# Pennsylvania Dependency Benchbook




Office of Children and Families in the Courts

Administrative Office of Pennsylvania Courts

The Pennsylvania Dependency Benchbook was written for Pennsylvania judges by Pennsylvania judges. The information contained in this Benchbook is intended to provide useful information regarding the subject covered but may not contain all relevant information or recent changes to the law or the Rules of Juvenile Court Procedure. The information contained herein is not intended to be construed as legal advice or considered a substitute for statutory, procedural or other legal authority.

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December, 2024

As a sitting juvenile court judge, I handled many cases involving abused and neglected children. As Administrative Judge for the Philadelphia Family Court, I was responsible for thousands of these cases. As the Supreme Court Justice leading our dependency court improvement efforts, I've continued my commitment to this area of the law mainly because I know the immediate and generational impact that can be made.

Dependency Court Judges oversee the most important matters handled by our courts, involving the most vulnerable children and families in our Commonwealth. In this court, you will make a difference. Whether or not that difference is positive or negative depends on your commitment to this area of the law and your willingness to grow in knowledge, skill, and insight.

Unlike many other matters, you are the ultimate finder of fact in dependency proceedings. There is no jury, and because the ultimate goal of all dependency proceedings is "the best interest of a child," the concept of winners and losers should not exist.

In this courtroom, the judge is an active participant. Your ability to create a courtroom environment that facilitates the open sharing of information where all parties and their counsel focus on the ultimate goals of our dependency system is critical. Your willingness to implement best practices related to the reduction of trauma, the enhancement of resiliency, the promotion of kin and family connections, and the elevation of child and family voices will be key to ensuring children grow into healthy, productive citizens.

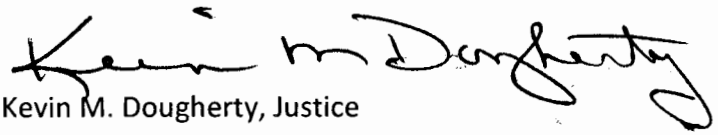
This Benchbook was written and updated by an experienced group of dependency court judges who represent all regions and sizes of counties across the Commonwealth. I was honored to be a member of the group that created the first edition released in 2010! Since then, the document has been updated three times to keep with changing laws and practices.

The Benchbook was designed to help new and experienced judges understand the intricacies of the many issues in dependency proceedings. Indeed, most Common Pleas judges have not grown up in the intense poverty, addiction, trauma, and abuse/neglect experienced by the children you will see. Dependency court judges need knowledge beyond their own

experiences to be most effective. This Benchbook provides much of that knowledge. If the issue is a dependency court issue, it is discussed in this Benchbook. And while the Benchbook is not binding authority, it is persuasive and has been mentioned in several Superior and Supreme Court opinions.

I would like to thank everyone who contributed to this fourth edition, including our relentless Chairperson, President Judge Craig Miller, and his entire committee. I also want to thank Sandy Moore and her staff from the Office of Children and Families in the Courts, who, as with all our initiatives, championed every phase of the project.

Finally, I especially thank everyone who read and used the original and revised Benchbooks and will now actively embrace this latest version. I encourage you to use this resource as you work to help children and families. In so doing, you will change the life trajectory of children and the generations that follow.



Kevin M. Dougherty, Justice
Pennsylvania Supreme Court



# DEDICATION

*Editing and updating a Benchbook is a monumental task concerning any area of the law. A Dependency Benchbook is even a greater challenge as the law, educational requirements, philosophies, and society's norms and challenges, along with best practices, are attempted to be woven into the final product. As the Chairperson of this Benchbook Committee, I am extremely grateful for the hard work of my fellow jurists who comprised this Benchbook Committee and the staff from the Office of Children and Families in the Court.*

*One cannot discuss this edition of the Benchbook without mentioning Judge Michael H. Sholley of Snyder and Union Counties, who was a driving force not only on this Benchbook Committee but in the various taskforces and workgroups in which Mike participated throughout his years on the Bench which included:*

- *The Autism and the Dependency Courts Taskforce;*
- *The Congregate Care Workgroup (Tri-Chairperson);*
- *The Kinship Care Taskforce;*
- *The Transitional Youth Workgroup (Co-Chairperson); and*
- *The State Roundtable*

*Unfortunately, Mike passed away on September 28, 2024. Just days prior to his death, Mike forwarded several submissions that he had recently volunteered to complete for inclusion in the Benchbook.*

*Acknowledging Mike's dedication, commitment, and immense impact on this Benchbook edition and the development of best practices in dependency jurisprudence, this Benchbook Committee dedicates this 4th Edition of the Dependency Benchbook in memory of the Honorable Michael H. Sholley.*

*The loss of Mike leaves a void in leadership and direction among the jurists who preside in Dependency Courts throughout this Commonwealth. Mike was indeed an advocate for children and families throughout this Commonwealth.*

*His spirit will live on through his accomplishments and actions, which centered professionally in the area of Dependency Law and will assist Judges, children, and their families throughout this Commonwealth for years to come. May he rest in peace, knowing that his actions, efforts, and determination helped better the lives of many children and their families in this Commonwealth.*

# Acknowledgements

This fourth edition of Pennsylvania's Dependency Benchbook benefited from the assistance of many individuals. The Office of Children and Families in the Courts would like to acknowledge and thank Justice Kevin M. Dougherty, Supreme Court of Pennsylvania, as well as all of the Supreme Court Justices for their support of this Benchbook and dependency court matters in general.

We would like to thank the Honorable Craig P. Miller, President Judge, Clinton County, as Chairperson of the Dependency Benchbook Committee. We would also like to thank all the members of the Committee for their dedication and guidance over the many months of careful review and thoughtful revision. In particular, we commend the Committee's vigilance in preserving the Mission and Guiding Principles for Pennsylvania's Child Dependency System throughout this Benchbook.

Finally, we want to thank the many judges, hearing officers, attorneys, and child welfare professionals who will use this tool to guide practice and, in so doing, help the children and families of Pennsylvania every day.



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# Benchbook Overview

As commissioned by the Pennsylvania State Roundtable, the Office of Children and Families in the Courts (OCFC), in collaboration with the Dependency Benchbook Committee, developed this Benchbook to assist new and experienced judicial officers in their efforts to provide timely and comprehensive action in child welfare cases; assure safe and permanent homes for children who are abused, neglected, or dependent; and promote child well-being. This 4th edition of the Benchbook incorporates new statutes, procedural rules, practice enhancements, and appellate court rulings since the last edition was released in 2019. The Benchbook provides:

- A summary of the legal requirements for dependency court proceedings, as well as detailed information on several unique topics, such as the rights of older dependent youth and legal representation of children, parents, and guardians.
- Best practices derived from the innovations implemented in various Pennsylvania courts and the cumulative experience of judicial officers in the state, as well as national level policy making and research organizations, such as the National Council of Juvenile and Family Court Judges and the American Bar Association's Center on Children and the Law.
- Tools such as hearing checklists, lists of critical questions, proposed colloquies to assist in the conduct of hearings, and judicial benchcards.

A recommended first step in using the Benchbook is to read **Chapter 1: The Charge for Pennsylvania's Dependency System**. This chapter provides an overview of the history of reform efforts in the state, current reform objectives and strategies, and the *Dependency Mission Statement and Guiding Principles*. The Mission Statement of *"Protect Children; Promote Strong Families; Promote Child Well-Being; Provide Timely Permanency"* provides the context for the themes that are echoed throughout the Benchbook and the recommended practices that support the overarching dependency system goals of increasing safety, well-being, and timely permanence for abused and neglected children.

Initial reading should also include **Chapter 2: Family Finding**, which discusses Act 118 of 2022, a Pennsylvania law requiring the ongoing practice of family finding for all child welfare cases once they are accepted for service by the child welfare agency. Within the chapter are tools and techniques that judges and hearing officers can use to guide the family finding process, as well as information about the importance of lasting connections for both youth and their families. It is also recommended that the initial reading include **Chapter 3: The Role of Judges and Hearing Officers**, which describes the multiple responsibilities of judicial officers in the dependency system, including oversight and management of individual cases, leadership in efforts to improve the

system, and participation in collaborative efforts with the child welfare agency and community. Critical information regarding the legal analysis of safety, required of judges and hearing officers at all dependency proceedings, is included.

Other essential background information is provided in **Chapter 4: Jurisdiction**, which examines Pennsylvania's court division structure as it affects child welfare case processing and the jurisdictional laws governing cases that cross county or state lines or involve tribal communities.

Because judicial officers are responsible for appointing counsel for children, parents, and guardians, the Benchbook also discusses these matters in **Chapter 5: Right to Legal Representation.**

**Chapter 7: Adjudication Hearing, section 7.3.11** provides guidance on tools for accommodating individuals with Autism Spectrum Disorder (ASD) to be used for an adjudication hearing and all hearings thereafter.

The main body of the Benchbook consists of chapters devoted to each of the hearings held in a Pennsylvania child welfare case, beginning with the shelter care hearing (**Chapter 6: Entering the Child Welfare System/Shelter Care Hearing**), proceeding in sequence through adjudication (**Chapter 7: Adjudication Hearing**, supplemented by **Chapter 8: Visitation, Chapter 9: Incarcerated Parents**), disposition (**Chapter 10: Disposition Hearing**), post-dispositional review (**Chapter 11: Modification of Placement, Chapter 12: Permanency Options**, **Chapter 13: Permanency Hearing**, **Chapter 14: Permanency Hearing to Consider Change of Goal ("Goal Change Hearing"),** and concluding with termination hearings **(Chapter 15: Termination of Court Supervision,** supplemented by **Chapter 16: Resumption of Jurisdiction and Chapter 17: Termination of Parental Rights**, supplemented by **Chapter 18: Appeals**) and adoption hearings (**Chapter 19: Adoption**).

For each of these hearing types, the following information is provided:

- An overview of the purpose of the hearing and the issues to be addressed.
- A summary of the legal requirements as delineated in Pennsylvania statutes and the Pennsylvania Rules of Juvenile Court Procedure.
- General guidance in preparing findings and orders.
- Best practices, interspersed in the appropriate sections of the text and highlighted in text boxes.
- A checklist that addresses the timing of the hearing, who should be present, notice and legal representation requirements, hearing procedures, critical questions to be addressed, and the findings and content of the order.

To further assist judges and hearing officers presiding over these hearings, the Benchbook includes a separate set of **Benchcards**. The two-sided benchcard for each hearing incorporates essential material from the corresponding hearing checklist in a

shortened, easily accessible format at the end of each hearing chapter. An additional copy of all benchcards is included in a separate section of the Benchbook. Other benchcards included in the Benchcard section offer guidance to judicial officers addressing specific issues such as Family Finding, Family Group Decision Making, Trauma, Autism, Stages of Recovery, and the Court of Common Pleas Case Management System Reports.

Following the core chapters devoted to dependency hearings, **Chapter 20: General Issues** contains valuable information on a variety of matters that have a more global application and may apply to the overall hearing process, such as the effective use of alternative dispute resolution techniques, Family Group Decision Making, **education success and truancy**, the appropriate handling of child testimony and considerations applicable to youth aging out of dependency.

**Chapter 21: Overview of Federal and State Child Welfare Legislation** provides a brief synopsis of the provisions of federal law that have had the most significant impact on child welfare, as well as the Pennsylvania Juvenile Act, the Child Protective Services Law, and the Pennsylvania Adoption Act.

The Benchbook concludes with a **Resources and References** section, a **Glossary, and a Bibliography of the references cited in the text. The Resources and References chapter includes links to the websites of national-level child welfare policymaking research organizations and information clearinghouses, as well as various tools and guidelines** developed for judicial officers who handle child welfare cases.



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# Chapter 1 - The Charge for Pennsylvania's Dependency System

**"If we save the body but in so doing destroy the mind and soul of a child, what good have we really done? We must focus on the whole child, the whole parent, the whole family to bring a child to adulthood as a whole person. Only when we do this for every child will we consider our work a success."**

***Honorable Max Baer, Pennsylvania Supreme Court Chief Justice, (2021-2022)***

American courts have had a central role in the protection of children since the first modern child welfare case, that of Mary Ellen Wilson, an eight-year-old girl who had for years been whipped, frozen, starved, and otherwise severely abused by her guardians before coming to the attention of "charitable visitors" in 1874 and being brought under the control of the New York Supreme Court pursuant to the Habeas Corpus Act. Mary Ellen's plight and the public outrage it stirred led to the creation of the first child protection organization, the New York Society for the Prevention of Cruelty to Children, as well as some of the first laws aimed at protecting children from exploitation, abuse, and neglect at the hands of those with responsibility for their care.

Since that time, cases involving alleged child abuse and neglect have required courts to strike a delicate balance between parental rights and children's rights, between family stability and child safety, stability, and permanency. This Benchbook is intended to help judicial officers strike that balance in a way that is consistent with the *Mission and Guiding Principles for Pennsylvania's Child Dependency System*, which was created by the Children's Roundtable Initiative in 2009 and endorsed by the Supreme Court of Pennsylvania, the Juvenile Court Judges' Commission, the Department of Public Welfare's (now known as the Department of Human Services) Office of Children, Youth and Families and the County Commissioners Association of Pennsylvania. That foundational document, reproduced at the end of this chapter, identifies four fundamental mission priorities for all professionals involved in Pennsylvania's child welfare system: ***protecting children, promoting strong families, promoting child well-being, and providing timely permanency.*** Embedding these mission priorities into all aspects of the child dependency system will lead to better outcomes for our children and a brighter future for our communities.

One overarching principle emerges from the Mission and Guiding Principles document and is woven throughout this Benchbook: **the vital importance of judicial**

**leadership in the child welfare arena**. That includes both administrative leadership in collaboration with the child welfare agency and other professionals that comprise the child welfare system, as well as courtroom leadership that ensures all parties remain focused on the goals of safe and timely permanency while reducing potential trauma to the child.

In addition, wherever possible, practical, court-tested techniques that serve to further the goals of the Mission and Guiding Principles are suggested throughout the Benchbook. These techniques and the Benchbook as a whole support several themes including:



**Strong Judicial Leadership & Oversight – All judicial districts should identify a lead dependency judge**. Unlike the Juvenile Probation Department (see Juvenile Court Judges' Commission (JCJC) *Standards Governing the Administration of Juvenile Court* for more information), the court does not have direct oversight of the child welfare agency. Even so, judges need to develop an administrative partnership with agency leadership that informs and strengthens the local child dependency system. This includes regular, consistent, collaborative administrative interaction with the agency, identification of gaps in services for children and families, and vocalization of the overall dependency system mission. One way to accomplish this is by participating in the development of the agency's Needs Based Plan and Budget (NBPB), an administrative role for the judge despite the agency's party status (See Chapter 20: General Issues, Section 20.11: Planning & Funding Services). Another way includes the development and support of a robust local Children's Roundtable convened by the lead dependency judge and co-facilitated with the child welfare administrator.

**Active and ongoing court oversight –** In dependency matters, the court maintains oversight until court supervision of the case is terminated. This Benchbook encourages the sitting judge or hearing officer to actively listen and ask questions that challenge all those before the court to expedite safe permanency for the child and family involved in each case. More frequent, thorough, and timely court oversight can move children to safe permanency expeditiously and simultaneously ensure a child's emotional, social, and physical well-being.

**One judge/one family –** Given the complexity of most dependency matters, having one judge hear the family's entire dependency case, from the initial hearing until the conclusion of court involvement, is preferred. This approach applies to hearing officers in jurisdictions utilizing them and includes the judge's oversight. This practice promotes stability and continuity throughout the case to help ensure children's emotional, psychological, and physical safety, well-being, and timely permanency.

**Early appointment of competent, well-trained legal counsel –** The assignment of competent, well-trained legal counsel for all parties is extremely important in dependency proceedings. Understanding one's rights and responsibilities, as well as the potential legal consequences of action or inaction, is critical to the outcome of a case. As such, courts should ensure that counsel for all parties is well-trained and well-equipped to provide comprehensive and thorough client representation. Additionally, counsel

should be appointed as early as possible upon filing a dependency petition, preferably before the shelter hearing.

**Continuous focus on safety –** Paramount in all child dependency matters is the issue of safety. Safety includes both physical and emotional aspects of a child's development. While parents and family are ordinarily the foundation for child safety, when this fails, the responsibility shifts to the child welfare professionals and, ultimately, the court. Assessments, decisions, plans, and follow-ups regarding emotional and physical safety are key elements of the dependency system and must be attended to at each judicial review.

**Timely processing –** Childhood is an incredibly short span of time, with dramatic development needing to occur as the foundation of all subsequent health and well-being. Research has repeatedly demonstrated that children who grow up in stable, loving, permanent family environments do much better in all areas of adult living. Accordingly, timely service implementation, judicial review, and decision-making are critical. **To the extent possible, courts should strongly discourage the use of continuances in dependency proceedings. These are urgent matters that directly affect the lives of children and deserve timely processing.** In the rare instance that a continuance is granted, judges should hold the next hearing as quickly as possible, reminding parties of the urgency of the moment. The issue of timeliness and recommended optimal time requirements is highlighted throughout the Benchbook.

**Concurrent planning –** The court is ultimately responsible for ensuring permanency for all dependent children, either by safe reunification or securing a safe, alternative, permanent home for the child. Simultaneous planning for both options is necessary to achieve the overarching goal that all children grow up in loving, permanent homes. Accordingly, specific elements of concurrent planning will be highlighted at each stage of the dependency court process.

**Service front-loading –** This Benchbook recognizes the importance of providing services for children and families upon the initiation of the case. The more quickly services are provided to families, the more likely they are to engage in services, thereby achieving more timely permanency.

**Maintaining family connections –** Act 118 of 2022: Family Finding (67 P.S. §§ 7501-7509), originally enacted into law in Pennsylvania as Act 55 of 2013, underscores the importance of maintaining family connections, involving extended family and kin in service planning and delivery, and strengthening supportive networks. This Benchbook emphasizes the importance of family connections, even in cases where families may not be reunified, and calls attention to the emotional damage that can be caused to children when proper steps are not taken to maintain these connections while ensuring child safety. Family finding is about the involvement of family and kin and the supportive network they wrap around a child and family; it is not just about finding a placement for a child. (See also Chapter 2: Act 118 of 2022: Family Finding.)

**Keeping siblings together –** Central to the need to maintain family connections is the more specific need to maintain sibling connections. Often, siblings see one another as the only link to their families, and many older siblings feel responsible for the care and well-being of younger siblings. Placing all siblings together will be highlighted unless this is not warranted for safety reasons. When placing children together is not possible, frequent and safe sibling contact should be prioritized to promote child well-being.

"I spent so much time scared, angry and confused. I know things could have been different for me if someone would have realized how important it was for me to be connected to my family."

- D.S., 20, Former Pennsylvania Foster Youth

**Engaging fathers –** Identifying, locating, and involving fathers early in the court process, ensuring needed services are provided in a gender-sensitive manner, arranging for meaningful/frequent contact, and including paternal relatives in the care and planning for children are critical to a court system that values child well-being. Special attention to the needs of fathers is presented at each stage of the process, including a benchcard specific to fatherhood.

**Using kinship care and "least restrictive" placements –** With the passage of the Fostering Connections to Success and Increasing Adoptions Act of 2008 and Act 55 of 2013: Family Finding and Kinship Care (currently Act 118 of 2022), the need to identify and involve kin has become more important than ever. In the past, kin have often not been considered as resources because popular belief dictated that if the parents were inadequate, then their relatives must be as well. This has been proven to be a myth, and with innovative tools such as Family Finding and web-based search engines, extended families and kin can be found more often and with more success. Once located, a thorough and unbiased assessment may identify appropriate kinship supports.

**Early implementation of visitation –** "Family time (visitation) should be liberal and presumed unsupervised unless there is a demonstrated safety risk to the child." Gatowski, S. et al., *Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* 16 (National Council of Juvenile and Family Court Judges 2016). As with the front-loading of services mentioned earlier, the timely implementation of an appropriate visitation schedule is imperative to manage the child's level of stress caused by the removal. Research has shown that, in most instances, children benefit from frequent, meaningful, and regular visitation. Parental and sibling contact often enhances children's emotional well-being and adjustment during periods of out-of-home care and improves parents' positive feelings about the placement while decreasing their worries about their children. Further, successful visitation is strongly correlated with achieving the placement outcome of safe reunification, achieving other permanency planning outcomes, and decreasing time in care. (See also Chapter 8: Visitation.)

**Individualized services identified with family input –** The cookie cutter approach to providing services to families does not work. Each family with which the system works is different, and services need to be tailored to fit each family's individual needs. Additionally, these needs change over time and, as such, the service provided should be adjusted to

meet changing needs. The identification and delivery of services is best accomplished through a collaborative process with the family. In most situations, this collaborative process can begin before the court has taken jurisdiction of the matter.

**Creating a culture and expectation of a non-adversarial process –** The use of Alternative Dispute Resolution (ADR) has significantly moderated the traditional adversarial approach to dependency court and the tendency to focus attention and energy on winning rather than children's best interests. ADR approaches provide an opportunity for parents to be empowered to determine their own solutions. This shift from traditional court approaches to family and solution-focused approaches requires significant change in court business processes, but its benefits far override any difficulties with implementation.

**Promoting educational success –** Educational stability and the success of a child are often seen as key predictors in a child's positive transition to adulthood. For many reasons, children in foster care may struggle with this issue. As such, each child's academic strengths and challenges should be regularly assessed, and resources and support should be provided as needed. In addition, every effort should be made to maximize school stability, even when the actual living situation of a child must change. A child's friends, teachers, and other school personnel are often incredibly important to the child and sometimes the only consistent relationships in a child's life. Minimizing disruption of these relationships may promote educational and future life success.

> "I just wanted to be a normal kid, but foster children never feel normal. We always feel as if other kids know our histories, what ugly events led to our being pulled from our homes. In my case, I've felt different my whole life."
>
> - J.B., 18, Former Pennsylvania Foster Youth

**Recognizing and reducing trauma for children and families –** While it is easy to recognize the physical toll that abuse and neglect at home can have on children who come into court, it is critical to understand that the events that lead to a dependency proceeding are traumatic for children and parents. In addition to the specific events that lead to court action, many of the children and families have experienced multiple traumatic events in their lives. Indeed, the average ACE (adverse childhood experiences) score for dependent children is 8 out of 10, which carries life-threatening consequences when unaddressed. (For more information on ACEs, see Chapter 2: Act 118 of 2022: Family Finding, Section 2.2 The Importance of Meaningful, Life-Long Connections.)

Moreover, the traumatic toll that the dependency and court process can have on children and families is sometimes overlooked. Families are complex social structures, and their disruption has the potential to be injurious to both children and adults. Michael Town, Circuit Judge in Hawaii, coined the phrase "jurigenic effect" to describe the unintended harm sometimes caused by involvement in the court system. Judicial officers should be mindful of this form of trauma and take steps to mitigate it. Judicial officers should collaborate with the agency to ensure adequate trauma-certified service providers are available. The Needs Based Plan and Budget provides an excellent opportunity

for judges and administrators to plan for adequate trauma-certified services to meet child and family needs. The broader concept of trauma is addressed throughout the Benchbook, in Chapter 20, Section 20.12: Trauma, and in more detail in the Pennsylvania Dependency Benchbook Resource Companion.

**Recognizing neurodiversity**—It is incumbent upon the court to recognize that not all persons process information in the same way. The court is responsible for recognizing individual needs, including information for children and adults on the autism spectrum, and using appropriate tools to assist in communicating with persons in a respectful and meaningful way.

As Justice Dougherty often quotes:

**"One doesn't have to operate with malice to do great harm. The absence of empathy and understanding is sufficient."**

*Honorable Kevin M. Dougherty,*
*Pennsylvania Supreme Court Justice*

# Mission and Guiding Principles For

# PENNSYLVANIA'S CHILD DEPENDENCY SYSTEM

Prepared By:

CHILDREN'S ROUNDTABLE INITIATIVE
OFFICE OF CHILDREN & FAMILIES IN THE COURTS
SUPREME COURT OF PENNSYLVANIA

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## Introduction

With approximately 20,000 children in Pennsylvania's foster care system, the need to examine and enhance our child dependency system is paramount. To do so, collaboration between the courts and the child welfare agencies is essential. This point was highlighted in the 2004 Pew Commission on Children in Foster Care Report to Congress stating,

> *"Although child welfare agencies and the courts share responsibility for improving outcomes for children in foster care, institutional barriers and long-established practices often discourage them from collaborating. Effective collaboration requires that both entities change the way they think about their respective roles, responsibilities, and priorities and engage in a new way of doing business together. Jurisdictions in which courts and agencies have been able to make this shift have yielded better results for children" (Pew Commission, 2004, p. 38).*

The initiative set forth herein combines the efforts of professionals from both the child welfare service and legal system in attaining the overarching goals of **child safety, well-being and permanency**. All involved in this work, from child welfare professionals to attorneys to commissioners and judges, are united in this common goal of helping children and families. To support and guide these efforts, this document was created by the Pennsylvania Children's Roundtable Initiative.

The document identifies a new mission for Pennsylvania's child dependency system and sets forth guiding principles that will lead to accomplishing that mission under the name:

***"Families 4 Children"*** stands for the collection of Pennsylvania individuals and organizations who have agreed to communicate and cooperate in pursuing the common purpose of finding or creating safe, permanent homes for every dependent child in Pennsylvania as quickly and practically as possible. This common purpose should be achieved through application of the Mission Statement and Guiding Principles set forth below, which are symbolized in its logo and summarized in its name.

## CHILDREN'S ROUNDTABLE INITIATIVE

The Children's Roundtable Initiative, supported by the Office of Children and Families in the Courts (OCFC) within the Administrative Office of Pennsylvania Courts (AOPC) and established by the Supreme Court of Pennsylvania in 2006, formally adopted the Mission Statement & Guiding Principles on May 29, 2009. The Children's Roundtable embodies a collaborative, cross-system statewide infrastructure that allows for effective administration and communication via a three-tiered system.

The first tier of the infrastructure is comprised of local **Children's Roundtables.** These exist in each judicial district and are convened by a judge. Members include supervisory and dependency judges, children and youth professionals, county solicitors, child and parent advocates, academic experts, and anyone interested in making a positive contribution to the functioning of the dependency system within counties.

The intermediate level (tier 2) of the infrastructure is comprised of **Leadership Roundtables.** There are eight Leadership Roundtables dividing Pennsylvania's sixty judicial districts into groups based on size. The number of judicial districts per Leadership Roundtable varies slightly to keep like-size judicial districts together, with a minimum of five (5) judicial districts per roundtable.

These Leadership Roundtables are comprised of three members from each local Children's Roundtable including a Dependency Judge, the Children & Youth Administrator, and one additional Children's Roundtable member. Leadership Roundtables provide a forum for members to identify, discuss, and share concerns and solutions.

Issues are identified during Leadership Roundtable meetings and common themes are brought to the highest roundtable level the **State Roundtable**. The State Roundtable (tier 3) is comprised of at least two members from each Leadership Roundtable and others with specific expertise in child dependency matters. In addition to facilitating intrastate communication, the State Roundtable sets priorities related to child dependency court improvement efforts and is involved in the national dependency reform movement to keep Pennsylvania apprised of evolving trends and best practices.

As recommended in the 2004 Pew Commission on Children in Foster Care Report, the Children's Roundtable Initiative encourages strong communication and collaboration on behalf of children. The State Roundtable first met in June of 2007. Through a collaborative discussion process at that meeting, a consensus was reached that a paradigm shift must occur regarding the way we presently work with children and families in Pennsylvania. The State Roundtable adopted a philosophical framework of respect by empowering families to identify their strengths and make their own decisions regarding the future of their children. It was further agreed that practice supported by the initiative henceforth would be strength-based and family-centered, engaging families in a manner that would guide them in developing their own collaborative solutions. That paradigm shift is described in this document.

## LOGO & NAME




### Description of Logo

This logo depicts the picture and words that we believe a child would create from blocks and crayons if that child were asked to show what he or she really wanted from the Pennsylvania child dependency system:

To grow up in a safe, nurturing, and permanent family.

This logo is child and family-friendly, representing a new philosophy and approach to child dependency in Pennsylvania which builds on the strengths of the family as a foundation for protecting children.

The adult figures represent all families, and the child figure represents all children.

The blue circle contains the Mission Statement set forth below.

### Description of Name

The name "Families 4 Children" summarizes the ultimate goal of this initiative and the Pennsylvania child dependency system:

To ensure that every child grows up in a safe, nurturing, and permanent family.

The name also stands for the "family" of Pennsylvanians who are "for" children and are communicating and cooperating with each other to achieve that goal.

## MISSION STATEMENT & GUIDING PRINCIPLES

The ultimate goal of "Families 4 Children" is to ensure that every child grows up in a safe, nurturing, and permanent family. This goal will be accomplished through the following four mission priorities: protecting children; promoting strong families; promoting child well-being, and providing timely permanency.

Embedding these mission priorities into all aspects of the child dependency system will lead to better outcomes for our children and a brighter future for our communities.

These principles represent the fundamental beliefs that should guide the overall operation of the child dependency system in Pennsylvania and be reflected in the delivery of all services to children and families within that system. These beliefs should also guide court and policy decisions at all levels within the system and the relationships among all participants in the system. Doing so should increase child safety and well-being while reducing the number of dependent children in Pennsylvania and/or the length of time that any particular child remains dependent.

To accomplish this mission and redefine, refocus, and redirect the goals, actions, and operation of the child dependency system in Pennsylvania, the Supreme Court of Pennsylvania, through its Office of Children & Families in the Courts and the Children's Roundtable Initiative, presents the following Mission Statement and Guiding Principles.

## *MISSION STATEMENT*

***"Protect Children;***
***Promote Strong Families;***
***Promote Child Well-Being;***
***Provide Timely Permanency"***

### *Protect Children*

All children have the right to be protected from physical neglect and abuse, including sexual victimization, and from emotional neglect and abuse.

### *Promote Strong Families*

All children have the right to live in a strong family that provides a safe, nurturing, and healthy environment in which to be reared, as families are the primary source of the protection and nurturing of children.

### *Promote Child Well-Being*

All children have the right: to be happy, thriving, self-actualized, educated, healthy, and content; to have the opportunity to reach their full potential as individuals capable of healthy relationships and productive lives; and to have a fair chance in life with opportunities for healthy, balanced, and well-rounded development.

### *Provide Timely Permanency*

All children have the right to live in a permanent family and to timely permanency decisions, as these are critical to the health and welfare of dependent children.

# PROTECT CHILDREN

## OUR BELIEF:

All children have the right to be protected from physical neglect and abuse, including sexual victimization, and from emotional neglect and abuse.

## GUIDING PRINCIPLES:

Pennsylvania's child dependency system shall protect children who:

- Are without proper parental care or control, subsistence, without education as required by law, or other control necessary for that child's physical health, mental health, emotional health, or moral development;
- Have been placed for adoption in violation of law;
- Have been abandoned by their parents, guardian or other custodian;
- Are without a parent, guardian, or legal custodian;
- Are habitually and without justification truant from school;
- Have committed an act of habitual disobedience of the reasonable and lawful commands of their parent, guardian, or other custodian and are ungovernable and found to be in need of care, treatment, or supervision;
- Are both under the age of ten years and have committed a delinquent act;
- Were formerly under the jurisdiction of the court or on informal adjustment who commit an ungovernable act;
- Are born to a parent whose parental rights regarding another child have been involuntary terminated within three years immediately preceding their date of birth and the conduct of the parent poses a risk to their health, safety, or welfare.

***In protecting children, the system shall also:***

- Recognize and address the trauma a child experiences as a result of abuse and neglect.
- Recognize and address the trauma a child experiences as a result of placement.
- Ensure that "reasonable services" are provided to parents or other caregivers prior to removal, if possible.

- When placement is required to ensure child safety, first and foremost, make all reasonable steps to immediately locate a safe, kinship care option, preferably within the child's community.

- Utilize shelter and congregate care facilities only when the child's immediate physical and emotional needs require such care.

- Ensure that the voice of the child is heard at each stage of the process.

- Regard child safety, well-being, and timely permanency as the shared responsibility of those within the system and the community.

# PROMOTE STRONG FAMILIES

## OUR BELIEF:

All children have the right to live in a strong family that provides a safe, nurturing, and healthy environment in which to be reared, as families are the primary source for the protection and nurturing of children.

## GUIDING PRINCIPLES:

Pennsylvania's child dependency system shall:

- Recognize that a family is the primary source for the nurturing and protection of a child and has the primary responsibility to meet a child's needs for permanency, safety, and well-being.
- Encourage families to utilize all available resources to meet that responsibility.
- Define "family" broadly to include parents, relatives, those not related by blood but who have a close and meaningful relationship with the child.
- Recognize that a child should be maintained with his or her parents whenever possible and, if not, then with other family members.
- Recognize that the family is significant to all aspects of the child's development.
- Recognize that families are capable of change and, with support, most can safely care for their children.
- Engage families respectfully.
- Recognize that each family is both unique and diverse and provide services tailored to its unique and diverse strengths and needs by respecting its economic, ethnic, class, cultural, and religious beliefs, values, practices, and traditions.
- Inspire hope, growth, and change in each family by identifying its strengths.
- Engage custodial and non-custodial parents, as well as kin, in the care of their children.
- Engage non-participating parents effectively.

- Include family members in the ongoing care of their children, even when those children are temporarily placed outside of the family home.
- Support families by stressing the importance of formal education for the child.
- Educate families in parenting and life skills.
- Ensure that a child in placement maintains safe family connections.
- Find and engage absent parents, siblings, and other relatives to keep children connected to their birth families.
- Value extended family members as permanent resources for children.

# PROMOTE CHILD WELL-BEING

## OUR BELIEF:

All children have the right: to be happy, thriving, self-actualized, educated, healthy and content; to have the opportunity to reach their full potential as individuals capable of healthy relationships and productive lives; and to have a fair chance in life with opportunities for healthy, balanced, and well-rounded development.

## GUIDING PRINCIPLES:

Pennsylvania's child dependency system shall:

- Recognize and promote the physical, emotional, social, and educational well-being of each child.
- Inspire hope, growth, and change in each child by identifying his or her strengths.
- Recognize that each child is unique and provide services tailored to his or her unique strengths and needs.
- Provide opportunities for each child to develop individual talents and skills.
- Provide opportunities for each child to build self-confidence and self-esteem.
- Empower every child to develop a sense of individual responsibility and accountability for their actions.
- Identify and engage an adult with whom a child can develop a reliable, sustaining, and meaningful life connection.
- Ensure that siblings are placed together unless there is a compelling reason not to provide such placement.
- Implement a visitation schedule including siblings, parents, and kin that meets the developmental needs of each child, understanding frequent, and quality visitation as being key to successful family reunification.
- Seek and strengthen informal and formal community resources for children and families.
- Ensure that early assessment is made of each child's cognitive development and, where possible, include family members in any recommended treatment.

- Encourage a child's interaction with peers in order to foster healthy social development.

- Strengthen an older child's ability to live independently as he or she transitions into adulthood by providing supportive services such as education, life skills training, prevention services, and employment and housing education.

# PROVIDE TIMELY PERMANENCY

## OUR BELIEF:

All children have the right to live in a permanent family and to timely permanency decisions, as these are critical to the health and welfare of dependent children.

## GUIDING PRINCIPLES:

Pennsylvania's child dependency system shall:

- Identify all possible practices and strategies that address the needs of a child and family and encourage solutions which do not require court intervention.
- Recognize that a child should be reunified with his or her parents whenever possible and, if not, then with other family members.
- Understand the need for urgency in service delivery and decision-making for those children who do require court intervention.
- Whenever possible, employ non-adversarial court processes including facilitation and mediation strategies as a means for resolving concerns.
- Employ family finding strategies in recognition of the potential trauma caused by family separation.
- Employ decision-making and planning strategies that are family driven.
- Employ family engagement strategies as a means of insuring strength-based family centered skills for professionals serving children and families.
- Employ non-adversarial, family-driven planning strategies at the initial stages of the dependency process and at any other stage at which a plan is being developed or updated.
- Assure timely and thorough court hearings and expeditious decisions for each child.
- Assure competent legal representation for children and parents before a shelter care hearing and throughout the legal process.
- Ensure that the voices of parents or other caregivers are heard at each stage of the process.
- Employ concurrent planning for permanency as each case commences and at every stage of the proceedings.

- Minimize the length of time children must spend in foster care and other temporary living situations.
- Timely accomplish permanency for every dependent child according to the law.
- Terminate court intervention in the life of a child when that child is no longer dependent.
- Identify, create, and implement additional systemic improvement practices.
- Ensure that recruitment activities are fully pursued to identify the best adoptive family for those children who cannot return to their families.
- Ensure close coordination with Orphans' Courts aimed at finalizing adoptions in a timely manner.
- Recognize that permanent legal custodianship is a viable option when reunification or adoption is not possible.

# CHILD DEPENDENCY SYSTEMS OPERATIONS

## OUR BELIEF:

To accomplish the Mission Statement and implement the Guiding Principles above, the Pennsylvania child dependency system must improve in every facet and at every level, increase the resources dedicated to that system, and measure its progress toward these new goals.

## GUIDING PRINCIPLES:

Pennsylvania's child dependency system shall:

- Communicate and cooperate with others within the child dependency system working toward the common goal of providing each child with a safe, nurturing, and permanent family.
- Provide appropriate and effective prevention, intervention, and treatment programs and ensure that all decisions made and all services offered are designed to meet the unique needs of each child and family.
- Ensure strong and responsible leadership from all facets of the dependency system, beginning with our courts.
- Ensure competent, trained legal counsel for children and parents who qualify for court-appointed legal counsel.
- Ensure that children and parents are fully informed about their rights, the court process, and the function and duties of legal counsel who represent them.
- Utilize the Children's Roundtable Initiative as a mechanism for local and statewide communication, decision-making, and leadership.
- Create unified methods to measure practices and outcomes.
- Collect and manage data, then evaluate and plan for future needs.
- Establish and monitor accountability for all system participants.
- Employ highly trained, competent, and caring staff who are prepared to serve children and families in accordance with the Mission Statement and Guiding Principles set forth herein.
- Treat all child dependency professionals with respect and dignity, establish clear expectations and standards for their performance, evaluate them regularly, and compensate them appropriately.

- Assure that families receive priority in the delivery of human services including mental health treatment, drug and alcohol treatment, training and employment connections, housing services, child care services, and other needed services.

- Educate community members and organizations to the within Mission Statement and Guiding Principles and the functioning of the child dependency system.

- Encourage community members and organizations to participate in all aspects of the child dependency system, because local communities are our greatest resource in meeting the needs of families and children.

- Develop and work within a strong and integrated network of service systems, since neither the child dependency system, nor any other system can alone address all the needs of children and families.

- Support the educational needs of all dependent children and advocate on their behalf.

- Continually increase the effectiveness of all services, programs, and processes.

- Advocate for stable and sufficient funding to support all aspects of service delivery and account for the expenditure of all such funds.

- Ensure that courts, child welfare agencies, permanent families, and all other participants in the child dependency system are provided with the necessary resources and capacity to implement these Guiding Principles and accomplish the mission to "protect children, promote strong families, promote child well-being, and provide timely permanency" in Pennsylvania.

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# Chapter 2 – Act 118 of 2022: Family Finding

## 2.1 Family Finding

One of the most significant laws impacting Pennsylvania's child dependency system is Act 118 of 2022 (formerly known as Act 55 of 2013 and Act 14 of 2019) (67 Pa.C.S. §§ 7501-7509). Act 55: Family Finding, became law in July 2013 and was amended in 2019 and 2022. The law mandates that county child welfare agencies initiate family finding when a case is accepted for service. 67 Pa.C.S. § 7503. A case is accepted for service when the county agency decides on the basis of the needs and problems of an individual to admit or receive the individual as a client of the county agency or as required by a court order entered under 42 Pa.C.S. Ch. 63 (relating to juvenile matters). 67 Pa.C.S. § 7502.

The law also requires the county agency to make ongoing diligent efforts to involve extended family and kin in the development of the service plan and delivery of services. In many situations, this acceptance for service will never result in a dependency petition. In others, a dependency petition may result. In both instances, family finding is required.

Family finding is not optional. Family finding is law. Family finding is an ongoing process that can only be discontinued by court order for court-involved children. ***While the law specifically places the burden of family finding on the child welfare agency, in practice, judges, hearing officers, child welfare administrators,*** **Guardians** ***Ad Litem, child's legal counsel, parent attorneys, solicitors, caseworkers, and providers share the responsibility of identifying supportive persons and involving them in the care of dependent children***.



Family finding ensures meaningful, life-long, supportive relationships for children and youth. Family finding helps identify caring adults who support children and older youth in a variety of ways, including writing letters, sending birthday cards, including the child or older youth in holiday events, mentoring, attending sporting events, and other activities that demonstrate unconditional love and acceptance of the child or older youth. ***Family finding is much more than a placement. Family finding connects a child or youth to their heritage and to loving, supportive adults.*** **For these reasons, it is imperative that family finding continue throughout the life of the entire proceeding.**



***Best Practice Box — Family Finding and Family Group Decision Making (FGDM)***

Act 118 of 2022: Family Finding was implemented to involve families when children enter the child welfare system and to promote family involvement, which is the law in Pennsylvania. In addition to other professionals, the caseworker may ask about family and friends to help support the child and family through a Family Group Decision-Making Meeting (FGDM). FGDM is a meeting about family. It brings together family, friends, caseworkers, and service providers to work as a team.

Family Finding and FGDM empower the family to be in the driver's seat, supporting them in making decisions and supporting all involved. More information can be found on the OCFC webpage here: https://ocfcpacourts.us/parents-and-families/family-group-decision-making/ and https://ocfcpacourts.us/wp-content/uploads/2020/05/1.pdf.

(see Chapter 20: General Issues, Section 20.4: Family Group Decision Making)

Family finding identifies relatives and kin (teachers, coaches, neighbors, etc.), including those estranged from or unknown to the child, who are willing to become permanent connections or supports for the child or the parent(s) receiving services from the child welfare agency. Family finding is intended to provide a range of committed adults who can provide permanency, sustainable relationships, and a network of support to children and their parents. Through family finding, a safe family or kin can be identified. These individuals, in turn, may be able to assist with visitation, provide age and developmentally appropriate activities, assist with transportation, provide respite, and provide a number of other resources children and families need. Family finding is vital to all permanency options courts are required to consider.

Family finding is especially important to judicial officers as the court is ultimately responsible for reducing future trauma to the children and families served, ensuring that the quality and quantity of services being provided to children and families adequately meet their needs, and making a number of required judicial findings and orders.

The intent of Act 118 is to ensure that family finding occurs on an ongoing basis for all children entering the child welfare system, to promote the use of kinship care when it is necessary to remove a child from the child's home, and to ensure

that each child leaving foster care at 18 years of age or older is prepared for the transition to adulthood. 67 Pa.C.S. § 7501.

In those situations where a request for protective custody is made and/or a petition for dependency is filed, the ***judge or hearing officer is ultimately responsible for ensuring adequate family finding activities occur***. To meet this responsibility, a general understanding of family finding is necessary. Judges and hearing officers are encouraged to ask specific questions about efforts to explore family finding, specifically when it appears that family finding efforts have been minimal or non-existent.

Understanding the urgency and the steps of family finding are critical as they link to specific findings required of the court. These findings, made at various stages of a dependency case, address reasonable efforts, least restrictive placement, and various issues related to safety, well-being, and permanency. Evidence of meaningful and ongoing family finding efforts should be presented at an application for an Order of Protective Custody, Shelter Care, Adjudication, Disposition, and Permanency Review Hearings until court supervision is terminated.

***Best Practice Box — Emergency Family Meetings***

Emergency Family Meetings involve quickly gathering extended family, kin, and community members to support the parents and child. This inclusive family approach is designed not only to give the family a voice but also to actively involve the family in decision-making. This approach strengthens partnerships between family and child welfare professionals with the common goals of the child's safety, permanency, and well-being. Expedited Family Group Decision-Making Meetings, https://ocfcpacourts.us/parents-and-families/family-group-decision-making/ and Crisis/Rapid Response Family Meetings, https://ocfcpacourts.us/childrens-roundtable-initiative/family-engagement-initiative/crisis-and-rapid-response-family-meetings are two examples of family-centered meetings that can occur quickly to address any emergent issue. These meetings can also assist in demonstrating family finding efforts needed for the court.

Because child welfare agencies are legally required to begin family finding when cases are accepted for service, cases that have been open in the agency for a period of time should have more thorough evidence of family finding

efforts than those cases previously unknown to the agency. As such, the length of time the agency has been working with the family should be a significant factor in the court's assessment of the quality of family finding efforts.

In Pennsylvania, family finding is often used as a foundational step towards a successful voluntary family conference (see Chapter 20: General Issues, Section 20.4: Family Group Decision Making). Ultimately, the combination of family finding and family conferencing should produce the Family Service Plan and the Child Permanency Plan required of all county child welfare agencies. These plans should form the basis for county child welfare recommendations to the Juvenile Court and court-ordered services.

While Act 118 does not specifically identify one model of family finding, in Pennsylvania, the model taught and implemented by the majority of counties is known as Family Finding, which originates from Kevin Campbell, founder of the National Institute for Permanent Family Connectedness. Pennsylvania's current family finding practice is a mix of the Kevin Campbell model, work done by Permanency Practice Initiative counties, and Pennsylvania law. Regardless of the model used or name given, family finding is a collection of very specific and effective methods and strategies to locate and involve relatives/kin of child welfare-involved children. The goal is to connect each child with family and other supportive adults so that every child may benefit from lifelong connections.

### 2.1.1 Core Family Finding Beliefs

Core Family Finding beliefs are:

1. Every child has a family; they can be found if we try.
2. Loneliness can be devastating, even dangerous, and is experienced by most children in out-of-home care.
3. A meaningful connection to family helps a child develop a sense of belonging.
4. The single factor most closely associated with positive outcomes for children is meaningful, lifelong connections to family.

*Family Finding*, Pale Blue, Inc, Family Finding.org (last visited Nov. 12, 2024).

### 2.1.2 Essential Family Finding Components

**Family Finding Practice Components include:**

**Urgency**
Family Finding views meaningful, supportive, permanent relationships with loving adults as an essential need closely tied to youth safety. Family Finding asks practitioners to urgently pursue these relationships for lonely youth by assertively engaging family and vigorously challenging the structural barriers to developing or strengthening these relationships.

**Expanded Definition of Permanency**
Although physical, legal permanence is an explicit outcome for most cases, Family Finding defines permanency as a state of permanent belonging, which includes knowledge of personal history and identity, as well as a range of involved and supportive adults rather than just one legal resource.

**Effective Relative Search**
Family Finding employs effective and immediate techniques first to identify relatives or other meaningful connections for each youth. We create large groups to form a smaller, tight-knit, unconditionally committed relational permanency around young people.

**Family Driven Processes**
Family Finding recognizes that families are disempowered by the placement of relative children outside of the family system, and it seeks to remediate that harm by identifying the strengths and assets of each family member and facilitating processes through which families can support their relative children effectively.

**Well Defined and Tactical Procedures**
Family Finding begins with careful preparation and alignment of current team members to pursue the six steps of the Family Finding model. While it is a strongly valued-based model, it also has clear and definable goals and activities that are easily tracked with a fidelity tool. The six steps include:

- Discovery
- Engagement
- Planning
- Decision-Making
- Evaluation
- Follow Up

*Family Finding*, Pale Blue, Inc, Family Finding.org (last visited Nov. 12, 2024)

***Best Practice — Ask the Parties***

Judges and hearing officers should ask parents about the important people in their life and their child's life. Children should also be asked about adults they have known with whom they've had a connection or relationship. If a child is unable to identify anyone, the judge or hearing officer should ask the child to consider the question, list any persons who come to mind, and provide that list to their GAL and caseworker.

Finally, judges and hearing officers should order the agency to explore the persons identified and how they might support the child, providing a report to the court of actions taken by the agency.

Because judges and hearing officers are required to make specific findings and orders regarding the adequacy of family finding efforts made by the agency at each stage of the case, evidence regarding the agency's initial and ongoing efforts must be provided to the court. If not provided, the judge or hearing officer should ask open-ended questions regarding the application of family finding for each child at every hearing.

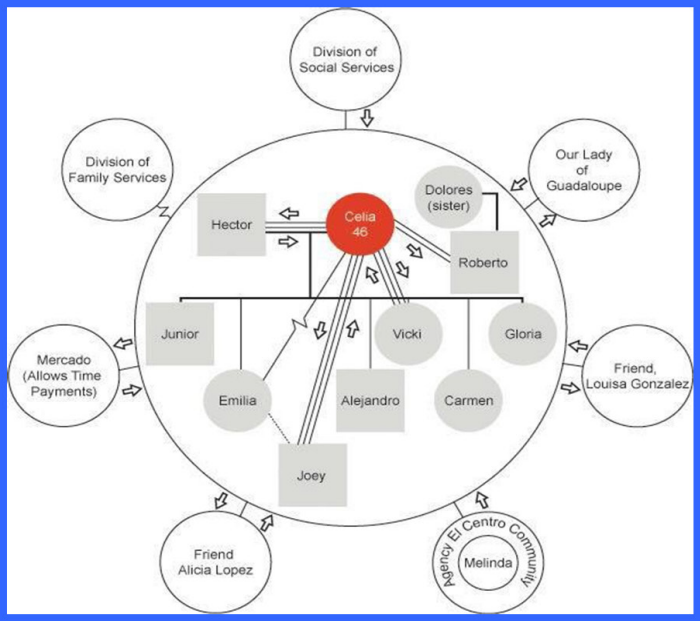
Because family finding is primarily aimed at ensuring meaningful connections for children rather than simply a placement, judges and hearing officers should know the number and strength of relationships each child has with caring adults.

## 2.2 The Importance of Meaningful, Life-Long Connections

*We know now that in addition to the goals of safety and permanency for youth living in care systems, we must also be active and intentional about protecting their development and health while they are waiting in care and transitioning from the care system. Relationships of stability, affection, responsiveness, flexibility, and commitment are the only protective factors reported in science to accomplish this.*
*Kevin Campbell, FF Model Author*

***Best Practice — Eco Maps***

Many Pennsylvania judges and hearing officers are now requiring the submission of an Eco Map for each dependent child. An Eco Map is a structural diagram of a child's most important relationships with people, groups and organizations. This simple visual depiction of each child's connections helps all parties understand the positive relationships in a child's life and clearly identifies when such relationships are non-existent. When such relationships are non-existent, judges and hearing officers can order specific steps aimed at creating healthy, life-long connections for children.




A landmark research study, the Adverse Childhood Experiences (ACE) Study, an ongoing collaboration between Kaiser Permanente and the U.S. Centers for Disease Control and Prevention (CDC), demonstrated a significant association between cumulative adverse experiences in childhood and a host of negative adult outcomes, including physical and mental health problems, substance abuse, risky sexual behaviors, suicide attempts, aggression, cognitive difficulties, and poor work performance. (See *ACEs and Toxic Stress: Frequently Asked Questions,* Center on the Developing Child, Harvard University, https://developingchild.harvard.edu/resources/aces-and-toxic-stress-frequently-asked-questions (last visited Nov. 13, 2024).)

According to the findings, by the time children have experienced four or more adverse experiences, the odds of having negative health outcomes in adulthood are up to 12 times that of children without such experiences.

Research has demonstrated the importance of positive, healthy connections. Indeed, the importance of meaningful connections directly impacts physical, social and emotional health throughout a person's life. While these connections are important for all human beings, they are especially critical for persons who have experienced trauma and live in situations involving high levels of toxic stress. (See *Toxic Stress,* Center on the Developing Child, Harvard University, https://developingchild.harvard.edu/science/key-concepts/toxic-stress (last visited Nov. 13, 2024).)

**All children in out-of-home placement have experienced some level of trauma, toxic stress, and ACEs.**

Research has also identified positive, healthy adult connections as a primary buffering mechanism through which a child with a high ACE score and high toxic stress level can heal. ***The ACE score, the toxic stress level, and the number of healthy adult connections for each dependent child are critical pieces of information for judges and hearing officers.*** Children with high ACE scores, high toxic stress, and few connections are at grave risk for a lifetime of serious psychological and physiological struggles. (See *Adverse Childhood Experiences (ACEs),* U.S. Centers for Disease Control and Prevention, www.cdc.gov/aces/about/ (last visited Nov. 13, 2024) and *Aces Too High*, Aces Too High LLC, https://acestoohigh.com/got-your-ace-score (last visited Nov. 13, 2024).)

Because the consequences of a high ACE score and unresolved toxic stress are momentous in a person's life trajectory, it is not sufficient for the court to simply inquire as to whether family finding was done. Instead, judges and hearing officers should inquire as to the specific, ongoing family finding actions taken by the county agency to ensure meaningful, life-long connections for all dependent children.

These meaningful, life-long connections require more than the mere identification of healthy adults. Meaningful, life-long connections require that the child have multiple opportunities for positive interaction with these adults.

As such, judges and hearing officers need to know the connections children have with others as well as the level of interaction children have with those identified. Both pieces of information are critical in the court's assessment of family finding. Eco-maps and Connection Circles (a practice used in Pennsylvania's Family Engagement Initiative courts) are easy ways to illustrate a child's connections, while calendaring can show the actual frequency of interactions children have with people identified as important in their lives.

***Best Practice – Calendaring***

One simple, easy method by which the court can quickly assess the connectedness of a dependent child is known as "calendaring." In its simplest form, the child (either by themselves or with the help of adults) lists his/her daily activities on a calendar which is provided to the court at each hearing.

In reviewing the child's calendar, the judge or hearing officer should not only see the number of meaningful adults in the child's life but the level to which those adults are interacting with the child. Judges and hearing officers should pay special attention to those non-paid adults who are likely to continue positive interaction with the child once court supervision is terminated.

In addition to demonstrating a child's connectedness, calendars also provide information judicial officers can build upon in their conversation with the child as well as evidence for judicial findings/orders regarding developmental and age appropriate activities.

In the absence of an ACE score, a toxic stress level, an eco-map, a Connections Circle, and a calendar, judges and hearing officers should question the adequacy of family finding efforts. When sufficient family finding actions have yet to be made, the judge or hearing officer should specify the court's expectations in the court order. CPCMS court orders contain very specific family finding language, which can be edited by the judicial officer to meet the needs of each situation.

## 2.3 Discontinuance of Family Finding

While Pennsylvania law does allow for the discontinuance of family finding, ***this should be done rarely and only after careful judicial consideration.*** For court-involved children and older youth, family finding can ***only*** be discontinued by the court. If discontinued, the court can order the resumption of family finding.



Act 118 allows for the discontinuance of family finding under very specific circumstances.

These include the following:

1. The child has been adjudicated dependent pursuant to 42 Pa.C.S. Ch. 63 (relating to juvenile matters), and a court has made a specific determination that continued family finding no longer serves the best interests of the child or is a threat to the child's safety.

2. The child is not under the jurisdiction of a court, and the county agency has determined that continued family finding is a threat to the child's safety. This determination must be based on credible information about a specific safety threat, and the county agency shall document the reasons for its determination.

3. The child is in a pre-adoptive placement, and court proceedings to adopt the child have been commenced under to 23 Pa.C.S. Part III (relating to adoption).

67 Pa.C.S. § 7503(b).

## 2.4 Resumption of Family Finding

Finally, Act 118 requires the resumption of family finding if either of the following circumstances exists:

1. The child is under the jurisdiction of a court and the court determines that resuming family finding is best suited to the safety, protection, and physical, mental and moral welfare of the child and does not pose a threat to the child's safety; or

2. The child is not under the jurisdiction of a court, and the county agency determines that resuming family finding serves the best interests of the child and does not pose a threat to the child's safety.

67 Pa.C.S. § 7503(c).

## 2.5 Oversight

***Ultimately, the judge or hearing officer manages the provisions of family finding for children.*** The judge or hearing officer sets the tone as to what level of family finding is sufficient, sets the expectation that comprehensive family finding efforts are provided to both children and parents, and ensures that all professionals involved (GAL, child's legal counsel, parent attorneys, solicitors, caseworkers and others) are meeting the court's expectations.

# Family Finding
# Key Questions for Legal AND Relational Permanence

## For the Children and Youth Agency

1. **What** specific things have you done to identify family and kin?
2. Who is connected to this child?
3. **How** have you included the identified family and kin into case planning and service delivery?
4. **Permanency Hearings:** Family finding is ongoing. What have you done to **continue** identifying and including family and kin?
5. **How** have you exhausted family and kin as a placement resource option?
6. What resources are being provided to extended family to support connections or placement?

FAMILY FINDING IS NOT AN ACCURINT SEARCH OR A PLACEMENT

## Legal Requirements of Family Finding

1. **Identify and build family and kin relationships**
2. **Include the identified family and kin in the planning and service delivery**
3. **Create a network of ongoing support**

FAMILY FINDING IS ENSURING MEANINGFUL, HEALTHY CONNECTIONS FOR CHILDREN & PARENTS

## For the Youth and Parents

1. Has your Caseworker or lawyer talked to you about the people in your life whom you love?
2. With whom in your life do you enjoy talking or spending time?
3. Tell me what your week looks like. What activities do you do throughout the week/month? **(You can ask the child or parent to keep a monthly list/calendar of activities)**
4. If you had to go out of town for the weekend, with whom would your child stay? **When directed to a youth**: If your parent had to go out of town for the weekend, with whom would you want to stay?

# Family Group Decision Making
# Key Questions

## For the Children and Youth Agency

1. Has there been a Family Group Decision Making conference?
2. If yes, …
   - When?
   - Who was there?
   - What was the purpose?
   - Did the family develop a plan that the agency accepted? Please provide a copy of the plan.
   - Is there a scheduled follow-up conference?
3. If no,...
   - Was Family Group Decision Making explained and offered to the family?
   - Why did the family decline the offer?

## For the Parent or Guardian

1. Has anyone explained or offered to you a process called Family Group Decision Making?
2. Do you have family or friends who you believe would come together to help you develop a plan to keep your child safe?
3. If you have been offered a Family Group Decision Making conference and declined such, help me understand why you prefer that the professionals make the decisions for you and your family.
4. If you have NOT been offered a Family Group Decision Making Conference, would you like the agency to provide you information on how you and your family can have one?
5. Do you understand what happens at a Family Group Decision Making conference?

## For the Youth

1. Has the agency or your lawyer explained or offered to you a Family Group Decision Making conference?
2. Do you have family or friends who you believe would come together to help you?
3. Do you understand what happens at a Family Group Decision Making conference?
4. Would you like to have family and friends come together to develop a plan for how they can support you?
5. Have you had a Family Group Decision Making Conference to assist with transition planning?



# Chapter 3 – The Role of Judges and Juvenile Court Hearing Officers

## 3.1 Role of Judges

The role of Judges in Dependency Court, as outlined in *The Mission and Guiding Principles for Pennsylvania's Dependency System*, is to "Protect Children, Promote Strong Families, Promote Child Well-Being, and Provide Timely Permanency." Children's Roundtable Initiative, Office of Children and Families in the Courts, *The Mission and Guiding Principles for Pennsylvania's Child Dependency System* (2009).

"Judging in juvenile and family court is specialized and complex, going beyond the traditional role of the judge. Juvenile court judges, as the gatekeepers to the foster care system and guardians of the original problem-solving court, must engage families, professionals, organizations, and communities to effectively support child safety, permanency, and well-being. Judges must encourage the court system to respond to children and their families with urgency and dignity. These key principles provide a foundation for courts to exercise the critical duties entrusted to them by the people and the laws of the land". Gatowski, S. et al., *Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* 14 (National Council of Juvenile and Family Court Judges 2016).

### 3.1.1 Oversight and Management of Individual Cases

As the *Enhanced Resource Guidelines* emphasize, child welfare cases involve the court in the lives of the parties and the operations of the child welfare agency to an extent unlike any other court case because of their length, complexity, and the continuous nature of the determinations they require. Because the decisions are "interlocking and sequential," the court must perform a more managerial and directive function than in other litigation. *Id*. at 25, 27.

"Congress's main purpose in involving judges in the oversight of child protection cases was to ensure that the social service agency was doing its job; that children were not removed from their family unless they were endangered, that the agency provided reasonable efforts to prevent removal, reasonable efforts to help parents reunify with their children, and reasonable efforts to achieve permanency for the child." *Id*. at 25.

Subsequent sections of this Benchbook highlight various best practices related to judicial oversight of cases in the context of individual hearings, as well as overall operations. They include:

- **Communicating the expectations** of the court regarding adherence to a timely court process and the need for proper preparation by all parties for all court events, including providing information to all parties as to court expectations and movement of the case.

- **Establishing rigorous case flow management** policies and practices, such as timetables/deadlines for the various stages of case processing, strict continuance policies, setting the next hearing date, distributing orders at the conclusion of each hearing, and requiring that all reports be submitted and distributed to all parties in advance of hearings or in accordance with established timelines.

- **Front-loading** the court process in order to set the stage for expedited proceedings and avoid later delays. In practice, front-loading means doing all of the following at the earliest possible point: appointing counsel for the child and parents/guardians; conducting an inquiry into paternity issues; finding and notifying absent parents; identifying any domestic violence, substance abuse, and/or mental health issues; recognizing neurodiversity; identifying and involving the relative/kinship support network in service planning and delivery; creating a network of extended family support to remedy concerns; identifying potential relative and kinship placement options; considering the educational needs of the child; and establishing visitation schedules for parents, siblings, and/or extended family members or kinship resources as may be deemed appropriate.

  Because there are so many interrelated parts to a dependency case, the assigned judge must be actively involved in each case. In effect, the judge must set and monitor the direction of case progress, including action and inaction that all other parties may recommend. For example, the court may have to ask questions like 1) why faster movement toward family reunification is not occurring; 2) why visitation has not increased; 3) how visitation with incarcerated parties is proceeding; 4) what are the steps being taken to progress from supervised to unsupervised visitation; 5) what services are being recommended and the status of scheduling services or recommended evaluations; 6) what is the status of family finding; and 7) what is the status of finding biological parents, if this is an issue.

  If there are issues or the case is not progressing, the judicial officer should schedule a status review hearing as soon as possible to hear why progress is not occurring. A status review hearing allows the judicial officer to address one or two specific issues. i.e., monitor the cooperation of the parents with services, address any visitation issues, and inquire about the progress of family reunification, if appropriate, before the next permanency review hearing. Status review hearing findings and orders should be documented on the Common Pleas Case Management System (CPCMS) Status Review Order. Of course, the judicial officer may also schedule an early permanency review hearing. The judicial officer has the power and the responsibility to order vital changes, often sooner than bureaucratic rules and policies would allow. ***Unlike the child welfare agency, the court is not bound by agency rules, regulations, or bulletins.*** The judge should consider making orders to facilitate the permanency plan, including orders to increase visitation or amend visits from supervised to unsupervised. No one can guarantee with certainty that all risks to the child will be minimized or eliminated. A healthy balance must be achieved at the earliest possible time, and sometimes, only the judge has the power to so order.



- Conducting **expedited review hearings** at critical stages of the case. Most Pennsylvania courts hear dependency matters every three months at a minimum. This enhanced review helps ensure services are delivered in a timely manner and the case is progressing as envisioned by the parties. "Through frequent and thorough review, judges must exercise their authority to order and monitor the timelines, quantity, quality, and cultural responsiveness of services for children and families. Judges must oversee families' progress and permanency progress for children." Gatowski et al., *supra*, at 27.

- **Taking the initiative** to solicit pertinent information if it is not otherwise presented during the hearing. Unlike some other court proceedings, dependency judges and hearing officers have an obligation to solicit facts needed to ensure child safety, well-being, and permanence if the parties do not provide such facts. In practice, this means judges and hearing officers are free to ask questions and request additional information, reports, and testimony as they deem appropriate for the matter at hand. "In child welfare cases, the judge is not merely the arbiter of a dispute placed before the court; he or she also sets and repeatedly adjusts the direction for state intervention on behalf of each abused and neglected child." *Id*. at 26.

- Setting aside **sufficient time for hearings** to ensure that all parties have an opportunity to be heard, all issues can be addressed, and findings and orders can be communicated immediately in open court. In the rare event that a case is taken under advisement, a date certain should be set to give the findings/decision. Given the complexities of the court schedule, it may be better to take a recess and consider the issue than take the entire case under advisement. In any event, a judge should be mindful of the urgency needed in dependency proceedings and make decisions as expeditiously as possible.

***Best Practice — Court Scheduling***

In dependency cases, it is important that court administration or the judge, not the child welfare agency, control the scheduling process and manage all court hearing dates and times. Special consideration should be taken when scheduling cases including the number of children in the family, as well as the complexity of issues to be decided. The Common Pleas Case Management System (CPCMS) Dependency Module allows this to be done easily.

The scheduling of multiple cases during a single large time slot (or "cattle calls") is highly discouraged. Hearings should be scheduled based on "time-specific scheduling" or "block scheduling," with sufficient time allotted for each hearing. The court should be sensitive to everyone's time schedule with special consideration given to children and parents.

- Encouraging the use of **Family Group Decision Making** and other **alternative dispute resolution** methods to allow family members to become active participants in the decision-making process and provide any assistance to the family to help with reunification or resolution of the reasons for Court involvement.

- Ensuring that **case plans address the specific needs** of the child and family and hold the child welfare agency and other parties accountable for the delivery of services, including assuring that the agency is assisting with expedited appointments for services and that cultural considerations are being recognized and addressed by the agency.

- Identifying **Indian Child Welfare and Interstate Compact on the Placement of Children** issues at an early stage of the case to avoid delay and disruptions in efforts to achieve permanency.

- Ensuring the child welfare agency has reasonably engaged in **family finding**. Act 118 of 2022, Pennsylvania's family finding law, found at 67 Pa.C.S. §§ 7501-7509, requires a three-pronged analysis, which includes locating family/kin, involving them in service planning and delivery, and creating or strengthening the network of extended family support to assist in remedying the concerns that led the child to be involved with the county agency. All three elements should be sufficient for a finding of reasonable efforts. This issue is expanded upon in Chapter 2: Act 118 of 2022: Family Finding.

- **Recognizing and minimizing additional trauma**. Courts and judges are uniquely positioned to identify those suffering from traumatic stress, help create safe and engaging courts and court practices, and help coordinate and monitor the provision of effective treatment. Courts should also take into consideration those with neurodiversity, including but not limited to autism.

***Best Practice — Trauma***

Recognizing that the impact of words and expressions has become increasingly important to many judicial officers, some have fine-tuned their motivational interviewing skills. Some come off the bench and greet the child and family. Some look specifically for strengths and comment on such. Some insist on beginning and ending each hearing with strengths. Some employ court dogs. And others make a concerted effort to commend parties on a job well-done, when warranted.

Whatever technique is used, it must fit the individual personality and style of the judicial officer so as to be seen as supportive and authentic. Recognizing the impact of trauma, the court environment, the seriousness of the decisions being made, and the potential impact on all parties, it is incumbent upon each judicial officer to develop and employ strategies that minimize trauma and support a safe courtroom experience.

- Ensuring that a **proper record** is made at every hearing, starting with the emergency protective custody order or the shelter care hearing (whichever comes first) and throughout the life of the case. All written documents and reports introduced and admitted should be used as evidence during the hearing and given the proper weight as determined by the judicial officer.

- **Minimizing or eliminating the use of continuances.** "A child's sense of time requires timely permanency decisions. Research supports that a child's development of trust and security can be severely damaged by prolonged uncertainty in not knowing or understanding if they will be removed from the home or when and whether they will return home. The shorter the time a child spends in foster care, separated from his or her family, the less likely there will be prolonged damage to the child's development of trust and security." Gatowski et al., *supra,* at 15-16. One tool courts can use to monitor continuances is CPCMS report 3934, Continued Dependency Cases by Date, a **court-specific continuance report**. This report provides information regarding the number of continuances and the reasons for each continuance. In courts with multiple dependency judges or hearing officers, the report can be run by the judicial officer, creating a useful tool to help the lead dependency judge identify system strengths and challenges.

In addition to these managerial functions, the judge and hearing officer should ensure that (1) all parties are treated with courtesy and respect both inside and outside of the courtroom; (2) the family understands the judicial process and the timelines that apply to the case; (3) the court's written findings of fact and conclusions of law are written in easily understandable language that allows the parents and all parties to understand the court's order fully; and (4) the child(ren)'s wants and needs are voiced to the judge or hearing officer early in the process.

Finally, at the core of all dependency proceedings is the issue of safety. Judges and hearing officers have the ultimate responsibility for conducting a thorough analysis of child safety at each proceeding and making orders necessary to ensure safety. Judges and hearing officers should not base their safety determinations solely on the analysis of physical safety. **Special attention should also be given to a child's emotional well-being or safety.** A legal framework for making **safety** determinations and orders is presented in the following section.



### 3.1.2 Legal Safety Analysis for Judicial Decision-Making

Judges and hearing officers overseeing child dependency proceedings are responsible for child safety. This includes ensuring due process, evaluating evidence, asking questions when needed, and independently determining a child's physical and emotional safety.

This focus on physical and emotional safety begins immediately upon the verbal or written request for court involvement and is re-visited at every subsequent judicial determination. It is the cornerstone issue for all dependency proceedings.

Judges and hearing officers must make findings regarding safety and order services to mitigate or eliminate safety threats. Even so, there can be confusion regarding what constitutes a real threat to a child's safety as opposed to what may be considered risk.

In life, every person experiences risk. Risk can never be eliminated entirely. When risk rises to a level where it immediately or within the foreseeable future seriously jeopardizes life, it becomes a safety threat. Ensuring that safety threats to children are eliminated or, at the very least, mitigated is the responsibility of the Juvenile Court.

While the Juvenile Act allows for an adjudication of dependency based upon factors that are more likely risk than safety (i.e., truancy, ungovernability, etc.), **decisions related to the removal and placement of a child should be based upon an analysis of a specific safety threat.** This is an important legal distinction. While removal and placement of children may mitigate a safety threat, it is likely to simultaneously create some level of emotional trauma for the child and parents. This potential for trauma necessitates a methodical legal safety analysis by the judge and hearing officer.

When a child's safety cannot reasonably be assured, placement is warranted. When out-of-home placement is necessary, one should assume potential emotional trauma for the child and the parent. The judge and hearing officer can take specific steps to minimize any potential emotional trauma experienced by the child and the parent as a result of removal and placement. The judge and hearing officer should consider orders that:

- Place the child with safe kin;
- Place siblings together or in close proximity;
- Ensure early, frequent, meaningful visitation and contact with parents and siblings (if not placed together);
- Maximize contact with other supportive persons within the child's network (i.e., aunts, uncles, grandparents, cousins, best friends, pastors, coaches, etc.);
- Secure special items for the child (i.e., blankets, toys, clothing, etc.);
- Minimize school disruption; and
- Minimize extra-curricular activity disruptions.

"If a threat of danger is present, presume the child is vulnerable and therefore unsafe. If, however, the child possesses certain strengths, then the child may not be vulnerable to that particular threat."

Therese Roe Lund & Jennifer Renne, *Child Safety: A Guide for Judges and Attorneys* 11 (American Bar Association 2009).

***Best Practice — Ice Breaker Meetings***

Many counties have begun the practice of "ice breaker" meetings. These meetings occur within days of placement. The meeting brings together the parent or guardian and the current caregiver. During the meeting parents have an opportunity to share information regarding the child's routine, likes/dislikes, activities, and other important information to minimize disruptions to their daily routine. Caregivers have an opportunity to ask questions and provide feedback. The meeting helps parents stay connected and involved with the care of their children while providing critical information to the caregivers, all aimed at minimizing trauma to the child.

Understanding the legal analysis that leads to the conclusion that a child is unsafe and must, therefore, be placed into out-of-home care is critically important. In this legal analysis, child safety rests upon three critical factors, which include the actual safety threat, the child's level of vulnerability, and the parent or guardian's protective capacity.

Threats of danger or "safety threats" are specific, observable or describable, out of control, immediate or likely to happen soon, and contain severe consequences. Because safety threats can increase or decrease over time, evidence regarding the current safety threat or threats should be presented at each hearing.

Several factors, including age, physical ability, cognitive ability, developmental status, emotional security, and family loyalty, impact a **child's level of vulnerability**. Evidence regarding the child's level of vulnerability should be provided at each hearing.

As outlined in *Child Safety: A Guide for Judges and Attorneys,* the following help determine or increase a child's vulnerability:

- A child's capacity to self-protect;
- A child's susceptibility to harm based on size, mobility, and social/emotional state;
- Young children (0-6 years of age);
- A child's physical or mental developmental disabilities;
- A child's isolation from the community;
- A child's inability to anticipate and judge the presence of danger;
- A child consciously or unknowingly provokes or stimulates threats and reactions;
- A child's poor physical health, limited physical capacity, or frailty;
- A child's emotional vulnerability;
- A child's feelings toward the parent - attachment, fear, insecurity, or security
- A child's ability to articulate problems or danger; and
- Impact of prior maltreatment.

Therese Roe Lund & Jennifer Renne*, Child Safety: A Guide for Judges and Attorneys* 12 (American Bar Association 2009).

Finally, within the legal analysis, the issue of **parental protective capacity** must be considered. Judges and hearing officers need current information regarding the protective capacity of each parent or guardian. The judge or hearing officer can then use this information to weigh the level of capacity against the level of threat and child vulnerability. Protective capacities are those cognitive, behavioral, and emotional capabilities that help parents or guardians provide adequate safety and care for their child.

To accomplish this legal analysis, information is needed. This includes information regarding:

- the nature and extent of the maltreatment [or threat of maltreatment];
- the circumstances accompanying the maltreatment [or threat of maltreatment];
- how the child functions day-to-day;
- how the parent disciplines the child;
- the overall parenting practices; and
- how the parent manages their own life.

*Id*. at 3.

"Protective capacities are fundamental strengths preparing and empowering a person to protect"

Therese Roe Lund & Jennifer Renne, *Child Safety: A Guide for Judges and Attorneys* 13 (American Bar Association 2009).

"If threats are present with a vulnerable child but sufficient protective capacity exists the child is safe…if threats are present, the child is vulnerable and protective capacity is insufficient, the child is unsafe"

*Id.* at 11.

As stated earlier, this legal analysis occurs during every dependency proceeding. The analysis helps identify the need for protective action by the agency and court.

## Threat + Vulnerability – Protective Capacity = Unsafe Child

The safety analysis can also help in making judicial determinations related to reunification, other permanency options, and eventual termination of court supervision. For more information regarding this legal safety analysis framework, please see the *Pennsylvania Dependency Benchbook Resource Companion*, Chapter 10: Safety & Risk.

Finally, services ordered by the court or included in a Family Service Plan should aim to minimize an identified safety threat, reduce a child's level of vulnerability, or increase a parent's or guardian's protective capacity. When ordering services aimed at reunifying a child and parent or guardian, the judge and hearing officer should be able to clearly link each service to one of these three child safety elements. Judicial determinations related to removal, reunification, and permanency should be governed by safety.

This is not to say that other court-ordered services are not warranted. Indeed, many services ordered by the court focus on child well-being and are very important. However,

completion of these well-being services, in most cases, is not generally the primary consideration as to when and whether safe reunification can occur.

### 3.1.3 Accountability

The judge and hearing officer are responsible for holding all parties accountable to the court's orders. This includes the child welfare agency and other providers of services, as well as children and parents receiving services. Judges and hearing officers must do this in a manner fitting the Judicial Code of Conduct, which highlights the expectation of judicial fairness, impartiality, and civility. What a judge and hearing officer says or does not say matters and will greatly impact what occurs pending the next proceeding. Judges and hearing officers should always be clear with their expectations, offer the ability for the parties to ask questions, and have patience when explaining expectations to the parties. A judge's or hearing officer's demeanor will go a long way in dictating the direction of the case. Finally, while there are many ways in which to encourage parties to comply with court orders, judges and hearing officers should **NEVER** use visitation as an accountability tool. ***Visits between children and parents are a right, NOT a privilege***. The frequency and level of supervision should be based on safety, not compliance.



***Best Practice — Eliminating/Reducing Sidebars***

Because the court process needs to maintain integrity, fairness, and impartiality, many courts have reduced or eliminated their use of "sidebar" conversations. If a parent is unrepresented, the court cannot have a sidebar unless the parent is included in the sidebar.

## 3.2 Judicial Commitment and Leadership in System Improvement Efforts

"The leadership of the judiciary is a crucial and necessary component in implementing reforms…Judges must engage the community in meaningful partnerships to promote the safety, permanency, and well-being of children and to improve system responses to our most vulnerable citizens. The juvenile court must model and promote collaboration, mutual respect, and accountability among all participants in the child welfare system and the community at large." Gatowski et al., *supra*, at 17.

Judicial impartiality does not preclude a judge from advocating for additional resources or more opportunities for training and education or serving as a convener of committees or working groups devoted to identifying systemic problems and developing solutions. In addition, as one of the key principles *Adoption and Permanency Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* points out, judges should "ensure that the court has the capacity to collect, analyze, and report aggregate data

relating to judicial performance," including compliance with requirements related to outcomes for children and families, compliance with statutory timelines, overall compliance with goals, and historical trends. *Adoption and Permanency Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* 6 (National Council of Juvenile and Family Court Judges 2000). Such data provides useful information for ongoing monitoring of operations evaluating programs and other initiatives over time, and assessing the need for judicial and other resources. These analyses can be shared with other stakeholders to encourage progress toward common goals and identify areas needing improvement.

Judges can also play an important role in ensuring **competent representation for parents and children** who appear in dependency proceedings. "Judges are responsible for ensuring that parties, including each parent, are vigorously represented by well-trained, culturally responsive, and adequately compensated attorneys." Gatowski et al., *supra*, at 42. They can join in efforts to establish initial training and experience thresholds, standards of practice, and ongoing specialized training requirements for court-appointed counsel.

***Best Practice — Attorney Training***

A number of Pennsylvania jurisdictions require specific, annual training sessions for all dependency attorneys within their jurisdiction. These training sessions are often created by the judge with input from others and are considered mandatory. If a listed attorney does not attend the session without exceptional circumstances preventing such attendance, the attorney is removed from further case assignments. In these jurisdictions, this enhanced requirement has led to clear expectations from the court and advanced attorney skills. Some jurisdictions compensate attorneys for their time, while some do not. However, all typically provide low-cost Continuing Legal Education (CLE) credits.

Other jurisdictions utilize strategies such as lunch & learn for CLE credits, which can be led by the local Bar Association, the local Children's Roundtable, and/or the court.

Judges can encourage the training of attorneys and other system stakeholders by participating and staying actively involved in trainings, seminars, and conferences.

In addition, judges can communicate the expectation that hearings will proceed as scheduled, barring exceptional circumstances, and that all parties will be prepared to proceed.

Core One: An Attorney's Introduction to Pennsylvania's Dependency System is an online training offered to all dependency attorneys across the Commonwealth. The training provides content specifically regarding issues such as autism awareness, family finding, kinship care, and FGDM. It is also the required pre-service training for all Guardians *Ad Litem* so that the agency can receive federal reimbursement. Core One training can be accessed here:
**Core One: An Attorney's Introduction to Pennsylvania's Dependency System – Office of Children & Families in the Courts**

***Best Practice — Legal Representative Practice Standards***

In May 2014, the Pennsylvania State Roundtable unanimously approved and adopted dependency practice standards for Guardians *ad Litem* and Parent Attorneys. These best practice standards focus on enhancing legal representation and advocacy for parents and children in the dependency system. Areas of practice covered within the standards include:

- client contact
- expertise & knowledge
- case preparation
- collateral contacts & collaboration
- advocacy
- appellate advocacy
- ethical considerations

The standards can be utilized by judges and hearing officers to ensure competent legal representation for children and parents. A complete narrative of each standard can be found in the 2014 State Roundtable Legal Representation Workgroup Report at https://ocfcpacourts.us/wp-content/uploads/2020/06/2014-Legal-Representation-Report2.pdf.

Encourage the Guardian *Ad Litem*, Solicitor, child's legal counsel, and parent attorneys to communicate and review the case's progress prior to the hearing. Having good communication will narrow issues prior to the hearing and help arrive at stipulations.

Finally, judges and hearing officers should routinely examine their practices, thought processes, and actions to protect against bias. The *Enhanced Resource Guidelines* provide self-reflection questions designed to assist judicial officers in examining potential **implicit biases** that may affect their decisions. A list of these questions follows:

- What assumptions have I made about the cultural identity, gender, and background of this family?
- What is my understanding of this family's unique culture and circumstances?
- How is my decision specific to this child and this family?
- How has the court's past contact and involvement with this family influenced (or how might it influence) my decision-making process and findings?
- What evidence has supported every conclusion I have drawn, and how have I challenged unsupported assumptions?

- Am I convinced that reasonable efforts (or active efforts in ICWA cases) have been made in an individualized way to match the needs of the family?
- Am I considering relatives (kin) as a preferred placement option as long as they can protect the child and support the permanency plan?

Gatowski et al., *supra*, at 67.

In addition, judicial officers may also want to ask if they are assuring that the recommended services for the family consider their primary language and cultural differences.

***Best Practice — Feedback Strategy***

Feedback on performance is important in any profession. It is critically important for judicial officers, but finding ways to get honest, productive feedback may present challenges. To address this issue, judges and hearing officers are encouraged to take advantage of feedback from court observations conducted by the AOPC's Office of Children and Families in the Court's judicial analysts. The judicial analysts are knowledgeable in procedural rules, the *Dependency Benchbook,* and statewide judicial practice. In addition, some judges invite a trusted friend or family member to observe court with the permission of the parties, as dependency court proceedings are presumed closed. These trusted persons, who know the judicial officer personally, can provide feedback regarding demeanor, tone, and facial expressions.

## 3.3 Judicial Collaboration with the Child Welfare Agency and the Community

Judges should encourage and promote collaboration and mutual respect among all participants in the child welfare system. Gatowski et al., *supra* at 32. Judges should initiate or participate in meetings with child welfare agency representatives at the state and local levels. They should encourage greater cooperation in developing training, including multi-disciplinary training, which addresses issues of mutual interest, such as improving court reports and in-court testimony, expanding access to services, and making more efficient use of court time.

"Judges are uniquely positioned to motivate systems change. Because judges see cases from all perspectives, they can often provide a clear vision of how the child welfare system needs to be improved. Judges have the influence to bring all necessary stakeholders to the table to collaborate" *Id*. at 30. The Children's Roundtable is an example of this collaborative effort to engage all stakeholders. Supported by the Office of Children and Families in the Courts (OCFC) within the Administrative Office of Pennsylvania Courts (AOPC), the Children's Roundtable Initiative was established by the Supreme Court of Pennsylvania in 2006. The judge convenes the local Children's

Roundtable and collaboratively led with the child welfare administrator. Judicial leadership in this area encompasses developing the mission/vision, setting the agenda, managing subcommittees/workgroups, effectuating the decisions made at meetings, and participating in Leadership Roundtables.

In addition, when appropriate, judicial leadership can include scheduling guest speakers to provide more information on community resources available to parties or to provide information on relevant issues affecting families and children.

The *Adoption and Permanency Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* encourage judges to help the community understand that child protection is a community responsibility. National Council of Juvenile and Family Court Judges at 17. This can be accomplished by appearing regularly in the community to inform citizens about the child welfare system and to encourage volunteer participation. The community can also be an effective partner in advocating for greater availability and access to services for children and families when there are gaps.

"Judges must convene and engage the community in meaningful partnerships to promote safety, permanency, and well-being of children and to improve system responses. The juvenile court must model and promote collaboration, mutual respect, and accountability among all participants in the child welfare system and the community at large." Gatowski et al., *supra*, at 32.

## 3.4 Juvenile Court Hearing Officer Authority

Ideally, a judge should hear a dependency case at each stage of the proceeding, and all parties will be better served if the same judge presides over the case from start to finish. *Id.* at 34-35. However, in Pennsylvania, as in many other jurisdictions across the nation, judge-supervised judicial officers (referred to hereafter as "hearing officers") are appointed to handle certain hearings or stages of a case. The *Pennsylvania Rules of Juvenile Court Procedure – Dependency Matters* view this as an acceptable practice and clearly articulate the authority of hearing officers. Pa.R.J.C.P. 1185. The judicious use of hearing officers has several potential advantages. It is generally more cost-effective and affords each case more time and focused attention, allowing for closer monitoring and fewer delays. Moreover, as long as there are clear policies and guidelines governing the handling of these cases, a judge/hearing officer team can maintain consistency in case processing and outcomes. Finally, a hearing officer appointed to hear dependency cases exclusively or predominantly can develop a level of specialization and expertise that would be difficult for a judge handling a general docket.

In Pennsylvania, the President Judge (or designee) may appoint hearing officers to hear designated dependency matters. Following their appointment, hearing officers may not practice before juvenile courts in the judicial districts where they preside over dependency matters. Pa.R.J.C.P. 1185. By rule, a hearing officer does not have the

authority to preside over termination of parental rights hearings, adoptions, or any hearing where any party seeks to establish a permanency goal of adoption or change a permanency goal to adoption. However, once a judge has approved a permanency goal of adoption, the hearing officer may hear all subsequent reviews or hearings unless a party objects. Hearing officers may not issue contempt orders or orders for emergency or protective custody. Pa.R.J.C.P. 1187. They may not issue warrants but may recommend that a judge do so if the circumstances make it necessary. The President Judge may place other restrictions on the classes of cases to be heard by the hearing officer.

The parties to a case retain the right to have a hearing before a judge rather than a hearing officer. Pa.R.J.C.P. 1187 directs the hearing officer to inform all parties of this right before beginning any hearing. If a party objects to having the matter heard by the hearing officer, the case should be scheduled for an immediate hearing before a judge.

"The Hearing Officer understands life and sees I am trying hard and I love my kids even though I'm not perfect."

- Pennsylvania Parent

Under Pa.R.J.C.P. 1190, hearing officers may accept stipulations in any class of cases that they are permitted to hear, subject to the usual stipulation requirements of Pa.R.J.C.P. 1405, including the requirement that the court take whatever additional corroborating evidence is necessary to support an independent determination that a child is dependent. At the conclusion of the hearing, Pa.R.J.C.P. 1191 requires that the hearing officer's findings and recommendation to the judge be announced in open court and on the record and submitted in written form to the juvenile court judge within two business days of the hearing. Upon request, a copy of the findings and recommendation is to be given to any party.

A party may contest the hearing officer's recommendation by filing a motion with the clerk of courts within three days of receipt of the recommendation, requesting a rehearing before a judge, and stating the reasons for the challenge. A copy of the findings and recommendation may be attached to the motion for rehearing. Pa.R.J.C.P. 1191(C).

The hearing officer's decision is subject to timely analysis and approval by the judge. Within seven days of receipt of the hearing officer's findings and recommendation, the judge is to review the findings and recommendation of the hearing officer and (1) accept the recommendation by order, (2) reject the recommendation and issue an order with a different disposition; (3) send the recommendation back to the juvenile court hearing officer for more specific findings; or (4) conduct a rehearing. Pa.R.J.C.P. 1191(D). When the judge rejects the hearing officer's recommendation and modifies a factual determination, a rehearing is to be conducted. The judge may reject the hearing officer's findings and enter a new finding or disposition without a rehearing if there is no modification of factual determinations. Nothing in the rule prohibits the court from modifying conclusions of law made by the hearing officer. See comments to Pa.R.J.C.P. 1191.

## 3.5 Qualifications of Juvenile Court Hearing Officers

In order to preside as a hearing officer in dependency matters, an individual must be a member in good standing of the Pennsylvania Bar and have been licensed to practice law for at least five consecutive years. Pa.R.J.C.P. 1182(A)(1-2). A hearing officer must complete six hours of instruction approved by the Pennsylvania Continuing Legal Education Board prior to presiding over any hearings. This instruction must specifically address the Juvenile Act, the Pennsylvania Rules of Juvenile Court Procedure, the Child Protective Services Law, evidence rules and methodology, and child and adolescent development. Pa. R.J.C.P. 1182(A)(3). While not required, an online Rule 1182 educational session is available to all newly appointed hearing officers. This course meets the initial six-hour instruction requirement for hearing officers outlined in Pa.R.J.C.P. 1182.

Once the initial six hours of instruction have been completed, a hearing officer must complete six hours of instruction in juvenile dependency law, policy, or related social science research designed by the Office of Children and Families in the Courts every two years. Pa. R.J.P.C. 1182(B). These requirements are in addition to the Pennsylvania Rules of Continuing Legal Education, as the mandate is for specific training in juvenile dependency law. The credit hours received count towards the total credits required under the Continuing Legal Education requirements. There are bi-annual Juvenile Court Hearing Officer Education Sessions provided by OCFC that meet these requirements.

It is the court's responsibility to ensure that the hearing officer meets these requirements initially and on an ongoing basis. The *Pennsylvania Rules of Juvenile Court Procedure – Dependency Matters* require hearing officers to submit an affidavit to the court confirming compliance with the mandated training. Pa.R.J.C.P. 1182(C). Courts should establish a local process for this.

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# Chapter 4 – Jurisdiction

## 4.1 Overview

Under Article V, Section 5 of the Pennsylvania Constitution, the Courts of Common Pleas are given jurisdiction over all cases "except as may otherwise be provided by law." This general jurisdiction extends to child welfare cases, among many others.

Although jurisdiction over each case before the Court of Common Pleas is vested in the court as a whole, cases may be allocated among divisions, specialized units of judges given responsibility for particular kinds of court business, for the sake of administrative efficiency. In a judicial district large enough to have permanent divisions, proceedings in child welfare cases are handled by judges sitting in the court's Juvenile Court Division. However, terminations of parental rights and adoption matters are reserved for the Orphans' Court Division.

The conduct of dependency actions is governed primarily by the Juvenile Act, the Pennsylvania Child Protective Services Law, and the Rules of Juvenile Court Procedure. These statutes and rules have been amended to meet the requirements of federal law, including the Adoption and Safe Families Act (ASFA), and are intended to ensure children's rights to safe, timely permanency. (A more complete explanation of the federal and state statutes may be found in Chapter 21: Overview of Federal and State Child Welfare Legislation.)

## 4.2 Dependency Jurisdiction in General

Juvenile courts are given the authority to hear and make dispositions in cases in which children are alleged to be dependent. 42 Pa.C.S. § 6302 defines a dependent child as a child who:

(1) is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, or morals;

(2) has been placed for care or adoption in violation of law;

(3) has been abandoned by his parents, guardian, or other custodian;

(4) is without a parent, guardian, or legal custodian;

(5) while subject to compulsory school attendance is habitually and without justification truant from school;

(6) has committed a specific act or acts of habitual disobedience of the reasonable and lawful commands of his parent, guardian or other custodian and who is ungovernable and found to be in need of care, treatment or supervision;

(7) has committed a delinquent act or crime, other than a summary offense, while under the age of ten years;

(8) has been formerly adjudicated dependent, and is under the jurisdiction of the court, subject to its conditions or placements and who commits and act which is defined as ungovernable in paragraph (6);

(9) has been referred pursuant to section 6323 (relating to informal adjustment), and who commits an act which is defined as ungovernable in paragraph (6);

(10) is born to a parent whose parental rights with regard to another child have been involuntarily terminated under 23 Pa.C.S. § 2511 (relating to grounds for involuntary termination) within three years immediately preceding the date of birth of the child and conduct of the parent poses a risk to the health, safety or welfare of the child.

## 4.3 Divisional Responsibilities

Juvenile courts operate under the guidelines established in the Juvenile Act, 42 Pa.C.S. §§ 6301-6387. Juvenile dependency proceedings are governed by the Pennsylvania Rules of Juvenile Court Procedure, Rule 1100 through Rule 1800.

Juvenile courts hear all phases of a dependency action, including shelter care, adjudication, disposition, and permanency review hearings. However, under 20 Pa.C.S. § 711, the jurisdiction of the Court of Common Pleas over adoption petitions and related matters, including voluntary and involuntary termination of parental rights, must be formally exercised through the Orphans' Court Division. The only exception is for Philadelphia, where 20 Pa.C.S. § 713 entrusts these matters to the Family Court Division. As only 20 of Pennsylvania's 60 judicial districts have Orphans' Court Divisions,[1] 42 Pa.C.S. § 951 provides that, in any judicial district that lacks such a division, "there shall be an Orphans' Court Division composed of the Court of Common Pleas of that judicial district."

What this means is that, at least in districts with separate divisions, if a dependency case progresses to the point that parental rights must be terminated and the child is placed for adoption, the matter must be taken up in the Orphans' Court Division for separate termination and/or adoption proceedings. The juvenile dependency case is not

[1] Under 42 Pa.C.S. § 951(a)-(c), Orphans' Court Divisions are established in Allegheny, Beaver, Berks, Bucks, Cambria, Chester, Dauphin, Delaware, Erie, Fayette, Lackawanna, Lancaster, Lehigh, Luzerne, Montgomery, Philadelphia, Schuylkill, Washington, Westmoreland, and York Counties.

transferred to the Orphans' Court, but rather, a separate case is filed, and the case proceeds independently and concurrently. For the sake of continuity, however, the judge who adjudicated the child dependent or conducted permanency or other dependency court hearings in the matter may be administratively assigned by the President Judge to preside in Orphans' Court over these separate proceedings. 42 Pa.C.S. § 6351(i).

In addition to Juvenile and Orphans' Court Divisions, Allegheny and Philadelphia Counties have separate Family Court Divisions established pursuant to the authority of 42 Pa.C.S. § 951. In some cases, tension may arise between juvenile court dependency proceedings and custody actions, which may be filed or pending with the Family Court Division. In any case, there should be coordination between court divisions, with the best practice being the assignment of one judge to preside over any proceeding involving a family, regardless of the division in which it is heard.

***Best Practice — One Judge/One Family***

The broad concept behind the One Judge – One Family Model is that the same judge or judge/hearing officer team that hears a family's dependency case also hears delinquency, custody, or even criminal matters involving the same family. While this is not practical in all jurisdictions, application of the One Judge – One Family principle within the dependency sphere requires that the same judicial officer who adjudicates a case continues to hear proceedings involving that family up through and including termination of parental rights and adoption proceedings. This practice provides stability and continuity throughout the case, reduces confusion and the possibility of conflicting orders, and puts the judge in a better position to make appropriate decisions.

## 4.4 Jurisdiction in Cases that Cross Borders

Sometimes, dependency cases originate in one county, state, or country and end with services and court supervision being provided in another. These cases can often be frustrating and time-consuming, but despite these challenges, families must receive appropriate services and have their needs met.

### 4.4.1 Inter-County Transfer Cases

Under Pa.R.J.C.P. 1302, a court has the authority to transfer a dependency case at any time after the adjudicatory hearing if the transfer is best suited to the safety, protection, and physical, mental, and moral welfare of the child. Upon transfer of a case, the transferring court must transmit certified copies of all documents, reports, and summaries in the child's court file. Common Pleas Case Management System (CPCMS) allows for electronic case transfer from county to county. However, this is not considered

the official record. The electronic transfer of cases must also be accompanied by the official case record, which includes all physical documents contained within the court record.

While Pa.R.J.C.P. 1302 does not specifically state how a transfer is to occur, there are essentially three steps to a transfer, including (1) the order transferring the case to the receiving county; (2) the acceptance of the case in the receiving county and the initiation of services in the receiving county; and (3) the termination of the case and services in the transferring county.

It is important to keep in mind the need for service continuity during the transfer process. Without communication between the courts and the agencies of the two counties involved, there could be a delay and/or disruption of services or even a risk that the case could be without oversight for a period of time. Time is critical in dependency cases, as children and families continue to grow and experience changing dynamics in their circumstances. In addition, the timeline constraint of the Adoption and Safe Families Act (ASFA) continues to apply. (See Chapter 21 for more information on ASFA.)

Ultimately, it is the court's decision regarding whether a case should be transferred or whether services and supervision should be retained in the original county. Almost always, transferring and receiving child welfare agencies have discussed the possibility of transfer before the matter is presented to the court. However, all transfer decisions are solely the judge's responsibility.

There are multiple factors a court should consider when making any transfer determination. While there are likely to be considerations unique to each child and family's circumstance, and the complexity of each case varies, the following is a suggested list of general factors, albeit not exhaustive, for courts to consider:

1. What is the status or stage of the case? Consider not transferring cases that have significant hearings or decisions in the imminent future.
2. Is the transfer in the child's best interest?
3. What is the permanency goal? A goal other than reunification may lessen the need for transfer.
4. What is the age and status of the child? Is the status in-home, nearing reunification, in a long-term placement, or with pre-adoptive parents?
5. How close to termination of court supervision is the case?
6. Where is the child physically residing? How would a transfer impact placement?
7. Where are the parents/guardians residing, and how long have they lived at their current location?
8. Is the new residence stable, or do the parents have a history of frequent moves?
9. What is the reason the parents relocated?
10. What connections do the child or parents have to the receiving and transferring county?

11. Where are the child's kin/family located, and to what extent do kin/family have contact with the child? How might a transfer impact this contact?
12. Where are the child's services being provided? How long has the child been with a particular service provider? How might a transfer impact a specific service?
13. How will the transfer affect the continuity of services? Will transfer disrupt the services, and what impact will any disruption have on the child?
14. How will the transfer impact the child's school?
15. Are there other ongoing proceedings involving the child (i.e., delinquency, child support, paternity), and what impact would transfer have on those proceedings?

A judge may face resistance when deciding the issue of transfer. The proposed receiving agency may be concerned with costs, resources, increases in placement data, and a number of other issues. Parents, children, and caretakers may also have specific concerns. Ultimately, the decision regarding the propriety of case transfer must be driven by the effect on the best interest of the child and must be made by the judge.

If the originating court determines that transferring a case may be appropriate, the judge should contact the dependency court judge of the county to which the transfer is to occur before issuing the transfer order. Initiating this communication is critical to avoid complications in the transfer and continuity of services. Parties should be notified regarding the timing of this conversation and allowed to be present. In addition, a record of the conversation should be made and shared with the parties.

***Best Practice — Child Welfare and Safety***

Money, resources, and time are not the leading considerations.
The child's welfare and safety are paramount.

**After this conversation between transferring and receiving county judges**, if an agreement to transfer the case has been reached, the transferring court should enter an order transferring the case to the receiving court. The order should include directions for the transfer of the official court record and a timeframe for such a transfer. The order should also direct the transferring county's child welfare agency to transfer their entire case record to the receiving county within a specified timeframe. **In addition, the order should direct the transferring county's child welfare agency to continue services until the receiving county has assumed responsibility for the ongoing services or has initiated other services in the receiving county. Many judges agree upon a date certain to include in the order so that there is less room for confusion as to when case responsibility ends and begins.** A copy of this transfer order should be provided to all parties, the receiving county court, and the receiving county child welfare agency.

While not specified in Pa.R.J.C.P. 1302, upon receipt of the order transferring the case, the receiving county's court should enter an order accepting the case and directing the assignment of a docket number. The receiving county should assign appropriate counsel for the parties (parents and children), providing notice to each and the agency solicitor. The receiving county should promptly schedule a hearing to review the case and ensure it is progressing without interruption of services.

Finally (*while this should never happen given that the transferring and receiving judges have agreed prior to the transfer order*), in the rare event that a transfer order is entered and the receiving county refuses to accept the case being transferred, the court in the receiving county should enter an order indicating the transfer will not be accepted. The order should provide a detailed statement of the reasons why the transfer is being rejected. A copy of this order should be forwarded to the originating county court and all parties.

### 4.4.2 Interstate Transfers

Three interstate compacts govern most transfers of children across state lines in the child welfare arena:

- The **Interstate Compact on Adoption and Medical Assistance** provides legal guidelines and requirements for ensuring that adopted special needs children are provided medical assistance in a timely manner when they move from one state to another. This Compact also ensures that children placed into foster or residential care and are Title IV-E eligible receive medical assistance, either in Pennsylvania or the state in which they are placed.

- The **Interstate Compact on Juveniles** coordinates the interstate movement of delinquent juveniles who are being referred between courts on a probationary status. This Compact allows for courtesy supervision to be provided in another jurisdiction in order to carry out the orders of a home jurisdiction. This Compact also returns runaways and arranges transportation for the juveniles served by this compact. Pennsylvania's Interstate Compact for Juveniles Act can be found at 11 P.S. § 890.2.

- The **Interstate Compact on the Placement of Children (ICPC)** governs the transfer and continued supervision of children moving between states for the purpose of adoption, foster care, or institutional placement. This Compact also assures that all Pennsylvania requirements are met prior to the placement of a foreign child in Pennsylvania for the purpose of adoption. The majority of dependency cases that cross state lines will involve the ICPC. The Pennsylvania ICPC law can be found at 62 P. S. § 761.

The ICPC applies to the following circumstances in which children may be sent to other states:

- Placement preliminary to an adoption;
- Placement into foster care, including related or unrelated caregivers;
- Placement with parents and relatives when a parent or relative is not making the placement; or
- Placement in group homes or residential placements, including adjudicated delinquents in institutions in other states.

Interstate Compact on the Placement of Children, Regulation 3 Definitions and Placement Categories: Applicability and Exemptions (October 1, 2011).

The ICPC applies to any 'sending agency', which is defined as a party state, officer or employee thereof, a subdivision of a party state or officer or employee thereof, a court of a party state, a person, corporation, association, charitable agency or other entity which sends, brings or causes to be sent or brought, any child to another party state. 62 P.S. § 761.

While the ICPC governs the majority of placements that cross state lines, not all placements of children in other states are subject to the Compact, nor are all persons who place children out of state. The Compact does not include placements made in medical and mental health facilities, in boarding schools, or any institution primarily educational in character. 62 P.S. § 761, Article II(d). (See also Interstate Compact on the Placement of Children, Regulation 4 Residential Placement (October 1, 2012).) The Compact also specifically excludes from Compact coverage the placement of a child made by a parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or the child's guardian. 62 P.S. § 761, Article VIII(a). For more information about ICPC, see Chapter 15: Termination of Court Supervision, Section 15.4.4: Transfer of Court Supervision.

### 4.4.3 International Transfers

The placement of children from other countries to Pennsylvania for the purpose of adoption may be subject to the requirements of the ICPC, the Interstate Compact on Adoption and Medical Assistance, or the Interstate Compact on Juveniles. In addition, the Pennsylvania Refugee Resettlement Program, which is funded by the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, provides a continuum of employment, educational, case management, health, and financial support services to newly arrived refugees in Pennsylvania, including potential supports for children. More information on programs and community service providers for refugees can be found at https://www.pa.gov/en/agencies/dhs/resources/refugees-in-pa.html.

## 4.5 The Indian Child Welfare Act (ICWA)

ICWA is a federal law that seeks to keep American Indian children with American Indian families. Congress passed ICWA in 1978 in response to the alarmingly high number of Indian children being removed from their homes by both public and private agencies. The intent of Congress under ICWA was to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families. 25 U.S.C. § 1902. ICWA sets federal requirements that apply to state child custody proceedings involving Indian children.

The Department of the Interior, Bureau of Indian Affairs (BIA) promulgated federal regulations governing ICWA in 2016. These binding regulations provide additional definitions, timelines, and required judicial findings that must be made on the record in an effort to create more consistency in ICWA implementation. " The statute and regulations together create the minimum federal requirements for Indian families." *Indian Child Welfare Act Judicial Benchbook* 1 (National Council of Juvenile and Family Court Judges 2017).

ICWA defines an Indian child as any unmarried person who is under the age of eighteen and is either (a) a member of a federally recognized Indian tribe or (b) is eligible for membership in a federally recognized Indian tribe and is the biological child of a member/citizen of a federally recognized Indian tribe. Under ICWA, individual tribes have the right to determine both membership and eligibility for membership. However, for ICWA to apply, the tribe must be federally recognized.

ICWA applies to all child dependency proceedings if the court knows or has reason to know that the child is an Indian child. If it is believed that a child could have ties to a federally recognized American Indian tribe or if someone alludes to the child having ties, it is the child welfare agency's responsibility to make efforts to determine the ties and to contact the tribe or tribes. While Pennsylvania does not have any federally recognized Indian tribes, the ICWA legislation remains applicable to children coming before Pennsylvania courts. In all cases involving the foster care placement of or termination of parental rights to an Indian child, the Indian custodian of the child and the Indian child's tribe have a right to intervene at any point in the proceedings.

It is a sound practice to inquire of parents at the shelter care hearing (if applicable) or initial dependency hearing as to the presence of Native American heritage to prevent complications later in the life of the case.

More information on American Indian tribes and ICWA can also be found at the National Indian Child Welfare Association website at https://www.nicwa.org/, the U.S. Department of the Interior, Bureau of Indian Affairs website at https://www.bia.gov/, or the National Center for Juvenile and Family Court Judges website at https://ncjfcj.org.

# Chapter 5 – Right to Legal Representation

## 5.1 Overview

Quality representation of all parties in dependency proceedings is necessary to produce good outcomes for children and families. Justice flows best from a system in which all parties are represented by competent and actively engaged legal counsel. In the end, courts' decisions are only as good as the information upon which they are based, and it is the attorney (or Pro Se litigant) who is ultimately responsible for collecting, preparing, and delivering that information. Critical to this role is an understanding of the parties who are being represented. If a child or adult party has special needs, it is imperative that the court and counsel are aware of any communication barriers so that accommodations can be made that minimize trauma to any of the parties.

Historically, there has been a recognized deficiency in the quality of legal representation in dependency cases across jurisdictions. This is attributable to various factors, including a lack of standards of practice, low expectations, high caseloads, unclear role definition, inadequate compensation, inadequate resources, and the mistaken view that attorneys working in these cases are relieved of the traditional rigors of the practice of law. This situation has improved as courts have come to recognize the importance of legal counsel in achieving the system's goals of safety, permanency, and well-being for children.

The assignment of competent, well-trained legal counsel for all parties is extremely important in dependency proceedings. Understanding one's rights and responsibilities, as well as the potential legal consequences of actions or inactions, is critical to the outcome of a case. As such, courts should ensure that counsel for all parties is well-trained and well-equipped to provide comprehensive and thorough client representation. Additionally, counsel should be appointed as early in the case as possible. If a shelter care hearing is necessary, it is preferable to have legal representation at that proceeding when possible.

Attorneys should also be engaged in systemic efforts to improve the handling of dependency cases. They should understand the culture change taking place in this area and have a strength-based, family-engagement focus in their work while zealously representing their clients. The agency and the court should include attorneys representing parents, children, and child welfare agencies in training to improve practice in the county.

With quality legal representation as a stated system objective, several projects have been undertaken to create enhanced practice. Much of the work has focused on the representation of children, as this was considered the least developed area. However, over time, more attention has been focused on parents' counsel in recognizing their critical role in achieving good outcomes for children involved in dependency proceedings by

protecting due process and statutory rights, presenting balanced information to judges, and promoting the preservation of family relationships when appropriate.

## 5.2 Legal Representation in Dependency Matters in Pennsylvania

### 5.2.1 Judge's Role

Judges should understand that attorneys working on dependency cases often receive limited compensation or, in some cases, none. While they should be acknowledged for the public service they are providing, this should not preclude quality work. The court, which is ultimately responsible for the appointment of counsel, can have a great degree of positive influence on representation in dependency matters. The judge sets the tone in dependency matters and should expect that all counsel come into hearings prepared. The judge also has the authority to remove or stop appointing ineffective counsel. If judges are only as good as the attorneys in front of them, they should take steps to ensure those attorneys are of the highest quality.

### 5.2.2 Guardian *Ad Litem* (GAL)

***Best Practice — Online Pre-Service Training for GALs***

Prior to the appointment of their first case, GALs must receive pre-service training to qualify for federal reimbursement of costs to the agency. The required training is the Core One: An Attorney's Introduction to Pennsylvania's Dependency System. This training is available through the Office of Children and Families in the Courts website: https://ocfcpacourts.us/core-one-an-attorneys-introduction-to-pennsylvanias-dependency-system/

The GAL is the child's voice in the courtroom, especially if the child is not of age to articulate his or her own best interests. Pa.R.J.C.P. 1128 requires the presence of the child's attorney at all dependency proceedings, with no exceptions provided. If the child has a GAL and legal counsel, both attorneys shall be present. Additionally, the Juvenile Court Rules have expressly set forth the duties and responsibilities of the GAL. The GAL should meet with the child immediately upon appointment to the case to ascertain the child's wishes as best as the GAL can determine. The visits should continue regularly in a manner appropriate to the child's age and maturity. Pa.R.J.C.P. 1154. The Pennsylvania Supreme Court decisions *In re Adoption of L.B.M.*, 161 A.3d 172 (Pa. 2017) and *In re T.S.*, 192 A.3d 1080 (Pa. 2018) discuss the role of GALs in Termination of Parental Rights cases. (See also Chapter 17: Termination of Parental Rights.)

The GAL should always be kept apprised of changes to the child's placement, custody, visitation, or treatment plan. Both the county agency and the GAL should be proactive in assuring the GAL is informed of all actions that affect the child's safety, well-being, and permanence. If there is a plan to relocate the child, the GAL shall be informed as soon as possible. Pa.R.J.C.P. 1154 (6)(a). The GAL shall be given access to all relevant court and agency records, reports of examination of the guardians or the child, and medical, psychological, and school records. Pa.R.J.C.P. 1154 (2). To fully understand the child's circumstances and represent the child's best interest to the court, the GAL may need to further investigate by interviewing potential witnesses, including the child's guardians, caretakers, or foster parents. In representing the child's best interest to the court, the GAL should fully advise the child of the proceeding and discuss potential outcomes with the child to ascertain the child's wishes to the extent possible. At hearings, the GAL must play an active role in the case by cross-examining witnesses, presenting witnesses, and presenting evidence necessary to communicate the child's wishes and best interests to the court.

"My new Guardian *Ad Litem*, she is amazing. She's there to talk to if I need her. I have the number for her office, if she doesn't pick up she calls me back within the same business day. She's just better, she cares and it shows."

- J.J., 19, Former Pennsylvania Foster Youth

***Best Practice — GAL Meetings with the Child***

Too often, the GAL's first encounter with the child occurs moments before the first hearing begins. Subsequent meetings follow suit with the GAL and the child meeting in the courtroom or hallway prior to each proceeding. This type of meeting has proven to be ineffective and does not provide adequate time for the GAL to understand the child's wishes or best interests.

In some jurisdictions, GAL caseloads are overwhelming, making regular meetings with child clients challenging. To address this issue, some jurisdictions have begun teaming GALs with social workers who meet with children and report back to the GALs. Other jurisdictions have caseloads that allow GALs to visit clients in their homes. Regardless, caseload size should not reduce the level of advocacy and representation provided to child clients or that expected by the court.

Ideally, the GAL should remain with a case throughout its life span with the courts. Maintaining one GAL throughout the case provides continuity for the child and helps to build a positive relationship.

### 5.2.3 Legal Counsel for the Child

In some situations, a child may need the services of both a GAL and legal counsel. There are significant differences between the GAL and the child's legal counsel. The GAL is concerned with the child's best interests, whereas legal counsel is concerned with the child's legal interests. A child may waive his or her right to legal counsel, but a child cannot waive his or her right to a GAL.

Generally, a GAL is assigned to represent all interests of the child if the reasons necessitating the child's placement result from the acts of the parent. These reasons are identified in 42 Pa.C.S. § 6302 (definition of a dependent child) and include paragraphs (1), (2), (3), (4) and (10).

If, however, the child's behavior plays a role in the allegations of dependency, there may be an underlying legal liability, in which case the child may need separate legal counsel. These reasons are identified in 42 Pa.C.S. § 6302 (5), (6), (7), (8) and (9). The provisions of Pa.R.J.C.P. 1151 specify the circumstances under which a GAL and separate legal counsel should be appointed to protect the child's best interests and legal interests. If the child waives legal counsel, then the GAL should represent both the child's best interests and legal interests.

### 5.2.4 Dual Jurisdiction

Dual jurisdiction occurs when a child is adjudicated as both dependent and delinquent. In this situation, the child needs representation from a GAL and/or legal counsel for the dependency matter and legal counsel for the delinquency matter. While this can get burdensome and complex, the different attorneys represent the differing interests of the child. The GAL represents the child's best interests in the dependency matter; legal counsel represents the child's legal interests in the dependency matter if necessary; and separate legal counsel represents the child's legal interests in the delinquency case.

### 5.2.5 Counsel for Parents

All parties in a dependency proceeding have the right to competent representation by legal counsel. Pa.R.J.C.P 1151(E) addresses the requirement to apprise parents and other parties of their right to counsel, as well as the timing of the appointment of counsel:

If counsel does not enter an appearance for a party, the court shall inform the party of the right to counsel prior to any proceeding. If a party requests counsel in any case, the court shall assign counsel for the party if the party is without financial resources or otherwise unable to employ counsel. Counsel shall be appointed prior to the first court proceeding. Pa.R.J.C.P. 1151(E).

The court must make every effort to ensure that parents and other parties to the case are clearly advised of their right to counsel and have legal representation at the beginning of dependency cases. If counsel is absent at subsequent hearings, the court should again advise of the right to counsel.

***Best Practice — Parents' Counsel***

Parents' counsel should meet with parents immediately upon appointment to the case to appropriately understand their needs and the circumstances of the case. Counsel should maintain regular contact with parents to inform them of the proceedings and get updates regarding progress or changing needs.

The timely appointment of counsel and active representation in the early stages of the case reduces the potential for delay in subsequent proceedings due to scheduling conflicts and/or lack of attorney preparation. Early appointment of counsel also encourages greater participation by parents in shaping and complying with the provisions of service plans.

Often, families that enter the child welfare system have a general lack of understanding of the system, which various disabilities and life struggles can compound. Attorneys for parents should clearly explain in plain language the proceedings and discussions occurring, as well as the potential consequences of noncompliance with court orders or Family Service Plans. Parents' attorneys should appropriately participate in the formulation of Family Service Plans to assist parents in understanding the expectations of the agency as a way to ensure timely compliance with the Family Service Plan. Parents' attorneys should also reiterate timeframes and deadlines related to the child welfare system and the possibility that failure to meet them may ultimately result in their parental rights being terminated. Finally, attorneys should advocate for the services needed by their clients to remedy the reasons that led to the dependency proceeding.

Ideally, the attorney for the parent or parents should remain with the case throughout its life span with the courts to maintain continuity and to help build positive relationships.

### 5.2.6 Meaningful Representation

In response to a need for consistent statewide legal representation in dependency court practice, the Legal Representation Workgroup, through the Pennsylvania State Roundtable, released a publication addressing standards of practice and accountability titled *Standards of Practice for Parents' Attorneys, Guardians Ad Litem & Legal Counsel for Children in Child Welfare Dependency Cases in Pennsylvania*. Topics covered include client contact outside the courtroom, review of the case file, attendance at family meetings, caseload size, specialized training, and the dual role of the Guardian *ad Litem* as protector of a child's best interests as well as legal interests of the child. Judges should note that, as part of this dual role, GALs should present witnesses, testimony, evidence, and arguments to support the GAL's best interest recommendation and witnesses, testimony, evidence, and arguments necessary to support the child's wishes.

Each judge, in their respective judicial district, should work to identify, maintain, and implement practices and procedures that are uniform and consistent within the context of the particular or unique aspects of dependency proceedings in their court. Adherence to these standards should improve case-flow management and client representation. The standards can be accessed at the following link: https://ocfcpacourts.us/wp-content/uploads/2020/06/Final-Standards-Of-Practice-Letter-Size-001686.pdf.

## 5.3 Pro Se Parents

While best practice dictates that all parties would be represented by appropriate legal counsel in the dependency system as early in the process as possible, it is still possible for parents to knowingly, willingly, and voluntarily waive counsel. (See colloquy in section 5.5 of this chapter.)

Parents who refuse representation in dependency matters should receive the same accommodations as any pro se litigant. Accommodations to be given to pro se parties may include:

- **Notification of the ongoing right to legal representation**. The parent can request attorney representation at any time.
- **Explanation of the court process**. As in any other court proceeding, the pro se litigant in a dependency matter needs to understand that both sides will be heard.
- **Explanation of the elements of the dependency case**. The parent should understand what occurs in dependency matters and the potential consequences of the hearings, including the potential for the court to ultimately terminate the parent's rights to the child.
- **Explanation of the rules of procedure and evidence and the proper forms of questioning**. The court should specify what is and is not admissible in a dependency hearing and explain that if the parent chooses to question witnesses, they are bound by the Rules of Juvenile Court Procedure and the applicable Rules of Evidence.
- **Explanation of the meaning of the court's rulings and orders**. Finally, the court should rule immediately and clearly explain to the parent what the court expects.

Sidebars in cases with self-represented parents should be avoided. If unavoidable, the self-represented parent should be included in the sidebar conversation.

***Best Practice — Helping Parents Understand Dependency Court***

In 2016, the State Roundtable's Legal Representation Workgroup created and released a video aimed at helping parents better understand the dependency court process. The video outlines the dependency courtroom experience, working with parent attorneys, case planning, visitation, and permanency. In many jurisdictions, parents are being encouraged to watch the video to better understand the dependency process. The video can be accessed at the following link: http://www.youtube.com/watch?v=vOrdjqHPBsY&feature=youtu.be

## 5.4 County Solicitors

Unlike counsel for the parents or the child, who is appointed on a case-by-case basis, the solicitor's appearance can be automatically entered for each dependency case. Pa.R.J.C.P. 1150(A)(3). The solicitor's primary responsibility is to represent the county child welfare agency in dependency court proceedings. In a broader sense, the solicitor serves as an advisor and counselor as well as the legal representative of the agency. The solicitor is also responsible for ensuring agency staff is prepared for hearings.

Additionally, the solicitor should keep the agency administrator and staff advised regarding current legal developments, including federal and state statutory changes, appellate decisions, and rule changes if they affect the agency and the conduct of dependency hearings.

Before any court proceeding, the solicitor should ensure that the agency staff is well-prepared for the hearing. The solicitor should prepare with the agency for each court appearance. A good way to do this is through a regularly scheduled time to review each case and discuss facts, issues, witnesses, and documents necessary for the hearing. Additional time or open schedules should be kept for emergency hearings and unexpected case developments. One helpful tool for preparing for court is the Permanency Review Hearing Checklist. The checklist was initially created to help judges and hearing officers ensure a thorough hearing. However, it was also found to help prepare for court and prepare a caseworker to testify in court. The tool can be found at the end of Chapter 13: Permanency Hearing and can be modified to suit the needs of the judge.

## 5.5 Waiver of Counsel

A child may waive legal counsel only. At no time may a child waive the right to a GAL. Parents may waive their right to counsel for any proceeding. A parent who waives the right to counsel may revoke the waiver at any time and must be informed of the right to counsel at all subsequent hearings. Pa.R.J.C.P. 1152.

If the right to counsel is waived, Pa.R.J.C.P. 1152 requires that the court determine if the waiver is "knowing, intelligent, and voluntary." The comment to Rule 1152 suggests that the court conduct a colloquy with the party on the record regarding the following points:

1. Whether the party understands the right to be represented by counsel;
2. Whether the party understands the nature of the dependency allegations and the elements of each of those allegations;
3. Whether the party is aware of the dispositions and placements that may be imposed by the court, including foster care placement and adoption;
4. Whether the party understands that if he or she waives the right to counsel, he or she will still be bound by all the rules of procedure and that counsel would be familiar with these rules;
5. Whether the party understands that counsel may be better suited to defend the dependency allegations; and
6. Whether the party understands that the party has many rights that, if not timely asserted, may be lost permanently; and if errors occur and are not timely objected to, or otherwise timely raised by the party, the ability to correct these errors may be lost permanently.

***Best Practice — Additional Colloquy Question***

In addition to the colloquy suggested in the comment to Pa.R.J.C.P. 1152, courts may wish to inquire as to whether the party has taken any substance into their body that would make them unable to understand any of the previous questions.

The court may assign standby (also known as back-up) counsel if a party waives counsel at any proceeding or stage of a proceeding. The judge should explain what this is and what to expect from standby counsel. (See *Commonwealth v. Spotz*, 47 A.3d 63 (Pa. 2012).) Whenever representation is waived, the waiver only applies to the hearing for which it is made. The party may revoke the waiver of counsel at any time, and the court should inform the party of the right to counsel again at each subsequent hearing.

## 5.6 Substitute Counsel

The court is responsible for setting expectations regarding substitute counsel and holding attorneys to those expectations. Sometimes, assigned counsel needs a substitute for a hearing. This is especially true in the case of emergencies. In anticipation of this need, courts should set expectations for substitute counsel. Courts should expect assigned counsel to thoroughly apprise the substitute attorney of the issues expected to be presented at the pending proceeding and what should be covered. Assigned counsel should also be expected to inform their client of the substitution prior to court and notify the court.

In an emergency situation, given certain circumstances, a case may need to be continued. In non-emergency situations, it is the obligation of the assigned counsel to submit a request for rescheduling in advance of the hearing to minimize disruption of the court calendar and any inconvenience to the parties. Judges and hearing officers should ask the party on the record if they agree to be represented by substitute counsel. If they are not in agreement, the hearing should be continued. Before continuing the hearing, the judge should ask if any emergency or time-sensitive issues need to be handled immediately.

***Best Practice — Substitute Counsel***

Clearly there are circumstances that occasionally warrant substitute counsel. Some jurisdictions have planned for these inevitable situations through the use of attorney teams, wherein each member of the team is aware of all cases and can easily step into a substitute role. Other jurisdictions require prior approval of the court to send substitute counsel.

When substitute counsel appears, the court should make an inquiry if counsel is prepared to proceed. The party should be asked if they are in agreement to proceeding with substitute counsel. Best practice is to do a full colloquy on the record to ascertain that they understand.

The court can also leave open for reconsideration an issue raised by substitute counsel that is not fully developed.

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# Chapter 6 – Entering the Child Welfare System/Shelter Care Hearing

## 6.1 Overview

The child welfare system is a large, complex system with many stakeholders that work to improve the lives of children and families. The focus of the county child welfare agency is to protect children and strengthen families. Numerous families receive voluntary services from the agency, and as a result, the majority of cases served by the agency will never be seen by the court system. Only a small percentage of cases require court oversight and supervision. This court oversight and supervision may apply to children within their homes or children who have been removed from their homes.

As such, there are several ways in which children may enter the dependency system. The primary means of entry pursuant to Pa.R.J.C.P. 1200 include:

1) the filing of a dependency petition;
2) the submission of an emergency custody application;
3) the taking of the child into protective custody pursuant to a court order or statutory authority;
4) the court accepting jurisdiction of a resident child from another state;
5) the court accepting supervision of a child pursuant to another state's order or;
6) the filing of a motion for resumption of jurisdiction pursuant to Pa.R.J.C.P. 1634.

A Standard Dependency Petition is typically filed by the agency but may be filed by others through application. Pa.R.J.C.P. 1320. A Standard Dependency Petition is typically handled on a non-emergency basis and will proceed directly to adjudication and disposition.

The removal of a child from a home may be accomplished on a voluntary, cooperative basis or may be met with great resistance by the family. Although ideally, a contested removal should occur after a court hearing as to the need for such action, the circumstances usually require immediate action by the agency before a preliminary protective hearing can be arranged. Therefore, a case may come into the system through an application for a court order of protective custody. Typically, this happens in emergency situations via an oral request of the agency, in which the child is taken into protective custody when the court determines that removal is necessary for the welfare and best interests of the child. The order may be oral but must be reduced to writing within 24 hours or the next court business day. Pa.R.J.C.P. 1210(A).

While Pa.R.J.C.P. 1201 allows specified medical professionals to take a child into temporary protective custody, no child may be held longer than twenty-four hours unless the appropriate county agency is immediately notified and obtains an order permitting the child to be held in custody for a longer period. A police officer, juvenile probation officer, or the county agency may also take a child into protective custody if there are reasonable grounds to believe that removal is necessary. Pa.R.J.C.P. 1202. The agency must ensure the necessity of the child remaining in care through a shelter care application. This application may be oral but must be reduced to writing within 24 hours and submitted to the court. Pa.R.J.C.P. 1240(A). A hearing shall then be held no later than 72 hours after the child is placed. 42 Pa.C.S. § 6332.

A case may come into the system as a result of the court accepting jurisdiction of a resident child from another state or accepting supervision of a child pursuant to another state's order. (Chapter 4: Jurisdiction, Section 4.4.2: Interstate Transfers.) Lastly, a child who has been adjudicated prior to turning eighteen years of age, has had dependency jurisdiction terminated, and is under the age of twenty-one may request the court to resume jurisdiction. (See Pa.R.J.C.P 1634 and Chapter 16: Resumption of Jurisdiction.)

***Best Practice — Pre-Trial Voluntary Services***

Entry into the court system may be avoided, especially in situations involving truancy or medical issues, through the practice of front-loading of pre-trial services. Early intervention and the provision of services can be of great benefit in assuring children's welfare while avoiding needless court involvement. Services in such situations are voluntary, and parents are free to refuse to participate until the court has taken jurisdiction of the matter. Family cooperation and identification of needed services may be accomplished through Alternative Dispute Resolution (ADR), including mediation, facilitation, and various types of family conferencing. (See Children's Roundtable Initiative, Office of Children and Families in the Courts, *The Mission and Guiding Principles for Pennsylvania's Dependency System* 13 (2009).)

Family Group Decision Making (FGDM), the preferred practice in Pennsylvania, allows the family to participate in the decision-making process along with the child welfare agency, service providers and other interested persons. Involving the family in decision-making helps to build communication, cooperation and collaboration between the family and child welfare professionals. Gatowski, S. et al., *Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* 70 (National Council of Juvenile and Family Court Judges 2016). Of course, these practices can also be used after the filing of a petition and at all stages of the case. A more detailed discussion of the use of FGDM and similar innovative practices may be found in Chapter 20: General Issues, Section 20.4: FGDM.

Some counties use expedited FGDM or other expedited family meetings prior to a Shelter Care hearing. These expedited meetings play a crucial role before shelter hearings and aim to enhance the child's safety within their own homes or, if a placement is necessary, significantly boost the likelihood of locating appropriate kinship placement. The meetings should involve more family members and other support persons than service providers, taking into consideration safety and other factors. The use of these meetings, along with appropriate implementation of any plan developed and follow-up, has significantly decreased placements, increased kinship placements, reduced trauma, and reduced or eliminated agency and/or court involvement.

### 6.1.1 Reasonable Efforts Determination

However a child enters out-of-home placement, the judge is required to make findings regarding the reasonable efforts made by the child welfare agency to prevent placement. Pa.R.J.C.P. 1242(C)(3)(b). This determination is directly linked to the safety threat which led to the child's placement and should be based upon the unique circumstances of each child and family.

The court has several options when making the initial reasonable efforts finding including:

- The agency provided reasonable efforts to prevent placement;
- The agency did not provide reasonable efforts to prevent placement; or
- Due to the emergency nature, it was not possible for the agency to provide reasonable efforts to prevent placement.

This initial reasonable efforts determination is distinct from future findings related to the parents' compliance and progress. The parents' efforts are not included in this initial finding. In addition, each finding carries specific meaning and consequences as described below:

**The agency provided reasonable efforts to prevent placement**. This finding indicates that the evidence and testimony provided to the court supports a conclusion that what reasonably could have been done by the agency to allow a child not to enter care was done. Examples might include family finding, respite services, the provision of tangible needs and in-home services, to mention a few. Important in this determination is the assurance that what was done by the agency matched the child and families' needs.

**The agency did not provide reasonable efforts to prevent placement.** This finding indicates that the evidence and testimony provided to the court supports a conclusion that there were things the agency could have reasonably done to prevent placement; however, for whatever reason those things were not done.

**Due to the emergency nature, it was not possible for the agency to provide reasonable efforts to prevent removal.** This finding indicates that the evidence and testimony provided to the court supports a conclusion that preventative services could not have been provided given the specific emergency that brought the child into care. In these instances, it is likely that the family was unknown to the agency and the safety threat was significant.

A judicial finding that the agency provided reasonable efforts to prevent placement is needed to claim Federal IV-E child welfare funding to support the cost of placement services. Congress attached this requirement to federal funding in an effort to discourage unnecessary placements and encourage the provision of reasonable services that allow children to safely remain in their own homes.

If there is a request for a no reasonable efforts to prevent placement finding, the agency may request time to bring forth additional testimony to explain what was done to prevent this initial placement and make a subsequent request for a reasonable efforts finding. The agency has 60 days from the date of initial removal from the home to obtain a reasonable efforts finding. If a reasonable efforts finding does not occur within 60 days of initial removal, federal funds cannot be claimed for the duration of the child's placement and funding of such becomes solely a county responsibility.

*** Best Practice — Reasonable Efforts ***

In instances where the court feels they do not have enough information to make a finding on reasonable efforts to prevent placement, courts should clearly identify what additional information is needed from the agency and allow the agency access to a hearing date before the 60-day deadline. This clear identification helps the agency know what additional information is needed. It also provides an opportunity to present evidence and testimony which may result in a reasonable efforts finding. The court's concerns surrounding reasonable efforts determinations can be discussed through the use of status conferences and pre-trial hearings, which will provide opportunities to allow the agency to address any issues or concerns before the next scheduled hearing.

## 6.2 Commencement of Proceedings

As delineated above, Pa.R.J.C.P. 1200 sets forth the different ways a case can arise on the judicial docket. These include the filing of a dependency petition, the submission of an application for emergency custody, the actual taking of the child into protective custody pursuant to a court order or statutory authority, the acceptance of jurisdiction or supervision over a case originating in another state, or resumption of jurisdiction at the child's request.

### 6.2.1 Voluntary Placement with the Agency

Dependency cases may also begin with the child being placed in agency custody under a time-limited voluntary agreement. As the comment to Rule 1200 explains, if custody of a child with the agency is by virtue of a voluntary placement agreement and custody will exceed thirty days, dependency proceedings must be initiated through a petition filed by the thirtieth day. If a guardian requests the return of the child and the agency refuses, then a dependency petition must be immediately filed at the time of such refusal.

While the actual agreements in a voluntary placement scenario are rarely the subject of review by the court, the required provisions to be included in such agreements are set forth in 55 Pa. Code § 3130.65. One of those provisions is that the agency is required to inform the parents or legal guardian of their right to be represented by legal counsel during conferences with the agency about voluntary placement.

### 6.2.2 Order for Protective Custody

Pa.R.J.C.P. 1210 outlines requirements for emergency protective custody orders. Both the application for the order and the order itself may be verbal. However, the request for an order must be reduced to writing within 24 hours. Likewise, the court's oral order must be reduced to writing within 24 hours or by the next court business day. Pa.R.J.C.P. 1210(B)(3). The court's order must specify, among other things, (1) the reasons for taking the child into protective custody, (2) whether reasonable efforts were made to prevent placement, (3) whether remaining in the home is contrary to the welfare and best interests of the child, and (4) findings and orders related to the requirements of Pa.R.J.C.P. 1149 regarding family finding. Pa.R.J.C.P. 1210(D).

Although the rule authorizing an order for immediate removal does not reference its *ex parte* nature, it is clear that the court is required to act promptly on an agency request, whether orally or by written application, to decide whether to authorize protective custody of the child. Before a court authorizes an emergency placement, it is imperative that the court make an inquiry into the efforts made to prevent placement. Reasonable efforts require the agency to continue to engage with the family to determine if the services provided are being appropriately implemented to address the primary concerns surrounding a child's safety. Continuing to engage in the same level of conduct without adequate follow-up to determine if the services are actually implemented or appropriately address the primary concerns for the safety of the child should call into question the agency's compliance with the reasonable efforts requirement. (See *In the Interest of K.M.,* 305 A.3d 116 (Pa. Super. 2023).)

## 6.3 Shelter Care Hearing

Once the child is removed from the home in an emergency situation, a shelter care hearing must be conducted by a judge or a hearing officer within 72 hours of taking custody. 42 Pa.C.S. § 6332; 23 Pa.C.S. § 6315(d). This is a statutory informal hearing.

***Best Practice — Presiding over Shelter Care Hearings***

Although judges and hearing officers are both able to hear shelter care hearings, whenever possible the judge should receive preference. The shelter care hearing is the most important hearing in the case. Having the hearing in a formal location in front of a judge can set the tone for the entire case. The judge should use this opportunity to attempt to provide the parties with an outline of the proceedings and set the tone as to what the parties can expect at this hearing and other proceedings.

Upon application or the filing of a dependency petition, a shelter care hearing must be conducted in those cases where removal of a child is planned but has not yet occurred or where a voluntary agreement is revoked by the parent and the agency intends to seek to keep the child in care.

Although in some courts the shelter care hearing has been transformed into an adjudicatory hearing, this procedure does not represent best practice. It is contrary to the carefully developed sequence of proceedings that assures adequate representation and time to reflect on the options available to parents. This sequence allows for appropriate safeguards to ensure that the well-being of the child is considered and the due process rights of the parent or guardian, as reflected in the Juvenile Act and the Juvenile Court Procedural Rules, are protected. (See *In re: A.S.,* 594 A.2d 714 (Pa. Super. 1991).)

The primary purpose of the shelter care hearing is to evaluate the agency's contention that allowing the child to remain in the home would be detrimental to the child's welfare and best interests. Under Pennsylvania law, as amended to conform to Adoption and Safe Families Act (ASFA), parental rights are secondary to the basic interests of the child in these proceedings, and "the health and safety of the child supersede all other considerations." *In the Interest of C.B.,* 861 A.2d 287, 295 (Pa. Super. 2004). If it is necessary for a child to be removed from the home, the placement of the child is expected to be the least restrictive environment available to meet the needs of the child.

***Best Practice — Least Restrictive Placement Setting***

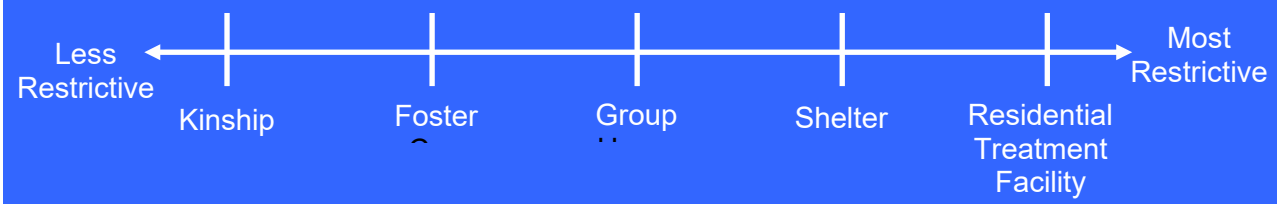
If it is necessary for a child to be removed from the home, the placement of the child is expected to be the least restrictive placement available. The placement should be the most family-like setting available for the child, consistent with the best interests and special needs of each child. 55 Pa. Code § 3130.67(b)(7)(i).

A primary consideration for placement should be with a fit and willing relative of the child or someone who has a close connection to the child. These kinship caretakers are typically the least restrictive placement options and can preserve the child's connections to family. In Pennsylvania, except where otherwise ordered by the court, kinship caretakers are required to become licensed foster parents and should be encouraged by the judge or hearing officer to fully cooperate with the agency in completing the necessary requirements of foster care licensing. In an emergency situation, a child can be placed with a kinship caretaker, but that caretaker must become a fully licensed foster parent at the end of 60 days. In instances where caregivers do not or cannot become licensed foster parents, any payment becomes the sole responsibility of the county as neither federal nor state funds can be claimed.

Other placement considerations should include geographical proximity to the family and community affiliations, educational stability, and cultural relevance of the placement to assure timely permanence and well-being.

Every effort should be made to place siblings together.

In general, the continuum of placement restrictiveness is as follows:



Holding a substantive shelter care hearing is key to the court process and ensuring that all parties are engaged and understand what is required of them. During this initial hearing, the court is becoming familiar with the child's and the family's needs and, in so doing, must consider a multitude of issues. As such, courts should strive for comprehensive hearings. The *Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* recognizes that this may "require a substantial initial investment of time and resources, but this investment can lead to better decisions for children and families while decreasing the substantial court and agency costs accrued during an unnecessary out-of-home placement." Gatowski, S., et al., 108 (National Council of Juvenile and Family Court Judges 2016).

***Best Practice — Finding and Engaging Absent and Putative Fathers***

The child welfare system has long been criticized for being maternally focused and for failing to involve fathers (particularly absent fathers) and their relatives. Every effort should be made as early in the process as possible to identify and engage the biological father of the child. Fathers and paternal relatives may prove invaluable to dependent children as placement resources, additional support, sources of health history information, and permanent connections. Additionally, early engagement of fathers and their relatives allows the agency to work with the family as a whole at the front end of the process, which can save valuable time later on, thus expediting services to families and timely permanency for children. Cases may occur where no father has ever been conclusively identified, and multiple potential fathers exist. In such circumstances, the court may proceed with the current father of record, but if any doubt exists as to paternity, the court should make every effort to determine paternity.

Too often, the mother is relied on as the sole source of information regarding the father. Unfortunately, especially if the father has not been involved in the child's care and support, the mother may not always provide complete and accurate information. This should not be taken to mean that no father exists or that the father or paternal family members are not interested in or capable of helping the child. Accordingly, other sources of information on the father and his whereabouts, including members of the mother's family, should be called upon as well. The court must provide strong leadership to ensure that the agency and other parties make locating and identifying the father a priority at each hearing in every case.

A number of issues should be considered at this first hearing: interim placement options, development of an interim (but specific) visitation schedule, identification of any medical/psychological/educational needs of the child, provision of interim services for the child and the parents, a determination of whether the child should be found to be an Indian Child. (see Chapter 21: Overview of Federal-State Child Welfare Legislation, Section 21.9: Indian Child Welfare Act), and the determination of additional court orders that may be required (i.e. court-ordered evaluations, paternity determinations, restraining orders, child support, notice to additional parties, etc.). If, given all the facts of a particular case, it appears to be in the child's best interest to remain in the same school until the adjudication/disposition hearing, then the court should address the logistical challenges of making that happen. With the Every Student Succeeds Act (ESSA) (20 U.S.C. § 6301 *et seq*.), there is a presumption that the child remains in their school of origin unless the court determines otherwise. The McKinney-Vento Act (42 U.S.C. § 11431, *et seq.)* provides for homeless youth, including those in temporary foster care placements. The Act makes it possible for continuation in the same school and the provision of transportation to that school. It also expedites the enrollment of students despite missing pieces from the educational record.

Because removal from home is traumatic, it is important for the child to have some sense of normalcy and be connected with familiar things. This can be accomplished in several ways, including keeping the children in their home, school, and community or placing the children with a person known to them. If the child was involved in sports, music, or other activities prior to entering foster care, then those things should continue. The court and the agency should make every effort to ensure that a child's personal belongings accompany the child into foster care.

In dependency proceedings, a child in placement is to remain in their school of origin unless the court finds remaining in the school of origin is not in the child's best interest, in which case the court may order the child to be enrolled in another school that best meets the child's needs. Pa.R.J.C.P. 1148(B). If a court orders the child to be enrolled in another school, then the child is to attend a public school unless the court finds that a public school is not in the best interest of the child. Pa.R.J.C.P. 1148(C). Often, the child's home school district is unaware that a child placed outside the home is still entitled to transportation. 42 U.S.C. § 11432(g)(1)(J)(iii). The inclusion of school principals and superintendents on the local roundtable is a good way to remind schools of such obligations.

In addition to ensuring that the child's basic needs are being met, the judge or hearing officer should ensure that the child has opportunities to develop prosocial skills and self-esteem and have fun. Therefore, it is certainly appropriate for the judge or hearing officer to engage the child in conversation regarding the child's interests and to make orders providing opportunities to engage in extracurricular activities.

A substantive shelter care hearing requires a significant initial investment of time and resources. This investment, often referred to as front-loading the court process, is viewed as key to establishing the basis for expedited case processing, ensuring that the family remains involved, and minimizing the time that the child remains in care. Important components of front-loading the court process include:

- timely appointment of counsel for the child and parents/guardians;
- establishment of the schedule/terms of visitation where appropriate;
- examination of options for placement with relatives/kin;
- identification of any domestic violence issues and, if appropriate, issuance of protective orders;
- assessment of the need for expert examinations or evaluations of the child or parent's physical and/or mental health and issuance of the appropriate orders;
- early inquiry into paternity issues and location of, notice to, and engagement of absent parents; and
- review of family finding efforts.

Since the hearing must take place on short notice to everyone involved (even the judge or hearing officer has little time to prepare as it is often an add-on to the schedule), witnesses and evidence may be unavailable. However, only a preliminary determination is expected until the more comprehensive adjudication hearing can occur within 10 days.

***Best Practice — Obtaining Parents' Medical History***

The court should require the agency to collect the medical/psychological history of both the biological parents and the child as early in the process as possible. This information can be helpful in a variety of ways, including assisting the court in decision-making, assuring appropriate services are identified, and creating a documented history for the child. This information may be beneficial to all parties in the short term but may also prove beneficial in the long term if the case advances to termination of parental rights and adoption. If the medical history of a parent or child reveals that a party is diagnosed with autism or self-reports as having autism, that information should be added to the Common Pleas Case Management System Dependency Module data for that case.

## 6.4 Counsel and Guardian *Ad Litem* (GAL) Appointments

### 6.4.1 Parent Counsel

Although the timeframe is short, legal counsel for the parent or guardian should be assigned after the child's removal from the home and prior to the shelter care hearing. Children's Roundtable Initiative, Office of Children and Families in the Courts, *The Mission and Guiding Principles for Pennsylvania's Child Dependency System* 14 (2009). This assignment will facilitate the orderly conduct of the shelter care hearing.

If the parent or guardian appears at the hearing unrepresented, the judge or hearing officer should take a direct approach at the outset of the hearing in advising them of the availability of court-appointed counsel, their right to counsel, and the benefit of legal representation. The parent or guardian is under stress and great anxiety and is in obvious need of impartial advice and advocacy. If the parent waives counsel, the judge or hearing officer must be satisfied, after a thorough colloquy, that a waiver of counsel is knowingly, intelligently, and voluntarily made. Pa.R.J.C.P.1152(B). (See Chapter 5: Right to Legal Representation, section 5.5 Waiver of Counsel for suggested waiver colloquy.)

***Best Practice — Assignment of Counsel***

Both children and parents should have legal representation available to them upon entering the shelter care hearing. At the time of the shelter care hearing the parents have the right to enter their own counsel, accept the counsel provided, or waive rights to any counsel.

The court should work to establish a county process that provides parents or guardians with the means to apply for counsel at or near the time that an emergency order is obtained or when the petition is filed. Some counties appoint counsel at the outset of an action and give notice to the parties and counsel of this assignment.

Ideally, all counsel, including the child's GAL and/or legal counsel, the parent attorney, and the agency solicitor, should remain with the case throughout its life span with the court. Counsel can thus work collaboratively while still allowing each to provide vigorous representation. In combination with a One-Judge, One-Family model, this approach can provide for more collaboration in the courtroom, a less adversarial tone in hearings, and better outcomes for children and families.

### 6.4.2 Assignment of Guardian *Ad Litem* (GAL) and Child Counsel

The court must assign a Guardian *ad Litem* (GAL) for the child, and the child may not waive the right to a GAL. Pa.R.J.C.P. 1151(A) and 1152(A). In certain situations, legal counsel for the child must be appointed as well. Pa.R.J.C.P. 1151(B). A child may waive legal counsel if the waiver is knowingly, intelligently, and voluntarily made and the court conducts a colloquy with the child. Pa.R.J.C.P. 1152(A)(2). (See Chapter 5: Right to Legal Representation, Section 5.2.2 Guardian *Ad Litem* and Section 5.2.3 Legal Counsel for the Child for further details.)

## 6.5 Conducting the Hearing

The judge or hearing officer should assure that all persons present are identified for the record. If parents or guardians are not in attendance, the agency representative must indicate the steps taken to provide each person with notice of the proceeding. The hearing may go forward if a parent or guardian is not present. If there has not been notice, and a parent or guardian later submits an affidavit to that effect, a rehearing must be held within 72 hours. Comment to Pa.R.J.C.P. 1241 and Pa.R.J.C.P. 1243.

In addition to advising the parties of their right to counsel, the judge or hearing officer is to ensure that each party has a copy of the shelter care application. Pa.R.J.C.P. 1242 (A). If the matter is being heard before a hearing officer, the right to have the matter heard by a judge shall also be explained. Pa.R.J.C.P. 1187(B).

The hearing may be preceded by an informal conference to narrow or discuss issues, especially where all parties have counsel present. In addition, related issues, not necessarily part of the hearing itself, can be addressed. For example, the parties may discuss whether a caretaker should file a Protection from Abuse action and seek an immediate temporary order that requires an abusive person to leave the house so the child can remain. Informal meetings at this stage may also be used to lay the groundwork for a Family Group Decision Making (FGDM) conference or for the utilization of family finding to provide support to the child and family or to locate a kinship caregiver.

Although the hearing is designated informal, it should be formal enough to convey the authority of the law. Security personnel should be present and, if possible, a court reporter Pa.R.J.C.P. 1242(B)(2). All witnesses, including agency caseworkers, shall be sworn and subject to cross-examination.

The parents or guardians are to be provided a full opportunity to present their testimony (including calling witnesses), so they may convey their version of events. If the child's non-custodial parent is ready, willing and able to provide adequate care for the child, the child cannot be determined to be dependent. *In re M.L.*, 757 A.2d 849, 851 (Pa. 2000). However, the court has the authority to transfer custody to the non-custodial parent if evidence for dependency would have existed, but for the existence of the non-custodial parent. *In the Interest of Justin S.*, 543 A.2d 1192 (Pa.Super. 1988). (See also comments to Pa.R.J.C.P. 1409.)

Written reports must be made available for examination by all counsel, and the parent or guardian if unrepresented. Any reports may be controverted by the other party. Pa.R.J.C.P. 1242(B)(3). All parties shall be treated with proper respect and fairness.

### 6.5.1 Evidentiary Standard

All evidence helpful in determining the issues raised, including oral or written reports, may be received and relied upon to the extent of its probative value. *Id*. Thus, hearsay may be admissible.

## 6.6 Findings and Orders

The court shall determine whether:

1) there are sufficient facts in support of the shelter care application;
2) the county agency has reasonably engaged in family finding;
3) custody of the child is warranted after consideration of the following factors:
    a) remaining in the home would be contrary to the welfare and best interest of the child;
    b) reasonable efforts were made by the county agency to prevent the child's placement;
    c) the child's placement is the least restrictive placement that meets the needs of the child, supported by reasons why there are no less restrictive alternatives available; and
    d) the lack of efforts was reasonable in the case of an emergency placement where services were not offered;
4) a person, other than the county agency, submitting a shelter care application, is a party to the proceedings; and
5) there are any special needs of the child that have been identified and that the court deems necessary to address while the child is in care.

Pa.R.J.C.P. 1242(C).

The above language in section 3 of the Rule must be included in the initial order removing the child from the home in order for the agency to claim federal reimbursement of placement expenses for the child for the duration of this placement episode.

At the conclusion of the shelter care hearing, the court shall enter a written order setting forth:

1) its findings pursuant to paragraph (C);
2) any conditions placed upon any party;
3) any orders regarding family finding pursuant to Rule 1149;
4) any orders for placement or temporary care of the child;
5) any findings or orders necessary to ensure the stability and appropriateness of the child's education, and when appropriate, the court shall appoint an educational decision maker pursuant to Rule 1147;

6) any findings or orders necessary to identify, monitor, and address the child's needs concerning health care and disability, if any, and if parental consent cannot be obtained, authorize evaluations and treatment needed; and
7) any orders of visitation.

Pa.R.J.C.P. 1242(E). (See also Gatowski, S. et al., *Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* (National Council of Juvenile and Family Court Judges 2016), Section III: The Preliminary Protective Hearing for additional important findings.)

***Best Practice — Reasonable Efforts***

The determination of reasonable efforts must not only be made at the shelter care hearing stage but must be revisited at each subsequent hearing. (Common Pleas Case Management System forms for these hearings require the judicial officer to address the reasonable efforts determination.) The requirement ensures that every reasonable opportunity is provided to the family and child to prevent unnecessary separation. In addition, the reasonable efforts finding is federally mandated to ensure only those children who cannot safely be cared for in their own homes come into care and that once in care, children proceed to permanency in a timely manner. This finding also affects the agency's ability to qualify for federal funding for the placement of the child and services to the family.

Because the focus of the Juvenile Act is on the dependent child, as opposed to the parents, any services for parents must directly promote the best interest of the child.

Although a judge cannot require services at this stage, the court can ask the agency to offer services pending the adjudicatory hearing. Early intervention through agency services or family examinations/assessments (i.e. medical, psychological, drug/alcohol, etc.) may aid in expediting permanency.

A copy of the order should be distributed immediately to all parties in order to facilitate understanding and compliance.

## 6.7 Motions and Answers

A motion, orally on the record or in writing, may be made at any stage of the proceeding. The judge should review the motion to ascertain whether a directed response would be beneficial to the court or the parties. In no event is a failure to answer deemed an admission of the well-pleaded facts of any motion. Pa.R.J.C.P. 1344.

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# SHELTER CARE HEARING CHECKLIST

## 1. TIMELY HEARING:

_____**Date** child removed: _____
_____**Date** of shelter care hearing: _____

(Note: The shelter care hearing must be held within 72 hours of child's removal.)

## 2. NOTICE OF HEARING:

_____Determine if written notice of time, place, and purpose of the shelter care was issued to:
- _____Child's mother and attorney
- _____Child's father and attorney
- _____Child's guardians/custodians and attorney
- _____Child and GAL and/or attorney
- _____Forster Parent
- _____Pre-Adoptive Parent
- _____Relative providing care for child
- _____County Agency
- _____CASA
- _____Ask county attorney and agency to detail efforts made to notify/locate absent parents.

_____If inadequate notice given, reset hearing. **Date** of rescheduled hearing: ____
_____Order county attorney and/or agency to locate and notify absent parents of next hearing.

## 3. WHO SHOULD ALWAYS BE PRESENT:

___Judge/Hearing Officer
___Mother
___Father
___Guardians/Custodians
___Child(ren)
___Spouse of Child, if any
___Parents' Attorneys
___Guardian *ad Litem*
___Child's Attorney
___Agency Solicitor
___Caseworker
___CASA
___Court Reporter
___Security Personnel

## WHO MAY BE NEEDED:

___Extended Family Members
___Friends of the Family
___Foster/Pre-Adoptive Parent
___Other Witnesses
___Service Providers
___Law Enforcement
___Probation Officer

**4. PROCEDURE:**

_____Explain the purpose of the proceeding and give advisements of rights.
_____Receive all relevant and material evidence to determine need for shelter care.
_____Receive all relevant and material evidence helpful to determine questions of placement, reasonable efforts, visitation and education.
_____Allow parties/counsel to examine and contest written reports received as evidence and cross-examine persons making the reports.
_____Make contrary to the welfare and reasonable efforts findings.
_____Make findings as to whether shelter care was necessary or still is necessary to keep the child safe.
_____If the father is unknown, begin process of establishing paternity.
_____Make findings as to whether the agency has reasonably engaged in family finding.
_____Make findings regarding the determination whether the child is an Indian Child as defined by the Indian Child Welfare Act (25 U.S.C. § 1901 *et seq*.) and the Bureau of Indian Affairs regulations (25 C.F.R. § 23.2).

**5. ADVISEMENT OF RIGHTS AND PURPOSE OF PROCEEDINGS:**

_____Advise of contents of petition and nature of allegations.
_____Right to legal counsel.
_____Right to confront and cross-examine witnesses.
_____Right to present witnesses and introduce evidence.
_____Right to issue subpoenas by the court.
_____Receive factual basis under oath and on the record.

**6. PLACEMENT OPTIONS:**

_____Ask county agency to provide details of child's proposed placement.
_____Determine whether the placement proposed by county agency is the least disruptive and least restrictive and most family-like setting that meets the needs of the child.
_____Specify the child's placement in the least restrictive setting.
_____Return child to the home.
_____Leave child in the home without county agency supervision and without services.
_____Leave child in the home with county agency supervision and services.
_____Remove/continue removal of the child and place/continue to place with someone other than county agency.
_____Remove/continue removal of the child and place/continue to place child with county agency.

**7. VISITATION:**

_____Ask county agency to provide details regarding visitation between child and Mother
_____Father
_____Sibling(s)

(*Note*: Visitation should be frequent and meaningful so as to reduce the trauma of placement. See Chapter 8: Visitation for more information.)

**8. EDUCATIONAL NEEDS:**

____Did the county agency consider proximity to the child's current school when placing the child?
____Is it in the best interest of the child to not remain in his school of origin?
____Does the child have any educational needs that should be addressed at this time?
____If the child is being moved into a new school, is there a plan to immediately move the school records and get the child enrolled?
_____What is the plan?

**9. SCHEDULE NEXT HEARING:**

_____Adjudication Hearing, **Date:** _____

(*Note*: The Adjudicatory Hearing must be held within 10 days of the filing of the petition if the child is in custody and 45 days if a child is not in custody.)

A court should distribute the orders at the conclusion of the hearing, and explain the significance to the parties, if necessary.

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# SHELTER CARE HEARING BENCHCARD

| | |
|---|---|
| Relevant Statutes | 42 Pa.C.S. §§ 6325, 6332, 6334<br><br>Pa.R.J.C.P. 1240, 1242 (B) (3), 1243 |
| Purpose of Hearing | An informal hearing to determine (a) whether shelter care is necessary; (b) whether allowing the child to remain in the home would be contrary to the welfare of the child; (c) whether reasonable efforts were made to prevent such placement; or (d) if, in case of emergency where services were not offered, whether lack of efforts were reasonable. Shelter care hearing is **not** a substitute for the adjudicatory hearing. |
| Time Frame | Hearing within **72 hours** of removal (42 Pa.C.S. § 6332).<br><br>If the child is not released and a parent or guardian or other custodian has not been notified of the hearing, did not appear or waive appearance at the hearing, and files his affidavit showing these facts, the court shall rehear the matter without unnecessary delay and order release of the child, unless it appears from the hearing that shelter care is required under 42 Pa.C.S. § 6325.<br><br>Upon application or the filing of a dependency petition, a shelter care hearing will also be conducted in those cases where removal of a child has not yet occurred, but is planned or a voluntary agreement is revoked by the parent and the agency intends to keep the child in care. |
| Rules of Evidence | All evidence helpful in determining the questions presented, including oral or written reports, may be relied upon to the extent of its probative value. Thus hearsay may be admissible. |
| Next Hearing | Child in Custody: Adjudicatory hearing within **10 days** of the filing of the petition.<br><br>Child Not in Custody: Adjudicatory hearing as soon as practical but within **45 days** of the filing of the petition. |

# SHELTER CARE HEARING
# SUMMARY OF KEY QUESTIONS/DETERMINATIONS

- Are there sufficient facts to support the shelter care application?
- Is custody with the agency warranted? Where will the child be placed (kinship care, foster care or other)?
- If a shelter care application was submitted by a person other than the agency, is that person a party to the proceedings?
- Would remaining in the home be contrary to the welfare and best interests of the child?
- Is the placement proposed by the agency the least disruptive and most family-like placement to meet the needs of the child?
- If the father is absent, is the father known? What is his relationship with the child? Can the father safely care for the child?
- Has family finding been done to identify all possible family and caregivers, on both the maternal and paternal side?
- Has the agency reasonably engaged in family finding?
- Has the family been offered a Family Group Decision Making Conference?
- Were reasonable efforts made by the agency to prevent the child's placement?
- Were the services offered by the agency relevant to the family's problems? Were they adequate, accessible and well-coordinated? Were there other cost-effective services that should have been offered?
- If services were not offered in the case of an emergency placement, whether the lack of efforts was reasonable?
- Are any additional orders needed concerning the conduct of the parents, such as restraining orders or orders expelling an allegedly abusive parent from the home?
- Are any additional orders needed concerning the agency's efforts to provide services?
- Are additional orders needed to address the immediate needs of the child, such as immediate medical treatment, evaluation or other examinations?
- What steps have been taken to ensure the educational needs of the child are being met? Does the child have an Individual Education Plan (IEP)?
- Has visitation been provided within 72 hours of the child's removal from their home? What are the terms and conditions for parental visitation or sibling visitation
- What consideration has been given to financial support of the child?
- Has the court made a determination as to whether the child is an Indian Child as defined by the Indian Child Welfare Act (25 U.S.C. § 1901 *et seq*.) and the Bureau of Indian Affairs regulations (25 C.F.R. § 23.2)?

These questions are adapted from the text of this chapter, the *Mission and Guiding Principles for Pennsylvania's Dependency System* and the Preliminary Protective Hearing Checklist provided in the *Enhanced Resource Guidelines* (NCJFCJ, 2016, pp.161-175)

# LOCATING FATHERS & ESTABLISHING PATERNITY BENCHCARD

***Identifying and locating fathers early in dependency matters helps children establish or maintain important connections. Doing so also expedites permanency.***

**Judges and hearing officers should ask whether the county agency caseworker has:**

1. Utilized family finding to locate father and paternal relatives. What specifically was done?
2. Complied with the requirement of the Fostering Connections Act? If so, how?
3. Asked the mother, child or relatives about the father's whereabouts?
4. Utilized the federal, state or other parent locator systems?
5. Sent letters to the last known address of the father?
6. Visited the last known address of the father, talked to neighbors and family members in the community where father previously resided?
7. Checked local jails, prisons, correctional facilities, probation and parole agencies, and immigration authorities?
8. Checked public benefits information (e.g., social security or public assistance)?
9. Checked with the child support enforcement agency?
10. Checked driving and vehicle registration records?
11. Used technology and social media to locate the father?

**Judges and hearing officers should also:**

1. Ask the mother and other relatives about the father's identity and location at the first and all subsequent hearings, until the issue is resolved.
2. Obtain information under oath or via an affidavit establishing parentage.
3. Ask the child about the father's identity, location and names of paternal kin (if appropriate).
4. Require the agency to promptly obtain information through any action noted above.
5. Order the agency to follow up on information gained from court hearings.
6. At every hearing, require information about progress in identifying and locating the father.
7. Impose deadlines for searches or for filing affidavits detailing search efforts.
8. Ensure court orders and records reflect effort to identify and locate fathers.
9. Consider a finding of "No Reasonable Efforts" if the agency has not made attempts to locate father.

# LOCATING FATHERS & ESTABLISHING PATERNITY

# BENCHCARD

***Establishing paternity after a putative father is located is critical. The father can then assert and protect his constitutional rights to the care and custody of his child.***

**Judges and hearing officers should:**

1. Arrange for the paternity case to be expedited so the father can be engaged and supported in the dependency case, if the cases are being handled separately.

2. Question the putative father directly about his:

    a. Relationship to the mother.
    b. Desire to be a father.
    c. Efforts to have or maintain a relationship with his child, such as:
        - How often he sees the child;
        - How often he speaks with the child;
        - Whether he provides formal or informal financial or other support to the child;
        - Whether his name is on the birth certificate;
        - If he has filed a claim or acknowledgement of paternity;
        - If he was living with or married to the mother when she was pregnant or when the child was born; and
        - Whether he has been prevented from contact with the child.

3. Require paternity testing, when appropriate.

4. Request at every hearing information about progress being made to establish paternity.

5. Be clear in the court order once paternity and "legal" fatherhood are established.

6. Inform the father of his right to counsel and availability of court-appointed counsel.

7. Expect the same level of service delivery provided to father as is provided to mother.

These questions are adapted from the text of this chapter, the *Mission and Guiding Principles for Pennsylvania's Dependency System* and the State Roundtable Workgroup on Fatherhood.

# Chapter 7 – Adjudication Hearing

## 7.1 Overview

The adjudication hearing is the bench trial before a judge or hearing officer in which a determination is made as to whether the child is dependent within the meaning of the Juvenile Act. This is the most formal of the hearings in a dependency case, with respect to both the admission of evidence and the child welfare agency's burden of proof.

The adjudication acts as the official entry point of a child into the dependency system and provides the basis for court-ordered agency services and interventions. A prompt and fully developed adjudication hearing can be instrumental in setting the stage for planning for the child's needs and achieving permanency. Judicial diligence, oversight, and concern are key components if the court proceedings are to meet these goals while safeguarding the constitutional and due process rights of the parties.

If the court sustains the allegations of dependency, the child is officially adjudicated dependent. At this point, the case goes to the disposition hearing, which determines the services to be provided to the child and family and whether they are appropriate. In many jurisdictions, the adjudication and disposition hearings are held jointly to expedite the process. While the combining of the hearings is acceptable, it should be noted that the burden of proof differs between the two hearings, and findings for each hearing must be announced in open court, recorded, and committed to the order. (See Chapter 10: Disposition.)

## 7.2 Dependency

In view of the focus at the adjudication hearing on whether or not there is dependency, the judge or hearing officer must be familiar with the statutory definition of dependent child found at 42 Pa.C.S. § 6302. (For a listing of the categories of dependency, see Chapter 4: Jurisdiction, Section 4.2 Dependency Jurisdiction in General.) The agency petition is a Common Pleas Case Management System statewide form. The agency must checkmark in the petition the specific subsection of Section 6302 under which the child's situation is covered. The general categories are neglect, which includes failure to thrive and parental incapacity; abuse, which includes physical, sexual, and emotional abuse; or status offenses, which include truancy, incorrigibility, and ungovernability. There is also a subsection that applies to a parent who has had parental rights involuntarily terminated as to another child within the past three years and is currently engaging in conduct that poses a risk to the well-being of the child.

Absent prejudice, the court has discretion to permit the amendment of the petition to include a different subsection, which changes the elements or matters of proof by a party. Pa.R.J.C.P. 1334(A)(2). The court may allow the petition to be amended if one of the parties makes this request or if the court deems an amendment is needed. Amendments to cure defects in form, the description of allegations or the description of any person or property, or the date alleged must be permitted by the court. Pa.R.J.C.P. 1334(A)(1). The court also has the discretion to grant a continuance to avoid prejudice based on the amended petition if the court deems it necessary. Pa.R.J.C.P. 1334(B).

A child whose non-custodial parent is ready, willing and able to provide adequate care for the child cannot be found dependent on the basis of lacking proper parental care and control. *In re M.L.*, 757 A.2d 849 (Pa. 2000).

## 7.3 Pre-Hearing Requirements and Considerations

### 7.3.1 Timing

The adjudication hearing must be promptly held, no later than ten days after the petition is filed for a child who has been removed from the home. Pa.R.J.C.P. 1404(A). If the child is still in the home, the hearing shall be held as soon as practical but within 45 days of the filing of the petition. Pa.R.J.C.P. 1404(B).

It should be noted, however, that delay may impede efforts to reunify the family or, in the alternative, to find a permanent placement. Even if a child has not been removed from the home, it is important that the adjudicatory hearing be held in a timely manner so that services can be initiated quickly if the allegations of dependency are proven, or the petition can be dismissed if they are not. A prompt hearing may also facilitate the use of practices such as Family Group Decision Making (FGDM), Mediation, Facilitation, and Family Finding.

It is highly recommended that when a child has been removed from the home, the established timeline for the adjudicatory hearing should not be continued even if the parties agree, except where there is newly discovered evidence, unavoidable delay in the notification of parties, an unavailable witness or unforeseen personal emergencies or illness. Gatowski, S. et al., *Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* 181 (National Council of Juvenile and Family Court Judges 2016).

Utilization of an emergency response protocol/procedure by the agency should occur pre-placement, if possible, and certainly prior to the adjudication hearing. Further, family finding actions by the agency should be commenced prior to the adjudication hearing.

### 7.3.2 Appointment of Counsel

All parties should have the opportunity to receive competent legal representation prior to the adjudication hearing. In some cases, the issue of representation has already been settled at the shelter care hearing, but often, due to the emergency nature of that hearing and the short timeframe in which it must occur, counsel may not have been provided to all parties. It is the duty of the court to ensure that all parties are provided the opportunity to retain counsel and, if a party cannot afford counsel, that a system is in place to have counsel appointed.

Any unrepresented parties must be advised of their right to legal counsel. 42 Pa.C.S. § 6337. Parents have a right to counsel at adjudicatory hearings, even if obtaining counsel may cause a delay in the hearing. *In the Interest of S.N.W.*, 524 A.2d 514 (Pa. Super. 1987). Further, parents are entitled to effective assistance of counsel. *In re S.M.*, 614 A.2d 312 (Pa.Super. 1992). A caregiver afforded standing as a party is likewise entitled to representation by legal counsel at all stages of the proceedings under the Juvenile Act. *In the Interest of D.K.*, 922 A.2d 929 (Pa. Super. 2007).

The right to counsel has also been expressed as a right to effective assistance of counsel. Urging counsel to model their services around appropriate and effective legal representation is required. True legal representation designed to build relationships with clients before, after, and during court proceedings, and to prepare for hearings well in advance of the hearing date is essential to avoiding future claims that the right to counsel was denied due to the ineffectiveness of counsel.

### 7.3.3 Notification

The court must issue a summons compelling all parties to appear for the adjudication hearing. Pa.R.J.C.P. 1360. The court must give notice of the hearing to: (1) the agency solicitor; (2) the child's GAL and legal counsel; (3) the guardian's attorney; (4) parents, foster parents, pre-adoptive parents or relatives providing care for the child; (5) the county agency; (6) the Court Appointed Special Advocate, if assigned; and (7) any other persons as directed by the court. Pa.R.J.C.P. 1361.

The summons compelling the parties to appear must be served in person or by certified mail return receipt and first-class mail. Pa.R.J.C.P. 1363(A). Service of the summons must occur no less than seven (7) days prior to the adjudicatory hearing if the child is in custody and no less than fourteen (14) days prior to the hearing if the child is not in custody. Pa.R.J.C.P. 1363(B).

Chapter 6: Entering the Child Welfare System provides a best practice box discussing the importance of locating and notifying absent and putative fathers.

### 7.3.4 Subsequent Identification of Parent not Named in Original Petition

If a petition is filed and one of the parents is not known at the time of the hearing, the court has jurisdiction to assess and address the needs of the child in an adjudicatory hearing while also pursuing the identity of the unknown parent. If the unknown and unnamed parent is located after the child was determined to be dependent, then due process concerns require that the subsequently identified parent be provided notice and an opportunity to be heard in any future dependency proceedings. However, jurisdiction over the original dependency petition would be unaffected. *In the Interest of A.D.-G.*, 263 A.3d 21, 28 (Pa. Super. 2021).

### 7.3.5 Continuances

When granting a continuance, it is important to remember if a child has been removed from the home, an adjudicatory hearing shall be held within ten days of the filing of the petition. If a child has not been removed from the home, the adjudicatory hearing shall be held as soon as practical but within forty-five (45) days of the filing of the petition. Pa.R.J.C.P. 1404(b).

The remedy for failure to hold the dependency hearing in a timely manner is that an objecting party can petition for "the automatic activation of the right of the child and its parents to the immediate release of the child from the state's custody." *In the Interest of M.Y.C.*, 230 A.3d 500, 509 n.11 (Pa.Super. 2020).

Continuances may be necessary in any court setting, but their use should be strictly limited in dependency cases, and if granted, the hearing should be immediately rescheduled and heard as soon as possible. Under the Pennsylvania Rules of Juvenile Court Procedure, "continuances should not be granted when they could be deleterious to the safety or well-being of a party." Comment to Pa.R.J.C.P. 1122. In a dependency proceeding, any continuance will serve to extend the child's stay in care and the family's involvement in the system, potentially harming both.

Practices that may cut down on the number of continuances include:

- Proper and timely notification to all parties in advance of a hearing to allow them time to make the necessary preparations to attend and participate.
- Early identification of family members, including fathers.
- Regularly scheduled hearing dates determined in advance.
- The use of pre-trial conferences and other ADR processes.
- Development of judge/attorney teams.

If the continuance is granted after the parties arrive for the hearing, start the proceedings and then continue the hearing. This provides an opportunity to productively utilize the court's time and address emergent issues. Taking testimony from expert witnesses or others who may not be available on a rescheduled date helps to expedite the next proceeding.

### 7.3.6 Discovery

A comprehensive rule governs discovery and inspection for all phases of dependency proceedings beginning with the period preceding the adjudication hearing. Pa.R.J.C.P. 1340. The agency is required to make disclosure of certain information under Pa.R.J.C.P. 1340(B), including the names and addresses of witnesses and any police report or other record or report intended to be used as evidence. As the comment to Rule 1340 notes, the purpose of the Rule 1340(A) is to encourage an informal discovery process. Only when the informal process fails and a dispute arises does court intervention become necessary.

If they are to be used as evidence, the agency may be required to disclose reports whose confidentiality would otherwise be protected under the Child Protective Services Laws, 23 Pa.C.S. 6301 *et seq*. Pa.R.J.C.P. 1340(B)(1)(e). However, the disclosure is required only to reports that will be submitted as evidence, and the names of confidential sources who have reported possible abuse are not to be disclosed. Comment to Rule 1340.

### 7.3.7 Pre-Adjudicatory Conference

Pa.R.J.C.P. 1342 authorizes the court to order pre-adjudicatory conferences, which can be extremely useful in working out preliminary matters, focusing issues, and eliminating potential causes of delay. If the court's calendar is too full to permit the judge to preside, the conference may be held before a hearing officer appointed for that purpose. Moreover, nothing in the rule precludes the court from ordering the parties to conference outside of the presence of a judge or hearing officer. Again, it may be useful to explore the use of techniques such as mediation, facilitation, or FGDM during the pre-adjudication phase. Chapter 6: Entering the Child Welfare System provides a best practice box discussing the best practices related to pre-trial voluntary agreements for services.

### 7.3.8 Stipulations

After the petition is filed, the agency and parents may arrive at an agreement to be incorporated as a stipulation and presented for the court's review. Pa.R.J.C.P. 1405. These agreements can be family-based if derived from a FGDM conference arranged by the agency. They may also result from a pre-adjudicatory conference. Of course, the use of mediation or facilitation is also likely to result in a stipulated finding and plan that meets the needs of the child. All of these possibilities obviously lessen the need for extensive court hearings. Despite stipulations, it is up to the court to make an independent determination that the child is dependent.

Thus, any stipulation is subject to rejection if the judge is not convinced that the facts are credible and solidly based. Parties cannot stipulate to the adjudication of dependency They may only stipulate to facts which the court may then determine provide a sufficient basis for a finding



of dependency. If the facts stipulated are insufficient to support a finding of dependency, a full adjudicatory hearing is conducted. (See Pa.R.J.C.P. 1405(B) and comment to the rule.)

When adjudications are uncontested, in the form of an admission by the parents or an agreement or stipulation among the parties, *Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* recommend that the court's findings accurately record the reasons for the agency's intervention and avoid "negotiated" findings that do not accurately describe the abuse or neglect. Adjudicatory findings are the basis for the case plan, important to the case review, and ultimately, the benchmark against which progress is measured. Gatowski, *supra*, at 181-182.

### 7.3.9 Reports and *Ex Parte* Communication

The judge or hearing officer can more ably conduct an adjudication hearing by reviewing some background information about the child before taking the bench. A starting point is the dependency petition, which will indicate the type of alleged dependency, the location of the child, the participants, and whether aggravated circumstances may be present. (See Chapter 20: General Issues, Section 20.2: Aggravated Circumstances.)

Data has been added to the Common Pleas Case Management System (CPCMS) about whether a parent or child is either diagnosed or self-reported with Autism under Special Considerations. This information, if available to the court ahead of time, will allow the court to make appropriate accommodations for the child or parent with Autism. Multiple CPCMS reports display special considerations. These reports include: ***1058 – Special AOPC Autism Special Considerations Report, 3905 – Dependency Daily List, and 5000 – Interactive Daily List.***

In some counties, a more comprehensive solicitor's report or caseworker's report is prepared by the agency and distributed to counsel for all parties, as well as to the court. Because it contains background information as well as the agency's recommendations in the form of a proposed order, this report can be of great use in preparing for the hearing. Of course, the report is not evidence. Thus, the judge or hearing officer cannot base the ultimate decision on matters in the report that are not established by properly accepted evidence at the hearing itself.

*Ex parte* communications by anyone with the judge or hearing officer are improper and prohibited by the Rules of Juvenile Court Procedure and the Code of Judicial Conduct. Pa.R.J.C.P. 1136 and 207 Pa.Code 33 Canon 2 Rule 2.9. All parties must be informed of any *ex parte* communications that a judge or hearing officer may receive. Correspondence can be returned to the sender unread, but if it is reviewed, the contents must be revealed to all of the parties. (See also Chapter 20: General Issues, Section 20.6.1 Talking to Children in Court and Tips for Talking to Children Benchcard.)

### 7.3.10 Standing

In the event the legal standing of a party who is not a biological parent is contested in a dependency proceeding, the court should not unduly postpone or delay the adjudicatory hearing to consider the issue. Often, a standing issue cannot be readily decided, especially in view of the various statutes and extensive case law that must be considered. It may require a separate hearing.

In general, as noted in *In the Interest of L.C., II*, 900, "Although the Juvenile Act does not define "party", case law from this Court has conferred the status of party to a dependency proceeding upon three classes of persons: (1) the parents . . . (2) the legal custodian . . . or (3) the person whose care and control of the juvenile is in question." 900 A.2d 378, 381 (Pa.Super. 2006). One who stood *in loco parentis* to a child at the time of removal and whose care and control of the child is in question at the adjudication hearing qualifies as a party to the dependency proceedings. *In the Interest of D.K.,* 922 A.2d 929 (Pa. Super. 2007).

Standing should not be confused with the right to be heard. The Juvenile Act affords any relative providing care for the child the right to be heard at any dependency hearing. 42 Pa.C.S. § 6336.1(a). This right to be heard has also been extended to a foster parent, a pre-adoptive parent, and a potential kinship care resource as to their qualifications to provide kinship care. *Id.* Unless a foster parent, pre-adoptive parent, relative providing care for a child, or potential kinship care resource has been awarded legal custody, the foster parent, pre-adoptive parent, relative providing care for the child, or potential kinship care resource has no legal standing. *Id*.

### 7.3.11 Autism Spectrum Disorder (ASD) Consideration

Adjudication hearings are often the first proceeding that a child or parent attends. These hearings can be extremely stressful for all participants, especially those living with Autism Spectrum Disorder (ASD). Recognizing this concern, the Pennsylvania State Roundtable commissioned the Autism and the Dependency Courts Taskforce in September 2021. The Taskforce's primary goal was to identify strategies to provide the most positive dependency court experience for children and families with ASD as possible. The Taskforce was also charged with increasing ASD awareness and responsiveness within the dependency system, believing it is incumbent upon the courts to ensure all individuals, including those with ASD, receive access to fair and equitable justice.

The Taskforce identified a variety of strategies that could achieve the goals noted above. Many of these strategies are being implemented under the leadership of dependency judges across the Commonwealth. These strategies include creating safe spaces within courthouses for persons with ASD and identifying individuals with ASD prior to their attendance at a hearing to make accommodations, if possible. The newly created Courthouse spaces have been an effective addition in many jurisdictions.

In addition, the identification of individuals with ASD is providing local jurisdictions the opportunity to ease the stress of court proceedings. Collection of ASD data is facilitated through the Common Pleas Case Management System (CPCMS). Children and parents who voluntarily share their diagnosis or self-report ASD are included in the data point. From this data, CPCMS reports can be generated. Two such reports are the CPCMS Form 1058 (Special Considerations Report) and the CPCMS Form 3905 (Daily List Report). These reports are intended to alert judges and hearing officers enabling them to make special supportive accommodations, when possible. For additional strategies refer to the Autism Benchcard.

*** Best Practice — A Trip to the Courthouse Social Story***

In 2022, the Centers for Disease Control and Prevention (CDC) found that 1 in 36 children had been identified with a diagnosis of Autism Spectrum Disorder (ASD). ASD is a neurological and developmental disorder that affects how people interact with others, communicate, learn, and behave, as defined by the National Institute of Mental Health.

Those with ASD often experience additional stress and anxiety when facing new or unknown situations. To help reduce anxiety when attending a dependency hearing, a template social story entitled "A Trip to the Courthouse" was created and provided to counties. The template provides space for county-specific pictures depicting a trip to the courthouse. This story can be shared with children and parents prior to the court hearing to help them prepare and reduce the stress of the unknown.

While this social story was written specifically for children and parents with ASD, it is helpful to everyone.

## 7.4 Conducting the Hearing

The judge or hearing officer should, at the outset, convey to all in the courtroom the nature of the proceeding: "This is a hearing to determine whether the child is, in fact, dependent as asserted by the agency."

All counsel should then be recognized to state their name and who they represent. The GAL and/or the child's counsel must also be identified.

Although Pa.R.J.C.P. 1406 refers to the court conducting the hearing in an informal manner, the judge or hearing officer's tone at the outset should establish its importance. The hearing is similar to a bench trial, although opening statements by counsel are normally very brief if made at all. At all stages of the hearing, the judge or hearing officer should explain, whenever necessary, how the hearing will proceed.

The hearing should begin with due process considerations of notice to all parties. An opportunity for all parties to present testimony and other evidence in accordance with the usual rules of evidence will be provided. All witnesses are subject to cross-examination, even by a *Pro Se* party who has waived counsel Pa.R.J.C.P. 1406(C). Based on the circumstances of each case, the judge or hearing officer should ensure that sufficient time is set aside for the hearing.

As part of an adjudication of dependency, a court may find a parent to be the perpetrator of child abuse, as defined by the Child Protective Services Law (CPSL). *In the Interest of S.L.*, 202 A.3d 723, 728 (Pa. Super. 2019). The CPSL defines child abuse, in relevant part, as "intentionally, knowingly or recklessly ... [c]ausing bodily injury to a child through any recent act or failure to act." 23 Pa.C.S.A. § 6303(b.1)(1). The abuse must be established by clear and convincing evidence, but pursuant to section 6381(d) of the CPSL, the identity of the abuser need only be established through *prima facie* evidence.

## 7.5 Burden of Proof

The burden of proof imposed by law upon the agency is to establish by "clear and convincing evidence" that the child is dependent. 42 Pa.C.S. § 6341(c), Pa.R.J.C.P. 1409(A)(1) and comment to the rule. **Clear and convincing evidence is defined as testimony that is "so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." *In re R.I.S. & A.I.S.*, 36 A.3d 567, 572 (Pa. 2011).** The court is not free to apply a best interest of the child standard. *In re the Interest of Haynes,* 473 A.2d 1365, 1368 (Pa. Super. 1983).

The court can find a child to be dependent only "when he is presently without proper parental care and when such care is not immediately available." *In the Interest of A.B.*, 63 A.3d 345, 349 (Pa.Super. 1983). Proper parental care is defined as "that care which (1) is geared to the particularized needs of the child and (2), at a minimum, is likely to prevent serious injury to the child." *Id.* (See also definition of dependent child at 42 Pa.C.S. § 6302.)

A child whose non-custodial parent is ready, willing, and able to provide adequate care for the child cannot be found dependent on the basis of lacking proper parental care and control. *In re M.L.*, 757 A.2d 849 (Pa. 2000). In cases where there exists a prior custody order, a juvenile court can issue an order modifying a family's prior custody arrangement under Pa.R.J.C.P. 1409(A)(2). The order should note that if the non-custodial parent did not come forward to care for the child, the child would have met the statutory definition of dependency. This will preserve the record in the event the child has future dependency court involvement. If the juvenile court finds a child not to be dependent or the court finds a parent ready, willing, and able to provide proper parental care or control, Pa.R.J.C.P. 1409(A)(2) requires the juvenile court to (a) dismiss the petition; (b) order the child to be discharged from custody and any restrictions ordered in

the proceedings; and (c) enter an order identifying individual(s) who will have legal and physical custody of the child until such order court is modified by further order of the court.

Finally, truancy can serve as a basis for adjudicating a child dependent. To adjudicate a child dependent based on truancy, the burden is on the petitioner to present clear and convincing evidence that the child, while subject to compulsory school attendance, is habitually and without justification truant from school. 42 Pa.C.S. § 6302. The compulsory school age in Pennsylvania is from the time the child's parents elect to have the child enter school and no later than six years of age until the child reaches eighteen years of age. 24 P.S. § 13-1326. Habitually truant is defined as six or more school days of unexcused absences during the current school year. *Id*. The lack of an excuse or a determination that a proffered excuse is facially invalid or insufficient creates a rebuttable inference that an absence was without justification.

## 7.6 Findings and Orders

Under Pa.R.J.C.P. 1408(1), the court must enter findings within seven days of hearing the evidence on the petition or accepting stipulated facts by the parties that specify which, if any, of the allegations in the petition have been proven by clear and convincing evidence.

Further, the court must make a finding as to whether the agency has reasonably engaged in family finding as required by Pa.R.J.C.P. 1149. Pa.R.J.C.P. 1408(2). When making its determination for reasonable efforts made by the county agency, the court is to consider the extent to which the county agency has fulfilled its obligation regarding family finding. Pa.R.J.C.P. 1409 comments. If the requirements of Pa.R.J.C.P. 1149 regarding family finding have not been met, the court is to make necessary orders to ensure compliance by enforcing this legislative mandate. *Id*.

The findings may be announced orally at the conclusion of the hearing and later set forth in a written order. If the child is removed from the home, a deadline of seven days is imposed by the rules for the court to enter a finding of what allegations, if any, were proved by clear and convincing evidence. If the child is in the home and a decision is not made, the court must hold a status conference every thirty (30) days until a decision is issued. Pa.R.J.C.P. 1408 and 1409(B).

Under Pa.R.J.C.P. 1409(C), the court's order must contain the following:

(1) Pursuant to Rule 1409(A): (a) a statement as to whether the court finds the child to be dependent from clear and convincing evidence, (b) the specific factual findings that form the basis of the court's decision, (c) any legal determinations made;
(2) any orders directing the removal of a child from the home or changes in the child's current residential status, including orders as to (a) placement, (b) visitation, or (c) changes in custody; and

(3) any orders as to any aids in disposition that may assist in the preparation of the disposition hearing, including orders regarding family finding.

Also, as required under federal law, the court's order must contain:

> *A finding whether the child is a child subject to the Indian Child Welfare Act and, if so, whether the agency has complied with notification requirements of the Act.*

The court's written findings should provide enough detailed information to justify agency and court choices for treatment and services, without going into the details of the abuse or neglect. In addition, if this is the first judicial order authorizing the child's removal from the home, the court must specify whether continuation in the home would be contrary to the child's welfare, whether the agency made reasonable efforts to prevent or eliminate the need for placement or whether the agency's lack of efforts was reasonable due to emergency circumstances. (See Chapter 6: Entering the Child Welfare System, Section 6.1.1 Reasonable Efforts Determination.)

In Pennsylvania, dependency findings and orders for adjudication hearings are contained within the Common Pleas Case Management Dependency Module (CPCMS). These court forms contain the needed information to assist the court in asking the necessary questions, managing the case, meeting federal requirements, and in capturing statewide data. The forms also allow for the entering of detailed text, which can outline the specific directives of the court.

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# ADJUDICATION HEARING CHECKLIST

## 1. TIMELY HEARING:

____**Date** child removed: _____
____**Date** of Adjudicatory Hearing: _____

(*Note*: The Adjudicatory Hearing must be held within 10 days of the filing of the petition if the child is in custody and 45 days if a child is not in custody.)

## 2. NOTICE OF HEARING:

____Determine if written notice of time, place and purpose of the adjudicatory hearing was issued to child and child's:

- ____Mother and attorney
- ____Guardians/custodians and attorney
- ____Tribe (If ICWA applies)
- ____Pre-Adoptive Parent
- ____County Agency
- ____Father and attorney
- ____GAL and/or attorney
- ____Foster Parent
- ____Relative providing care for child
- ____CASA

____If a party is not present and not properly served, reset adjudicatory hearing as to the absent party.
____Proceed with adjudicatory hearing as to parent/party who had proper notice.
____Determine whether efforts are being made by county agency to locate/notify absent parent(s).

## 3. WHO SHOULD ALWAYS BE PRESENT:

___Judge
___Mother
___Father
___Guardians/Custodians
___Child(ren)
___Spouse of Child, if any
___Parents' Attorneys
___Guardian *ad Litem*
___Child's Attorney
___Agency Solicitor
___Caseworker
___CASA
___Court Reporter
___Security Personnel

## WHO MAY BE NEEDED:

___Extended Family Members
___Friends of the Family
___Foster/Preadoptive Parents
___Other Witnesses
___Service Providers
___Law Enforcement
___Probation Officer

## 4. PROCEDURE:

____Explain the purpose of the proceeding and give advisements of rights.
____Provide opportunity to admit or deny allegations.

____If parent(s) *admits*:
____Determine competency.
____Determine which allegation(s) of the Petition will be admitted.
____Receive factual basis under oath on the record.
____If parent(s) *deny*:
____Allow opening statements.
____Take oath of witnesses.
____Receive evidence.
____Determine which allegations of the Petition have been proven.

**5. CHILD'S WELL-BEING & FAMILY SERVICES:** (if disposition hearing is not immediately following)

Placement:
____Determine the child's placement prior to disposition.
____Ask the county agency to evaluate relatives and friends of the family as possible caregivers.

Services:
____Ensure family finding efforts are sufficient and order additional if not found to be sufficient.
____If disposition is to be set at a later time, ask the county agency to address what services can be given to the parents prior to disposition.
____Offer the family the opportunity to have an FGDM conference.
____Order services appropriate to the family that will allow the child to remain/reunify with the family.
____Address whether the child needs any physical/mental examinations prior to disposition.

Visitation:
____Determine if the visitation plan is in the best interest of the child and if the parties are in agreement with it (the plan should include visitation with parents and siblings if siblings are in different placement settings).
____Advise parent(s) that visitation is expected and to contact the county agency if unable to make a visit.
____Ensure that frequency and duration are appropriate based on the age and needs of the child.
____Ensure that oversight and location of visits are the least restrictive and provide for the most natural interaction. Supervised visits should result from an identifiable safety threat.

Educational Needs:
____Explore whether the child is remaining in the same school.
____Determine whether the child is appropriately placed in school, attending school regularly and making adequate progress.
____Determine whether the parent or guardian is adequately involved in the child's education or whether an educational decision-maker needs to be appointed.

## 6. CONTRARY TO THE WELFARE AND REASONABLE EFFORTS FINDINGS:

(*Note*: Contrary to the welfare and reasonable efforts, findings must be detailed and child-specific.)

____Ask the county agency to detail efforts made to avoid protective placement of the child.
____Determine whether continuation in the home would be contrary to the child's welfare. (*Note*: This finding must be made at the first court hearing authorizing the child's removal).

Reasonable Efforts Findings (Choose one of the following three options):
____County agency made reasonable efforts to prevent or eliminate the need for placement, including: _____
___ The lack of efforts to prevent/eliminate the need for removal was reasonable due to the following emergency circumstances:

_____
___ The county agency has NOT made reasonable efforts to prevent or eliminate the need or placement because:

_____

## 7. OTHER REQUIRED FINDINGS:

___ The county agency has or has not reasonably engaged in family finding.
___ Whether the child is a child subject to the Indian Child Welfare Act and, if so, whether the agency has complied with the Act's notification requirements.

## 8. SCHEDULE NEXT HEARING:

___ Disposition Hearing **Date:** _____

(*Note*: The hearing must be held within twenty days of adjudication.)

___ Three-month review hearing **date**: _____
___ Six-month review hearing **date**: _____
___ Permanency hearing **date**: _____

A court should distribute the orders at the conclusion of the hearing and explain the significance to the parties, if necessary.

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# ADJUDICATION HEARING BENCHCARD

| | |
|---|---|
| Relevant Statutes | 42 Pa.C.S. §§ 6302-6341<br><br>Pa.R.J.C.P. 1240 - 1243, 1340 - 1342, 1406 (discovery) |
| Purpose of Hearing | To determine by **clear and convincing evidence** whether a child is dependent pursuant to the definition of dependent child in 42 Pa.C.S. § 6302. |
| Time Frame | Hearing within **10 days** of the petition if the child is in custody.<br><br>The time frame may be extended for another 10 days if the court finds that despite due diligence, evidentiary material is not available and there is clear and convincing evidence that the life of the child is in danger if the child were released (42 Pa.C.S. § 6335(a)(1) & (2)).<br><br>If the child is not in custody, the hearing should be within **45 days** (Pa.R.J.C.P. 1404). |
| Rules of Evidence | The Rules of Evidence apply to the adjudication hearing. Further, the statute also provides that a party has the right to present evidence and to cross-examine witnesses (42 Pa.C.S. § 6338). |
| Standard of Proof | Clear and Convincing Evidence: 42 Pa.C.S. § 6341(c)<br><br>Stipulations and agreements cannot substitute for the presentation of evidence from the parties and/or disinterested parties. The court must make an effort to ensure the presentation of evidence. |
| Next Hearing | Child in Custody: A disposition hearing must be held within 20 days of the findings of clear and convincing evidence of adjudication (Pa.R.J.C.P. 1408 & 1510).<br><br>The majority of jurisdictions in Pennsylvania hold the adjudicatory and disposition hearings consecutively for the purposes of timeliness and convenience. |

# ADJUDICATION HEARING

# SUMMARY OF KEY QUESTIONS/DETERMINATIONS

- Which allegations of the petition have been proven by clear and convincing evidence or admitted, if any?
- Do the facts prove that the child was without proper parental care and control?
- Do the facts prove that immediate, proper parental care and control is unavailable to the child without state intervention?
- Are there aggravated circumstances?
- Is there a legal basis for continued court and agency intervention?
- Have reasonable efforts been made to prevent the need for placement or safely reunite the family?
- Has the father been identified? If not, what specific actions have been completed to locate him? Is the father an able and willing caretaker? If yes, is adjudication warranted?
- Has family finding been done to identify all possible family and kin?
- Has a determination been made as required by the Indian Child Welfare Act?
- Has the family been offered a Family Group Decision Making conference?
- Is the basis for dependency truancy alone? If so, have the underlying causes been investigated? Are there problems at home preventing the child from attending school? Is there a lack of proper parental care and control? Has the school done an attendance improvement plan? Are the parents and/or the child receiving interventions/services? Does the child have a learning issue that has not been identified? Is the child being bullied in school? Are there transportation and/or safety issues that can be resolved? (See www.ocfcpacourts.us)

**If the disposition hearing will not immediately follow the adjudication hearing:**

- Where will the child live until the disposition hearing?
- Is there a need for further testing or evaluation of the child and/or parents in preparation for disposition?
- Is the agency taking steps to evaluate relatives as possible support for the child or parent?
- Is the agency continuing to try to notify noncustodial parents?
- If the child will be in foster care, what are the plans for parental visitation and sibling visitation?
- If siblings are not placed together, what reasonable efforts has the agency made to prevent or remedy this?
- If the child will be in foster care, will the parent or guardian be able to continue making educational decisions for the child or should an educational decision maker be appointed? Are there any other educational needs to address?

These questions are adapted from the text of this chapter, the *Mission and Guiding Principles for Pennsylvania's Dependency System* and the Adjudication Hearing Checklist provided in the *Resource Guidelines* (NCJFCJ, 1995, p. 52).

# Chapter 8 – Visitation

## 8.1 Overview

One of the most important ongoing issues in a dependency matter is that of parent-child visitation. In cases where the goal is family reunification, parents enjoy a qualified right to visit their children regularly. Moreover, in such cases, frequent visitation is essential to preserving vital parent-child bonds that cannot easily be restored once broken. Visitation may also serve to reduce the child's separation trauma during the time of out-of-home placement. It may help the parent stay motivated and focused on achieving reunification. Even when another permanency goal has replaced reunification, regular visitation may nevertheless be in the child's best interest. It is known from research that the long-term emotional well-being of the child improves when biological roots are integrated and honored in some manner, even after adoption. Children's long-term emotional well-being improves when visitation is thought of in the broader sense of "maintaining connections" with their biological family roots. Visitation planning works best when approached primarily from the child's needs and secondarily from the parent's needs.

For these reasons, it is essential that courts exercise oversight of visitation arrangements and not leave this responsibility solely to the agency. The court should determine whether visitation can be done safely and, if so, ensure that it begins promptly and occurs as frequently as possible. Visitation progress should always be assessed at court reviews, and reports and testimony regarding visitation should be presented at **every hearing** to inform the court's orders regarding continued visitation. (See Chapter 13: Permanency Hearing, Section 13.6.12 and Best Practice Box: Benefits of Frequent Family Time.) The Guardian *Ad Litem* and any Court Appointed Special Advocate (CASA) may be able to provide additional insight regarding how the visitation is impacting the child. Also, when reviewing a parent's performance during visitation, it is important to focus on the progress being made by the parent and the safety of the child. The purpose of visitation is to maintain the parent-child bond and to provide assistance to the family. All parties need to be careful not to allow the review of the visitation to become an overly critical assessment of parenting styles. If a well-intentioned supervisor is unintentionally overly critical of non-safety issues to the Court, the relationship between the parent and agency can become adversarial. For example, a report that a parent chooses to bring an unhealthy snack to a visit over a more wholesome snack is irrelevant to the child's safety unless the child has dietary restrictions. Such a report can create tension between the parent and the agency.

## 8.2 Visitation in Reunification Cases in General

In order to proceed effectively toward successful reunification in a case involving out-of-home placement, frequent and meaningful family visitation is essential. Visitation

is also a key component of the agency's reasonable efforts toward the goal of reunification, which the court must review on an ongoing basis. Thus, specific visitation conditions should be incorporated into the court's orders at the end of each hearing. Included at the end of this chapter is a Visitation Frequency and Duration chart that can help in the critical analysis of these important factors.

Research has shown that children are not only more likely to be reunified with their parents if they have early and frequent visitation but will suffer less trauma in the meantime. Frequent visitation yields the following benefits:

- Reduces the pain of separation;
- Promotes attachment;
- Increases parents' motivation to change;
- Helps parents practice skills learned;
- Increases the likelihood of timely permanency.

> "Every time I was sent to a new placement I wasn't allowed to talk to my dad or my sister for a month and that made me so angry. How do you expect kids to be put in a new home with strangers and not be allowed to talk to the people they love and trust?"
>
> - A.K., 21, Former Pennsylvania Foster Youth

Visitation orders need to be tailored differently for the youngest children. Children between the ages of six months and three years are most vulnerable to separation anxieties or attachment issues and thus need more frequent contact with their parents. Generally, however, these visits may be shorter in duration. Though still vulnerable, older children typically have language skills to better cope with change. They are also expanding their social involvement with peers and usually need less frequent visits to maintain their connections. Generally, the visits for older children may need to be longer.

The court should ensure that the quantity and quality of visits are appropriate for the family on a case-by-case basis. It is not recommended that visitation be left to the agency's discretion. A visit should include daily living activities, if practical. Interactions should be sensitive to the parent's and child's emotions. It is natural for children to become agitated following visits, and this does not mean the parent erred during the visit. It is better to monitor the child's reaction over time. For parents with addictions, random drug testing may be critical. While sobriety during visits is essential, a positive drug screen at any point in the life of the case should not be the sole basis for suspending or canceling a visit. The visitation plan should be modified over time with strategic planning of the initial arrangements, the middle phase, and the transition plan. Progression in the visitation can be utilized to recognize and commend parents for their progress during the case.

Visitation also calls for the court to oversee the appropriate level of supervision. A careful analysis of safety for visitation and the protective capacities of the parent should be done to determine the level of oversight needed. It should be noted that safety for removal may be different from safety for visitation. It should be presumed that visitation is unsupervised unless there is a safety reason that requires supervision. Once supervised, it is also important that visitation moves to unsupervised visits as quickly as safety allows, including overnight visits and the children being placed in the home on a

trial basis. The court's directives should inform all as to the expectations of visitation. Both the court and the agency may have to be creative with visitation, such as using technology for video conferencing and virtual visits using webcams, as well as using family resources for visit locations and oversight.

Parents should also be encouraged to attend medical appointments, school functions, and other activities of the child. Also, consider the involvement of foster parents, who are invaluable in programs where special training allows them to role model and assist with parenting techniques at visits. Consider arranged visits with foster parents to nurture relationships. When safety is not an issue, making sure the parents meet the foster parents within a short time after the child's removal will help to facilitate the interaction between foster and biological parents, which can greatly improve outcomes and emotional well-being of children who can see the coordinated parenting efforts of important people in their lives.

***Best Practice — Visitation Practices***

In any prehearing report, the judge should require the agency to include a specific section discussing the visitation history while in care as to each parent and the siblings and any specific recommendations as to the immediate future. A judge should also facilitate collaborated agency and community efforts to improve visitation practices and encourage strategies for quality visits.

## 8.3 Legal Requirements Governing Visitation

When reunification is the permanency goal, a parent may not be denied visitation "except where a **grave** threat to the child can be shown." *In the Interest of M.B.,* 674 A.2d 702, 705 (Pa. Super. 1996). Furthermore, courts and child welfare agencies may not suspend parents' visitation with a child unless the party seeking to suspend the visitation proves by **clear and convincing evidence** that visitation poses a grave threat to the child. *In the Interest of Rhine*, 456 A.2d 608 (1983). *Rhine* states that visitation constitutes a grave threat if the court finds that "there are no practicable visitation options that permit visitation AND protect the child." *Id.* at 614. This standard reflects the parents' constitutionally protected liberty interest in visitation and the significant consideration of allowing a parent to maintain a meaningful and sustaining relationship with his or her child. *See also In re: B.G.,* 774 A.2d 757 (Pa. Super. 2001) and *In re: C.J.,* 729 A.2d 89 (Pa. Super. 1999).

The term grave threat is not specifically defined in case law. However, case law has limited or denied visitation only where a parent suffers from "severe mental or moral deficiencies that constitute a grave threat to the child." *Rhine,* 456 A.2d at 613. Poor parental judgment during visits is not enough to limit a parent's visitation nor is a contention that the parents are undercutting the authority of foster parents or that the caregivers complain of acting out by the child after the visit. (See *B.G.*, 774 A.2d 757.)

For the most part, the Juvenile Act does not contain any guidelines for parent-child visitation in dependency cases. By administrative regulation, the county agency is generally required to provide opportunities for visits between the child and parents "as frequently as possible, but no less frequently than once every two weeks." 55 Pa.Code § 3130.68[1]. Note that the regulation specifies only a minimum required frequency. However, courts should be reluctant to approve cookie-cutter minimum visitation plans as the minimum frequency does not allow sufficient time to maintain and establish a parental bond, especially with younger children. Relying solely on the administrative regulation provides parents 52 hours or 2¼ days of visitation per year. Clearly, this level of visitation is minimal at best.

There are three exceptions where the agency does not have to provide opportunities for visitation at least every two weeks. First, when visits are clearly not in keeping with the placement goal, for instance, in adoption cases, visitation may be discontinued by court order. The same is true when the parents freely refuse visitation in writing. Finally, regulations authorize the agency to petition the court for approval to reduce or eliminate visits whenever they are not in the child's best interests. However, it has been held that the best interest standard specified in the regulations serves only as an internal guide for the agency and does not set a standard for the court order. Accordingly, the court must apply the grave threat standard if reunification is the goal. (See *C.J.*, 729 A.2d 89.)

## 8.4 Sibling Visitation

The preferred method for ensuring sibling contact is to place siblings together. The agency must explain what reasonable efforts have been taken to ensure children are placed together. Courts should be hesitant to approve the separation of siblings and only do so when such joint placement is not in the child's best interests. Frequent, ongoing sibling contact and visitation are critical when joint placement is not possible. Visitation with siblings can be of great value in serving the child's best interests. Children's Roundtable Initiative, Office of Children and Families in the Courts, *The Mission and Guiding Principles for Pennsylvania's Child Dependency System* 11-12 (2009).

"I was happy that my youngest brother and I were always placed together so I could keep an eye on him. To be honest, I always felt like his mother. I thought it was important that, as siblings, we could maintain a relationship. Fortunately my other siblings were placed in foster homes nearby."

- C.S., 18, Former Pennsylvania Foster Youth

Federal law (see the summary of "Fostering Connections to Success and Increasing Adoptions Act of 2008" in Chapter 21) recognizes the special relationship siblings may have with one another and requires states to make "reasonable efforts" in dependency cases to place

[1] This regulation section also covers the county agency's obligations to notify a parent with the details of the child's placement and to provide assistance to a parent in attending visitation.

siblings together and to provide "for frequent visitation or other ongoing interaction between the siblings when not placed together." An exception exists if visits or contact is contrary to a sibling's safety or well-being. Under the Act, the case plan should reflect efforts to keep siblings as near to each other as possible with regular sibling face-to-face visitation once a month at a minimum and regular phone contact. Clearly, this is a minimum standard, with ongoing sibling visitation needing to be much more frequent in many cases.

It should be noted, however, that a sibling does not have standing to seek court-ordered visitation with a minor sibling under Pennsylvania law. *Ken R. on behalf of C.R. v. Arthur Z.*, 682 A.2d 1267 (Pa. 1996).

Parents may also refuse visits as to a child remaining in their home after a sibling has been adjudicated dependent. (See *In the Interest of C.F.,* 647 A.2d 253 (Pa. Super. 1994).)

## 8.5 Visitation Arrangements

After carefully considering visitation oversight through the legal safety analysis framework (See Chapter 3: Role of Judges and Hearing Officers), there is a wide array of approaches to visitation across Pennsylvania to determine the least restrictive and most natural setting. For example, in one county, visits take place on weekends at the courthouse, where organized play therapy is available. In another county, almost all visitation occurs in the birth families' homes. Some counties use a visitation house that allows families to perform natural parenting duties such as bathing an infant, making dinner, and/or sharing a meal at the kitchen table. Many other counties have separate, specially designed Family Centers to accommodate supervised visitation, with rooms that mimic living rooms and kitchens but are equipped with observation mirrors. Some counties strongly encourage the use of community settings for visits, such as parks and public restaurants. In others, visitation arrangements are made by private providers pursuant to their own standards and methods.

> "When my visits were at a family member's house and my parents missed a visit, I still got to visit with my family."
>
> -Former Pennsylvania Foster Youth

Regardless of the location and setting, visitation should support the development of healthy family relationships and take place in as neutral and least restrictive setting as possible. Family and kin homes should be explored and considered as a visitation resource to allow the child an extended connection to biological roots during visits. Finally, when considering visitation locations, it is important to remember the child's age and distance from their placement.

In some instances, supervision may be required to ensure the child's safety and well-being during visits. Observation during visits may also be necessary to help the agency gauge parenting skills and identify training or other needs. Over time, observation of interactions between a parent and child during visitation will indicate the presence or

absence of a true, healthy bond between them. Additionally, over time, visits should progress from supervised to unsupervised settings.

## 8.6 Visitation and Contact with Incarcerated Parents

Some people feel that children should not visit their parents in jail or prison. However, the truth is that, in most cases, children benefit from visitation and contact with a parent who is incarcerated. Children feel enormous grief and loss when they are unable to maintain contact with a parent. It is almost the same as when a parent has died. Children also worry about a parent that they cannot see or talk to on a regular basis. They wonder whether their mommy is happy or whether daddy is safe. Visitation and contact can reduce some of their worries and sad feelings.

Children have a right to visit with their incarcerated parent, children want to maintain the bond during their parent's incarceration, and child well-being is enhanced by frequent visitation. Common barriers to visitation include distance to the institution, transportation, inadequate, "non-child-friendly" spaces in the correctional facilities, concerns about the emotional impact of visits, a lack of written protocols for working with incarcerated parents with dependent children, and a lack of collaboration amongst stakeholders.

Many institutions will only permit contact visits if they are court-ordered. It is important for the judge or hearing officer to take an active role in ensuring that, when appropriate, a child maintains contact with an incarcerated parent.

In deciding whether to order visitation, including contact visitation, the judge or hearing officer should consider the following:

- The type of contact the child had with the parent prior to the incarceration and adjudication of dependency;
- The child's needs and wishes;
- The age and special needs of the child;
- The distance the child will have to travel to attend the visit;
- The visitation schedule in the facility; and
- The wishes of the incarcerated parent.

The court order should set forth in clear and concise language whether contact visits should take place and whether the visits need supervision other than the security in the institution. If the court requires some other type of supervision, observation, or coaching, then the order should reflect this and who will be responsible for such.

Remember, the job of the correction officer is to keep the institution secure and not to supervise a court-ordered visit.

In addition:

- The judge or hearing officer should **order the same person to transport the child to and from the visitation.** This will enable observations and consistent assessments of the child's mood and behaviors. This will also allow for debriefing by a person with whom the child is familiar.
- The judge or hearing officer should **order additional visitation by videoconference** (if available) and should **order an incarcerated parent to also maintain contact with the child through letters, cards, telephone calls, etc.**
- Sometimes, having siblings visit together in a jail or prison is not in their best interests. Accordingly, **when appropriate, the court should order separate visitation for siblings**.
- The judge or hearing officer should **order that the visitation occur outside the institution** if a parent is permitted to leave the jail or prison on work release.

In most cases, visitation with an incarcerated parent is important to the well-being of the child. However, there are circumstances when visitation with an incarcerated parent may not promote the well-being of the child.

Below are examples of situations that may result in visits NOT occurring with an incarcerated parent. It should be noted that the list is not exhaustive and that the Court must make a corresponding finding that the situation would pose a grave threat to the child. Without a grave threat finding, visitation must continue.

1. The child is the victim of the crime for which the parent is incarcerated, AND there is a grave threat of harm to the child;
2. The child is scheduled to testify as a witness at trial against the incarcerated parent;
3. A qualified mental health professional trained in grief and loss has stated that it would be emotionally harmful for the child to visit with the incarcerated parent, and the court agrees that this is an appropriate recommendation;
4. The child is medically fragile, and a qualified physician indicates visits to a prison should not occur due to the child's health condition.

***Note*: These are the same factors that a judge or hearing officer should consider in ANY case regarding whether or not visitation is appropriate between a child and a parent.**



Any of these factors may be temporary in nature, so the judge or hearing officer should consider whether additional services and support would eliminate these factors.

At every review hearing, the judge or hearing officer should review and reconsider the issue of visitation and inquire as to whether the issues are resolved or whether the factors have changed. (See Chapter 9: Incarcerated Parents.)

## 8.7 Visitation and Contact for Youth in Congregate Care Facilities

Courts must be conscious of the fact that youth placed in congregate care facilities are the neediest and most traumatized youth in the dependency system. Further isolation from family and kin and its resulting trauma should be avoided and prevented whenever possible. (See Chapter 2: Family Finding.) The court should dictate the terms of visitation and telephone/video contact for any child placed in a congregate care facility. Orders should include, but not be limited to, the following specifics regarding contact:

- Frequency and duration;
- On-facility grounds or off-grounds;
- Who may visit or contact (grandparents, extended family, siblings, kin, friends);
- Home passes;
- Age and developmentally-appropriate activities.

Physical and emotional safety should be the primary consideration for home passes, off-ground visits, visitation, and telephone/video contact.

Most, if not all, facilities have policies for visitation and telephone calls. These policies are generally not tailored for the unique circumstances of each youth and their families. The policies are usually designed for the convenience and operation of the facility rather than for what is best for the youth placed there. Many facilities have blackout periods where the youth cannot contact anyone, including parents and caregivers, for up to several weeks following the initial placement. In addition, there are restrictions on telephone calls (i.e., one call per week) even though a youth's parents may be separated or he/she has a strong bond with other family members (grandparents, siblings, aunts, uncles).

Facilities also frequently use a tier or level system to determine visitation terms or telephone/video contact privileges. These facilities may also utilize visitation and telephone/video contact as a reward or punishment. This should **never** be permitted.

> "If you want something beyond our policy just put it in the court order. We will do it."
>
> -Congregate Care Provider

A facility's policies do not bind courts and agencies. The order placing a youth in a facility should be specific regarding the court's expectations for visitation and contact with family, kin, and friends.

While safety is often a reason for placement in congregate care facilities, courts should be aware of the many reported physical and sexual assaults on youth while placed at facilities that are supposed to be ensuring a youth's safety. Isolation increases a youth's risk of these types of events.

***Best Practice — Caseworker Visits after Critical Incident Reports***

Following a report of any critical incident at a congregate care facility (or a foster care agency), judges and hearing officers should order the agency caseworker (and the juvenile probation officer if applicable) to make a visit to the facility. At the facility, the caseworker should privately interview all agency children placed at that facility to ensure they are safe. No facility staff should be present for the interview.

A critical incident is a "substantiated report of child abuse occurring within a facility, formal licensing actions, certain criminal incidents or delinquent acts, all suspicious deaths, and certain other events" as defined by the Department of Human Services Office of Children, Youth and Families notification procedure for placement decision makers.

## 8.8 "Best Interests" Visitation in Non-Reunification Cases

Once the goal shifts away from reunification, the grave threat standard is no longer to be applied. The traditional best interests of the child is the sole guiding basis for continuing visitation. This is a discretionary determination by a judge or hearing officer to use his or her experience and wisdom. It is a judgment call that is more intuitive than scientific and for which there are no formulas or bright-line tests. Some guidance was offered in the case of *In the Interest of M.B.*, 674 A.2d 702 (Pa.Super. 1996).

To determine whether visitation is in the child's interest the court may consider all evidence relating to the child's best interest, including but not limited to the following factors: (1) length of separation from natural parents; (2) effect of visitation on the child; (3) the age, sex and health of the child; (4) the emotional relationship between child and parents; (5) the special needs of the child; and (6) the effect on the child's relationship with the current caregiver, usually the foster parents. *Id.* at 706.

Another important consideration is the wishes of the child, particularly in cases in which the child has been subject to physical, sexual, or emotional abuse. Certainly, visits in such cases must be appropriately supervised. When applicable, consideration should also be given to any visitation recommendations by the child's mental health professional affecting the child's best interests. An older child's preference should also carry great weight, particularly where the child is of high school age.

Some believe that if a child is in a pre-adoptive home, maintaining parental visits serves no purpose. Moreover, visits will likely prolong or delay emotional transitions and create confusion and anxiety for the child. However, with the development of healthy practices and trusting non-judgmental attitudes, alliances between foster parents and biological parents can provide opportunities for children to have permanency in an adoptive home and yet have visits or periodic contact with their biological roots, which will better serve their long-term emotional well-being. Act 101 of 2010 makes a provision for adoptive parents and birth parents to enter into an enforceable voluntary adoption agreement that specifies the terms of continued contact with the birth parents. (See 23 Pa.C.S. §§ 2731-2742.)

# VISITATION BENCHCARD
## Oversight vs. Support Matrix

| | **Supervised** | **Unsupervised** |
|---|---|---|
| **With Support** | Child's safety and well-being are at risk and require supervision. Parent needs support to understand and meet child's needs or develop/maintain attachment and connection to the child.<br><br>*Example: Children recently removed due to neglect or abuse. Goal may be reunification or adoption; support is appropriate for either.* | Child's safety and well-being are assured and visits may occur without any need for supervision. Parent needs support to refine their ability to understand and meet child's needs or develop/maintain attachment and connection to the child.<br><br>*Example: Parent and child transitioning to child's return home; reunification goal.* |
| **Without Support** | Child's safety and well-being are at risk and require supervision. Parent does not demonstrate capability to have insight into child's needs and/or parent's own need to change their behavior.<br><br>*Example: Visitation solely for the purpose of providing the child with contact with the parent; closely supervised. Reunification is not likely or is not a goal or parent is pursuing prerequisite treatment goals before parenting can become a priority.* | Child's safety and well-being are assured, parent is attuned to and responsive to child's needs, parent-child bond is strong. Placement not due to lack of parenting ability or protective capacity.<br><br>*Example: Homelessness due to job loss; reunification goal.* |

# VISITATION BENCHCARD

APPENDIX I

## Frequency and Duration Guide for Visitation

| Infants and Toddlers<br>0-3 | Preschool<br>3-5 | Children<br>6-9 | Children<br>10-12 | Children<br>13-17 |
|---|---|---|---|---|
| The first visit occurs within 72 hours of the removal of a child from the parents/ guardians<br><br>**Infants and toddlers have a minimum visitation of 3 times per week. More frequent visitation is considered for infants and toddlers, due to their developmental need to secure attachment and bonding with caretakers in the early months and years of life. (Smariga, 2007, Dependency Resource Companion).**<br><br>Visitation frequency addresses, through the development of a visitation plan, beginning at the shelter hearing and included in the shelter order | The first visit occurs within 72 hours of the removal of a child from the parents/ guardians<br><br>Children have a minimum of weekly visitation. More frequent visitation is considered when possible<br><br>Visitation frequency addresses, through the development of a visitation plan, beginning at the shelter hearing and included in the shelter order<br><br>The frequency of the visitation is progressive and reviewed at every hearing | The first visit occurs within 72 hours of the removal of a child from the parents/ guardians<br><br>Children have a minimum of weekly visitation. More frequent visitation is considered when possible<br><br>Visitation frequency addresses, through the development of a visitation plan, beginning at the shelter hearing and included in the shelter order<br><br>The frequency of the visitation is progressive and reviewed at every hearing | The first visit occurs within 72 hours of the removal of a child from the parents/ guardians<br><br>Children have a minimum of weekly visitation. More frequent visitation is considered when possible<br><br>Visitation frequency addresses, through the development of a visitation plan, beginning at the shelter hearing and included in the shelter order<br><br>The frequency of the visitation is progressive and reviewed at every hearing | The first visit occurs within 72 hours of the removal of a child from the parents/ guardians<br><br>Children have a minimum of weekly visitation. More frequent visitation is considered when possible<br><br>Visitation frequency addresses, through the development of a visitation plan, beginning at the shelter hearing and included in the shelter order<br><br>The frequency of the visitation is progressive and reviewed at every hearing |
| The frequency of the visitation is progressive and reviewed at every hearing<br><br>When possibly to safely do so, parents are encouraged to attend collateral contact activities, in addition to their traditional visits (i.e. medical appointments) | **Consideration is given to preschool schedules**<br><br>When possible to safely do so, parents are encouraged to attend collateral contact activities, in addition to their traditional visit (i.e. preschool meetings, programs) | **At this age, consideration is given to children becoming involved in school activities and sports. As such, it may be necessary to consider an increase in duration when an increase in frequency will disrupt those activities enjoyed by the child.**<br><br>When possible to safely do so, parents are encouraged to attend collateral contact activities, in addition to their traditional visit (i.e., sports, educational planning meetings) | **Duration, over frequency, is more strongly considered at this stage as children become more independent and collateral activities become more socially important.**<br><br>When possible to safely do so, parents are encouraged to attend collateral contact activities, in addition to their traditional visit (i.e., school programs, sports) | Duration, over frequency, is more strongly considered at this stage as children become more independent, collateral activities become more socially important and **the older teenagers may obtain employment.**<br><br>When possible to safely do so, parents are encouraged to attend collateral contact activities, in addition to their traditional visit (i.e., school activities, community activities, job searches) |

***All bolded information highlights individualized needs for that age group**

### Transitioning Youth ages 18 – 21 Years:

- Visitation during this stage should be at the discretion of the transitioning youth.
- Consideration should be given to the cognitive and developmental needs of the youth that would require additional planning and oversight.

# *Chapter 9 – Incarcerated Parents*

**"Incarcerated parents have the same rights as parents who are not incarcerated to fully participate in the court process, to fully participate in case planning, to require the agency to make reasonable efforts toward reunification, and to have visitation and contact with their children."**

***Pennsylvania State Roundtable Dependent Children of Incarcerated Parents 2013 Workgroup Report***

## 9.1 Overview

The engagement and inclusion of incarcerated parents in the dependency system can be challenging but not impossible. The major difference between an incarcerated parent and one who is not incarcerated is their current residence, i.e., jail vs. the community. In general, incarcerated parents have the same rights as any other parent in dependency proceedings with respect to involvement in case planning, visitation with their children, and participation in hearings. With respect to case planning, the child welfare agency is required to provide parents with "the opportunity to participate in the development and amendment of the service plan." 55 Pa. Code § 3130.61(d). No exception is made for incarcerated parents.

In cases where reunification is the goal, absent a court order to the contrary or refusal in writing by the parent(s), the agency must provide the "opportunity for visits between the child and parents as frequently as possible but no less frequently than once every two weeks at a time and place convenient to the parties and in a location that will permit natural interaction." 55 Pa. Code § 3130.68(a). Again, there is no exception for incarcerated parents. The Superior Court has held that with respect to visitation between children and incarcerated parents' visitation should not be denied or reduced unless it poses a grave threat to the child. *In re: C.J.*, 729 A.2d 89, 95 (Pa. Super. 1999).

Inclusion of incarcerated parents in the case planning process and delivery of services is critical. Inclusion must occur at the onset of the case or at least when it is discovered that a parent is incarcerated. Many parents who are incarcerated are serving minimal sentences in county jails or are incarcerated pending trial and will be released while the permanency goal is still reunification with a parent.

If incarcerated parents are engaged in case planning and working on family service plan goals while incarcerated, reunification could likely occur shortly after release from incarceration. **Remember, incarceration does not** relieve the agency of making reasonable efforts or offering reasonable services to assist the incarcerated parent with meeting their family service plan goals. The agency must offer needed services to the **incarcerated parent, if possible.** The court should inquire as to the efforts being made by the agency to provide needed services to parents while incarcerated.

## 9.2 Engagement of Incarcerated Parents in Case Planning and Delivery of Services

Incarcerated parents and their children have the right to maintain a relationship, to contact and/or visitation, and to actively participate in family service planning. Reunification of a child and parent is the preferred permanency goal under the Adoption and Safe Families Act of 1997 and the Pennsylvania Juvenile Act. (See 42 U.S.C. § 675 and 42 Pa.C.S. § 6351(f.1).)

***Best Practice — Inclusion of Incarcerated Parents***

Because the decisions made during a dependency court proceeding are likely to have dramatic impact on the parent/child relationship, judges and hearing officers are encouraged to ensure the participation of incarcerated parents.

This inclusion should extend beyond the actual court proceeding to any meeting wherein decisions are being made about the care of the children. In particular, incarcerated parents need to be included in service planning meetings. Incarcerated parents should have input in the placement of their children.

Many of the past challenges to this inclusion have been minimized by advances in technology. While in-person inclusion is preferred, when this is not possible judges and hearing officers are encouraged to expect that incarcerated parents be included via telephone or video conferencing.

Incarcerated parents should participate in all case planning meetings, conferences, educational meetings, etc.

## 9.3 Engagement and Participation of Incarcerated Parents in the Court Process

Participation in court hearings is critical for an incarcerated parent. It should be the rule, rather than the exception, for incarcerated parents to attend court hearings. Appearances at court hearings provide an opportunity for the court to observe the interaction between parent and child. In cases where it is difficult for a child to visit an incarcerated parent, appearances at court hearings provide an opportunity for the parent and child to have contact. Appearances at court hearings also enable the court to engage the parent and encourage the incarcerated parent to participate in the case planning.

During the hearing, the judge or hearing officer should clearly set forth the expectations for the incarcerated parent. It is important that the judge or hearing officer speak on the record as the incarcerated parent may not receive or read the court order. The judge or hearing officer should address the issue of visitation and contact with the child in the order of court. Following the practices and protocols as stated in the Best Practice Box below can ensure that the incarcerated parent participates in the court process.

***Best Practice — Court Hearings with Incarcerated Parents***

1. The judge or hearing officer should automatically appoint counsel to represent a parent who is incarcerated.
2. The judge or hearing officer should order the incarcerated parent to appear at every hearing. The court can order the parent to be transported to the hearing or can order appearance by videoconference or teleconference. Hearings can be scheduled directly in Common Pleas Case Management System for state inmates.
3. If the incarcerated parent is participating by videoconference or teleconference, the court should schedule the hearing in the first time slot of the day if possible to ensure that it starts on time and to prevent the parent from being disconnected in the middle of the hearing.
4. At the conclusion of the hearing, issue the transportation order for the next hearing.

## 9.4 Visitation and Contact for Dependent Children of Incarcerated Parents

Some people feel that children should not visit their parents in jail or prison. However, in most cases, the truth is that children benefit from visitation and contact with a parent who is incarcerated. Children feel enormous grief and loss when they are unable to maintain contact with a parent. It is almost the same as when a parent has died. Children also worry about a parent they cannot see or talk to regularly. They wonder whether their mommy is happy or whether daddy is safe. Visitation and contact can reduce some of their worries and sad feelings.

Children have a right to visit with their incarcerated parent, children want to maintain the bond during their parent's incarceration, and in most cases, child well-being is enhanced by frequent visitation. Common barriers to engagement, hearing participation, and visitation include distance to the institution, transportation, inadequate, "non-child-friendly" spaces in the correctional facilities, concerns regarding the emotional impact of visits to the child, an absence of a written county protocol for working with incarcerated parents with dependent children, and a lack of collaboration among stakeholders.

It is important for the judge or hearing officer to take an active role in ensuring that a child maintains contact with an incarcerated parent when appropriate. Many institutions will only permit contact visits if they are court-ordered. In deciding whether to order visitation, including contact visitation, the judge or hearing officer should consider the following:

- The safety of the child based on clear and convincing evidence of grave threat of harm;
- The type of contact the child had with the parent prior to the incarceration and adjudication of dependency;
- The child's needs and wishes;
- The age and special needs of the child;
- The distance the child will have to travel to attend the visit;
- The visitation schedule in the facility; and
- The wishes of the incarcerated parent.

The court order should set forth in clear and concise language whether contact visits should take place and whether the visits need supervision other than the security in the institution. If the court requires some other type of supervision, observation, or coaching, then the order should reflect this and who will be responsible for the supervision. Remember, the job of the corrections officer is to keep the institution secure and not to supervise a court-ordered visit.

The judge or hearing officer should also:

- **Order the same person to transport the child to and from the visitation** (if possible). This will enable observations and consistent assessments of the child's mood and behaviors. This will also allow for debriefing by a person with whom the child is familiar.
- **Order additional visitation by video conference** (if available).
- **Order the incarcerated parent to maintain contact with the child through letters, cards, telephone calls, etc.**
- **Order that the visitation occur outside of the institution,** if a parent is permitted to leave the jail or prison on work release.

***Best Practice — Visits in Local Jails and Prisons***

In many counties, judges are inviting wardens to become members of the Local Children's Roundtable (LCRT). Including wardens in LCRT discussions can foster better understanding of the safety needs inherent in correctional facilities and the well-being needs of children. This informed discussion can produce jail visitation policies and practices that reduce trauma to children and enhance the parent/child bond without jeopardizing safety.

Indeed, many counties have worked with their local jails and created innovative practices, including child-friendly visitation spaces, that support meaningful parent/child visitation.

When developing local policies and practices, courts are encouraged to focus on the needs of children rather than using visitation as a "reward system" for the incarcerated parent.

In most cases, visitation with an incarcerated parent is important to the well-being of the child. However, there are circumstances when visitation with an incarcerated parent may not promote the well-being of the child.

Below are examples of situations that may result in visits NOT occurring with an incarcerated parent. It should be noted that the list is not exhaustive and that the Court must make a corresponding finding that the situation would pose a grave threat to the child. Without a grave threat finding, visitation must continue.

1. The child is the victim of the crime for which the parent is incarcerated, AND there is a grave threat of harm to the child;

2. The child is scheduled to testify as a witness at trial against the incarcerated parent;

3. A qualified mental health professional trained in grief and loss has stated that it would be emotionally harmful for the child to visit with the incarcerated parent, and the court agrees that this is an appropriate recommendation;

4. The child is medically fragile, and a qualified physician indicates visits to a prison should not occur due to the child's health condition.

***Note:*** **These are the same factors that a judge or hearing officer should consider in ANY case regarding whether or not visitation is appropriate between a child and a parent.**



Any of these factors may be temporary, so the judge or hearing officer should consider whether additional services and support would eliminate the factors. At every review hearing, the judge or hearing officer should review and reconsider the issue of visitation and inquire as to whether the issues have been resolved or whether the factors have changed.

## CHECKLIST OF SUGGESTED QUESTIONS FOR HEARINGS INVOLVING AN INCARCERATED PARENT

*Note*: This list is not exhaustive. It is important to adapt the questions to each specific case and to tailor them to each participant within each case.

### To the Agency:

___When was your last communication with the incarcerated parent?
___When was the last time you met in person with the incarcerated parent?
___Describe how the incarcerated parent was included in the development of the Family Service Plan/Child Permanency Plan.
___Was a Family Group Decision Making conference offered and/or used? If so, how was the incarcerated parent included?
___Describe the visitation plan for the child and incarcerated parent.
___Describe the services available to the incarcerated parent at the current facility. Is the incarcerated parent utilizing these services?
___In anticipation of the incarcerated parent's release, what additional services might be needed?

### To the Incarcerated Parent:

___When did you last speak with your caseworker and/or your attorney?
___How were you involved in creating your Family Service Plan/Child Permanency Plan?
___Was a Family Group Decision Making conference used, and if so, how did you participate?
___In what services are you currently participating? Describe your participation.
___What additional services might you need upon release to successfully parent your child?
___When did you last have contact with your child? Describe that contact.
___When did you last visit with your child? Describe your visit.
___Is there any reason why the court shouldn't order you to attend the next hearing?

## CHECKLIST FOR HEARINGS INVOLVING AN INCARCERATED PARENT

___Set the tone.

___Automatically appoint counsel.

___Make it clear that it is expected that the caseworker meets with the incarcerated parent(s) and includes them in the development and ongoing monitoring of the case plan.

___Make it clear that the attorney is expected to communicate with their client in person and via phone, letters, or other means.

___Make it clear that the caseworker and the attorney should know what services are available to the parent within the facility.

___Make it clear that the parent is expected to utilize available services while in the facility.

___Order the incarcerated parent(s) to appear at every hearing, unless excused by the court.

___Issue transportation orders for the next hearing at the conclusion of a hearing.

___Carefully consider the issue of visitation for every incarcerated parent and every child, based on the specific needs of the child.

___Use clear, concise language in court orders about the type and frequency of child/incarcerated parent visitation.

___Order the incarcerated parent to contact the caseworker within 72 hours of discharge.

# Chapter 10 – Disposition Hearing

## 10.1 Overview

In the timeline of dependency proceedings, the disposition hearing occurs immediately after adjudication. The adjudication and disposition are separate processes and serve two different purposes. The majority of jurisdictions in Pennsylvania hold these hearings consecutively for timeliness and convenience. This occurs for several reasons: many, if not all, of the parties are the same at both hearings, much of the evidence presented is similar, it helps to expedite the process, and many times the outcomes overlap. When these hearings are held jointly, the judge or hearing officer should ensure that all necessary findings for each hearing are included in the final order.

A disposition hearing is not a permanency hearing. In the juvenile court process, disposition is the stage at which the court determines who shall have custody of the child in question and what services should be provided to the child and family. In the interest of protecting the child from further neglect or abuse, the court must decide whether to remove the child from the home, continue out-of-home placement, review safe alternatives to placement, or return the child to the home.

In cases where information is incomplete at the time of adjudication (i.e., Family Service Plans/Child Permanency Plans, professional reports, or evaluations are not available), the court may adjudicate the child and schedule a separate disposition hearing. If the child has been removed from the home, the disposition hearing must be held within 20 days after adjudication. See Pa.R.J.C.P. 1510 and 42 Pa.C.S.A. § 6341(c). In these circumstances, the child is typically ordered to remain in the current placement setting until the disposition hearing. Bifurcating the process in this manner allows more time to obtain information on the case, including family finding, and aids the judge or hearing officer in making the most appropriate decision on the custody and placement of the child. This also allows the agency to fully engage the family in identifying the most appropriate services.

## 10.2 Preliminary Matters

As with other dependency hearings, notice must be provided to all parties before the dispositional hearing. Notice of the hearing must also be provided to the agency solicitor; the child's GAL and/or legal counsel; the guardian's attorney; the parents, the child's foster parent, pre-adoptive parent, or relative providing care for the child; the Court-Appointed Special Advocate, if assigned; the educational decision-maker, if applicable; and any other persons as directed by the court. Pa.R.J.C.P. 1501.

*** Best Practice — Frontloading Services***

Identifying appropriate services to families early in the process is imperative. Whether the adjudication and disposition hearings are held simultaneously or separately, the judge or hearing officer should take this opportunity to order the agency to provide immediate services to alleviate the circumstances necessitating placement. The court can order the agency to do an exhaustive search for absent or putative fathers and kin resources or offer the families some type of Alternative Dispute Resolution (including FGDM, mediation or facilitation). The provision of these services prior to disposition or at an expedited review after disposition promotes timely permanency for the child.

Likewise, parties at the dispositional hearing are entitled to be represented by counsel, as discussed more fully in Chapter 5: Right to Legal Representation. Counsel for the parties, as well as the GAL, should come to court fully prepared, having reviewed all pleadings and reports, having met with their client on a date prior to the scheduled hearing, and having identified and prepared all witnesses and evidence. (See The Legal Representation Workgroup, Pennsylvania State Roundtable, *Standards of Practice for Parents' Attorneys, Guardians Ad Litem & Legal Counsel for Children in Child Welfare Dependency Cases in Pennsylvania* 12-17 (2014), https://ocfcpacourts.us/wp-content/uploads/2020/06/Final-Standards-Of-Practice-Letter-Size-001686.pdf.)

In addition, the rules governing discovery and inspection in dependency cases discussed in Chapter 7: Adjudication also apply prior to disposition hearings. (See Pa.R.J.C.P. 1340.)

## 10.3 Reports

At the disposition hearing, the court may consider various written reports that may not have been allowable or available previously. Reports can include but are not limited to, results of examinations, written reports by experts regarding the case, and the Family Service Plan/Child Permanency Plan. (See Pa.R.J.C.P. 1509 and 42 Pa.C.S.A. § 6341(d).)

The Family Service Plan (FSP) is the plan developed for the family by the agency. The creation of this plan should be accomplished with the family's input. Under 55 Pa. Code § 3130.61, the FSP must include identifying information pertaining to the child and family members, the specific circumstances under which the case was accepted, service objectives for the family, services to be provided to achieve the objective of the plan, actions to be taken by the parents, children, the county agency or other agencies and the dates when these actions will be completed, placement amendments, and the results of

any family service plan reviews and placement reviews. In counties that use Family Group Decision Making (FGDM) to identify needed services, the FGDM plan is often incorporated into the FSP document. In these instances, the agency caseworker has accepted the family's plan as sufficient and appropriate. If the court disagrees with the caseworker's acceptance, the judge or hearing officer has various options ranging from asking the family to reconvene and develop a plan that addresses the unaddressed court concerns to rejecting the entire family plan. The latter option should be done only when there is no reasonable way to resolve the unacceptable elements identified by the judge or hearing officer.

The agency is required to complete a written FSP within 60 days of accepting a family for service. 55 Pa. Code § 3130.61. However, if a child is in emergency placement and continued placement is necessary, the agency has only 30 days from the time of placement to complete the FSP. 55 Pa. Code § 3130.66. If the agency has not completed the FSP by the time of the disposition hearing, it may be appropriate to bring the parties back for a post-hearing review of the completed FSP.

***Best Practice — Family Service Plan Requirements***

Judges and hearing officers should consider the requirements contained within the FSP, the feasibility of accomplishing the requirements, and the connection each requirement has to positively impact child vulnerability, parental protective capacity, and the reduction of specific child safety threats. FSPs should help guide needed change. Family Service Plans should be unique to the child and parent(s) and goals tied to the identified safety threats. Goals not addressing safety threats may inflate the plan and dilute the importance of goals addressing the safety threat.

Sometimes , the needs of a child or parent may require a multitude of services, which may feel overwhelming to a family. When this occurs, judges and hearing officers can help by providing guidance regarding which services are priorities for the court. At the end of each hearing, the court should address the parent(s) and orally explain to them what was ordered. It is helpful if the judge or hearing officer prioritizes the tasks for or with the parent(s) identifying which need to be worked on or accomplished by the next hearing.

Additionally, upon placement of a child, the agency is required to prepare a Child's Permanency Plan (CPP) (an amendment to the FSP) for each child. The CPP also provides a wide variety of information for the courts and should be provided to all parties. The CPP includes specific information regarding the child, such as circumstances that made placement necessary, health and educational information for the child, the child's

permanency goal and concurrent planning goal, the placement type and location, appropriateness of the placement, justification for the placement's level of restrictiveness, and anticipated duration of the placement. 55 Pa. Code § 3130.67.

The services provided in any plan should be tailored to meet the specific needs of each child and parent. The court should ensure that the recommended services are appropriate for the family and include any modifications to the FSP in the court order. Every family with whom the system works is different, and therefore, the services needed are likely to be different and must be tailored to each family's individual needs. As such, the identification and delivery of services is best accomplished by engaging in a collaborative process with the family.

## 10.4 Stipulations

When the parties admit the allegations or stipulate to a set of facts as to dependency, they often agree to a disposition order at the same time. Stipulations are a very efficient and valuable way to reach the necessary outcome because the parties are taking part in resolving the issues instead of simply acquiescing in a court-imposed ruling.

***Best Practice — Active, Ongoing Court Oversight***

Once the court is certain that a stipulated agreement is well-considered and within the abilities of the parties, it would be prudent to set a review in three or four weeks to be sure all of the services are in place and all parties are moving towards the goal and cooperating with each other. Agency case workers and service providers should participate in the review. The review notice should be given at the conclusion of the disposition hearing.

Particular emphasis should be placed on the facts that led the agency to initiate dependency proceedings, and the court must be sure the parties understand the serious nature of the situation and the applicable law. At this stage, it is imperative that the judge or hearing officer inform the parents of what improvement must be shown on their part before the child can come home.

## 10.5 Conduct of the Hearing

The judge or hearing officer sets the stage for what happens in the courtroom, starting with an introduction, an explanation of the judicial role, and a description of what will happen in the courtroom. Before proceeding, the court should likewise ask those in the courtroom to introduce themselves and identify their relationship to the child.

Although dependency court is a less formal setting than many civil proceedings, some decorum and formality should be observed, and all parties should show consideration for the seriousness of the matter at hand. This includes how parties are addressed. By addressing parties by their proper names, as opposed to their roles as guardian, dad, and mom, the court conveys a tone of respect for both the proceeding and those involved. This culture of caring and collaboration sets a positive tone for the hearing and can ensure that the child and the family leave the hearing with hope.

In all cases where children are removed from the home, the agency is required to implement concurrent planning. Concurrent planning is the practice whereby the agency simultaneously establishes and executes one permanency goal along with a concurrent plan for the child. If, for any reason, the permanency goal does not work out for the child, the concurrent plan can be immediately effectuated. Concurrent planning can significantly shorten the length of time a child remains in care since virtually no time is lost in shifting from the initial permanency plan to the concurrent plan.

The court's role in concurrent planning is to determine that both the permanency goal and concurrent plan are appropriate and are established in a timely manner. The court reviews the status of the concurrent plan at future hearings, but the concurrent plan should initially be established at disposition.

All procedures and rules of evidence applicable to adjudication hearings apply to disposition hearings, except that "helpful" evidence that would not be competent in an adjudication hearing may be considered to the extent of its probative value in a dispositional hearing (i.e., hearsay). 42 Pa.C.S.A. § 6341(d). The court may entertain both testimonial evidence and documentary evidence during the proceeding. All persons and agency representatives with current knowledge of the child and the family may offer testimonial evidence so the court can use this relevant knowledge in making permanency decisions for the child.

> "I felt fortunate to have been placed with my aunt, someone I've known my whole life, someone I can have fun with, laugh with. I felt really blessed when she came and got us that night."
>
> **- D.S., 18, Former Pennsylvania Foster Youth**

Counsel and the Guardian *Ad Litem* should secure documentary evidence from the agency, private providers, schools, and health care providers and provide it to all parties in advance of the hearing. Written reports can directly assist a judge in reaching a decision and give caseworkers additional perspective concerning the needs of a child and family. Further, where concerns regarding child safety can be clearly identified, necessary services can be implemented, and clear objectives for family members can be set, providing touch points for later reviews.

The key discussion in a disposition hearing is whether it is **clearly necessary** that the child be placed or continue in placement away from home and which services should be provided at the early stages of the case. If initial placement is clearly necessary, the court should prioritize the placement of the child and his/her siblings, if possible, with safe

relatives or kin to reduce potential trauma. Each child has a family, immediate and extended. Each child also has a network of non-related people with whom they are close and who could provide support in addition to possible placement. Locating members of that extended family and kinship network widens the circle of caring adult relationships for the child and permits meaningful connections, which help the child develop a sense of belonging. The court should inquire into the county agency's family finding efforts and inquire of the parties and the child to identify family and kin.

The single most identified factor contributing to positive outcomes for children is the maintenance of meaningful connections and relationships with safe, supportive family members and kin. In fact, the county agency has a legislative mandate to conduct family finding pursuant to 67 Pa.C.S. A. §§ 7501-7509. Accordingly, it is important to transform the ideology of courts and agencies from providing placements with licensed strangers to finding and connecting children with safe family members and kin. By doing that, we honor positive family and kinship relationships, give a family the opportunity to heal and develop trust with the agency, and provide a child with a much-needed sense of belonging.

The court has great latitude in imposing conditions and limitations that serve the best interest of the child. Often, a discussion on disposition is necessary before significant planning can begin, bearing in mind the goal of arriving at an appropriate long-term plan for the child's future, one that speaks to the needs and problems of the child and parents.

Depending on the nature of the case, a judge or hearing officer may consider asking the family to engage in FGDM if one has not yet been undertaken. Although a judge or hearing officer should not order a FGDM conference, as this is a voluntary practice, the judge or hearing officer can order the agency to provide information regarding the practice and order the family to meet with a facilitator who can explain the process of FGDM clearly in order to help the family make an informed decision. Alternatives to proceedings in front of a judge, like FGDM, mediation, and facilitation, can lessen the stress on a family and be quite helpful. With the parties working together to find solutions in a non-adversarial environment and focusing on the family's strengths, the parties and the caseworkers can make a huge difference in successfully resolving cases. (For more information on FGDM, see Chapter 20: General Issues, Section 20.4: FGDM.)

Should no agreement be reached, the court will determine whether the child can stay at home with safety measures in place or should be placed away from the home and where, specifically, the child is to reside. A child should be maintained with his or her parents whenever it is safe to do so. Children's Roundtable Initiative, Office of Children and Families in the Courts, *The Mission and Guiding Principles for Pennsylvania's Child Dependency System* 9 (2009). When considering placement outside the home, the court should consider the well-being of the child as well as safety. Does the placement promote the emotional and social needs of the child? Will the placement location create a barrier to visitation or contact between the child and other supports? How does the placement impact the child's education?

Whenever possible, the wishes of the child (if old enough) and parents regarding a safe and appropriate placement should be honored. When there is disagreement between the parties regarding the preferred placement, the court should ask each party their reason(s) for their preferred placement. In doing so, the court conveys a sense of fairness and concern for all. After hearing from all the parties, the court shall make the placement decision that is in the best interest of the child, explaining to the parties the rationale for the decision.

***Best Practice — Educational Information***

Each party should attempt to bring all of the child's current and relevant educational information including reports, report cards, attendance records, disciplinary records, and evaluations such as a copy of the child's Educational Screen or other educational assessments of the child to the adjudication hearing, the disposition hearing, and all subsequent hearings.

If the agency does not have the records, the court should direct the agency to immediately obtain the records of the child. In January 2013, the Family Educational Rights and Privacy Act (FERPA) was amended to ensure that child welfare agencies obtain immediate access to the education records of children in care.

Under the Uninterrupted Scholars Act (P.L. 112-278), agency caseworkers and private providers are authorized to obtain the education records of children in out of home care for whom they have legal responsibility, including children under a voluntary placement agreement and youth adjudicated dependent under shared case responsibility.

## 10.6 Educational Decision Makers (EDM)

It is presumed that a parent or guardian can make appropriate educational decisions to safeguard the child's best interests unless evidence is presented to the court to the contrary. When such evidence is presented, the court should hear from the parties.

### 10.6.1 When to Appoint an Educational Decision Maker

If the court determines that all parents and/or guardians are unable to fulfill the child's educational needs, the court may appoint an Educational Decision Maker (EDM) to safeguard the child's educational best interests. (See Pa.R.J.C.P. 1147.) If the court appoints an EDM, the court may wish to advise the parent/guardian to remain involved in the child's education to the extent that they are able. If appointed, the continued necessity of an EDM should be addressed at each subsequent hearing.

***Best Practice — Hearings to Determine Whether Appointment of an Educational Decision Maker is Needed***

When determining whether to appoint an Educational Decision Maker (EDM), a court should ascertain whether the parent or guardian can fulfill the child's ongoing educational needs. Judges should allow testimony from all interested parties and should make findings supporting the need for an appointment if one is necessary. The judge should consider various factors such as: (1) the permanency goal of child (*i.e*. reunification or adoption); (2) any unique circumstances of the child; (3) the complexity of the educational decisions that may need to be made; (4) whether the child has a disability and needs special education; (5) whether the parents are capable of making educational decisions for the child and readily available and willing to participate; (6) why the person to be appointed is appropriate for this child's needs; (7) how well the person to be appointed knows the child; and (8) the best interests of the child.

At each subsequent hearing, the court should determine whether an EDM continues to be necessary and whether the appointed EDM is meeting the needs of the child.

### 10.6.2 Person Eligible for Appointment

While not an exhaustive list, the following persons may be considered to serve as a child's EDM:

- A family member;
- A foster parent or former foster parent;
- A kinship provider;
- A Guardian *Ad Litem* (GAL);
- A Court Appointed Special Advocate (CASA);
- A family friend;
- A mentor;
- If special education is not an issue, a child welfare professional; or
- Any other person deemed appropriate by the court.

### 10.6.3 Special Rules for Students with Disabilities

When dealing with children who need special education services, there are additional requirements under the federal Individuals with Disabilities Education Act (IDEA) (20 U.S.C.A.1400-1482)*. Thus, when the court appoints an Educational decision-maker for a child who is or may be eligible for special education, the court's order should state that:

(1) The EDM meets the requirements of the IDEA.

(2) The parents are not "attempting to act" in the special education process, or the court has determined the parent's authority to make decisions should be limited and has appointed an EDM for the child.

(3) Like all other parents under the IDEA, the EDM appointed by the court has all of the rights of an IDEA parent, including the right to access educational records, request and consent to evaluations, disagree with the recommendations of the school, and request mediation or a due process hearing.

**A court-appointed EDM for a child with disabilities cannot be an employee of the state education agency, the local education agency, or any agency involved in the education or care of the child, including the local child welfare agency*. 34 C.F.R. § 300.519(d)(2)(i).

## 10.7 Findings and Orders

In its written findings of fact and legal conclusions, a court must address both the immediate and long-term plans for the maintenance of the child, including the nature of the placement and why it is necessary and appropriate under the circumstances. Additionally, the court should determine whether the child is safe in the placement.

The court must also review the case plan and the concurrent plan proposed by the agency to determine whether it is appropriate as is or with modification and whether it can be implemented, monitored, and followed by the family. The findings and conclusions must include the services ordered and the corresponding needs to be met.

***Best Practice — Active, Ongoing Court Oversight ***

When placement out of the home is necessary, the court should include the type of placement and the specific name and location of the placement, whenever possible. This should include the names of kin, foster families, or facility names. Circumstances may arise when it is not appropriate to identify the name or address of a resource family. In such a case, it may be appropriate to use *confidential* in the court order to protect that information.

In addition, it is sometimes not possible for the agency to identify a specific placement location immediately. In these instances, the placement type should be identified generally with the judge or hearing officer requesting the case be returned to the court within 30 days to determine the actual placement of the child and issue a new order.

Pursuant to Pa.R.J.C.P. 1514(a), the court must find in open court or enter into the record through the dispositional order a finding if the child is placed that:

(1) remaining in the home would be contrary to the welfare, safety, or health of the child;

(2) the child's placement is the least restrictive placement that meets the needs of the child, supported by reasons why there are no less restrictive alternatives available;

(3) if the child has a sibling who is subject to removal from the home, whether reasonable efforts were made prior to the placement of the child to place the siblings together or whether such joint placement is contrary to the safety or well-being of the child or sibling;

(4) the county agency has reasonably satisfied the requirements of family finding under Pa.R.J.C.P. 1149;

(5) one of the following (unless the court has previously found aggravated circumstances exist and that reasonable efforts to remove the child from the home or to preserve and reunify the family are not required. (See Pa.R.J.C.P. 1514(b) and Chapter 20; Section 20.2 Aggravated Circumstances)):

1. Reasonable efforts were made prior to the placement of the child to prevent or eliminate the need for removal of the child from the home, if the child has remained in the home pending such disposition; or

2. If preventative services were not offered due to the necessity for emergency placement, whether such lack of services was reasonable under the circumstances; or

3. If the court previously determined that reasonable efforts were not made to prevent the initial removal of the child from the home, whether reasonable efforts are under way to make it possible for the child to return home; and

(6) the county agency has provided a permanency plan and services pursuant to 67 Pa.C.S. § 7504.

Under Pa.R.J.C.P. 1512(D), the court shall enter its findings and conclusions of law into the record and enter an order pursuant to Pa.R.J.C.P. 1515. On the record in open court, the court shall state:

a) its disposition;

b) the reasons for its disposition;

c) the terms, conditions, and limitations of the disposition;

d) the name of any person or the name, type, category, or class of agency, licensed organization, or institution that shall provide care, shelter, and supervision of the child;

e) whether any evaluations, tests, counseling, or treatments are necessary;

f) the permanency plan for the child;

g) the services necessary to achieve the permanency plan;

h) whether the county agency has reasonably satisfied the requirement of Rule 1149 regarding family finding, and if not, the findings and conclusions of the court on why the requirements have not been met by the county agency;

i) any findings necessary to ensure the stability and appropriateness of the child's education, and when appropriate, the court shall appoint an educational decision-maker pursuant to Rule 1147;

j) any findings necessary to identify, monitor, and address the child's needs concerning health care and disability, if any, and if parental consent cannot be obtained, authorize evaluations and treatment needed; and

k) a visitation schedule, including any limitations. (Though the rule does not specify what the visitation must be, guidance on this can be found in Chapter 8: Visitation)

Pa.R.J.C.P. 1512(D)(1)

In Pennsylvania, dependency findings and orders for dispositional hearings are contained within the Common Pleas Case Management System, Dependency Module. These court forms contain the information needed to assist the court in asking the necessary questions, managing the case, meeting federal requirements, and capturing statewide data. The forms also allow for the entering of detailed text, which can outline the court's specific directives.

If a child is placed in foster care, the court should also order child support if the parents are able to help cover the costs of care, keeping in mind that child support obligations should not be unduly burdensome.

When possible, the order should also set the date for the Permanency Review Hearing (see Chapter 13: Permanency Hearing) and be distributed immediately to all parties.

Finally, pursuant to Pa.R.J.C.P. 1512(C), the court must determine on the record that the parties were advised of their appellate rights. The court should explain the right to appointed counsel for an appeal if a party is without counsel and without the financial resources or otherwise unable to employ counsel. The court should explain the right of any party who is indigent to proceed with an appeal without payment of costs.

# DISPOSITION HEARING CHECKLIST

## 1. TIMELY HEARING:

_____**Date** child removed: _____
_____**Date** of disposition hearing: _____

(*Note:* The disposition hearing must take place no later than twenty days after the child is adjudicated dependent if the child has been placed.)

## 2. NOTICE OF HEARING:

____Determine if written notice of time, place, and purpose of disposition hearing was issued to the child and the child's:

____Mother and attorney
____Guardians/custodians and attorney
____Tribe (if ICWA applies)
____Pre-Adoptive Parent
____Relative Providing Care for Child
____Father and attorney
____GAL and/or attorney
____Forster Parent
____County Agency
____CASA

____Determine the status of any absent parents/parties.

## 3. WHO SHOULD BE PRESENT:

___Judge
___Mother
___Father
___Guardians/Custodians
___Child(ren)
___Spouse of Child, if any
___Parents' Attorneys
___Guardian *ad litem*
___Child's Attorney
___Agency Solicitor
___Caseworker
___CASA
___Court Reporter
___Security Personnel

## WHO MAY BE NEEDED:

___Extended Family Members
___Friends of the Family
___Foster/Pre-adoptive Parents
___Other Witnesses
___Service Providers
___Law Enforcement
___Probation Officer

## 4. PROCEDURE:

_____Explain the purpose of the disposition hearing (which is to determine whether the child, who was adjudicated dependent, will remain in or be returned home or be placed in another setting).

_____Identify all parties present.
_____Advise parties of their rights, including the possibility of termination of parental rights if the child has been in foster care for fifteen of the last twenty-two months.
_____Determine whether timely service of process and notice of the hearing was given to the necessary parties.
_____Take testimony to determine if it is clearly necessary to remove the child from the home and determine the best placement; testimony shall be offered by the agency and fact witnesses, including parents; expert testimony, if needed, will be given; and aggravated circumstances testimony, if appropriate, shall be offered.
_____If not already determined, has the court made a determination as to whether the child is an Indian Child as defined by the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963 and the Bureau of Indian Affairs regulations, 25 C.F.R. § 23.2?

*When alternatives to removal are not possible or practical, clear necessity is shown.*

## 5. ISSUES RELATED TO DISPOSITION:

_____An agency's reasonable efforts regarding services which would permit reunification;
_____Family visitation if the child is placed outside the home;
_____Payment of child support if the child is placed outside the home;
_____Ongoing services and non-placement reviews if the child is placed in the home;
_____Educational needs of the child;
_____Long-term plan for the child;
_____Status of family finding process;
_____Ensure that frequency and duration are appropriate based on the age and needs of the child.
_____Ensure that oversight and location of visits are the least restrictive and provide for the most natural interaction to occur.

## 6. ISSUANCE OF ORDERS:

Orders shall address these points:
_____Disposition of the child, in home or out;
_____Services and assessments ordered for the child and the family;
_____Permanency Plan (goal) for the child;
_____Visitation schedule, including any limitations.

**7. SCHEDULE NEXT HEARING:**

_____Three-month review hearing **Date**: _____
_____Six-month review hearing **Date**: _____
_____Permanency hearing **Date**: _____

8. **ADVISE PARTIES ON THE RECORD OF THE FOLLOWING:**

_____Right to appeal within thirty days;
_____Right to proceed without payment of costs if unable to afford to pay costs;
_____Right to appointed counsel if unable to afford to retain counsel.

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# DISPOSITION HEARING BENCHCARD

| | |
|---|---|
| Relevant Statutes | 42 Pa.C.S. § 6351 (a) and (b)<br><br>Pa.R.J.C.P. 1340, 1501, 1509, 1510, 1512, 1514, and 1515. |
| Purpose of Hearing | A hearing at which the judge considers all the evidence, such as reports and recommendations, regarding the child's placement. The judge also reviews the case plan developed by the parties to determine if it addresses all of the child's identified needs. |
| Time Frame | Not later than 20 days after adjudication if the child has been removed from the home.(42 Pa.C.S. § 6341(c). The court may continue the hearing for a reasonable time to receive reports and other evidence bearing on the disposition or the need for treatment, supervision, or rehabilitation. 42 Pa.C.S. § 6341(e). *Dependency proceedings cannot be deferred.* |
| Rules of Evidence | In disposition hearings, all evidence helpful in determining the questions presented, including oral and written reports, may be received by the court and relied upon to the extent of its probative value. Thus, hearsay may be considered. 42 Pa.C.S. § 6341(d). |
| Next Hearing | <u>Permanency Hearing to determine or review the child's permanency plan:</u> within 6 months of the date the child was removed from the home or date of disposition, whichever is earlier. 42 Pa.C.S. § 6351(e).<br><br><u>Permanency Hearing:</u> Or within 30 days if there is an allegation of aggravated circumstances or the court finds that reasonable efforts are not required to reunify the family. 42 Pa.C.S. § 6351(e).<br><br>**The best practice is to conduct review hearings a minimum of every 3 months.** |
| Appeal Rights | On the record to all parties |

# DISPOSITION HEARING

## SUMMARY OF KEY QUESTIONS/DETERMINATIONS

- What is the appropriate disposition of the case and long-term plan for the child? (i.e., What disposition does the predisposition report recommend?)
- Where should the child be placed?
- Is this the least restrictive, most appropriate, most family-like placement option?
- Does the agency-proposed case plan reasonably address the identified needs of the child and parent? Have both the father and mother been included in the development of the plan?
- Has the father been identified? Has paternity been established? If not, what specific actions have been taken or are needed?
- What is the concurrent plan for the child? Was the concurrent plan established in a timely manner? Is it appropriate to the child's circumstances?
- Are any evaluations, tests, counseling, or treatment necessary?
- What services are necessary to achieve the permanency plan? Are services specific to the needs of the father, the mother, and the child(ren)?
- Has the agency made reasonable efforts to eliminate the need for placement or prevent the need for placement?
- What, if any, child support should be ordered?
- What visitation with parents is appropriate? Have relatives or kin resources been exhausted for visitation location and oversight? Has a visitation plan been presented to the court that outlines details of the visitation plan, including assistance to the parent, such as transportation?
- What visitation with siblings is appropriate?
- When will the case be reviewed?
- Has family finding been done to identify all possible family and caregivers?
    - Has any possible kinship placement been identified?
    - What, if any, are the obstacles to placing the child with family/kin?
- Has the family been offered a Family Group Decision Making conference?
- Does the family understand what Family Group Decision Making is?
- Remember to advise all parties of the following:
    - Right to appeal within thirty days;
    - Right to proceed without payment of costs;
    - Right to appointed counsel.
- If not already determined, has the court made a determination as to whether the child is an Indian Child as defined by the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963 and the Bureau of Indian Affairs regulations, 25 C.F.R. § 23.2?

These questions are adapted from the text of this chapter, the *Mission and Guiding Principles for Pennsylvania's Dependency System* and the Disposition Hearing Benchcard provided in the Gatowski, S. et al., *Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* 244-249 (National Council of Juvenile and Family Court Judges 2016).

# Chapter 11 – Modification of Placement

## 11.1 Overview

Placement changes impact children in many ways and almost always result in some level of loss. As such, the court must guard against changes made for reasons that are not absolutely necessary and in the child's best interest. A change of placement causes a child to be uprooted from a familiar environment to an unknown environment. It can disrupt relationships with friends, teachers, and other supportive persons and, in so doing, impact a child's sense of well-being and security. Minimizing the negative impact of emergency moves and ensuring the thoughtful implementation of a non-emergency move can help children cope and adjust to the change.

***Best Practice — Minimizing Unnecessary Moves ***

While it is sometimes necessary to move a child from one placement to another, the first step in minimizing trauma is to move only when absolutely necessary. To strengthen placements, judges and hearing officers should oversee the provision of services to the child to make sure that they are adequate to deal with the child's needs.

Additionally, children who have been traumatized, especially those with multiple traumas, should have services from providers who have had specific training in addressing trauma and trauma related behaviors.

Adequately addressing a child's needs upon their entry into care, may help to decrease the likelihood of future moves related to the child's behavior or unresolved trauma issues.

## 11.2 Disposition of the Motion

The stability of the child's placement is critical. Pa.R.J.C.P. 1606 requires prior court approval of any change in the child's placement except in cases of emergency. In non-emergent cases, the agency must file a motion requesting the change of placement, which shall also include receipt of notice of same as demonstrated by the signature of all parties and an averment, if available, as to whether each party agrees or objects to the change of placement. Any party may oppose the change in placement by filing an objection within three days of the filing of the motion to change placement.

If an emergency exists and a judge cannot be contacted, the county agency may place a child temporarily in a shelter care facility or other appropriate care. However, the county agency must notify the court and all parties of the emergency change in placement and file a written motion seeking the court's approval of this emergency placement by the next business day.

Any motion for modification of placement must include:

a) the specific reasons for the necessity of the change;

b) the proposed placement;

c) the current location of the child;

d) the manner in which any educational, health care, and disability needs of the child will be addressed;

e) an averment as to whether each party concurs or objects to the proposal, including the child's wishes if ascertainable; and

f) the signatures of all parties.

Pa.R.J.C.P. 1606(B).

The court, in disposing of the motion, may do any of the following:

a) schedule a prompt hearing to determine whether there will be a modification of the child's placement;

b) enter an appropriate order to modify the child's placement; or

c) enter an order denying the motion.

Pa.R.J.C.P. 1606(D).

***Best Practice — Using a Trauma-Informed Perspective***

When the modification of placement request is being presented as a result of the child's behavior, shifting to a trauma informed perspective can be particularly helpful. To accomplish this, the judge or hearing officer should ask what has happened to the child instead of what did the child do. This subtle shift in questioning will likely provide better information to help with decision-making and planning.

In light of the potential for increasing trauma and diminishing a child's sense of security, judges and hearing officers should use extreme caution when authorizing a modification of placement. In addition to asking any questions necessary to clearly understand the reason for the request for modification of placement, the judge or hearing officer should ascertain what has been done to stabilize the placement prior to reaching any decisions. If the kinship caregiver, foster parent, or facility representative is in the courtroom, the judge or hearing officer should inquire what has been and is being done to stabilize the placement. Talk to the child about his/her wishes related to placement.

For placements involving kin or foster care providers, supportive services such as respite, family therapy, and tangible resources may assist. Judges and hearing officers can order a multitude of services that may resolve the issues that led to the placement modification request and, in so doing, may dramatically reduce potential trauma for the child.

Ongoing family finding efforts provide a network of connections to support children and families during difficult times. Especially in the case of kinship placements, family members and kin may be able to step in and provide the support necessary to stabilize a placement. A family's plan for placement, like those created via FGDM, can anticipate the need for such and build in preventative measures as well as a contingency plan if the need for modification of placement becomes necessary.

***Best Practice — Minimizing Trauma***

When a child must be moved from one placement to another, judges and hearing officers should consider the following in court orders authorizing placement modifications:

- Pre-placement visits between the child and the potential caregiver. During the visit, both the child and the caregiver could discuss concerns and other important information in advance of the actual placement.
- Allowing the child to remain in the same school. Remaining in the same school would allow the child to keep their friends and teachers and be on target for academic progress.
- Allowing the child to remain in the activities that he or she participated in prior to the move. Continuing karate lessons or dance classes will bring a sense of normalcy and keep important community ties.
- Ensuring the child receives all of their belongings from their previous placement. Personal possessions and security objects (like special stuffed animals or pillows) become tangible sources of comfort when children are scared.

The court, in reaching its modification of the placement decision, should consider the reasons for the move, whether the new placement is more restrictive, the permanency plan goal, and whether the move will enhance the opportunity to realize that goal, the educational and health needs of the child, especially considering the impact of a change in school placement, the trauma and sense of loss that the child may experience, the continued opportunity for parents, guardians, siblings, and/or significant individuals in the child's life to visit, and any other relevant factors that the court deems appropriate. In addition, judges and hearing officers should revisit the issue of safety at each modification of placement request. Revisiting the legal safety analysis may reveal that the circumstances necessitating placement have been alleviated and that the child can safely return home with or without a safety plan in place.

When the court grants a motion for modification of the child's placement, the court should also consider whether there needs to be a change in services such as a new visitation provider, new mental health or trauma specialists, physicians, etc. The court should ask about potential changes in education/school placement; school stability should be carefully considered. Care should be taken to ensure that quality visits are continued between the parent and child and the child and siblings if not placed together. The court should ensure the court order reflects any needed modifications to services. (See Common Pleas Case Management System order regarding modification of child's placement).

Finally, while some moves are unexpected, others are the result of hard work on the part of a child or the positive progression of effective treatment. Judges and hearing officers should consider that trauma may still exist even in these positive moves.

# Chapter 12 – Permanency Options

## 12.1 Overview

Adoption and Safe Families Act (ASFA) amended the Social Security Act, requiring states to establish a hierarchy of permanency goals for children in the child welfare system and giving the highest preference to reunification. 42 U.S.C. § 675(5)(C). Subsequent amendments to the Juvenile Act, 42 Pa.C.S. § 6351(f.1), governing determinations to be made at permanency review hearings, adopted the federally mandated order of preference for children in Pennsylvania dependency proceedings. The basic hierarchy is as follows:

1. Return the child to the parent whenever this course is "best suited to the safety, protection and physical, mental and moral welfare of the child."

2. Place the child for adoption (with the county agency being required to petition for a termination of parental rights) where reunification is not best suited to the child's safety, protection, and physical, mental, and moral welfare.

3. Place the child with a permanent legal custodian where return to the child's parent, guardian, or custodian or being placed for adoption is not best suited to the child's safety, protection, and physical, mental, and moral welfare.

4. Place the child permanently with a fit and willing relative where return to the child's parent, guardian, or custodian, being placed for adoption, or being placed with a legal custodianship is not best suited to the child's safety, protection, and physical, mental, and moral welfare.

5. Place the child in some other court-approved and permanent living arrangement in instances where the agency has shown a "compelling reason" that it would not be best suited to the safety, protection, and physical, mental, and moral welfare of the child to be returned to the child's parent, guardian or custodian, to be placed for adoption, to be placed with a legal custodian or to be placed with a fit and willing relative. Importantly, this cannot be utilized for any child under the age of eighteen.

The court's role in reviewing the permanency goal as well as the concurrent plan goal is to determine that they are established in a timely manner, which is appropriate to the child's circumstances. (For time requirements applicable to the agency's permanency planning, see Chapter 10: Disposition.)

While the agency makes a recommendation regarding the primary permanency goal and the concurrent plan, it is an analysis and determination ultimately made by the court. The initial determination must be made early in the case and reviewed at each subsequent hearing. The court is responsible for ensuring sufficient activities occur simultaneously to implement both the primary permanency goal and the concurrent plan. This simultaneous implementation requirement underscores the need for comprehensive and meaningful family finding as life connections and permanency resources are often discovered within the child's supportive network.



**Finally, the court is required to make findings at each permanency review hearing regarding the reasonable efforts made by the agency to finalize the court- ordered permanency plan. This necessitates the court receiving evidence regarding efforts made by the agency to assist the parents in completing required services.** For example, it is not sufficient for the agency to develop a plan that includes visitation, parenting skills development, and substance abuse treatment. The agency must present information to the court regarding steps taken by the agency to support the parent in completing the services. The court's findings regarding the parent's compliance with services and a parent's progress are not the same as the court's findings regarding the agency's reasonable efforts to finalize the court-ordered permanency plan. The court is required to make findings related to each.

## 12.2 Reunification

Reunification of a child and parent is the preferred permanency choice under ASFA and the Juvenile Act. (See 42 Pa.C.S. § 6301(b) and 42 Pa.C.S. § 6351(f.1)(1).) The deleterious impact on a child that is caused by the separation from his or her parents is well documented; therefore, the majority of permanency hearings focus on reunifying the family whenever possible. When reasonable efforts fail to prevent the removal of the child from the parent's home, reasonable efforts must be made to reunite the child and parent.

It is important to note that the issue of whether the agency has made reasonable efforts to return a child home is distinct from the issue of whether the child *should* be returned home. Safety is always the first consideration in all court decisions, including reunification. (See Chapter 3: Roles of Judges and Hearing Officers.) The agency and the court must make every reasonable effort to secure a safe environment by providing parents with the services and resources to create an environment where the child can be safe. (See Children's Roundtable Initiative, Office of Children and Families in the Courts, *The Mission and Guiding Principles for Pennsylvania's Child Dependency System* (2009).)

Although two distinct assessments, examining the agency's reasonable efforts to reunify the family provides insight into whether the child can be safely reunified with his or her parents. Factors the court should consider when determining reasonable efforts to

finalize a permanency plan for reunification have been enumerated in *Making it Permanent: Reasonable Efforts to Finalize Permanency Plans for Foster Children*:

- Whether the services provided by the agency to the parents have changed their behavior and provided them with the skills to parent effectively.
    - Many case plans require parents to take parenting and/or anger management classes; however, the fact that a parent has completed the course does not mean the parent's behavior has changed. The judge or hearing officer should consider evidence regarding visits between the parent and child to determine whether actual behavior has changed for the better.
- Whether the child wants to return home.
    - Depending on the age of the child, the judge or hearing officer should talk to the child directly to determine the child's wishes. (See Section 20.6: Children in the Courtroom in Chapter 19: General Issues.) In any case, the child's advocate should inform the judge or hearing officer of the child's position on returning home and the child's basis for that position.
- Whether visits between the child and the parent have been successful.
    - Visitation is one of the most important tools in effectuating reunification. The judge or hearing officer should inquire of the agency if the parent has consistently kept the visitation appointments and if the visitations have been meaningful and effective. (See Chapter 8: Visitation and Benchcard on Visitation.)
- Whether the family situation has changed since the child entered the system.
    - Do additional services now make the safe return of the child possible? For example, do the parents now have access to daycare or after-school care for the child that they did not have before so that the child will no longer be left home alone?
- Whether additional safety threats have arisen that prevent the child from returning home.
    - Often, circumstances change and the agency needs to change the services/service plan to meet the new circumstances. The judge or hearing officer must ensure that the child is not out of the home because the parents do not know what is required of them to have the child returned home. The judge or hearing officer should also ensure that what needs to be completed is specific and understandable and that it serves the best interests of the child.

Cecilia Fiermonte & Jennifer Renne, *Making it Permanent: Reasonable Efforts to Finalize Permanency Plans for Foster Children* 12-17 (Claire Sandt ed., American Bar Association 2002).

## 12.3 Adoption

When a child cannot safely return home, adoption is the preferred legal permanency option under ASFA and the Juvenile Act. 42 Pa.C.S. § 6351(f.1)(2). Only a judge can designate the goal of adoption. While hearing officers are not permitted to make the designation of adoption as a child's permanency goal, hearing officers are permitted to review the case once the judge has made the designation.

Adoption is the legal and permanent transfer of all parental rights and responsibilities to the adoptive parents. Adoption requires the termination of each natural parent's rights. This provides the child with a new permanent legal family in which the child has the same legal standing and protection as if he/she had been born into the family. More importantly, adoption provides a sense of belonging to a stable family with emotional and physical security for a lifetime. Another advantage of adoption over less preferred placements is that it ends the court's oversight so that the family can continue without further state interference. If, however, an adopting family needs additional support from the agency, the state can offer further assistance through financial subsidies and post-adoption services.

ASFA and the Juvenile Act require that the agency demonstrate reasonable efforts to secure the child's adoption in an appropriate home and ensure the adoption process is thorough, so the placement is not challenged later. The judge or hearing officer should inquire at the permanency hearings as to the efforts the agency is making to find a permanent adoptive home for the child. Once the permanency plan has been changed to adoption by the judge, the agency is required to make reasonable efforts to finalize the permanency plan of adoption. Examples of activities to finalize a plan of adoption include but are not limited to identifying, recruiting, and evaluating prospective adoptive homes for the child, child-specific recruitment, and child preparation adoption services. Reasonable efforts may also include determining the child's wishes, looking at current caregivers, relatives, and kin as possible adoptive families, and exploring the use of Act 101 Post-Adoption Voluntary Contact Agreements. (See 23 Pa.C.S §§ 2731-2742; see also Chapter 17: Termination of Parental Rights, Section 17.9.3: Post-Adoption Voluntary Contact Agreements.)

In Pennsylvania, a child over the age of twelve must consent to the adoption. However, it is good practice to find out how a child of any age feels about an adoption. A child who objects to adoption may need more time to develop a trusting relationship with the prospective adoptive parents. In any case, the judge needs to determine the reasons for the child's opposition—whether the child is opposed to adoption itself, to specific prospective adoptive parents, to the prospect of losing contact with siblings, etc.

***Best Practice — Kinship Caretaker***

The judge or hearing officer should inquire as to whether the kinship caretaker has cooperated with the agency to finalize the foster care licensing process and should encourage the potential kinship resource to complete the process as soon as possible. The judge or hearing officer should also ensure that the agency is providing all necessary services to support the kinship resource.

The agency should first consider current caregivers, relatives, and kin when looking for adoptive parents. The agency must determine the willingness of current caregivers, relatives, and kin to adopt and address any concerns they may have about adopting the child. Although caregivers and relatives should never be pressured into adopting, their initial reluctance may often be overcome if their underlying concerns are addressed. For example, relatives often hesitate because they believe the child may return to the parent. The agency needs to make clear that any adoption will be preceded by a termination of the biological parent's rights and that this termination will be final and permanent.

If current caregivers or relatives are unwilling or unable to adopt, the agency must develop a child-specific recruitment plan. This may entail looking for other relatives or kin or placing the child on adoption exchanges and local or national adoption lists. The agency should be aware of and utilize all available public and private adoption agencies to secure a home for the child. This includes possible out-of-state placements. The Interstate Compact on the Placement of Children (ICPC) makes it possible to place a child in another state as it ensures that a proper home study and evaluation of prospective parents meets the legal requirements of both states. (For further details on the ICPC, see Chapter 21: Summary of Major Federal and State Child Welfare Legislation.)

Some children require very specific caregivers with specialized skills for a variety of reasons, including age, disability, membership in a sibling group, ethnic background, and/or special medical needs. The agency still needs to work diligently to find homes for these children. Under the Multi-ethnic Placement Act (MEPA) and the Inter-ethnic Adoption Provision Act of 1996 (IEPA), a child cannot be denied an adoptive placement because of the ethnicity of either the child or the prospective adoptive parent. 42 U.S.C. § 671a(18). If the court finds that a placement is being delayed because the agency is restricting its search efforts in violation of these laws, the court should order the agency to broaden its search to include prospective parents of all ethnicities and national backgrounds. (Further details on MEPA/IEPA are contained in Chapter 21: Summary of Major Federal and State Child Welfare Legislation.)

Regardless of who the prospective adoptive parents are or where they reside, the agency should ensure that the prospective adoptive parents are well-informed about the adoption process and that adoption is a lifelong commitment. They should also be informed of any subsidies or other benefits they may be entitled to if the child has special

needs. Current caregivers may be concerned about losing the agency's support if they adopt the child, so it is essential that they be informed that they may qualify for subsidies and post-adoption services. Subsidies may include such things as:

- Regular monthly payments
- Medical coverage
- Respite care
- Reimbursement for "special costs" (wheelchairs, medical equipment, etc.)
- Special services such as tutoring or physical therapy
- Counseling – family and individual
- Reimbursement for legal expenses incurred in the adoption process
- Household support services from private foster care support groups

## 12.4 Permanent Legal Custodianship (PLC)

Legal custodianship in Pennsylvania is the equivalent of legal guardianship under the Social Security Act as amended by ASFA. (See 42 Pa.C.S. § 6357 and 42 U.S.C. § 675(7).) It is a formal legal arrangement that transfers custody of a minor child from the natural parent to a relative or other caregiver. A legal custodian is given the primary rights and duties associated with parenthood, including physical custody of the child, the right to make care and treatment decisions, and "the right and duty to provide for the care, protection, training and education, and the physical, mental, and moral welfare of the child." 42 Pa.C.S. § 6357. In the hierarchical scheme of permanency options, permanent legal custodianship is less desirable than reunification or adoption but preferable to permanent relative placement and another planned permanent living arrangement. See 42 Pa.C.S. § 6351(f.1)(3). It is preferred because it provides permanency and stability without ongoing state oversight while often maintaining ties with siblings, extended family members, and biological parents.

"I am very lucky to have formed a bond with my foster parents who eventually became my legal guardians. I finally found the home I always wanted."

-M.M., 18, Former Pennsylvania Foster Youth

The two hallmarks of legal custodianship are permanency and self-sustainability. The legal custodianship order remains in place until a court terminates it or until the child is adopted, turns 18, or marries. When legal custodianship is set as the permanency plan goal, the court should make every effort to ensure the parties understand that the relationship is to be permanent and that a change in custody will not be made lightly. Parental rights are not permanently terminated as they would be in an adoption case, and the parents may play a role in the child's life. Therefore, the parent may later seek a change in the custodianship arrangement. The court should inform the parents that although they may have a continuing role in the child's life, decision-making capacity and legal custody belong to the legal custodian. The legal custodians should know that the responsibility they are assuming is permanent and cannot be abdicated to the parents just because the parents continue to have a role in the child's life.

The biological parents need not consent to permanent legal custodianship for the court to establish it. However, since the court will no longer have an oversight role following a permanent transfer of legal custody, the legal custodian and the parent must maintain a clear understanding of the duties and responsibilities of legal custodianship.

The Pennsylvania Department of Human Services' Office of Children, Youth, and Families (OCYF) has published bulletins delineating the rights and duties of the legal custodian and the parents. The legal custodian's rights and duties include, in addition to those already enumerated:

- The right and duty to make decisions on behalf of the child, including decisions regarding the child's travel, driver's license, marriage, and enlistment in the armed forces.
- The right to petition for child support from the child's parent.
- The obligation to pay legal expenses related to a parent's request to change custody or visitation.

The parental rights and duties include:

- The right to visitation when it does not affect the health and safety of the child.
- The right to petition for custody of the child.
- The right to pass on property to the child.
- The duty to pay child support.

Although the legal custodianship is considered permanent, it may be terminated with judicial approval following the filing of a petition by the agency. (Because the grant of permanent legal custody closes the dependency case, this is technically a new proceeding.) The biological parent or the legal custodian may also file motions to terminate the legal custodianship. Whether the petition is filed by the agency following a determination that the child is in danger, by a parent seeking the return of the child, or by a legal custodian wishing to be relieved of custodial responsibilities, the court must decide whether to continue or revoke the legal custodianship based on the best interest of the child.

In considering whether legal custodianship serves the best interest of the child, the court must be acutely aware of the pros and cons of the arrangement:

Pros:

- It is sometimes better for relative caregivers when the termination of parental rights is inconsistent with cultural or family traditions.

- The child may not want parental rights to be terminated; legal custodianship provides permanence while maintaining ties to the biological family.
- It is sometimes easier to find a relative to care for sibling groups, special needs children, or older children who may be difficult to place.
- There is no ongoing state supervision.

Cons:

- Because the legal custodian is not the child's legal parent, the legal custodian's ability to make permanent, binding decisions on behalf of the child is limited.
- Lack of permanency may cause some concern to the child.
- The biological parent's rights are not necessarily terminated. Therefore, the parent can return to court to attempt to undo the arrangement.
- Legal custodianships are inherently less stable and less permanent than adoption.

Fiermonte & Renne, *supra*, at 52.

## 12.5 Permanent Placement with a Fit and Willing Relative

Pennsylvania law and Pennsylvania Rules of Juvenile Court Procedure require that when a child is initially removed from the home, the first consideration for the child's placement should be with a relative or kin. Only when this is not possible should other placement alternatives be considered. Therefore, a child's initial placement will likely be with a relative if one is available. Ideally, relatives or kin will choose to adopt or become the child's legal custodian if reunification is not possible. If the relative or kin is unwilling, the court must determine if another appropriate person is willing to adopt or become a permanent legal custodian. Otherwise, under ASFA and the Juvenile Act, permanent placement with a fit and willing relative is considered the next best alternative – after reunification, adoption, and permanent legal custodianship. 42 Pa.C.S. § 6351(f.1)(4).

Placement with a fit and willing relative offers many potential advantages, including dampening the traumatic impact of removal, allowing for the continued maintenance of family bonds, and preserving the child's cultural identity. ASFA, Pennsylvania's Kinship Care Program Bulletin, the Juvenile Act, and Act 118: Family Finding all strongly support relative and kinship placements in lieu of placements with strangers whenever possible.

On the other hand, a fit and willing relative permanency option is subject to drawbacks that should not be overlooked. For example, the relative may not be able to protect the child from the neglectful or abusive parent. Moreover, there is a possibility that the relative does not feel capable of caring for the child but feels compelled to do so. The authors of *Making it Permanent: Reasonable Efforts to Finalize Permanency Plans for Foster Children* suggest the following pros and cons when a permanency goal of fit and willing relative is proposed:

Pros

- Relatives often have a sense of familial responsibility and are often more committed to keeping the child on a long-term basis.
- It is easier to preserve the bond the child has to his biological family, including siblings.
- Relatives may reduce the trauma of being removed from the home.
- Relatives preserve the child's cultural identity and heritage.
- The child is often able to adjust to living with a relative more easily than living with strangers.

Cons

- Relatives often receive fewer services than non-relatives.
- The most appropriate relative is often a grandparent who may have limitations due to age.
- Relatives may protect the parent or deny the maltreatment occurred, thus engaging in behavior that could put the child at risk.
- Relatives may be loyal to the parent and unwilling to adopt because it would sever the parent's rights.
- Relatives and parents may be hostile toward one another, making it harder for the agency to work with the parents.

Fiermonte & Renne, *supra*, at 69.

Permanent placement with a fit and willing relative is one of the least defined options provided in the statute. Neither ASFA nor the Juvenile Act define relative or fit and willing nor do they create new legal authority for the relative. However, some guidance is provided by the Kinship Care Act, which defines a relative as someone "related within the fifth degree of consanguinity or affinity to the parent or stepparent of the child" and who is at least 21 years of age. 67 Pa.C.S. § 7502.

In general, a relative is fit and willing if they can provide a suitable placement for the child, ensure the child's safety, and meet the child's needs. *Placement of Children with Relatives* 4 (Child Welfare Information Gateway Sept. 2022). In Pennsylvania, a kinship caretaker must become a licensed foster parent. Once licensed as a foster parent, the kinship caretaker is entitled to the same payments and services as non-relative foster parents while at the same time ensuring they are able to safely meet the child's needs. 67 Pa.C.S. § 7507. In an emergency situation, a child can be placed with a kinship caretaker, but that caretaker must become a fully licensed foster parent within 60 days.

Following placement with a relative, the agency continues to be involved in the case and provides supervision. The level of supervision required may vary depending on the resources of the placement. The court should ensure the agency has done a thorough home evaluation and determined what services the family needs and whether the agency can provide the necessary services. The dependency case remains open, and the court continues to conduct permanency hearings until court supervision is terminated. A

relative who wants relief from agency and court oversight may pursue the adoption or permanent legal custodianship options.

Since placement with a fit and willing relative has a lower priority than adoption or legal custodianship, the judge or hearing officer should make sure that the agency has made reasonable efforts to ensure the placement is suitable for the child and that the relative is not taking the child unwillingly or solely in order to prevent the termination of parental rights. The judge or hearing officer should inquire as to the following issues:

- Whether the relative should adopt or enter into a guardianship;
- Whether the child has a bond with the family;
- Whether non-relatives are willing to adopt or accept guardianship;
- Whether the placement will help preserve the child's family identity;
- Whether the placement will help preserve sibling bonds;
- The child's wishes with respect to the placement with the relative caregiver;
- Whether this is the right family for the child;
- Whether family dynamics compromise the relative's ability to safeguard the child from abusive parents;
- Whether the agency has observed the interaction between the child and the relative;
- Whether the relative is committed and able to provide a stable, long-term home for the child;
- Whether the relative received counseling when appropriate;
- Whether the relative is committed to the child;
- Whether the placement is stable and long-term;
- Whether the agency has collected and reported to the court sufficient information about the relative's home;
- Whether the agency has complied with the ICPC when the relative lives out of state; and
- Whether all the necessary services have been provided.

Fiermonte & Renne, *supra*, at 65-70.

In any case, both the agency and the court should do their best to make placement with a fit and willing relative truly permanent through adoption or legal custodianship. Placement with a relative as the selected permanency plan should not be used as a stopgap measure just to satisfy the permanency guidelines. Rather, it should be the best available choice. Even if a relative is available, a better alternative may still be a non-relative who is committed to the child and willing to adopt or accept guardianship.

## 12.6 Another Planned Permanent Living Arrangement

Another Planned Permanent Living Arrangement (APPLA) is the least preferred option for ensuring permanency for a child. ASFA and the Juvenile Act require the agency to provide the court with a compelling reason why one of the other permanency options is not available to the child. (See 42 U.S.C.A. § 675(5)(C) and 42 Pa.C.S.A. § 6351(f.1)(5)(iii)(A).) While the least preferred of all options, APPLA should not be viewed as a catchall or long-term foster care. It must be both planned and permanent. The preamble to the ASFA regulations specifically states that long-term foster care is not a permanency option, noting that "far too many children are given the permanency goal of long-term foster care, which is not a permanent living situation for a child. The compelling reason requirement is in place to encourage States to move children from foster care into the most appropriate permanent situation available." 65 Fed. Reg. 4036.

**Importantly, APPLA cannot be utilized for any child under the age of eighteen. Pa.R.J.C.P. 1608(d)(2); 42 Pa.C.S.A. § 6351(f.1)(5)(i).** For the purposes of this section, it is important to remember the definition of child is an individual ages 18 to 21 years who meets certain criteria. 42 Pa.C.S. § 6302. Before assigning the permanency goal of APPLA, the court must consider all of the evidence relevant to the considerations listed in Pa.R.J.C.P. 1608 (d)(2)(i)&(ii). If the court assigns the permanency goal of APPLA, the court must make very specific findings at each subsequent permanency hearing on the record pursuant to Pa.R.J.C.P. 1608(d)(2)(iii). The court is also required to speak directly to the youth regarding the child's desired permanency goal. Pa.R.J.C.P. 1608(d)(2)(ii). It is not sufficient to receive this information from the caseworker, the GAL, the child's caretaker, or any person other than the child. The court must also ensure that updated evidence regarding the agency's effort to comply with Pa.R.J.C.P. 1608(d) is provided to assist in the court's determination.

After the presentation of updated evidence, if the court determines APPLA should be the continuing permanency goal for the 18-21 year old child, the judicial officer must state in open court on the record the following:

1. the reasons why APPLA continues to be the best permanency plan; and

2. the compelling reasons why it is not in the best interests of the child to return home, be placed for adoption, be placed with a legal guardian, or be placed with a fit and willing relative; and

3. the full name of at least two supportive adults with whom the child has significant connections; and

4. the identify of the specific APPLA approved by the court.

Pa.R.J.C.P. 1608(d)(2)(iii).

The additional rule requirements listed above are intended to reduce the number of youth receiving the goal of APPLA and, in turn, exiting the dependency system with few or no supportive, life-long connections.

***Best Practice — Family Finding Revised***

It is imperative that the court ensure all children, especially those 18 years and over with a goal of APPLA, have meaningful and significant connections with responsible, caring adults. While Act 118 of 2022 modified some of the family finding provisions of Act 55 of 2013, it continued the mandates of family finding for all dependent youth unless discontinued by the Court. One specific strategy being used throughout Pennsylvania is known as Family Finding, developed by Kevin Campbell.

Another, more advanced practice being used in Pennsylvania's twenty Family Engagement Initiative counties is known as Family Finding Revised. Family Finding Revised offers innovative methods and strategies to locate and involve the relatives and kin of children. Family Finding Revised is used to provide each child with lifelong, supportive adult connections, enhance the child's network of support, promote healing, and reduce trauma. To learn more about Family Finding Revised see https://ocfcpacourts.us/childrens-roundtable-initiative/family-engagement-initiative/

The court should ensure comprehensive family finding occurs wherein the child's support network is strong and involved in his care. Very often, realistic permanency options come from a strong and involved network. For example, the child may have developed a relationship with a mentor that could lead to legal custodianship, or perhaps a relative who was not previously available for relative placement is now available. See Chapter 2: Act 118 of 2022: Family Finding for additional information. The court should also inquire as to the services being provided in the group home which cannot be provided in the community. Identifying that there are no additional benefits to group care can provide for ease of transition into newly realized placement options.

Finally, Independent Living (IL) is not a permanency option. It is the provision of services to help an adolescent live independently. IL services are typically provided at age 14 up to age 21. The judge or hearing officer should ensure that the agency is providing all the services necessary to meet the adolescent's physical, emotional, psychological, and educational needs. Stability is key, and the judge or hearing officer should ensure that services are sufficient and will continue until the adolescent reaches the age of majority. (For more information about IL services, see Chapter 20: General Issues, Section 20.9: Transitioning Youth.)

# Chapter 13 – Permanency Hearing

## 13.1 Overview

After a child has been adjudicated dependent and the court has issued a disposition order under 42 Pa.C.S. § 6351(a), Pennsylvania's Juvenile Act requires the court continue its oversight of the case by holding a series of subsequent hearings "for the purpose of determining or reviewing the permanency plan of the child, the date by which the goal of permanency for the child might be achieved and whether placement continues to be best suited to the safety, protection and physical, mental and moral welfare of the child." 42 Pa.C.S.§ 6351(e). All such post-dispositional hearings are designated as permanency hearings in Pennsylvania. Moreover, the Juvenile Act specifies a long list of determinations that must be made at all permanency hearings whenever they occur.

As a practical matter, the primary focus and issues emphasized at these hearings will vary substantially depending on the posture of the dependency case involved. In general, early permanency hearings often serve as status review hearings in which the primary concerns are with issues of compliance with the initial permanency plan, progress being made towards plan goals, minor plan adjustments that may be necessary in view of changes in circumstances, and ensuring reasonable efforts are made by the agency to finalize the court-ordered permanency plan. In later permanency hearings, the focus is likely to emphasize the remaining steps that are needed to finalize permanency and whether the original goal still appears to be appropriate and feasible. In some cases, it is necessary to hold a permanency hearing to choose a new goal. Considerations applicable to permanency hearings where the focus is on changing the permanency goal are distinctive enough to warrant treatment in a separate chapter (See Chapter 14: Permanency Hearing to Consider Change of Goal.)

In each permanency hearing, the court must determine whether or not the agency has made reasonable efforts to finalize the permanency goal (See Chapter 20: General Issues, Section 20.3: "Best Interests" and "Reasonable Efforts" Findings), whether or not the agency made reasonable efforts to comply with family finding, the appropriateness of the permanency goal and concurrent plan, the parents' compliance and progress, as well as issues specifically related to each dependent child. Updated evidence is needed at each hearing for each of these issues to enable these judicial determinations.

Act 118 of 2022 (67 Pa. C.S. §§ 7501-7509) also requires that family finding efforts be reviewed at every permanency hearing. The court must inquire as to the efforts made by the county agency to comply with family finding requirements. Pa. R.J.C.P. 1149. (See Chapter 2: Act 118 of 2022: Family Finding.)

The following sections will not only discuss requirements common to all permanency hearings but will offer practical suggestions for making the best and most efficient use of these hearings at various stages of dependency proceedings in order to achieve the overall goal of safe, timely permanence while ensuring child well-being.

## 13.2 Timing of Permanency Hearings

An initial permanency hearing must be held within six months of the date of the child's removal from the parental home for placement or pursuant to a transfer of temporary legal custody or other disposition, whichever is earliest. 42 Pa.C.S. § 6351(e)(3)(i); Pa.R.J.C.P. 1607(B). Thereafter, the court must conduct a permanency hearing every six months until the child is returned to a parent or guardian or removed from the jurisdiction of the court. *Id.*

A permanency hearing must be held within 30 days of:

1. An adjudication of dependency at which the court determined that aggravated circumstances exist and that reasonable efforts to prevent or eliminate the need to remove the child from the child's parent, guardian or custodian, or to preserve and reunify the family need not be made or continue to be made (See Chapter 20: General Issues, 20.2 Aggravated Circumstances for more information on aggravated circumstances);

2. A permanency hearing at which the court determined that aggravated circumstances exist and that reasonable efforts to prevent or eliminate the need to remove the child from the child's guardian or to preserve and reunify the family need not be made or continue to be made and the permanency plan for the child is incomplete or inconsistent with the court's determination;

3. An allegation that aggravated circumstances exist regarding a child who has been adjudicated dependent; or

4. A motion alleging that the hearing is necessary to protect the safety or physical, mental, or moral welfare of a dependent child.

42 Pa.C.S. § 6351(e)(3)(i), Pa.R.J.C.P. 1607(A).

***Best Practice — Frequent Judicial Oversight***

Frequent judicial oversight keeps everyone accountable. Although permanency hearings are mandated to occur at least every six months, best practice guidelines encourage conducting permanency hearings at a minimum of every three months, particularly in the early stages of the case or at other critical junctures. Beginning the permanency planning at the 3-month mark rather than at the 6-month mark recognizes the child's need for early resolution of permanency and is a more effective way of assuring progress toward securing permanency for the child. In cases where the parents are not working on their family service plan goals or where it is unlikely that the parents will be able to remedy the conditions that led to removal and placement, holding permanency hearings in a 3-month cycle will result in earlier permanency for children.

Motions are also an efficient way to resolve issues that need to be brought to the court's attention between permanency hearings. Single issues can be heard without crowding the court docket or trying to schedule an early permanency hearing.

Judges and hearing officers should take the lead in scheduling status reviews that address single issues that should not be left unattended between permanency hearings, such as whether the child moved from shelter care to kinship or foster care and whether services ordered are in place. This is an efficient way to provide early resolution of issues. It is not necessary for caseworkers to complete full family service plans for each status hearing.

Note that these mandated timeframes do not preclude scheduling a permanency hearing sooner than the law prescribes, for example, whenever it becomes clear that the present plan is no longer appropriate. Moreover, individual courts may choose to establish a more expedited schedule of permanency hearings as a matter of good practice.

## 13.3 Pre-Hearing Conferences

Courts should consider holding pre-hearing conferences with all parties and their legal representatives for review in complex cases. This enables the judge or hearing officer to get a feel for the number of potential witnesses and the type of evidence that may be introduced, set limitations on witnesses, make advance rulings on evidence, and handle other issues that may contribute to effective time management and the smooth running of the hearing. In addition, a pre-hearing conference may provide an occasion for the use of facilitation or mediation strategies.

As a rule of thumb, a complex case is one involving multiple siblings; one in which sexual abuse, physical abuse resulting in serious bodily injury, or aggravated physical neglect is alleged; or one in which so many witnesses will be called that more than two hours will be required to complete the hearing.

## 13.4 Hearing Objectives

The general purpose of any permanency hearing is to make progress toward finding a permanent placement for the child. The court should not just receive an update of what occurred between review hearings but should actively engage the parties and work toward identifying a permanent placement for the child.

At every permanency hearing, the judge or hearing officer must review and determine the child's permanency plan, the date by which the permanency goal might be achieved, and whether the placement continues to be best suited to the safety, protection, and physical, mental, and moral welfare of the child. The court may also assess the status of the case, re-examine long-term goals, or refine or update the case plan if necessary. Pa.R.J.C.P. 1608.

***Best Practice — Issues to be Emphasized at Permanency Hearings***

Although Pennsylvania statutes essentially create an all-inclusive statutory permanency hearing category that encompasses both routine review-type hearings and hearings that truly focus on finalizing permanency, this should not diminish the importance of this distinction in actual court practice.

One way to operationalize the distinction is by reference to the matters that the judge or hearing officer is required to address at permanency hearings under 42 Pa.C.S. § 6351. In most instances, in permanency hearings that are scheduled within the first year of a case, the issues that are of overriding concern include the appropriateness, feasibility, and extent of compliance with the permanency plan; progress made toward alleviating circumstances necessitating placement; and whether reasonable efforts are being made by the agency to finalize the permanency plan.

On the other hand, in permanency hearings involving children who have been in placement for 12 to 18 months or longer, other issues become of paramount concern, including the continuing necessity and appropriateness of placement, the appropriateness and feasibility of the current placement goal, the likely date that the placement goal might be achieved, whether a petition for termination of parental rights should be filed, and when the child will achieve permanency.

As noted above, however, hearings that are designated permanency hearings in the Juvenile Act may have different functions depending on when they occur in the dependency proceeding. Some of the basic sub-types of permanency hearings include:

**Expedited Review Hearings for Youth in Shelters —** If, at the time of disposition, the child has not been returned to the care of the parents or guardians and remains in shelter care, respite care, or other short-term/temporary placement, the judge or hearing officer should review the child's placement within 30 days to ensure that the child has either returned home or has been placed as directed by the dispositional order.

**Expedited Family Service Plan Status Hearings —** Pennsylvania statutes encourage an expedited court process through adjudication and disposition. Adjudication must occur within 10 days of petition filing if a child has been removed from their home. Pa.R.J.C.P. 1404. Most courts routinely consider dispositional issues immediately after adjudicatory determinations are made. Review of the appropriateness of the Family Service Plan (FSP) and/or Child's Permanency Plan (CPP) should be a central component of the dispositional process. However, the agency has up to 30 days in removal cases and 60 days in non-removal cases to fully complete the case plan. The agency is required to complete a CPP if the child is removed from the home. Consequently, a fully developed FSP/CPP might not be available for consideration at the time of disposition. (See Chapter 10: Disposition.)

The court has statutory discretion to proceed with disposition even if an FSP/CPP is not available. But waiting six months for the next *required* permanency review to examine the FSP/CPP is too long, given the short permanency timeframes envisioned by the federal Adoption and Safe Families Act (ASFA) and Pennsylvania statutes.

In these instances, it makes sense for the court to schedule an expedited FSP/CPP status hearing with all parties present that allows for an in-court examination of the FSP/CPP. This practice helps to ensure that all parties understand FSP provisions/expectations, and it allows the court to examine the steps that have already been taken with respect to the plan. This hearing should occur within 45-60 days of the disposition hearing.

**6-Month Permanency Hearing —** This is the first statutorily required permanency hearing after disposition. At this hearing, the agency is required to submit an updated FSP/CPP and evidence regarding the reasonable efforts made by the agency to finalize the permanency goal. Depending on the court, this may include a report summarizing the efforts made and case progress to date. The report should also address the continuing appropriateness of the placement, the permanency plan, and an estimated date for achieving this plan.

Ideally, the agency has front-loaded services, which are crucial to successful reunification or permanency. At this hearing, the judge or hearing officer should ensure

that all the services are in place and fine-tune the permanency plan. As in every proceeding, the court must determine through proper inquiry whether the children are safe.

***Best Practice — Permanency Reviews Every 3 Months***

While only required by rule every 6 months, permanency reviews occurring every 3 months provides for better judicial oversight leading to more timely permanence for youth and increased child well-being. Parents receive the benefit of judicial pressure to remedy conditions that led to involvement with the dependency system and frequent reminders that the clock is ticking. Likewise, the agency can address concerns more quickly and can be held accountable in their provision of reasonable efforts to achieve permanency for youth.

The focus at the 6-month permanency review hearing and all hearings thereafter is examining case progress and finalizing the child's permanency plan. **Serious discussion of a child's concurrent plan is appropriate.**

In all cases where children are removed from the home, the agency is required to implement a concurrent plan. Concurrent planning is the practice whereby the agency simultaneously establishes and executes one permanency goal along with a concurrent plan for the child. If, for any reason, the primary goal does not work out for the child, the concurrent goal can be immediately effectuated. Concurrent planning can significantly shorten the length of time a child remains in care since virtually no time is lost from the end of the primary plan to the initiation of the concurrent plan.

The court's role in concurrent planning is to determine that both the permanency goal and concurrent plan are appropriate and are established in a timely manner. The court will review the status of the concurrent plan at all permanency hearings, but the concurrent plan should initially be established at disposition.

"Gentle pressure, relentlessly applied."

- Honorable Max Baer, Supreme Court Chief Justice

Additionally, the court must make a finding as to whether the agency has made reasonable efforts to finalize the permanency goal. This necessitates receiving information regarding the agency's efforts to assist the parents in accessing services and meeting the Family Service Plan requirements if the permanency goal is reunification. Likewise, if the permanency goal is adoption, legal guardianship, fit and willing relative, or another planned permanent living arrangement, the agency must demonstrate the reasonable efforts made to finalize that goal. The court should also consider any additional efforts required by court order.

**12-Month Permanency Hearing —** By this time (unless extenuating circumstances apply), the focus of the permanency hearing process should clearly shift to the finalization of the child's permanency plan. If the plan goal remains reunification, but the child cannot now be returned home, the judge or hearing officer should set very clear expectations regarding what needs to happen to achieve this goal within a clearly defined timeframe. In these situations, it is also appropriate for the judge or hearing officer to schedule expedited status reviews to ensure that steps are being taken to return the child home. The judge or hearing officer should make it clear that if expectations are not met, a goal change is likely to occur at the next permanency hearing.

***Best Practice — Considerations for Permanency Hearings***

More frequent reviews can shorten the time it takes to review a case in court. These short reviews keep all parties on their toes, and it is easier for the court to pick up where it left off at the last review instead of rehashing issues that were already litigated. The progression of the case is also easier to follow. Remember to allow additional time in cases with multiple siblings, as the court must independently review the case and plan for each child.

Holding dual hearings for dually adjudicated youth is a more efficient way to provide oversight in a case. Dual hearings enable the court to clearly define the responsibilities of the agency and the probation department. Dual hearings also help to streamline services.

The court should have basic questions for caseworkers, foster parents, service providers, therapists, etc. to assess compliance, progress, the quality of the services, and the permanency plan. Remember to give each party and interested person the opportunity to be heard.

The child welfare agency's proposed permanency plan should be provided to all parties and their legal representatives sufficiently in advance of the hearing to allow for preparation and response. If there has been a family conference as part of a family group decision-making process, the report and recommendation from that conference should be included with the child welfare agency's report and submitted to the court for approval as the permanency plan. Citing the importance of the permanency hearing as a step in the move to permanency for the child, Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases recommends that the court should not accept stipulations to the plan or agreed orders without a full examination of the parties to ensure their understanding of the issues under consideration. Gatowski S., et.al., 299-300 (National Council of Juvenile and Family Court Judges 2016).

**15-Month Permanency Hearing —** At the fifteenth-month hearing mark, the federal Adoption and Safe Families Act (ASFA) and the Pennsylvania Juvenile Act require the child welfare agency to request a goal change and file a Termination of

Parental Rights (TPR) petition when a child has been in care for 15 out of the past 22 months unless compelling circumstances apply. (See 42 U.S.C. §§ 671-679, 42 Pa.C.S. § 6351(f)(9) and for a more detailed discussion, see Chapter 14: Permanency Hearing to Consider Change of Goal and Chapter 17: Termination of Parental Rights.) It is not the agency's decision whether or not to file for termination. It is presumed that the agency will file for termination at 15 months when conditions necessitating placement have not been remedied unless the court makes a determination to the contrary. At this hearing, the court will change the goal to adoption unless finding it is not in the child's best interest to do so or compelling reasons not to terminate parental rights exist and direct the agency to file a petition to terminate parental rights.

**18-Month Permanency Hearing —** Again, unless some very extenuating circumstances apply, the primary decision made at this hearing will be to immediately reunify the child with the parents or guardians or, if this is still not possible, determine the specifics of an alternative permanency plan. If the court directed the agency to file a petition for termination of parental rights or assumed the agency would do so per ASFA, the Court should ask if the petition has been filed and what progress has been made toward TPR.

**Permanency Hearing: To Consider Change of Goal —** see Chapter 14: Permanency Hearing to Consider Change of Goal (Goal Change Hearing).

## 13.5 Conduct of the Hearing

### 13.5.1 Courtroom Management

At times, permanency hearings can be more contentious than adjudication hearings. Often, the facts alleged in the petition for dependency and the issue of dependency itself are not in dispute. However, at the time of the first Permanency Hearing and thereafter, the parties do not always agree as to what should happen. The parents may feel they have done everything required of them to be reunified with their children. The agency may not agree. In particular, a permanency hearing to consider a change of goal can be emotionally devastating to both the child and parents.

The permanency hearing must be driven by the judge or hearing officer. It is important for the judge or hearing officer to set the tone for the hearing and to control the proceedings. The judge or hearing officer should make it clear what the issues are and keep the parties focused.

At the onset, the judge or hearing officer should state the purpose of the hearing and what the court needs to decide. This keeps the parties and the lawyers focused. Unless there is an emergency, only matters that are properly before the court should be decided. However, the safety of the child is always the paramount concern.

It is important that the parties have an opportunity to be heard and have their positions considered, as this hearing is often about the process and not the result. In particular, the judge or hearing officer should consult with the child to ensure the child's views have been ascertained to the fullest extent possible. On the other hand, it is important not to let the parties and the lawyers turn the hearing into a family therapy or venting session. Testimony and evidence should be relevant to the proceeding and focused on the determinations that must be made at a permanency hearing.

The judge's or hearing officer's demeanor should reflect the seriousness of the proceedings for all parties. The parties should feel that they have the opportunity to be heard at the appropriate time. The judge or hearing officer should strongly discourage people from speaking unless they are being addressed by a lawyer or the court. The judge or hearing officer should control the emotions of the parties, making it clear that parties and others who have relevant evidence and have a legitimate interest in the child or the outcome will be heard, but persons who are out of control may be asked to leave the courtroom.

The judge or hearing officer must demand that the professionals involved in the case, such as lawyers, caseworkers, service providers, and others, be prepared. If the professionals know that the judge or hearing officer has high expectations, they will be prepared.

The judge or hearing officer should be an active listener and should ask questions to supplement the record, clarify matters, or cover matters that were neglected by the parties. This is especially important when a party is *Pro Se* and unable to adequately examine witnesses. Moreover, the court's obligation to make an informed decision may require the judge or hearing officer to intervene by asking questions in order to develop the evidence necessary to inform the decision.

The court should allow sufficient time for the matters to be heard. The *Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* recommend that 60 minutes be allocated for a routine review hearing. Gatowski, S., et al., *supra*, at 299. Some things that should be taken into consideration in scheduling sufficient time for a hearing are the number of children, the number of witnesses who will testify, the complexity of the issues, the special needs of the children and/or the parents, and whether it is a dually adjudicated dependency/delinquency hearing. This list is by no means exhaustive. In allocating time for a hearing, the court should include the time it takes to complete the written court order contained in the AOPC's Common Pleas Case Management Dependency Module so the order can be distributed to all parties at the conclusion of the hearing. (See section 13.8 Findings and Orders for a discussion of court orders.)

The timing of the hearing is also important. The cattle-call approach is inhumane as it often requires parties and witnesses to sit in the courthouse for an entire day before entering the courtroom. The judge or hearing officer should be mindful that as people are waiting, they may be missing school and work, medications are wearing off or

missed, young children are missing nap time or nap time is disrupted, and children and families are missing meals. The bottom line is that it is equally important for the parties to feel that they have had an adequate opportunity to be heard and that the court has considered their positions.

### 13.5.2 Persons in Attendance

At a minimum, children, parents (including putative fathers), relatives, other adults with custody, the caseworker, and anyone else with a proper interest, including family members, kin, fictive kin, and supports, should attend the hearing. The judge or hearing officer should ensure that all parties, including the parents, have legal representation. If the parents are not represented, the judge or hearing officer should make sure they understand they are entitled to representation and that they are voluntarily choosing to proceed without representation. (See Chapter 5: Right to Legal Representation, Section 5.5: Waiver of Counsel for a colloquy.)

The child must be present at all proceedings, except for good cause shown. Pa.R.J.C.P. 1128. The child's attendance at the permanency hearing is particularly important because the court is required to ascertain, to the fullest extent possible, the child's wishes regarding the permanency plan. The preferred method is for the judge or hearing officer to hear directly from the child. Even though the child's wishes may be contrary to the child's best interest, it is important for the judge or hearing officer to view the case through the eyes of the child. The judge or hearing officer should consult with the child in a manner appropriate to the child's age and maturity.

Upon motion or request in advance of the hearing, the judge or hearing officer may excuse the child from a hearing for good cause. If the child is not present in court or does not wish to speak to the judge or hearing officer, the views of the child may be communicated to the court by the GAL, child's attorney, CASA, or other person designated by the court. The judge or hearing officer must ensure the child's wishes are known in every case. (See Chapter 20: General Issues, Section 20.6: Children in the Courtroom.)

Pa.R.J.C.P. 1129 allows for the child, guardian, or a witness to appear by Advanced Communication Technology (ACT). However, this should be the exception rather than the rule, as there are other important reasons for a child to appear in person. Appearance in the courtroom permits the judge or hearing officer to assess things such as the child's physical health and well-being, the care that is being provided by the caregivers, and the bond and relationship with the parents, foster parents, and others. Although Rule 1129 permits appearance by ACT, at a minimum the child must appear in person at least every six months. Pa.R.J.C.P. 1129(A)(2).

If paternity has not been established at this point, it is important for the judge or hearing officer to insist that paternity be established. If paternity has been established, but the father is not participating in the hearings, visiting the child, or working on family service plan goals, the judge or hearing officer should direct the caseworker to take

affirmative action to engage or involve the father. (See Locating Fathers & Establishing Paternity Benchcard.)

***Best Practice — Establishing Paternity***

Protocol for the Agency:

a) Check with the Bureau of Child Support Enforcement (BCSE) paternity tracking system for acknowledgments of paternity;
b) Check the Pennsylvania Child Support Enforcement System (PACSES) for orders of support;
c) Ask/interview the mother;
d) Ask/interview the child;
e) Check all collateral sources (schools, medical records, neighbors, other relatives).

Protocol for the Court:

a) Establish a legal father (only one father per child);
b) Question the mother and/or the child under oath;
c) Explain to the mother the importance of establishing paternity;
d) In cases where there is no legal father and an alleged father appears, the judge should do a colloquy on the record about his obligations (child support, etc.) and then ask him to sign an acknowledgment of paternity or order genetic testing;
e) In cases with a legal father and there is a question as to who the biological father is, require the party seeking a paternity test to file a motion or petition seeking genetic testing with service upon and notice to the legal father;
f) Never order genetic testing in a case with a legal father without first disestablishing paternity;
g) The court order should reflect whether paternity has been established and, if not, the reason(s) paternity has not been established and what efforts, if any, are being made to establish paternity;
h) If paternity has not been established before the adjudication of dependency but is subsequently established through either acknowledgment or genetic testing, the court should enter an order establishing paternity;
i) If paternity has not been established, the court should inquire at every court hearing about the efforts made to establish paternity.

If a parent is incarcerated, the judge or hearing officer should demand that the caseworker make personal contact with the parent at the correctional facility. Most correctional facilities have videoconferencing capabilities that will allow a parent to participate in the hearing by videoconference or at least by teleconference. (See Chapter 9: Incarcerated Parents.)

A deputy sheriff or other court security should be present to ensure that all persons attending the hearing feel safe and are safe.

Foster parents, pre-adoptive parents, and relatives providing care for the child and potential kinship care resources are all entitled to timely notice and the opportunity to be heard at permanency hearings. 42 Pa.C.S. § 6336.1. This does not give them legal standing in the proceeding unless they have been awarded legal custody. *Id*. If foster parents, pre-adoptive parents, or kinship caregivers have not submitted a written report (see Section 13.7: Admissibility of Evidence, Reports and other Documents) or do not ask to be heard, the judge or hearing officer should nevertheless engage them concerning the child's progress, behaviors, needs, etc. When children have been placed outside of the home, caregivers spend more time with them than the parents, caseworkers, or the lawyers. As such, they are in the unique position to observe and assess the child's behavior, progress, adjustment, and needs on a daily basis. It is also important to ascertain whether caregivers are helping to facilitate the permanency goal and working toward safe reunification in partnership with the agency. In addition, the court must provide a potential kinship care resources with the right to be heard as to the individual's qualifications to provide kinship care. 42 Pa.C.S. § 6336.1.

***Best Practice — Kinship Care***

The judge or hearing officer should encourage kinship care where such care provides for the safety of the child. Kinship care includes relatives by blood, marriage, or adoption, and other supportive persons known to the child and family. Inquiries should be made as to the agency's use of family finding and other family engagement techniques. Even when kin has been identified, the court should require the agency to continue family finding to expand the number of supports for the child and the family.

If relatives and extended family are available, Family Group Decision Making (FGDM) should be considered. FGDM allows the family to develop its own plan that provides for the child's safe care. As a consequence, the family becomes invested in the plan and is more likely to follow it and make progress on the goals.

Ideally, service providers should attend the permanency hearing. Although hearsay is admissible at a permanency review hearing, sometimes the court may require information that is beyond the caseworker's knowledge and is not contained in any reports that have been offered into evidence. Additionally, it is important for the providers to hear the court's findings and orders on the record to better understand the court's expectations. If it is not possible for the service provider to be at the hearing in person, they are permitted to appear by advanced communication technology. Pa.R.J.C.P. 1129.

If a CASA has been appointed, the CASA should attend the permanency hearing. (See Chapter 20: General Issues, Section 20.10 for more information about CASA.)

If the Indian Child Welfare Act (ICWA) is applicable, the Indian custodian, counsel for the tribe, or a tribal representative or liaison should be present. It would be appropriate for these persons to participate by video or teleconference if they are unable to attend in person.

Other persons that should be present include: parents of a half-sibling who have custody of the half-sibling, parent support partners or mentors, education liaisons and school representatives, education decision-makers, adult or juvenile probation officers, and interpreters.

## 13.6 Matters to be Determined

The Rules of Juvenile Court Procedure require the court to ensure that seventeen basic findings are made at permanency review hearings. (See Rule Pa.R.J.C.P. 1608(d) for the list of 17 findings.) If these matters are not covered by counsel, then the judge or hearing officer should take the lead. Following this chapter are lists of suggested questions to assist the court in covering the matters set forth below. However, it should be remembered that the lists of suggested questions are not exhaustive and that the questions must be adapted to suit specific cases and the language tailored to suit specific witnesses.

### 13.6.1 Continuing Necessity of Placement

The court must determine whether the placement continues to be necessary and appropriate for the child and whether the child is safe. If the child is placed, the court must determine whether the placement continues to be best suited to the safety, protection, and physical, mental, and moral welfare of the child. Judges and hearing officers should ask why placement is still needed, whether the child is or should be placed with siblings, if there are any family members available for placement or visitation with the child, if the placement is meeting the child's needs, and if the child is happy, safe, and adjusted to the placement. An additional inquiry into the services needed to assist a child who is fourteen years of age or older to make the transition to independent living should also be made. (See the discussion of Transitioning Youth, Section 20.8 in Chapter 20: General Issues.)

In deciding whether the placement of the child remains necessary, the court should consider and assess the child's vulnerability, parental capacity, and any safety threat. Depending on the age and maturity of the child or the parents, the assessment and ultimate risk may be different. In deciding the issue of return, the court should consider the protective capacity of the parents. Protective capacity refers to the behavioral, cognitive, and emotional characteristics that can be specifically and directly associated with a person's ability to care for and keep a child safe. This may not be the same for each sibling. For example, a parent with an intellectual disability may be able to safely parent a 16-year-old child with no special needs but may not be able to parent a 2-year-old child or a 16-year-old child with special medical needs.

The return should not be based upon compliance but rather on progress and the mitigation of safety threats. A parent may not have completed every program or goal, but **once the risk to the safety of the child is removed or mitigated, in most cases, the child should return home**.



### 13.6.2 Appropriateness of Placement

Determining the appropriateness of the placement involves consideration of the child's needs and is based on information about the child's behavior, health, mental status, education, and development.

Questions that may assist in this determination are ones about the safety of the child, the visitation plan and whether it is adequate and, if separated from siblings, whether or not sibling visits are occurring. The court should also determine whether the child's medical needs are being met and ask questions about immunizations, dental care, glasses, medications, and other special medical needs, as well as the need for mental health or other therapeutic services and whether these are being provided.

If the child is displaying behavioral issues or if the placement was due to ungovernability, the judge or hearing officer should also inquire as to the child's level of compliance and assess the progress that has been made toward alleviating those placement conditions. Special attention should be given to the child's educational needs and development, what services are needed to assist the child age 14 or older in transitioning to independence, and whether the child's basic needs for clothing and personal care items are being met.

**"The most difficult thing was switching schools so frequently, it was hard to maintain friendships and keep up with school work."**

- C.S., 18, Former Pennsylvania Foster Youth

Oftentimes, these children who display behavioral issues or are placed due to ungovernability are recommended to be placed in congregate care. A congregate care workgroup was commissioned by the Pennsylvania State Roundtable (SRT) to examine the use of congregate care for dependent youth. The workgroup continued through June 2023, when the workgroup was sunsetted by the SRT. The workgroup developed tools to be utilized by county agencies and the courts when considering the placement of a child and/or reviewing the placement of a child. The congregate care workgroup did exemplary work and gathered significant information on the issues surrounding the use and appropriateness of congregate care. The end result was a decreased use of congregate care. (See Chapter 20.8 for more information on congregate care.)

### 13.6.3 Appropriateness, Feasibility, and Extent of Compliance with the Permanency Plan

**"The judge told me he is proud of how I am handling things now."**

- Pennsylvania Parent

The court must also make findings related to the child's and parents' compliance and progress. These are two separate and distinct findings. When making a determination as to the compliance of parents or guardians, the judge or hearing officer may want to consider asking a caseworker for an opinion on the level of compliance with the permanency plan. Questions should also be asked regarding attendance at visitation and the quality of the visits for both parents. Based upon the information received during the hearing, the judge or hearing officer must make a finding in the permanency review order as to whether the parents or legal guardians have had no progress, minimal progress, moderate progress, substantial progress, or full compliance with the permanency plan.

The determination of the level of compliance and progress is subjective and must be analyzed on a case-by-case basis. Many judges and hearing officers struggle with the determination of the level of compliance and progress. It is important that specific facts are included to support the level of compliance and progress findings set forth in the order.

Judges and hearing officers should take into consideration all of the parents' or guardians' actions during each review period, including efforts toward compliance and attempts at progress. Judges and hearing officers should look at an individual's work schedule, childcare, financial issues, and transportation issues when making this assessment. Judges and hearing officers should also consider the parties' understanding of the permanency plan when considering efforts made by the parent or guardian.

**Despite the fact that judges and hearing officers are required to enter findings related to both compliance and progress, these two issues are distinct.** *Compliance* addresses the extent to which a parent or guardian is actively involved with services ordered by the court or contained in the Family Service Plan or Child Permanency Plan, while *progress* addresses the level to which behavioral changes are being made and demonstrated by the parent or guardian. These are two separate analyses which may or may not be interconnected. For example, a parent or guardian may be very compliant with attendance in a particular court-ordered service; however, they may make no or minimal positive behavioral changes. Conversely, a parent or guardian may be minimally compliant with a particular service yet make significant behavioral changes.

While it is likely that all parties may have an opinion and/or recommendation regarding the level of a parent's or guardian's compliance and progress, the judge or hearing officer should make the assessment of both. Finally, although judges and hearing officers are required to address both findings, those related to progress focusing on actual behavioral changes generally have the greatest impact on permanency decisions.

### 13.6.4 Progress toward Alleviating Circumstances Requiring Placement

In assessing the progress made toward alleviating the circumstances that necessitated the original placement, the court should consider whether the parents were offered reasonable and appropriate services, whether the parents requested services that were not provided, and inquire as to what the parents still need to accomplish before reunification would be recommended by the agency. In determining progress, the court should concentrate on changes in behaviors rather than on whether the parent attended all sessions or completed certain tasks. A finding must be made in the permanency review order if the parents or legal guardians have had no progress, minimal progress, moderate progress, substantial progress, or full progress toward alleviating the circumstances which necessitated the original placement.

Remember, the agency is required to make reasonable efforts to reunify the child with the parents unless they have been relieved of this requirement by the court. This includes but is not limited to, offering appropriate and reasonable services. The judge or hearing officer should not hesitate to hold the agency accountable for failure to make reasonable efforts. Once a finding of no reasonable efforts has been made, the county agency may lose federal and state funding for the costs of the child's placement until the Court finds that the agency has made reasonable efforts. (See Chapter 20: General Issues, Section 20.3: "Best Interests" and "Reasonable Efforts" Findings.)

### 13.6.5 Appropriateness and Feasibility of Current Placement Goal and the Concurrent Plan

At every permanency review, the court must determine whether the placement goal is appropriate and feasible and, if not, whether a new placement goal should be set. The judge or hearing officer should seek an opinion from the agency and consider the positions of the GAL or counsel for the child, the parents and their counsel, and the CASA, if one is assigned, before reaching a decision. The judge or hearing officer should state on the record or in writing the reasons the goal is or is not appropriate and feasible.

If a concurrent plan was not established at the disposition hearing, the judge or hearing officer should set a concurrent plan**. Concurrent planning is required in all out-of-home dependency cases**. In the majority of cases, the initial permanency goal is reunification. Establishing a concurrent plan from the beginning will expedite permanency for a child if the efforts to reunify fail. It is not sufficient to simply name a concurrent goal. Rather, there should be affirmative action of the agency to pursue the concurrent plan while the primary goal is being pursued.

It is important for the judge or hearing officer to emphasize to the parties that the establishment of the concurrent plan does not in any way mean that the goal of reunification will not be seriously pursued. The court should also explain that ASFA only gives the parents a short time to remedy the conditions that brought the children into placement. In some cases, knowing that there is a Plan B will cause parents to work harder towards achieving their goals.

## KEY ELEMENTS OF CONCURRENT PLANNING



**Concurrent planning should include:**

- **Involvement of the parent in determining the concurrent plan and, in the case of an Indian child, involvement of the Indian custodians and the child's tribe;**
- **Placement of the child in a relative-adopt or foster-adopt home to reduce the number of times the child must move;**
- **Strict time limits on case progress and scheduling of hearings;**
- **Detailed small steps to accomplish the plan, in weekly and monthly increments, accompanied by frequent court reviews;**
- **Progress measured by behavior, documented in reports submitted to the court, excellent social work, supported by training, consultations, and reasonable caseload; and**
- **Defining success by timely permanency, whether it is reunification or the alternate plan.**

Gatowski, S. et al., *Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* 93 (National Council of Juvenile and Family Court Judges 2016).

For a more detailed discussion of goal changes, see Chapter 14: Permanency Hearing to Consider Change of Goal (Goal Change Hearing).

### 13.6.6 Likely Date that Placement Goal Might Be Achieved

Judges and hearing officers should determine the likely date by which the placement goal will be achieved. Common sense is often the best tool. Remember, this date is a projected date and not a deadline. It is helpful to make certain that parents and children understand that this is a projection, not a promise.

### 13.6.7 Reasonable Agency Efforts to Finalize Permanency Plan

At the permanency hearing, the judge or hearing officer must determine whether the agency made reasonable efforts to finalize the permanency plan that is in effect. This finding is tied to the concept of procedural justice. Although it may be harsh to render a finding of no reasonable efforts, it is important to hold the agency accountable for its obligation to make reasonable efforts to finalize the plan.

A determination that there were reasonable efforts requires evidence about the reasonable actions of the agency to assist the child and parents. It is not sufficient to simply hear evidence as to the compliance and progress level of the parent or child. The court should not include in its analysis agency staffing shortages, caseload sizes, or other systemic issues. **To make this finding, evidence as to the agency's affirmative actions to make reasonable efforts is the sole issue.**



(See Chapter 6: Entering the System/Shelter Care Hearing, Section 6.1.1 Reasonable Efforts Determination and Chapter 20: General Issues, Section 20.3 "Best Interests" and "Reasonable Efforts" Findings for more information on reasonable efforts determinations.)

***Best Practice — Ensuring Equity in Engagement and Services***

The judge or hearing officer should ensure that reasonable efforts are made with respect to both parents. Historically, the child welfare system has been criticized as being focused on the mother in the case. Fathers should receive similar levels of service and be afforded the same level of persistence from the caseworker as is given to the mother.

### 13.6.8 Whether the Child is Safe

The judge or hearing officer should always assess the safety of the child at every permanency hearing. Any party may present evidence about the safety of the child. The judge or hearing officer must consider any evidence of conduct by a parent, guardian, foster parent, or any person supervising the care of the child that places the health, safety, or welfare of the child at risk, including evidence of the use of alcohol or a controlled substance, regardless of whether the evidence or the conduct was the basis for the determination of dependency. 42 Pa.C.S. § 6351(f.2). Each parent should be considered individually. If the child is unsafe, the judge or hearing officer should consider whether the child might be safer under a safety plan developed by the agency.



**As noted above, unless good cause has been shown, all parties, including the child, shall appear at every hearing Pa.R.J.C.P. 1128 and comment to the rule. Even if excused by the court, the child shall appear at least every six months, at a minimum. Pa. R.J.C.P. 1129. If the child is not present, the court should ask where the child is and why the child is not present. *It is critical for the court to see the child.*** The child's physical appearance is important to the assessment of safety. Is the child overweight or underweight? Does the child appear to be clean? Additionally, the child's affect and demeanor can aid in the assessment of well-being. Does the child appear happy and content or sad and depressed? In cases of physical abuse, the judge or hearing officer can see first-hand how the child is healing. The court should take the opportunity to have the child photographed at each review hearing or, if the child is not present for some reason, the judge or hearing officer should demand that a picture be received in order to create a record of the child's physical development and growth. (See Chapter 20: General Issues, Section 20.6: Children in the Courtroom.)

***Best Practice — Children Appearing at Every Hearing***

The judge or hearing officer should set an expectation that children will appear at each hearing unless there is a good reason for the child not to appear. It is important that the court see the child to develop a first-hand understanding of the child including developing a rapport with him or her. While the court may wish to exclude the child from sensitive portions of the proceeding, the presence of the child serves as a visual reminder that it is *this* child's best interest that the court is serving. It also provides the child with an opportunity to be heard and to participate in proceedings that have a profound impact on his or her life.

When considering waiving the child's appearance, the judge or hearing officer should consider circumstances specific to the child and not make generalized decisions about attendance.

If the child is excused from the hearing, the judge or hearing officer should request the parties' agreement to permit the judge or hearing officer to interact with the child at some other place and/or time to ensure the child's safety and possibly measure any progress the child may have made. The agreement should be made part of the record. Any observations or findings to justify the decision should be placed on the record.

### 13.6.9 Reasonable Efforts to Engage in Family Finding

At each permanency hearing, the court is required to inquire as to the efforts made by the county agency to comply with family finding requirements pursuant to 67 Pa.C.S.7501 *et seq*. Pa.R.J.C.P. 1149(A)(1). Family finding may be discontinued only if, after a hearing, the court determines that: (1) continued family finding no longer serves the best interests of the child; (2) continued family finding is a threat to the child's safety; or (3) the child is in a pre-adoptive placement and court proceedings to adopt the child have been commenced. Pa. R.J.C.P. 1149(B).

Even if the court has ordered family finding to be discontinued, the court may, at a subsequent hearing, order family finding to resume when the court determines family finding is best suited to the safety, protection, and physical, mental, and moral welfare of the child and does not pose a threat to the child's safety. Pa.R.J.C.P. 1149(C).

In assessing whether the agency has made reasonable efforts to engage in family finding, the court should ask what methods they used to identify family and kin supports (interviews, social media, search engines, etc.), who was identified and the relationship of

those identified to the child and family, and whether the agency made contact with those identified and, if so, whether those contacted can be a support or potential placement resource. The court should also inquire as to how the family and kin were included in service planning and delivery. It is important to stress that family finding is more than looking for a kinship foster home. Family Finding is also about identifying supports for the child and the parents.

The judge or hearing officer should also inquire as to the next steps that the agency will undertake to identify supports or additional supports for the child and the parents. (See also Chapter 2: Act 118 of 2022: Family Finding.)

### 13.6.10 Services Needed to Help Older Youth Transition to Independence

At each permanency hearing, the court must assess the services needed to assist a child who is 14 years of age or older in making the transition to a successful adulthood. Pa.R.J.C.P 1608(d)(1)(xi). Although the agency is only required to provide services to transition a child into independent living when the child is fourteen years of age or older, these services should be ordered whenever appropriate. Information on the individual needs of the child and the development of skills should be sought. Because educational success is an important step on the road to self-sufficiency, the court should investigate whether the child is on track to graduate from high school or whether the child is enrolled in an alternate education program that will assist the child in achieving self-sufficiency, whether the child is being provided vocational and career counseling, and any plans for post-secondary education. Children with disabilities should have a transition plan included in their Individual Education Plan if they are eligible for special education services.

Housing is also an important issue. Some children may need to transition into a supervised living environment through the adult mental health system. This process takes time and should be initiated before the sixteenth birthday. Other general areas of inquiry might be employment, daily living skills, and the possession of necessary identification and documents such as a birth certificate and a social security card. (See Chapter 20: General Issues, Section 20.8 Transitioning Youth.)

The court should inquire as to whether the child is placed in the most family-like setting that will enable the child to develop independent living skills and as to the efforts that have been made to develop and maintain connections with supportive adults. Pa.R.J.C.P. 1608(d)(1)(xi). The judge or hearing officer should receive an update on family finding when making these determinations.

The court should also determine the services needed to assist the child in making the transition to successful adulthood, including the specific independent living services or instructions that are currently being provided, the services that have been identified by the independent living assessment pursuant to the Chafee Act (42 U.S.C. § 671 *et seq*.), and the services that the child will receive before the next hearing. *Id*.

Other determinations include whether the child is receiving job-readiness services, whether the child has physical health or behavioral health needs that will require continued services into adulthood, and what steps are being taken to ensure that the child will have stable housing or living arrangements at case closure. *Id*.

At least ninety days before a child's eighteenth birthday, the court must hold a hearing to determine whether supervision will terminate. Before the hearing, a transition plan shall be developed for the child. Pa.R.J.C.P. 1631(e)(1).

The transition plan shall be presented to the court, and the court must approve the transition plan before supervision can be terminated. Pa.R.J.C.P. 1631(e) provides that the transition plan shall, at a minimum, include:

a) the specific plans for housing;
b) a description of the child's source of income;
c) the specific plans for pursuing educational or vocational training goals;
d) the child's employment goals and whether the child is employed;
e) a description of the health insurance plan that the child is expected to obtain and any continued health or behavioral health needs of the child;
f) a description of any available programs that would provide mentors or assistance in establishing positive adult connections;
g) verification that all vital identification documents and records have been provided to the child;
h) a description of any other needed support services;
i) a list, with contact information, of supportive adults and family members; and
j) notice to the child that the child can request resumption of juvenile court jurisdiction until the child turns 21 years of age if specific conditions are met.

***Best Practices — Creating & Approving the Transition Plan***

Bringing together family members can help develop a transition plan that will ensure that the child has a life-long support system. Family finding can assist with the identification and location of family members and close connections that will provide the support. Once family and kin are located, a Family Group Decision Making conference can help create the transition plan.

If the transition plan is NOT approved, the court should schedule a review every thirty days until the plan is approved.

If supervision is not terminated, the court must conduct a permanency hearing at least every six months. Pa.R.J.C.P. 1610.

### 13.6.11 Findings Regarding Sibling Placement and Visitation

In most cases, placing siblings together best serves the emotional needs and welfare of children in foster care. In many cases, the sibling bond may be stronger than the bond between a child and a parent, and the separation of siblings is traumatic.

If siblings are not placed together, the court must determine whether reasonable efforts were made to place siblings together and whether joint placement is contrary to the safety and well-being of the child or sibling. Pa.R.J.C.P. 1608(d)(xiii). The court must also ask whether visitation is occurring at least twice a month unless the court finds that visitation is contrary to the safety and well-being of the child or sibling. Pa.R.J.C.P. 1608(d)(xiv).

Although the rule mandates sibling visitation twice per month unless visitation is contrary to the safety and well-being of the child or sibling, siblings who have been placed apart should visit as often as possible. Thus, it is imperative that the judge or hearing officer specify in the order the frequency of sibling visitation that is expected. (See Chapter 8: Visitation and Visitation Bench Card.)

### 13.6.12 Findings Regarding Visitation with Parents and Guardians

At every permanency hearing, the judge or hearing officer is required to determine whether visitation with a parent or guardian is adequate unless a finding is made that visitation is contrary to the safety and well-being of the child. Pa.R.J.C.P. 1608(d)(xvii).

In determining whether the frequency or duration of the visitation is adequate, the court should consider:

- the age of the child;
- the wishes of the child;
- the level of supervision required;
- the distance the parties are required to travel for the visitation; and
- the quality of the visitation.

***Best Practices — Creative Visitation Plans***

- Creative plans clearly identify and communicate roles and responsibilities of all involved in the visitation plan.
- Frequency and duration of visits respects the individualized needs of the child and the parent/guardian**.**
- The location of the visits are designed for privacy and interaction only as restrictive as required to protect the child.
- Efforts to manage participant reactions to visits, initially and on an ongoing basis, are part of the creative visitation plan.

Visitation Workgroup, *Report to the Pennsylvania State Roundtable*, Office of Children and Families in the Courts 8 (May 2012).

**Visitation is a right that respects familial bonds; it is not a privilege.** Visitation should be consistent with the permanency goal and presumed to be unsupervised unless there is a valid reason for supervision.

The court should understand that frequent and meaningful family time can lessen the trauma of separation from family, can improve the quality of the relationship between a child and a parent, and can create a bond and relationship between an infant and his parents.

"Consistent with child safety, relationships between and among children, parents, and siblings are vital to child well-being. Judges must ensure that quality family time is an integral part of every case plan. Family time should be liberal and presumed unsupervised unless there is a demonstrated safety risk to the child."

NCJFCJ Permanency Planning for Children Department, *Key Principles for Permanency Planning for Children* (National Council of Juvenile and Family Court Judges, 23 July 2011).

Even when visitation is supervised, it should occur in the most family-friendly location possible. Attendance at a child's medical or educational appointments or other activities is the responsibility of a parent or guardian but should not be considered visitation.

***Best Practices — Benefits of Frequent Family Time***

- Promotes healthy attachment and reduces the negative effects of separation for the child and parents.
- Establishes and strengthens the parent-child relationship.
- Eases the pain of separation and loss for the child and parents.
- Keeps hope alive for the parents and enhances parents' motivation to change.
- Involves parents in their child's everyday activities and keeps them abreast of the child's development.
- Helps parents gain confidence in their ability to care for their child and allows parents to learn and practice new skills.
- Provides a setting for the caseworker or parenting coach to suggest how to improve parent-child interactions.
- Allows foster parents to support birth parents and model positive parenting skills.
- Provides information to the court on the family's progress (or lack of progress) toward their goals.
- Facilitates family assessments and can help the court determine whether reunification is the best permanency option for the child.
- Helps with the transition to reunification.

Gatowski, S., et al., *Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect* Cases 86 (National Council of Family Court Judges 2016), citing Dougherty, S. (2006) *Promising Practices in Reunification,* National Resource Center for Foster Care and Permanency Planning, Hunter College School of Social Work.

### 13.6.13 Educational, Health Care, and Disability Needs of the Child

At every permanency hearing, the judge or hearing officer is required to determine whether a child's educational, health care, and disability needs are being addressed. Pa.R.J.C.P. 1608(d)(1)(xii).

Educational success is a significant gauge of well-being for children and an important factor for a successful transition to adulthood. Yet educational success is often overlooked when children are in the dependency system. Sometimes, the same dependent children and youth whose safety and permanency needs are being met by the child welfare system experience significant educational challenges.

Educational success measures include:

- consistent attendance;
- achieving reading and math levels;
- academic progress;
- engaging in extracurricular activities; and
- developing an attachment to school.

With respect to the child's educational needs, the court should determine whether:

- the child is regularly attending school;
- the child has changed schools since the last review;
- the child is enrolled in an appropriate educational program; and
- the child is making progress toward promotion and graduation.

"Children in congregate care often lack an active, involved adult to make education decisions on their behalf. Without an adult invested in the child's education, the child is more likely to fall through the cracks of the school system. Judges must ensure that children in care have an adult in their lives to make education decisions on their behalf, and should appoint an educational decision-maker when needed pursuant to Juvenile Court Rule 1147."

Educational Success and Truancy Prevention Workgroup, *2013 Report to the Pennsylvania State Roundtable*, Office of Children and Families in the Courts, March 2013.

Educational stability is paramount, and any order of the court resulting in the placement of a child or change in the placement of a child shall address it. The Rules of Juvenile Court Procedure state that a child shall remain in their school of origin unless the court determines it is not in the child's best interest to do so. Pa.R.J.C.P. 1148(B). If the court orders the child to be enrolled in another school, then the child shall attend

public school unless the court finds this is not in the child's best interest. Pa.R.J.C.P. 1148(C). If attending a residential facility's on-grounds school, the court should ascertain whether the credits a child earns at a residential placement are transferable toward graduation at a public school. (See also Chapter 20: General Issues, Section 20.7 Congregate Care, Section 20.8.1 Factors to Consider Prior to Placement.)

Children with disabilities should have an Individual Education Plan (IEP) transition plan as required by 22 Pa. Code § 14.131(a)(5) included in their IEP beginning at age fourteen if they are eligible for special education services. Certain children may require supportive services or special living arrangements as they transition to independence. If the court determines that the parents are incapable of making educational decisions for the child or are not readily available and willing to participate in making educational decisions for the child, the court should appoint an Educational Decision-Maker (EDM) for the child. (See Chapter 10: Disposition, Section 10.6.1 When to Appoint an Educational Decision Maker and Pa.R.J.C.P. 1147.)

If an EDM has previously been appointed, the court should determine whether an EDM continues to be necessary and whether the appointed EDM is meeting the needs of the child. If parental rights have been terminated, the judge or hearing officer should ensure that an educational and medical decision-maker is appointed.

### KEY POINT REGARDING THE USE OF CYBER SCHOOL



**While virtual learning may be a viable option for some highly motivated youth, medically fragile children, or those who need to recover a few credits, studies indicate that cyber-learning is a poor option for at-risk students, particularly those with a history of truancy. When considering the use of cyber schools, judges and hearing officers should give significant weight to the needs of the youth, the level of adult supervision that will be available, and the capacity of the cyber school program to meet the foster youth's needs. Finally, judges and hearing officers should designate a specific person to monitor the youth's involvement and progress and supply a periodic report to the court.**

With respect to the child's health care needs, the court should determine whether the child is receiving all routine medical, mental health, and dental care as well as any special care, psychotropic medications, and services that the child may need.

***Best Practice — Questions to Ask When a Child is on Psychotropic Medications***

- What is the child's diagnosis?
- Is it the correct diagnosis?
- What is the medication's intended effect?
- Is it effective?
- Are we monitoring for adverse effects?
- If the child is doing well, have we thought about tapering the medication?
- What is the opinion of the treating physician?
- What other treatment interventions are happening along with medication?

If a child has a disability or special needs, the judge or hearing officer should determine whether the child's current placement is equipped to address the child's disabilities or special needs and whether the child is receiving the necessary services.

### 13.6.14 Other Findings as to Well-Being

It is important for children in kinship, foster, or congregate care to engage in the same types of activities and experiences as children who are not in care. At each permanency hearing, the court is required to make findings as to whether the agency has taken sufficient steps to ensure that the caregivers are exercising the reasonable and prudent parent standard and whether the agency has taken sufficient steps to ensure that the child has been provided regular and ongoing opportunities to engage in age-appropriate activities or developmentally- appropriate activities. (See Pa.R.J.C.P. 1120 for definitions of Reasonable and Prudent Parent Standard and Age-appropriate or Developmentally Appropriate.)

In making these findings, the court should consult the child and the caregivers and identify any barriers to participation.

### 13.6.15 Special Findings when the Permanency Goal is APPLA

**A child under the age of eighteen cannot be assigned the permanency goal or concurrent plan goal of Another Planned Permanent Living Arrangement (APPLA).** APPLA is the least favored of all permanency options and the rules require special findings and considerations *before* the goal of APPLA is assigned and *after* the goal of APPLA is assigned. Pa. R.J.C.P. 1608(d)(2).

Before assigning a goal of APPLA to a child 18 years or older, the court must consider evidence entered into the record concerning:

- the intensive, ongoing, and unsuccessful efforts that have been made to return the child home or to place the child with a fit and willing relative, legal guardian, or adoptive parent;
- the specific services, including the use of search technology and social media, to find biological family members and kin (family finding), as well as permanency services that have been provided to the child that serves as the intensive, ongoing, and unsuccessful efforts to achieve reunification, adoption, or placement with a guardian or fit and willing relative;
- the full names of a least two identified supportive adults with whom the child has significant connections;
- how each supportive adult has formalized the connection with the child;
- the specific services that will be provided by the agency to support and maintain the connection between the child and the identified supportive adults; and
- the specific planned, permanent placement or living arrangement for the child that will provide the child with stability.

Pa.R.J.C.P. 1608(d)(2)(i).

The court is also required to ask the child about his or her desired permanency outcome. Pa.R.J.C.P. 1608(d)(2)(ii). In speaking with the child, the judge or hearing officer should take the time to explain and make sure that the child understands all other permanency outcomes and why APPLA may not be the best permanency outcome for the child.

After consideration of the above facts and before assigning a goal of APPLA and at each subsequent permanency hearing, the judge or hearing officer must state on the record:

- why APPLA is (or continues to be) the best permanency goal for the child;
- compelling reasons why another permanency goal is NOT (or continues NOT to be) in the best interests of the child; and
- the full names of a least two identified supportive adults with whom the child has significant connections; and
- the identity of the specific APPLA approved by the court.

Pa.R.J.C.P. 1608(d)(2)(iii).

***Best Practice — Preventing a Goal of APPLA***

- A goal of APPLA should only be assigned when there is absolutely no other option.
- Start with identifying supports and life-long connections rather than placement. Utilize family finding to identify prospective supports for the child. Insist that someone from the agency speak with every identified person to identify supports. Sometimes someone who is a support can became a placement resource once they know the child.
- Order the agency to offer a FGDM or a family conference meeting. Sometimes the family may be able to come up with a plan.
- Cultivate support or create opportunities for the child to develop support, such as appointing a CASA, Youth Support Partner, or mentor. Encourage the child to engage in activities that are likely to connect him or her with positive supportive adults (scouting, community service projects, religious programs, etc.)
- Hold frequent status reviews on the issue of identifying supports for the child. At the status review, the court should review updates on family finding.
- Never give up! Even when APPLA is the goal, it should be carefully reconsidered and scrutinized at every subsequent court hearing.

### 13.6.16 Whether a Termination of Parental Rights (TPR) Petition Should Be Filed

The federal Adoption and Safe Families Act (ASFA) and the Pennsylvania Juvenile Act require the child welfare agency to request a goal change and file a Termination of Parental Rights (TPR) petition when a child has been in care for 15 out of the past 22 months unless compelling circumstances apply. (See 42 U.S.C. §§ 671-679, 42 Pa.C.S. § 6351(f)(9) and for a more detailed discussion, see Chapter 14: Permanency Hearing to Consider Change of Goal and Chapter 17: Termination of Parental Rights.) The judge, not the agency, determines whether there is a compelling reason NOT to file a petition for termination of parental rights. Therefore, it is imperative that the judge be aware of all the facts and circumstances of the case to make the final decision as to compelling circumstances. Juvenile Court Hearing Officers do not have authority to preside over TPR hearings. Pa.R.J.C.P. 1187.

Prior to the judge ordering the agency to file a TPR petition, several factors should be considered. The judge should consider:

- the length of time the child has been in placement while considering the 15 out of 22 months requirement;
- the child's desire for adoption if the child is 12 years of age or older 23 Pa.C.S. § 2711;
- progress made toward the goal of reunification; and

- whether or not aggravated circumstances have been filed and found (see the discussion of aggravated circumstances in Chapter 20: General Issues, Section: 20.2).

Under certain circumstances, there may be a compelling reason not to file a termination petition. These reasons can include that the child is being cared for by a relative and that the relative does not wish to pursue an adoption and permanent legal custody is being considered, that good progress has been made by the parent(s) or guardian(s) and the expectation is that they will achieve compliance with their permanency plan shortly, or the needed services were not provided to the family for the child to be reunited with the parent(s) within the time frames set by the permanency plan. (See Chapter 17: Termination of Parental Rights for more information.)

Other circumstances in which a TPR petition should be filed without regard to the 15 out of 22-month timeframe include:

- aggravated circumstances have been found, and no reasonable efforts to reunify the child and parent(s) are required;
- the child has been abandoned, and no parent has had any substantial or continuing contact for a period of six months or greater;
- any time it is clear to the judge that reunification is not viable and adoption seems to be the most appropriate permanency goal for the child.

If the permanency goal is changed to adoption, the judge should inquire about whether the agency or parents' attorneys have discussed voluntary relinquishment and consent to adoption with the parents. An inquiry should also be made regarding the child's desire for adoption if the child is twelve years of age or older. 23 Pa.C.S. § 2711. The judge may also want to consider whether post-permanency counseling is appropriate for either the child or parent.

If a child has been in care for 15 out of 22 months with a permanency goal of reunification, the court may want to consider a change in goal even if termination of parental rights is not an option. In any case, the court should assess the parents' progress with the FSP/CPP, whether the child is happy and safe in the current placement, and whether another permanency goal should be considered.

### 13.6.17 When and How the Child Will Achieve Permanency

Finally, based on all the determinations made above and all the evidence presented at the permanency hearing, the court must determine if and when the child will be returned to their parents or guardian in cases in which reunification is in the child's best interests or if and when the child will be placed for adoption, placed with a legal custodian, placed with a fit and willing relative, or placed in another planned, permanent living arrangement. These options are listed in order of preference, and the determination

is made based on what is best suited to the child's safety, protection, and physical, mental and moral welfare. 42 Pa.C.S. § 6351(f.1).

The preferred goal in most cases is reunification with a parent or guardian, followed by adoption, permanent legal custodianship, and placement with a relative. The least preferred permanency goal is APPLA, which can only be used with a child 18 years or older. APPLA is often the goal for older youth who are not able to return home.

It is the responsibility of the agency and the court to do everything possible to ensure that any child, including older youth, secures a loving and permanent home.

***Best Practice — Helping Older Youth Secure Permanency***

The following practices can assist in identifying and securing permanent homes for older youth and children that the agency has not been able to place in a permanent home:

- Adoption Prep and Profile Services
- Child Specific Recruitment
- Family Finding
- Matching Specialists
- Pre-Placement Visitation with Prospective Families

### 13.6.18 Family Finding

As indicated above, the judge or hearing officer must place determinations on the record as to whether the county agency has reasonably engaged in family finding. Pa. R.J.C.P. 1149 A(2).

Family finding must be commenced for a child by the county agency when the child is accepted for services. 67 Pa.C.S. § 7503(a). The county agency must utilize resources to search for relatives and kin.

A "relative" is defined as an individual at least 21 years of age and within the fifth degree of consanguinity or affinity to the parent or stepparent of the child. 67 Pa.C.S. § 7502.

"Kin" is defined as an individual 21 years of age or older who is one of the following:

(1) A Godparent of the child as recognized by an organized church.
(2) A member of the child's tribe, nation or tribal organization.
(3) An individual with a significant, positive relationship with the child or family.

*Id.*

**Best Practice: Family Finding Report**

Prior to a permanency hearing, the county agency could file a report that documents the efforts of the county agency in finding family and kin as possible family support and/or placement options. This report could include dates of interviews with the child, parents, family, and kin to demonstrate ongoing family finding efforts. Noting how the family and kin are involved in the child's life, such as visits or phone calls, would also be helpful information to the court.

The county agency should be continuously searching for family members and adults who have or could have significant, positive connections with the child and/or family.

For more information regarding Family Finding, See Chapter 2: Act 118 of 2022: Family Finding.

## 13.7 Admissibility of Evidence, Reports, and other Documents

A judge or hearing officer has broad discretion concerning the admissibility of evidence, reports, and documents at a permanency hearing. The judge or hearing officer should consider any evidence that is helpful in determining the appropriate course of action, including evidence that was not admissible at the adjudicatory hearing. Pa.R.J.C.P 1608(c)(1).

Per Pa.R.J.C.P. Rule 1608(f), the modified or updated FSP/CPP must be submitted to the court, the parties and counsel at least 15 days before the permanency hearing. However, if the FSP has not been modified or updated or if the hearing is an expedited review or status hearing, the FSP, report and recommendations from the agency, proposed orders of court, CASA report, etc. should be submitted to the court and counsel at least 72 hours in advance of the hearing.

Foster parents, pre-adoptive parents, and relative caregivers are also entitled to submit a pre-hearing report to the court regarding the child's adjustment, progress, and condition and to have the report examined and considered as evidence. Pa.R.J.C.P. 1604. The President Judge shall assign a designee to receive these reports. The designee will file the report with the clerk of courts and distribute to the judge, attorneys, parties, and CASA if appointed.

If requested, due process requires that the judge or hearing officer permit cross-examination of those who have provided information upon which the judge or hearing

officer may rely. All parties have a right to cross-examine witnesses and challenge evidence. "Where reception of hearsay evidence would deprive the parent of an opportunity to confront and cross-examine a witness, such evidence may not be admitted." *In the Interest of Jones*, 429 A.2d 671, 678 (Pa.Super. 1981).

## 13.8 Findings and Orders

After a permanency review hearing, the court shall enter its findings and conclusions of law into the record in open court and enter an order pursuant to Rule 1609. Pa.R.J.C.P. 1608(d).



**The court order is the document that drives the case. If well-written and timely entered, the order gives clear and comprehensible direction to all parties of what the court expects.** It enables the caseworker to initiate the necessary services and fine-tune the Family Service Plan/Child Permanency Plan.

A good court order should state the court's findings of fact and conclusions of law. Well-written, detailed findings can save time later as they may be incorporated at the permanency hearing to consider a change of goal or at a TPR hearing. In cases of multiple siblings, the findings, conclusions, and orders should be child-specific.

The order should clearly communicate to the parties, foster parents, providers, and other interested persons what is expected between the review hearings. Whenever feasible, detailed court orders should also contain dates or timelines for the implementation of specific orders. This can increase accountability and encourage timely case progress.

The judge or hearing officer is the gatekeeper to making a good record. Therefore, the order should indicate the names of the parties and all counsel and whether the parties and attorneys were present at the hearing.

The order should clearly reflect what occurred at the review hearing, what is expected to occur before the next hearing, and what will occur at the next review hearing (goal change, possible case closure, etc.). If possible, the order should provide the date, time, and place of the next review hearing.

In Pennsylvania, dependency findings and orders for permanency hearings are contained within the Common Pleas Case Management System Dependency Module (CPCMS). These court forms contain the needed information to assist the court in asking the necessary questions, managing the case, meeting federal requirements, and capturing statewide data. The forms also allow for the entering of detailed text, which can outline the specific directives of the court.

**"Judicial findings can strengthen the court's decision-making and create a more complete record. Clear findings at the previous hearings, including specific instructions to the parties, increase the likelihood that there will be consistent decisions in the case. Without a strong written record, there is a risk that the same issues and excuses for parental or agency inactivity will be repeated, prolonging case resolution."**

Gatowski, S. et al., *Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* 273 (National Council of Juvenile and Family Court Judges 2016).

However, in some counties, the addition of language into the CPCMS-generated order is not available due to staffing. The judge or hearing officer may hand-write the language into the CPCMS-generated order. If the detailed language desired by the judge or hearing officer is extensive, then, at the end of the proceeding, the judge or hearing officer may desire to dictate a supplemental order to be attached to the CPCMS-generated order. The paralegal, law clerk, court reporter, etc., are able to add details to the proposed order during the hearing. The judge or hearing officer will need to review the order for accuracy prior to filing.

The court order should clearly set forth who has legal custody of the child, including who will make educational and medical decisions for the child; the physical placement of the child, including the name and address of such person (unless disclosure is prohibited by the court); the specific visitation schedule for the parents, guardians, or siblings that are adjudicated dependent but not placed together; and any conditions, limitations, restrictions, and obligations in its permanency order imposed upon any parties to the action.

## 13.9 Thorough Permanency Hearings

By rule, there are many matters to be determined during a permanency hearing. It is important to safety, well-being, and timely permanence that the court conducts a thorough hearing. Judges and hearing officers should consider using the Permanency Review Hearing (PRH) Checklist to ensure all matters have been considered. The PRH Checklist can be found at the end of this chapter.

"The judge told me I had rights and I get to speak."

- Pennsylvania Parent

## *Best Practices — Findings and Orders*

Whenever possible, rule from the bench so that the parties understand what happened at the hearing and what is expected to occur in the future.

If possible, the parties should leave the courtroom with a copy of the court order. Handing out court orders gives parties an immediate, written record of what was decided, what they are expected to do prior to the next hearing, any social services that have been specifically ordered, and the date and time of the next hearing.

Providing parties, especially parents, with a copy of the court order at the conclusion of the hearing can increase their participation in the case plan. This can have a positive impact on successful front-loading of cases by involving parents earlier in the court process.

Dedicate the last few minutes of a hearing to allow sufficient time to create the order. Parties can wait for the order to be completed and distributed.

It is important that the child and the parents (especially those who may not be represented) understand the court's findings of fact and the legal conclusions. The parties deserve an explanation. Remember that not all parents or children can or will read the written order.

When stating the findings and conclusions on the record, the judge or hearing officer should ensure the parties that all evidence was considered and should highlight both strengths and challenges. The judge or hearing officer should make sure that the parties understand the findings and orders and give the parties the opportunity to ask questions.

If an appeal is filed, well-written and well-recited findings and orders make a good record for the appellate court. This is especially important with the Children's Fast Track rules.

## QUESTIONS TO BE ASKED AT PERMANENCY HEARINGS

*Note:* These lists of questions are not exhaustive. It is important to adapt the questions to each specific case and, within a case, to tailor the questions for each sibling, parent, and guardian. Additionally, the judge or hearing officer must always determine whether the agency has made reasonable efforts to reunify the child with the parents or to finalize the permanency plan.

**These suggested questions concern the issues of the need for placement and the quality of the placement.**

___ How long has the child been in out-of-home placement?
___ If the child is in a residential treatment facility (RTF), is the RTF still medically necessary? If not, where will the child be placed upon discharge from the RTF?
___ If the child is in placement through juvenile probation, are there issues in the home that would prevent the child's return? Are there relatives available, or does the child need foster care?
___ Is placement still needed? Why?
___ Should the child be placed with siblings?
___ Are there any relatives available for purposes of placement or visitation?
___ Is the current placement still appropriate? If not, why?
___ Is the permanency plan still appropriate and feasible? Why or why not?
___ Is the child safe? If not — why?
___ Is the placement meeting the child's needs?
___ How has the child adjusted to placement?
___ Has the child bonded to the foster family?
___ Is the child happy?

**These suggested questions concern the child's needs and behaviors.**

_____ What is the level of compliance of the child (if applicable)?
_____ In cases where the removal was based on the child's conduct (truancy, ungovernability, etc.), what progress has been made in alleviating the conditions that led to the original placement?
_____ If the child is not placed with siblings, are sibling visits occurring?
_____ Has the child had all appropriate/required immunizations?
_____ Has the child seen a dentist? Does the child need glasses?
_____ Does the child have any special medical or mental health needs? Are these needs being met?
_____ Is the child prescribed any medications? Is the child compliant with medication?
_____ Is the child in need of mental health services or other therapeutic services? Is the child receiving these services?
_____ Is the child experiencing any behavioral issues?
_____ Are the child's educational needs being met? Is the child on target educationally?

_____ What services are needed to assist a child 14 years of age or older in transitioning into independent living?
_____ Does the child need clothing?
_____ What extra-curricular activities is the child involved in?

**These suggested questions concern the child's educational needs.**

_____ Where does the child attend school? What grade is the child in?
_____ Has the child changed schools since entering care? Had the child changed schools prior to the adjudication of dependency?
_____ What is the educational setting? Is the child in an appropriate school setting where he/she can make progress toward graduation?
_____ Should the child be evaluated or re-evaluated for special education, or does the child need any accommodations for a disability (504 Plan)?
_____ Does the child have an Individualized Education Plan (IEP)? Is a special needs child's IEP enabling the child to make progress?
_____ If the child has an IEP, are the IEP and evaluations up to date?
_____ If the child is 14 years of age or older, does the child have an IEP transition plan regarding how the child will transition to independent living?[1]
_____ Is the child making progress toward promotion? Is the child on track academically and in the right grade?
_____ Is the child attending school on a regular basis?
_____ If truancy is an issue, how has the school intervened? Have the underlying reasons for the truancy been determined? Is there a plan? How is it working?
_____ Are there any issues with transportation to and from school?
_____ What are the child's grades? Is the child on grade level in reading and math? If not, is the child participating in tutoring at school?
_____ Are the child's behaviors in school appropriate? Describe the behaviors.
_____ Has the child been suspended or expelled? Why?
_____ Does the child like school? Does the child have friends at school? What are the child's favorite subjects? (Questions for the child.)
_____ Does the child or youth participate in developing his or her educational goals? If not, can such a process be implemented so that the youth will feel invested in his or her education?
_____ Is the child engaged in a sport, club, or extracurricular activity at school?
_____ Is the student involved in a mentoring program?
_____ Are the parents or guardians attending school meetings and advocating for the child's educational needs?
_____ Are the parents and guardians meeting the child's educational needs? If not, does the child need an Education Decision Maker (EDM)? If so, who should be appointed?

[1]The transition plan for children with disabilities in federal law is required by age 16 at the latest. 20 U.S.C. § 1414 (d)(1)(A), 34 C.F.R. § 300.320(b). In Pennsylvania, the PA Code requires such an IEP transition plan by age 14 years of age. 22 PA Code § 14.131(a)(5).

_____ If the child or youth has special needs, does the EDM need help navigating the IEP process?[2]
_____ Does the child have an involved Educational Decision Maker? Is the EDM still necessary?
_____ If the child has entered high school, is he or she on track to graduate? Does he or she have a graduation plan? Has this child been informed of post-secondary opportunities?
_____ Does the child who is 18 or older have a detailed transition plan under Pa.R.J.C.P. 1631?
_____ If the child attends a post-secondary educational program, is he or she making progress toward graduation?

**These suggested questions concern compliance and progress of the parents/guardians.**

_____ What is the level of compliance of the mother?
_____ What is the level of compliance of the father?
_____ What progress has the mother made toward alleviating the circumstances that led to the original placement?
_____ What progress has the father made toward alleviating the circumstances that led to the original placement?
_____ Are the parents regularly visiting the child?
_____ Do the visits go well?
_____ Have either of the parents requested any services that the agency has not provided or cannot provide?

**These suggested questions concern the permanency plan and the permanency/placement goal.**

_____ Is the permanency plan appropriate and feasible? Why or why not?
_____ Were reasonable efforts made to finalize the permanency plan? If not—why?
_____ Is the current permanency/placement goal appropriate and feasible? Why or why not?
_____ If the current permanency/placement goal is not appropriate, what is the new goal?
_____ What is the likely date that the permanency/placement goal might be achieved?

**These questions concern the issue of whether a petition for termination of parental rights should be considered.**

_____ Has a petition for aggravated circumstances been filed? Have aggravated circumstances been previously found? (See Chapter 20: General Issues, Section 20.2 for more information on aggravated circumstances.)

[2] (The PEAL Center or the Disabilities Rights Network of Pennsylvania can provide IEP support.)

_____ If the child has been in placement for at least 15 of the last 22 months or the court has determined that aggravated circumstances exist and that reasonable efforts to prevent or eliminate the need to remove the child from the child's parent or preserve and reunify the family need not be made or continue to be made, has the county agency filed or sought to join a petition to terminate parental rights (TPR) and to identify, recruit, process, and approve a qualified family to adopt the child?

_____ If the permanency goal has been changed to adoption or a TPR petition has or will be filed, has the agency or the parents' attorneys spoken with the parents about a voluntary relinquishment or consent to adopt?

_____ If the child is 12 years of age or older, does the child want to be adopted?

_____ Should the parents and/or the child be referred to adoption counseling?

_____ If the agency has not filed a TPR petition has the court considered the following:

- whether the child is being cared for by a relative best suited to the physical, mental and moral welfare of the child;
- whether the county agency has documented compelling reason for determining that filing a petition to terminate parental rights would not serve the needs and welfare of the child; or
- whether the child's family has not been provided with necessary services to achieve the safe return to the child's parent within the time frames set forth in the permanency plan?

**These suggested questions concern the issue of when the child will achieve permanency.**

_____ When will the child be returned to the child's parent, guardian, or custodian in cases where the return of the child is best suited to the safety, protection, and physical, mental, and moral welfare of the child?

_____ When will the child be placed for adoption and when will the county agency file for termination of parental rights in cases where return to the child's parent, guardian, or custodian is not best suited to the safety, protection, and physical, mental, and moral welfare of the child?

_____ When will the child be placed with a legal custodian in cases where the return to the child's parent, guardian, or custodian or being placed for adoption is not best suited to the safety, protection, and physical, mental, and moral welfare of the child?

_____ When will the child be placed with a fit and willing relative in cases where return to the child's parent, guardian, or custodian, being placed for adoption or being placed with a legal custodian is not best suited to the safety, protection, and physical, mental, and moral welfare of the child?

_____ If the goal is placement in another planned permanent living arrangement (APPLA) for a child 18 years or older, has the county agency documented a compelling reason that it would not be best suited to the safety, protection, and physical, mental, and moral welfare of the child to be returned to the child's parent, guardian, or custodian, to be placed for adoption, to be placed with a legal custodian, or to be placed with a fit and willing relative? Have all efforts to achieve a more preferred permanency goal been exhausted? Have circumstances changed such that another goal should be considered?

**These suggested questions concern the issue of the child's progress, behaviors, needs, etc. (questions for the caregivers).**

_____ Describe the child's interaction with you (the caregiver).
_____ Is there any change in the child's behaviors after the child returns from a visit with the parents, siblings, or other family members?
_____ Does the child sleep well? Does the child sleep through the night?
_____ Does the child have nightmares or bad dreams?
_____ How does the child interact with other children?
_____ How has the child adjusted to school?
_____ How is the child doing in school—academically and behaviorally?
_____ Does the child talk about his family? What does he say?
_____ Does the child seem happy or content?
_____ Does the child need anything?
_____ Is the child involved in extracurricular activities?
_____ Do the parents call the child or write letters?
_____ How does the child react or respond to the letters or telephone calls?

**These suggested questions concern the well-being of the child.**

_____ What do you like/ What does the child like to do for fun?
_____ Do you/Does the child have friends? Who is your/Who is the child's best friend?
_____ Do you feel safe (at home, foster home, school, community)?
_____ Does the child have any special medical, physical, or mental health needs?
_____ Is the child receiving appropriate treatment and services for mental or physical health needs?
_____ Is the child up to date on medical and dental appointments and immunizations?
_____ Does the child have enough clothing?
_____ Does the child have appropriate toiletries?
_____ Do you/Does the child have the opportunity to get their hair done or get a haircut?
_____ Is there anything that you/ that the child wants or needs?
_____ Are you/Is the child participating in age-appropriate activities such as sports, music, dance, arts, etc.?
_____ Do you/Does the child have the opportunity to spend quality time with extended family and friends?

**These suggested questions are designed to engage the child.**

_____ Do you want to speak? Would you like the courtroom cleared?
_____ Are you happy at home or in your placement?
_____ Would you tell me what your room looks like?
_____ Do you feel safe in your placement or at home?
_____ Where are you attending school? How are you doing in school?
_____ What do you like to do for fun?
_____ What are you interested in?

_____ If the agency or the court could provide you with something that you wanted, what would it be?
_____ Do you have a life plan?
_____ What are your goals or plans after you complete high school?
_____ Do you need clothing, glasses, etc.?
_____ How often do you see your parents and/or siblings? If it were possible, would you like more visits with them?
_____ Do you enjoy the visits with your parents and/or siblings? Why or why not?
_____ Are there other important people you want to have contact with?
_____ Who do you miss?

**These suggested questions concern the transitional/older youth?**

_____ Will you graduate on time?
_____ Would you like to attend special events such as the prom? Do you need assistance with clothing or purchasing tickets to attend these events?
_____ Are you able to get graduation photos taken?
_____ What would you like to do after graduating high school or getting your GED?
_____ Do you have your birth certificate, social security card, driver's license, or state I.D.?
_____ Are you employed, or would you like to have a job?
_____ Tell me the names of at least 3 supportive adults who will support you for the rest of your life.
_____ Would you like to obtain a driver's license?
_____ Would you like to visit colleges or vocational schools?
_____ Have you taken the SAT? Have you completed the FASFA forms?
_____ Are you interested in the military? If so, have you taken the ASFAB exam?
_____ Do you have a bank account?
_____ Has your attorney or your caseworker talked to you about continuing services and court supervision after you turn 18? Have you agreed to continued services and court supervision?
_____ If you have not agreed to continued services and court supervision, why not?
_____ Tell me about your plans when your case is closed. Do you have a job? Where will you live? How will you eat? Who will buy your clothes?
_____ If your case were closed:

- Who would you call to take you to the hospital if you were sick in the middle of the night?
- Who would send you a birthday card or buy you a birthday present?
- Who would you speak with for advice?
- Where will you spend special holidays (Christmas, Thanksgiving, Hanukkah, etc.)?
- Where would you live? How would you buy clothing, food, and hygiene products?

**For youth who are parents ask the following:**

_____ Are you visiting your child (if the child is in foster care)? How often? How do the visits go?
_____ Does your child seem happy?
_____ Do you attend your child's medical and dental appointments?
_____ Does your child seem healthy?
_____ Do you think your child is safe?
_____ Does your child need anything?
_____ Is there anything that you need?
_____ Are you receiving/paying child support?
_____ Does your child have contact with the other parent?
_____ Does your child have contact with other family members?
_____ If your case is closed, how will you care for your child?

**For youth 18 years and older with a goal of APPLA ask the following:**

_____ Do you understand what APPLA means?
_____ Would you like to try to return home with your parent(s)? Why or why not?
_____ What do need so that you can return home to a parent?
_____ Why do you not wish to return home?
_____ What do you think your permanent home should be?
_____ With whom would you like to live on a long-term or permanent basis?
_____ Would you like to be adopted? Why or why not?
_____ Give me the name of at least two adults who are important in your life and who will support you whenever you need support?
_____ Would you like to visit with any family members in another county or another state?

**These suggested questions concern Family Finding:**

_____ Has the county agency attempted to contact family and/or kin?
_____ Are any identified family and/or kin a possible support in any way for the child and/or family?
_____ Are any identified family and/or kin a possible placement Resource?
_____ Has the county agency filed a family finding report prior to the hearing?

# Permanency Review Hearing
## CHECKLIST

### Beginning the Hearing
- [ ] Explain hearing purpose
- [ ] Advise hearing can be heard by judge
- [ ] Swear in witnesses

### Present
- [ ] Child must be seen once every 6 months (min)
- [ ] Inquire about absentee parent (if app)
- [ ] Engage child and parent
- [ ] Consult with child and parent

### Primary and Concurrent Goal
- [ ] What is the primary goal?
- [ ] What is the concurrent goal?
- [ ] What actions have been taken to support the goal?
- [ ] What specific steps have been taken towards the concurrent goal?

### Family Finding—Required by Act 118
- [ ] Ask for Family Finding Report
- [ ] What was done to involve family/kin in planning?
- [ ] Specific steps taken by child welfare agency
- [ ] How specifically will they be involved in the child's/family's life?
- [ ] Specific steps taken by others
- [ ] Additional people identified by parent/child
- [ ] Order family finding

### Family Meeting
- [ ] Ask for family plan
- [ ] Briefly summarize the meeting and plan
- [ ] Date of last family meeting
- [ ] Does the family plan support the permanency goal?
- [ ] Who was present( family/professionals)?
- [ ] Next family meeting date

### Safety
- [ ] Is child safe in current placement? (regardless of age)
- [ ] Least restrictive placement?
- [ ] What is preventing me from returning the child today?
- [ ] Parent's protective capacities?
- [ ] What is the continued safety threat?
- [ ] Child's vulnerabilities?

### Permanency
- [ ] Parents Progress and Child's Progress: Do the actions occurring support the goal?
  If not, why not? What needs to be ordered?
- [ ] Highlight parent and child strengths

### Well-being
- [ ] Physical Health
- [ ] Trauma
- [ ] Education
- [ ] Mental Health
- [ ] Mother Visitation
- [ ] Connections/child's calendar
- [ ] Psychotropic Med
- [ ] Father Visitation
- [ ] Prep for independence (older youth)
- [ ] Sibling Visitation
- [ ] Age & Developmentally Appropriate Opportunities

### Order
- [ ] Findings/orders on record in open court
- [ ] Ask parents/child if they understand or have questions

# PERMANENCY HEARING BENCHCARD

| | |
|---|---|
| Relevant Statutes | 42 Pa.C.S. § 6351<br><br>Pa.R.J.C.P. 1607 (Scheduling of Permanency Hearings) & 1608(C) (Evidence in Permanency Hearings). |
| Purpose of Hearing | The child should attend every hearing unless waived by the judge. At the permanency hearing the court determines if the child welfare agency has made reasonable efforts to finalize the permanency plan in effect for the child.<br><br>The court will make a permanency decision as to whether the plan for the child should be: reunification, adoption, legal custodianship, placement with a relative or another permanent living arrangement. The court should also consider concurrent planning for the child to achieve permanency more quickly.<br><br>Time is of the essence for permanency of children. The purpose of the permanency hearing is to determine when the child will achieve the permanency goal or whether modifying the current goal is in the best interest of the child. |
| Time Frame | A permanency hearing must be held within 6 months of the child's removal from the home or a transfer of temporary legal custody or other disposition, whichever is earlier.<br><br>A permanency hearing must be held within 30 days of a determination that reasonable efforts to reunify the family are not required. |
| Rules of Evidence | Evidence of conduct by the parent that places the health, safety or welfare of the child at risk, including evidence of the use of alcohol or a controlled substance, can be presented to the court regardless of whether it was the basis for the determination of dependency.<br><br>"Any evidence helpful in determining the appropriate course of action, including evidence that was not admissible at the adjudicatory hearing, shall be presented to the court" (Pa.R.J.C.P. 1608(C) (1)). |
| Next Hearing | A permanency hearing must be held every 6 months until the child is removed from the jurisdiction of the court.<br><br>**Best practice is to conduct review hearings a minimum of every 3 months.** |

# PERMANENCY HEARING
# SUMMARY OF KEY QUESTIONS/DETERMINATIONS

- Were reasonable efforts made by the agency to reunify the family and to finalize a permanent plan?
- Is the plan in the best interest of the child?
    - Will placement be continued for a specific time, with a continued goal of family reunification? Have adoptive parents been identified?
- If legal custodianship is the plan, why is it preferable to TPR and adoption?
- If/when will the custody of the child be transferred to an individual or couple on a permanent basis?
- If APPLA is the plan:
    - Has the county agency documented a compelling reason that it would not be best suited to the safety, protection and physical, mental and moral welfare of the child to be returned to the child's parent, guardian or custodian, to be placed for adoption, to be placed with a legal custodian or to be placed with a fit and willing relative?
    - Has family finding been thoroughly conducted?
    - Have all efforts to achieve a more preferred permanency goal been exhausted?
    - Have circumstances changed such that another plan should be considered?
    - Is the child placed in the most family-like setting possible?
- What are the child's special needs? Who is to provide the services to meet the child's needs?
- Is the visitation plan still appropriate or do revisions need to be made?
    - Does the frequency and duration of the visits seem appropriate based on the child's age and needs?
    - Have relatives or kin resources been exhausted for visitation location and oversight?
    - Has a visitation plan been presented to the court that outlines details of the visitation plan, including assistance to the parent or siblings such as transportation?
- What are the child's educational needs?
    - Will the child remain in the same school?
    - If the child has been moved, does the child need new assessments?
    - If the child has been moved, is there monitoring to make certain his or her transition is successful?
    - Is the child appropriately placed, attending school, and making progress?
    - Does the child have a parent or guardian making reliable education decisions or should an EDM be appointed?
- If not already determined, has the court made a determination as to whether the child is an Indian Child as defined by the Indian Child Welfare Act, 25 U.S.C. § 1901 *et seq*. and the Bureau of Indian Affairs regulations, 25 C.F.R. § 23.2?

These questions are adapted from the text of this chapter, the *Mission and Guiding Principles for Pennsylvania's Dependency System* and the Permanency Hearing Benchcard provided in the *Enhanced Resource Guidelines* (NCJFCJ, 2016, pp. 319-329).

# Chapter 14 – Permanency Hearing to Consider Change of Goal (Goal Change Hearing)

## 14.1 Overview

The goal change hearing is the name commonly given to the permanency hearing that initiates the permanent removal of the child from the parents. Although this term will not be found in the Juvenile Act or the Pennsylvania Rules of Juvenile Court Procedure, it will be used here to denote any permanency hearing in which any party or the court itself seeks a change in the permanency goal from reunification to some other option.

Most dependency cases begin with a permanency goal of reunification with the parents or guardians. During the permanency review process, the judge or hearing officer monitors the parents' compliance with the permanency plan and their progress toward remedying the circumstances that led to the removal of the child. The judge or hearing officer also assesses whether the agency has made reasonable efforts to finalize the permanency plan and has made reasonable efforts to comply with family finding requirements. (See Chapter 20: General Issues, Section 20:3 for more information on reasonable efforts.)

When reasonable efforts have been made to finalize the permanency plan, but the child has remained in care and reunification is not viable or imminent, the court must consider changing the goal from reunification to another permanency goal. In many cases, this means a change to adoption. Other goal options in the permanency hierarchy are: Permanent Legal Custodianship, Permanent Placement with a Fit and Willing Relative and Another Planned Permanent Living Arrangement (APPLA) for children ages 18-21 years old. (See Chapter 12: Permanency Options for more information on the permanency hierarchy.)

The goal change hearing can be emotional for both the child and the parents. Like every permanency hearing, the goal change hearing must be judge-driven. While it is important to give the parties the opportunity to be heard, it is equally important for the judge to maintain control over the hearing, to rule from the bench whenever possible, and to explain decisions on the record to assure that all parties understand. (See the general discussion of the conduct of permanency hearings in Chapter 13: Permanency Hearings.)

It should be noted that, under Pa.R.J.C.P. 1187(A)(1)(c), a hearing officer does not have the authority to preside over any hearing in which any party seeks to establish a permanency goal of adoption or change the permanency goal to adoption. However, once the goal has been changed by the judge to adoption, the hearing officer may hear all subsequent review hearings unless a party objects or exercises the right to have a hearing before the judge.

## 14.2 Initiating the Goal Change

The Juvenile Act generally requires the agency to request a goal change and file a petition for termination of parental rights when the child has been in care for 15 out of the last 22 months. 42 Pa.C.S. § 6351(f)(9). This requirement is consistent with federal law as amended by the Adoption and Safe Families Act (ASFA). 42 U.S.C. § 675 (5)(C) and (E).

In addition, there are other points when the agency should request and/or the court should consider a goal change. In cases involving aggravated circumstances, including severe physical abuse, sexual abuse, or aggravated physical neglect, where it is demonstrated at the outset of the case that the circumstances that led to removal cannot be remedied and that the child cannot be safely reunified with the parents, the court can establish a goal other than reunification from the beginning.

The permanency goal should also be changed when there have been aggravated circumstances found and the court has determined that reasonable efforts to preserve or reunify the family are not required, when the child has been abandoned and no parent has made substantial or continuing contact for a period of six months, *or at any time when it is clear to the judge that reunification is not viable and another permanency goal seems to be more appropriate for the child.* (See Chapter 20: General Issues, Section: 20.2 for more information on aggravated circumstances.)

In most cases, the goal change is initiated by the child welfare agency, but any party may seek a goal change. If a party intends to request a goal change from reunification, then either the notice of the permanency hearing shall state this purpose or the party shall give separate notice of intent to change the goal. Pa.R.J.C.P. 1601(B).

There is nothing in the Pennsylvania Rules of Juvenile Court Procedure or the Juvenile Act that precludes the court from ordering the agency to change the permanency goal or to order the filing of a petition for termination of parental rights.

A parent can also agree to a goal change. In cases proceeding to adoption, the parent can file a petition to voluntarily relinquish his or her parental rights. (See discussion of voluntary termination below.)

In addition, the Guardian *Ad Litem* (GAL) or counsel for the child may initiate a goal change in the interest of the child or at the request of the child. It is crucial that the views of the child regarding the permanency plan, including the request for a goal change be ascertained to the fullest extent possible and communicated to the court by the child, the GAL, attorney, CASA, or other person as designated by the court pursuant to 42 Pa.C.S. § 6351(e)(1).

***Best Practice — Goal Change Initiation***

While not required by Pennsylvania statute or rule of court, the request to change a goal can come in many forms. The official change of goal by the court is most commonly initiated by the agency. This is typically done by the agency petitioning the court for a permanency hearing with notice that they are requesting a goal change.

Additionally, nothing precludes the court from initiating a change of goal. In some counties the judge informs all the parties at the permanency hearing that at the next scheduled permanency hearing a change of goal will be considered. It is particularly beneficial to provide all parties with the date of the upcoming goal change hearing to prevent any issues of parties not receiving appropriate notice.

In cases where the child is twelve years of age or older, the child must consent to adoption. It is important to know whether the child is consenting to adoption *before* the goal is changed to adoption and a petition to terminate parental rights is filed.

The Guardian A*d Litem* or counsel for the child may also file a petition for termination of parental rights. 23 Pa.C.S. § 2512(a)(4).

## 14.3 Goal Change to Adoption

As noted, when a child has been in care for 15 out of the past 22 months, the agency is required to ask for a change in the permanency goal from reunification to another permanency goal, in most cases adoption, and file a petition for termination of parental rights unless certain exceptional circumstances apply. These circumstances include:

1. that the child is being cared for by a relative best suited to the physical, mental, and moral welfare of the child;
2. that the agency has documented a "compelling reason" for determining that filing a petition to terminate parental rights would not serve the needs and welfare of the child; or
3. the child's family has not been provided with necessary services to achieve the safe return to the child's parent, guardian, or custodian within the time frames set forth in the permanency plan.

42 Pa.C.S. § 6351(f)(9).

While the agency may be required to request a change in goal as set forth above, the court is not required to grant the request. *In re R.J.T.*, 9 A.3d 1179, 1190 (Pa. 2010). In *In re R.J.T.*, the Pennsylvania Supreme Court reiterated the need for appellate courts to defer to the findings of fact and credibility determination of a trial court in dependency cases given that trial courts have generally "presided over several other hearings with the

same parties and have a longitudinal understanding of the case and the best interests of the individual child involved." *Id*. The court rejected the conclusion that a trial court was required to grant a goal change motion if a child had been in placement for fifteen of the last twenty-two months pursuant to subsection (f)(9), instead opining that subsection (f)(9) was merely "one of a number of factors a trial court must consider in ultimately determining whether the current placement is appropriate or if and when another placement would be appropriate based upon a trial court's assessment of what is 'best suited to the safety, protection and physical, mental, and moral welfare of the child.'" *Id.* (quoting 42 Pa.C.S. § 6351(g)).

***Best Practice — Combining Goal Change and Termination Hearings***

Consider hearing the goal change and the termination of parental rights at the same time. The evidence at both hearings is essentially the same and hearing both at the same time is more efficient. The Juvenile Act suggests that it is appropriate for the dependency judge to also preside over the termination hearing. 42 Pa.C.S. § 6351(i). See also Chapter 17: Termination of Parental Rights.

When considering whether to change the goal and to order the filing of a petition for termination of parental rights, the judge should consider multiple factors, including whether or not aggravated circumstances have been filed or found, the length of time that the child has been in placement, and whether or not the agency has identified or is in the process of identifying an adoptive resource for the child.

Although the processes of goal change to adoption and the filing of the petition for termination of parental rights go hand in hand, they are two separate issues. It may be in the best interest of the child to change the goal to adoption but not order the agency to file the petition to terminate parental rights. For example, if a child has been abandoned by the parents but is not in a pre-adoptive foster home or is in a residential treatment facility, it might be prudent to change the goal but delay the filing of the petition for termination of parental rights until a pre-adoptive resource has been identified. It should be noted that identification of a pre-adoptive resource is not a prerequisite to the filing of a petition to terminate parental rights.

Finally, the Adoption Act permits parents to voluntarily terminate their parental rights. 23 Pa.C.S. § 2501. If a parent does not contest a goal change to adoption, consider ordering the agency to discuss voluntary relinquishment of parental rights. Voluntary termination prevents a trial, and the child is freed for adoption at an earlier stage and thus will achieve permanency sooner. Voluntary termination also provides a benefit to the parents in that it does not constitute an aggravated circumstance (as would an involuntary termination) should the parents have other children that come into care and are adjudicated dependent.

## 14.4 Change to Other Permanency Goals

When the conditions for a goal change are fulfilled but adoption is not possible or is not in the child's best interests, the Court should consider ordering a change from reunification to another goal that will provide a permanent placement for the child.

### A. Permanent Legal Custodianship (PLC) & Subsidized Permanent Legal Custodianship (SPLC)

When neither reunification nor adoption is a viable option for permanency, PLC or SPLC is the favored goal. 42 Pa.C.S. § 6351(f.1)(3). While it may not afford the child the same degree of permanency as adoption because PLC is essentially a custody order subject to modification like any other custody order, it does provide the child with the opportunity for a permanent relationship and case closure. In many cases, the legal custodian is a relative, but legal custodianship may be given to an unrelated foster parent or any suitable adult.

SPLC provides the custodian with a subsidy similar to foster care payments to ensure the custodian is financially able to meet the needs of the child. Any agreed-upon monthly subsidy amount cannot exceed the amount that would have been provided had the eligible child remained in foster care. The agreement must be signed and in effect prior to or at the time of the SPLC order and terminates upon the eligible child's eighteenth birthday or age twenty-one if the SPLC agreement became effective when the child was at least thirteen years of age, and this agreement was in effect on or after July 1, 2012.

The PLC or SPLC may be ordered at any time after the child has been in care for at least six months and the child has been with the PLC/SPLC resource for at least six months. (See the discussion in Chapter 12: Permanency Options.)

### B. Placement with a Fit and Willing Relative

If reunification is not viable and the child is placed with relatives who do not wish to adopt or become permanent legal custodians, the court should consider a permanency goal of placement with a fit and willing relative. 42 Pa.C.S. § 6351(f.1)(4). Again, the pros and cons of this option are discussed more fully in Chapter 12: Permanency Options.

### C. Another Planned Permanent Living Arrangement (APPLA)

The following are examples of living arrangements that qualify as APPLA: long-term foster care, group care/residential treatment, supervised independent living, independent apartments, and kinship care. *These arrangements are not, however, a permanency goal — APPLA is the permanency goal.*

APPLA is the least favored of all permanency options. **APPLA's use is limited to youth aged eighteen and older.** Act 94 of 2015 (Pennsylvania law addressing the federal Preventing Sex Trafficking and Strengthening Families Act) mandates that efforts to identify supportive adult connections be established for all youth with the goal of APPLA. 42 Pa.C.S. § 6351(f.1)(5)(ii). When changing a goal to APPLA, the court should enter detailed findings in support of a goal of APPLA.

It is imperative that the court ensure all children, especially those ages 18-21 years old with a goal of APPLA, have meaningful and significant connections with responsible, caring adults. Family finding, particularly important in cases with the goal of APPLA, ensures the ongoing diligent efforts of the county agency or its contracted providers to search for and identify adult relatives and kin and engage them in the county agency's social service planning and delivery of services, including gaining commitment from relatives and kin to support a child or parent/guardian receiving county agency services. (See Chapter 2: Act 118 of 2022: Family Finding for more information.)

The court is required to inquire as to the efforts made by the county agency to comply with family finding requirements pursuant to 67 Pa.C.S. §§ 7501-7509. Family finding may be discontinued only if the court determines after a hearing that: (1) continued family finding no longer serves the best interests of the child; (2) continued family finding is a threat to the child's safety; or (3) the child is in a pre-adoptive placement and court proceedings to adopt the child have been commenced. Pa. R.J.C.P. 1149(B).

Consistent with the intent of the Pennsylvania legislature (Act 94 of 2015) and the long-term goals for judicial procedure as it relates to cases where the agency is seeking to change the goal to APPLA, it is recommended that the court engage in the following analysis.

The court shall conduct an inquiry regarding the following matters and require proof from the agency seeking to change the goal to APPLA:

1. Has the child reached eighteen years of age or older? If yes, continue to questions 2 through 9.
2. Has the county agency identified at least two significant connections with supportive adults willing to be involved in the child's life as the child transitions to adulthood, or has the agency documented that efforts have been made to identify supportive adults?
3. Does the agency seeking to change the goal to APPLA have documentation that details a compelling reason that it would <u>not</u> be best suited to the safety, protection, and physical, mental, and moral welfare of the child to be returned to the child's parent, guardian, or custodian, to be placed for adoption, to be placed with a legal custodian or to be placed with a fit and willing relative?

4. Does the agency seeking to change the goal to APPLA have documentation that details its intensive, ongoing, and, as of the date of the hearing, unsuccessful efforts to return the child to the child's parent, guardian, or custodian, to be placed for adoption, to be placed with a legal custodian, or to be placed with a fit and willing relative?
5. Has the agency seeking to change the goal to APPLA made reasonable efforts to engage in family finding to find biological family members and kin for the child?
6. What are the child's desired permanency goals for himself/herself?
7. What compelling reasons has the agency seeking to change the goal to APPLA provided to explain why it continues to not be in the best interest of the child to return to the child's parent, guardian, or custodian, be placed for adoption, be placed with a legal custodian, or be placed with a fit and willing relative?
8. What: (a) significant connections are identified in the permanency plan or (b) efforts have been made to identify two supportive adults for the child, if no one is currently identified?
9. Why APPLA is the best permanency plan for the child as of the date of the hearing?

Next, the court shall consider the testimony and evidence elicited in response to the analysis. Finally, the court must weigh the evidence solicited in response to its inquiry and make an ultimate finding that "the county agency has documented a compelling reason that it would not be best suited to the safety, protection, and physical, mental, and moral welfare of the child to be returned to the child's parent, guardian, or custodian, to be placed for adoption, to be placed with a legal custodian, or to be placed with a fit or willing relative" and that changing the goal to APPLA is in the best interest of the child. See 42 Pa.C.S.A. § 6351(f.1)(5) and Pa.R.J.C.P. 1608(d)(2).

## 14.5 Effects of Goal Change

When a permanency goal is changed from reunification to another permanency goal, the agency is basically relieved of continuing efforts toward reunification. However, if reunification is or remains the concurrent plan, the agency must continue to offer services and make reasonable efforts to reunify.

Irrespective of a goal change, the judge or hearing officer can order the agency to continue to offer services and make reasonable efforts when it is in the best interest of the child. For example, if a goal is changed to adoption or permanent legal custody, continued visitation between the child and parents may be in the child's best interests.

This may especially be true in instances where the child is older and has strong connections to his or her birth family.

Upon ordering a goal change, the court should review the existing visitation schedule to determine whether the visitation schedule should be changed in keeping with the new permanency goal and the best interests of the child. (See Chapter 8: Visitation for more information.)

In deciding whether to change the visits, the court should consider the following:

1. Is there a concurrent plan of reunification?
2. Have the parents been consistently visiting?
3. What is the bond between the child and the parents and the child and the caregivers?
4. What is the quality of the visits?
5. Are the visits supervised or unsupervised? What is the frequency of the visits?
6. How do the visits affect the child? Are there any behavioral changes noted after the visits?
7. What are the child's wishes?
8. Is the child placed with relatives or family friends where continued contact would likely occur after case closure?
9. If the new goal is adoption, the court should consider a reduction in visitation that is consistent with a permanency goal of adoption.
10. If the child is bonded with the parents and has frequent visits, consider a gradual reduction in visits so as to minimize the loss.
11. Does the child's therapist or other expert have an opinion on any reduction of visits and the effect that it may have on the child?

## 14.6 Evidentiary Issues in Goal Change Hearings

In a permanency hearing where goal change is being considered, the court should consider the *full* record that reflects the parents' compliance and progress as it relates to whether they have remedied (or will remedy) the circumstances that led to the removal and placement of the child. In the ordinary permanency hearing, the court is generally looking at what has transpired between review hearings. The full history and record are relevant at the time of a permanency hearing with a goal change emphasis.

While compliance with the Family Service Plan is an issue bearing on the goal change, the court is examining progress or lack thereof. While the parents' refusal or failure to comply is relevant, the real issue is progress. It is not unusual for parents to be compliant and cooperative but make no progress. Conversely, some parents are not compliant but manage to remedy the conditions that led to the removal of the child without the help of the agency. The real issues are: have the parents remedied the conditions that led to removal, can the child be safely reunified with the parents in a reasonable period of time, and does reunification best serve the needs and welfare of the child.

**CAUTION**—if the permanency hearing for goal change and the termination of parental rights hearing are being heard at the same time, keep in mind that hearsay evidence that may be admissible in the permanency hearing may not be admissible in the termination hearing.

## 14.7 Findings and Orders

As with any permanency hearing, the court shall enter its findings and conclusion of law into the record in open court and issue a written court order at the conclusion of a goal change hearing. (See Pa.R.J.C.P. 1608(d) and 1609(A).) The order is especially important when a goal change occurs because orders granting goal changes are often appealed.

In addition to what is normally contained in a permanency hearing order, the order entered pursuant to a goal change should clearly set forth the reasons that the request for a goal change was granted or denied. (See the discussion of orders in Chapter 13: Permanency Hearings.)

In Pennsylvania, dependency findings and orders for permanency hearings, including those in which a change of goal occurs, are contained within the Common Pleas Case Management System Dependency Module. These court forms contain the needed information to assist the court in asking the necessary questions, managing the case, meeting federal requirements, and capturing statewide data. The forms also allow for the entering of detailed text, which can outline the specific directives of the court.

If the court has done its job throughout the review process, the court orders should clearly track the compliance and progress of the parents and should make a clear record to support the court's decision for the goal change. Entering detailed findings at each permanency review can assist the court at the time of goal change and can shorten the length of the hearing where a goal change occurs.

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# Chapter 15 – Termination of Court Supervision

**"All children have the right to live in a permanent family and to timely permanency decisions, as these are critical to the health and welfare of dependent children." As such, the court shall: "Terminate court intervention in the life of a child when that child is no longer dependent."**

**Children's Roundtable Initiative,
Office of Children and Families in the Courts,
*The Mission and Guiding Principles for Pennsylvania's Child Dependency System* 13-14 (2009).**

## 15.1 Overview

Termination of court supervision or termination of jurisdiction can occur at any time during a dependency case. When termination of court supervision occurs, the court can no longer order the parties to do anything, nor can the court conduct ongoing oversight.

In most instances, the need to terminate court supervision becomes increasingly obvious as the case progresses through the various court proceedings. This is true for many reunification cases and especially true in cases that resolve through adoption or permanent legal custodianship.

In some cases, however, the basis for this determination requires proactive inquiry of the court for a variety of reasons. This might include a reluctance of the parties or the court itself to let go of the security found in court oversight or a phenomenon commonly referred to as raising the bar of expectations wherein the requirements for termination of court supervision go above and beyond the basic care and safety needs of the child. This is particularly true in cases resolving through reunification.

In these instances, it is the duty of the court to recognize when parents have done enough to provide a safe, loving home for their child and court-ordered services from the county agency are no longer needed, even if the parenting is not perfect. The belief is that children do best when they are raised by safe, permanent, loving families rather than government entities. When such families have been secured (either a child's birth family or another family), court involvement in a child's life should cease.

In cases involving a youth turning 18 years of age who no longer wants the court's supervision, the reluctance to terminate court supervision may be based upon a very real concern that the youth still needs the support and resources available through continued

court supervision. In these situations, courts have an obligation to ensure the youth is fully aware of the consequences which accompany the termination of supervision, but ultimately must accept the decision of the youth. The Resumption of Jurisdiction provisions of Act 91 of 2012, discussed in more detail below and in Chapter 16: Resumption of Jurisdiction, have helped to lessen many concerns previously associated with this older youth population.

How the court chooses to terminate supervision can have a substantial impact on the child and family which extends well beyond the court's direct supervision. Understanding the critical questions that must be answered in this determination can help reduce potential concerns related to the termination of court supervision while providing critical information to children and parents who may need future assistance.

***Best Practice — Case Closure Plans & FGDM***

One strategy being used by many courts throughout Pennsylvania is the development of a Case Closure Plan, often created through a Family Group Decision Making (FGDM) meeting. Through a FGDM meeting, families can identify the supports and resources they will use once court supervision has been terminated. In preparation for these meetings, courts can identify what the court needs to see to proceed to closure of the case, allowing families an opportunity to develop a thorough and comprehensive plan that is acceptable to the court. In addition to the created plan, these meetings involve extended family, kin, and community members in the oversight and care of the child, which may enhance ongoing child protection and well-being.

Consideration of whether court-ordered services remain necessary is a primary focus of the Permanency Hearing. Any party by written motion or verbal request during an already scheduled proceeding or the court on its own motion may move for the termination of court supervision. Upon the filing of a motion, the court can determine if a hearing should be held. Generally, if a party objects to the motion, a hearing must be held. Pa.R.J.C.P. 1631(c) and (d). If the motion for termination involves a youth 18 years of age or older, there are special rules that apply, discussed in section 15.4.1.

## 15.2 Timing of Termination of Supervision

While termination of court supervision can occur at any point in a dependency case, it most typically happens following several months of court supervision. The parents may have made sufficient progress to ensure their child's safety, care, and well-being, and the child may have returned home. If the child has not been able to return home, an alternative permanent plan may have been finalized. In either situation, the parties have typically been before the court on numerous occasions, and the court is very familiar with the circumstances of the case.

While a request for termination of court supervision can occur at any point during a dependency case, the request should be made when court-ordered services from the county agency are no longer needed, and:

1) the child has remained with the guardian and the circumstances which necessitated the dependency adjudication have been alleviated;

2) the child has been reunified with the guardian and the circumstances which necessitated the dependency adjudication and placement have been alleviated;

3) the child is under 18 years of age and has been placed with a ready, willing, and able parent who was not previously identified by the county agency;

4) the child has been adopted and services from the county agency are no longer needed;

5) the child has been placed in the custody of a permanent legal custodian and services from the county agency are no longer needed;

6) the child has been placed in the physical and legal custody of a fit and willing relative and services from the county agency are no longer needed;

7) the child has been placed in another living arrangement intended to be permanent and services from the county agency are no longer needed and a hearing has been held pursuant to Pa.R.J.C.P. 1631(e) for a child who is age 18 years or older;

8) the child has been adjudicated delinquent and services from the county agency are no longer needed because all dependency issues have been resolved;

9) the child has been emancipated by the court;

10) the child is 18 years of age or older and a hearing has been held pursuant to Pa.R.J.C.P. 1631(e);

11) the child has died;

12) a court in another county of this Commonwealth has accepted jurisdiction; or

13) a court in another state has accepted jurisdiction.

Pa.R.J.C.P. 1631(a).

Importantly, termination of court supervision is permissible only when permanency for the child has occurred and court-ordered services from the county agency are no longer warranted or the matter is accepted by another court either within or outside of the Commonwealth. Termination of court supervision does not imply that every challenge faced by a child or family has been completely resolved. Many families may need additional community services and support throughout the life of their family. The court should recognize this and encourage families to access services before future crises arise.

***Best Practice — Services after Termination of Supervision***

In many courts, judges and hearing officers ask a number of questions aimed at ensuring parents know how and when to access services if such are needed once court supervision has been terminated. Judges and hearing officers discuss potential needs children/parents may encounter and encourage parents to reach out if help is needed, emphasizing this as a positive parenting skill.

In addition, many local Children's Roundtables have worked closely with community organizations including faith-based entities to establish a network of social supports. Examples include Tioga County's Seeds for Hope Partnership, Venango County's Mustard Seed Partnership and Dauphin County's Faith-Based Partnership. These partnerships are generally voluntary, free resources not typically provided by governmental agencies to children and families.

## 15.3 Reasons for Termination of Supervision

While some reasons for termination of court supervision are self-explanatory, others are more nuanced. Orders to terminate court supervision should be based on evidence presented that ensures child safety, well-being, and permanence.

Within child safety, the judge or hearing officer should consider evidence related to a child's level of vulnerability, the parent's capacity to protect and care for the child, and the reduction or elimination of any safety threats. Parental capacity should examine the cognitive, behavioral, and emotional changes and growth of a parent rather than solely relying on a parent's compliance with services. Attending a parenting class may or may not actually change parenting capacity. Likewise, child well-being should be considered with an analysis of how the basic and essential needs of the child are being met.

Finally, the decision to terminate court supervision should adhere to the overarching mission of the child dependency system: "Families 4 Children". Embedded in this mission is the belief that children do best when they have permanency and are raised by safe, caring, capable parents rather than government entities. (For a more complete discussion, see Chapter 1: The Charge for Pennsylvania's Dependency System.)

Given the mission of Pennsylvania's child dependency system, all efforts should be made to secure safe, loving families for children. When this occurs and the judge or hearing officer is confident that court-ordered services from the county agency are no longer needed, termination of supervision should occur.

## 15.4 Circumstances Requiring Special Consideration

Within the basic construct of any decision to terminate court supervision are a number of special situations that warrant added consideration. Some of these situations are highlighted below.

### 15.4.1 Children Turning 18 years old

Before a court may terminate supervision of a child who is 18 years of age or older, a hearing must be held at least 90 days prior to the child turning 18 at which time the court shall review the plan for the youth's transition to independence. Pa.R.J.C.P. 1631(e). While all efforts should be made to secure a safe, loving family for every dependent child, for a very few, this is simply not accomplished. In those few instances where youth turn 18 years of age without a permanent family, the judge or hearing officer should take extraordinary steps to ensure the youth is capable of self-care and support when considering termination of court supervision.

Each young person should be seen as a unique individual with unique needs. As such, no one plan or service is likely to be right for every youth. Instead, transition plans should be tailored to the specific needs, resources, and strengths of the individual youth.

The judge or hearing officer should take a proactive approach to explaining the benefits and responsibilities of continued care for those youth wishing to leave the court's supervision. In addition, the judge or hearing officer should ensure that the county agency has taken all steps possible to thoroughly conduct family finding which could identify possible supports for the youth's successful transition to adulthood. (See Chapter 2: Act 118 of 2022, Family Finding, for more information.)

***Best Practice — Youth in Court***

Many courts now require youth aging out of care to be present at any hearing to terminate court supervision rather than permitting such by motion or by issuing a prospective order of termination. While it is challenging to make sure the youth appears, scheduling an actual hearing allows the youth an additional opportunity to speak directly to the judge or hearing officer. For those youth who do appear, judges and hearing officers should take extra time to clearly explain the benefits and requirements of staying under the court's supervision as well as the opportunities available through resumption of jurisdiction.

Prior to the 90-day hearing, the children and youth agency must prepare a transition plan in compliance with Pa.R.J.C.P. 1631(e)(2) and 67 Pa.C.S. § 7505 and present it to the court. In preparation of the plan, the agency must confer with the youth who shall have the opportunity to provide input and make decisions concerning the plan.

The plan prepared by the agency must include, at a minimum:

i) the specific plans for housing;

ii) a description of the child's source of income;

iii) the specific plans for pursuing educational or vocational training goals;

iv) the child's employment goals and whether the child is employed;

(v) a description of the health insurance plan that the child is expected to obtain and any continued health or behavioral health needs of the child;

(vi) a description of any available programs that would provide mentors or assistance in establishing positive adult connections;

(vii) verification that all vital identification documents and records have been provided to the child;

(viii) a description of any other needed support services;

(ix) a list, with contact information, of supportive adults and family members; and

(x) notice to the youth that the youth can request resumption of juvenile court jurisdiction until the youth turns 21 years of age if specific conditions are met.

Pa.R.J.C.P. 1631(e)(2). See also 67 Pa.C.S. § 7505.

Finally, the judge or hearing officer should ensure that youth who choose to leave the court's supervision at the age of 18 years old fully understand the resumption of jurisdiction option available to them until age twenty-one. Judges or hearing officers should discuss this option on the record and enter into a dialogue with the youth regarding very specific issues, including the youth's immediate plans for housing, income, employment, and health insurance, to mention a few. These items are required to be included in the mandatory transition plan created by the county agency in conjunction with the youth at least 90 days prior to the youth's 18th birthday.

It should be noted that while the elements contained within a Transition Plan are similar to those contained in Independent Living (IL) Plans created for dependent youth beginning at age fourteen, the detail and immediacy of a Transition Plan are much more specific. So, while an IL Plan may identify getting a job and having stable housing as a goal for a 16-year-old dependent child, by contrast, a Transition Plan would identify the actual employer and the actual address or specific housing plan of the older child.

***Best Practice — Mandatory Transition Plans & FGDM***

Many counties are utilizing FGDM meetings as the forum in which youth create their Transition Plans. The youth in these meetings take an active role in determining who is invited to the meeting and what services and supports are needed. Utilizing FGDM meetings to produce these plans is an excellent way to identify ongoing supportive adults for the youth and ensure the plan is specifically tailored to the unique needs of the youth.

At the hearing held 90 days prior to the youth turning 18 years of age, judges or hearing officers are required to review and approve a Transition Plan for each youth. The court shall not terminate its supervision of the child without approving an appropriate transition plan, unless the child, after an appropriate transition plan has been offered, is unwilling to consent to the supervision and the court determines termination is warranted. Pa.R.J.C.P. 1631(e)(4).

In most instances, by the time a case reaches the stage where one or more parties are asking to terminate the supervision of an 18-year-old, the judge or hearing officer has already reviewed these issues with the youth multiple times. Indeed, transitioning successfully to adult life requires multiple conversations and extensive planning for most youth. These conversations should begin much sooner than 90 days before the youth turns 18 years old.

Finally, irrespective of the many conversations a caseworker, GAL, judge, or hearing officer may have, some youth are determined to leave the court's supervision at the age of 18. Youth turning 18 years old have the right to make their own decisions, good or bad, just like any other adult. What is most important is that these youth fully (or to the best of their ability) understand the consequences of their decisions and the remedies/opportunities available if they wish to change their minds.

### 15.4.2 Custody Orders

A youth is no longer a dependent child if there is a ready, willing, and able parent available to provide care, even if the ready, willing, and able parent was previously a non-custodial parent. (See *In re M.L.,* 757 A.2d 849 *(*Pa. 2000).) When one parent is capable of parenting a child but the other is not, the judge may decide to award primary, partial, or full custody to the capable parent through the entry of a custody order. A court may transfer custody to a previously non-custodial parent where the parent is best suited to provide for the safety, protection, and physical, mental, and moral welfare of the child. See 42 Pa.C.S. § 6351(a)(2.1).

These orders may include any or all of the elements found in a typical custody order, including type of custody and visitation with important adults in a child's life. Pa.R.J.C.P. 1515(B). Many of the orders include detailed instructions regarding what should happen if any party wishes to modify the specific custody arrangement in the

future. Any award of custody should be noted in the termination order and must be entered as an order filed pursuant to the Pennsylvania Rules of Civil Procedure. Pa.R.J.C.P. 1631(b). Judges should be cognizant when awarding custody between parents of previously filed and docketed custody litigation in order to avoid duplicative captioning and separate custody litigation.

***Best Practice — Custody Agreements & Family Conferencing***

Some counties, Cumberland and Allegheny for example, are using FGDM or other family conferencing models for meetings to develop detailed custody agreements. Typically, the court identifies general issues that must be included in the agreement but then allows the family to develop a proposal.

### 15.4.3 Shared Case Responsibility

Shared case responsibility (SCR) can occur in a number of ways but generally refers to situations where a youth is simultaneously served by both the juvenile probation department and the county children and youth agency. This can happen through an order of the court or through a voluntary agreement between the county agency and the family. When SCR involves the court's formal supervision through dual adjudication of dependency and delinquency, special considerations should be made prior to terminating supervision. An adjudication of dependency brings resources that may not otherwise be available to a child and parent. If a child or parent is in need of court-ordered children and youth agency services, supervision should not be terminated.

A youth may have completed all the requirements of their juvenile justice adjudication but still need court-ordered placement or services from the county children and youth agency. In those situations, the court may wish to terminate the adjudication of delinquency but retain the adjudication of dependency.

***Best Practice — Hearing Appearances***

When terminating court supervision of a SCR youth, it is critical that the judge or hearing officer has information from both supervising agencies. As such, all persons involved in the youth's case should be present at the termination of supervision hearing. This includes the juvenile probation officer, child welfare caseworker, attorneys, GAL, and service providers. Having everyone at this hearing facilitates communication and can help ensure the needs of the youth are adequately addressed.

### 15.4.4 Transfer of Court Jurisdiction

While not required, the court may transfer court supervision to another court in the Commonwealth or another state. Upon receiving the order accepting the case, the transferring court may order the termination of court supervision pursuant to Rule 1631(A)(12). Pa.R.J.C.P. 1302 comments. In some situations, transferring jurisdiction is very much warranted. This decision is influenced by the residency of the parents, the needs of the child, resource availability in the potential receiving jurisdiction, and the phase of the proceedings. The court must determine whether the transfer is best suited to the safety, protection, and physical, mental, and moral welfare of the youth. Pa.R.J.C.P. 1302(A).

When deciding whether to transfer court jurisdiction and supervision, the sending court should always keep the safety, well-being, and permanence of the child at the forefront of its determination. Is the move of the parent likely to be temporary or permanent? Will such a transfer disrupt services, placement, education, visitation, or any other important case factor? Are the services needed by the child and/or parent available in the receiving jurisdiction? Is the court jurisdiction in its initial phases or closer to a final permanency decision?

A transfer of jurisdiction to another county may be initiated by motion of a party or the court on its own motion. Before a transfer is ordered, the court must conduct a hearing with notice to all parties. Additionally, the proposed receiving county children and youth agency must be given notice and granted standing to participate in the hearing. Pa.R.J.C.P. 1302(B). The proposed receiving county agency shall be permitted to appear at the hearing utilizing advanced communication technology. Pa.R.J.C.P. 1302(C). If the court in the transferring county finds that a proposed transfer would be in the child's best interest and would result in a transfer between judicial districts:

(1) the court shall communicate with the president judge or designee of the receiving judicial district to ascertain whether jurisdiction will be accepted;

(2) a record of the communication shall be made and served promptly by the court on the parties; and

(3) upon service of the record of the communication, the parties shall have five days to file written responses with the court regarding the decision to accept jurisdiction.

Pa.R.J.C.P. 1302(D).

An order approving transfer shall specify an effective date no less than ten dates from the date of the order to allow for the coordination of services and preparation of the official court record for transmission. Pa.R.J.C.P. 1302(E). A court should accept transfers if appropriate. A case that is terminated is not eligible to transfer to another county. Prior to transferring supervision, the sending county should not terminate.

For **interstate transfers**, in addition to the considerations noted above, courts must also adhere to the requirements of the **Interstate Compact for the Placement of Children (ICPC).** 62 P.S. §§ 746-765.

The ICPC is a statutory agreement among member states, the District of Columbia, and the U.S. Virgin Islands authorizing them to work together to ensure that children who are placed across state lines receive adequate protection and support services. The ICPC establishes procedures for the placement of children and assigns responsibility to agencies and individuals involved in placing children.

The need for the ICPC grew out of work performed in the late 1950s when a group of social service administrators and state legislators informally studied the problems of placing children out of state.

Although some federal statutes regulated interstate movement, they did not provide protection for children who moved between states. The group found that a sending state, in the absence of the ICPC, could not compel the receiving state to provide protection or support services for a child. In addition, a receiving state, in the absence of the ICPC, could not compel a sending state to remain financially responsible for a child. In response to this group's findings, the ICPC was drafted. Currently, all 50 states, the District of Columbia and the U.S. Virgin Islands have joined the ICPC. Each member of the ICPC appoints a Compact Administrator who is responsible for the administration of the ICPC in its jurisdiction. In Pennsylvania, the Compact Administrator is the Department of Human Service's Office of Children, Youth, and Families Director of the Bureau of Policy, Programs, and Operations. More information on transfers can be found in the Benchbook, Chapter 4: Jurisdiction, Section 4.4.2: Interstate Transfers.

The purpose of the ICPC is to protect the child and the party states in the interstate placement of children so that:

- The child is placed in a safe, suitable environment;
- The receiving state has the opportunity to assess that the proposed placement is not contrary to the interests of the child and that the receiving state's applicable laws and policies have been followed before it approves the placement;
- The sending state obtains enough information to evaluate the proposed placement for safety, suitability, and ability to meet the child's needs;
- The care of the child is promoted through appropriate jurisdictional arrangements; and
- The sending agency or individual guarantees the child legal and financial protection.

***Best Practice — Placing Children in Other States***

While the overarching requirements for these placements are contained within the ICPC, each state's specific laws govern whether a potential placement can be approved. Additionally, the ICPC allows up to 180 days to finalize the approval of a prospective placement resource. As such, time is of the essence.

When a possible out-of-state placement resource is identified, judges should ask specific questions regarding the submission of the ICPC request and status. When needed, judges may wish to contact their peer judge in the receiving jurisdiction or make specific orders related to the ICPC packet submission.

Courts may also wish to initiate conversations with agency and judicial peers in bordering state counties to strengthen local partnerships and encourage reciprocity in the timely completion of ICPC requests. While this will not alleviate the need for an official ICPC request, it may expedite the approval process.

Finally, courts may wish to contact the Pennsylvania ICPC Division, when needed.

## 15.5 Findings and Orders

In Pennsylvania, dependency findings and orders for termination of court supervision are contained within the Common Pleas Case Management System (CPCMS) Dependency Module. These CPCMS forms contain the needed information to assist the court in asking the necessary questions, in managing the case, in meeting federal requirements, and in capturing statewide data. The forms also allow for the entering of detailed text, which can outline the specific directives of the court.

While decisions related to the termination of court supervision involve complex analysis and consideration, in many instances, the actual findings and orders are likely to be the least complicated of any within the dependency process. The court order requires the selection of a reason for termination. In addition, court orders should contain the views of the child and indicate the means by which those views were ascertained. Finally, the court order allows additional findings and orders as needed.

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# LIST OF SUGGESTED QUESTIONS

## Questions for Parents

### Services:

1. Is there anything else you need for yourself or your children from the agency or the court before we close your case?

2. Do you have adults you feel connected to and who are supportive of you? Who are they?

3. Do you have copies of any records (school, medical, dental, behavioral health) you need for yourself or your children?

4. Are you aware of services in the community that can help you? Do you know how to access them? How would you do that?

5. Can you think of any type of problem that might get you or your children re-involved with child welfare? If so, what can you do now to avoid that problem in the future? What can the court do to help prevent the problem from occurring?

6. Do you know how to contact the agency if you or your children need help in the future? How would you do that?

## Questions for Youth Leaving the Court's Supervision

### Extended Services:

1. Are you aware that you can continue under the jurisdiction of the court to receive services and/or remain in placement until the age of twenty-one?

2. Are you aware that in the future, you can ask to:
    - Receive services through Children and Youth;
    - Have the court resume jurisdiction/supervision or
    - Enter placement or re-enter placement?

3. Do you know who to contact if you need anything in the future or want to come back under the court's jurisdiction? How would you do that?

4. Do you know how to contact your caseworker and/or GAL? How would you do that?

5. Do you have adults you feel connected to and who are supportive of you? Who are they?

### Today:

1. Is there anything you need today before the court terminates supervision?

## Questions for Youth Leaving the Court's Supervision *(Extended Version)*

### Extended Services:

1. Are you aware that you can stay in care until the age of twenty-one?

2. Are you aware that you can ask to come back into care if you want?

3. Do you know who to contact if you need anything in the future or want to come back into care? Who do you contact? How would you do that?

4. Do you know how to contact your caseworker and/or GAL? How would you do that?

### Housing:

1. Where will you live after you leave foster care? Will you be living with anyone? Why do you believe this is a good arrangement?

2. If you will be living in a dorm, where will you live when the dorms are closed and during the summer?

3. Have you calculated the costs of housing, like rent, gas, electricity, water, etc.? Does your income cover these costs?

4. If you find yourself unable to pay your rent or utilities, do you know where to get help? If so, how would you do that?

### Employment/Finances:

1. Are you currently working? If so, how many hours per week? Do you have sufficient income to care for your needs? Do you think this is the kind of work you would like to do as a career? Do you have a resume? Do you have a social security card, photo ID, and a copy of your birth certificate?

2. Do you have a credit card and/or debit card? Do you have any debt?

3. Do you know how to budget? Do you have a bank account? Do you have a plan for saving money for a car, apartment, or other big items?

4. Who will be able to help you with money management after you leave foster care? Can you describe your budget?

5. Who can you call if a financial emergency arises?

**Transportation:**

1. How do you get to your job, school, or other places you need to go?

2. Have you saved any money toward buying a car and car insurance? Do you have a driver's license?

**Health Care:**

1. What health care coverage will you have after you leave foster care? Do you understand how healthcare coverage works? Would you tell me how it works?

2. Will you have the same doctor and dentist after leaving foster care? If not, where do you plan to go and do they accept your insurance?

3. Are you prepared to manage your medications? Do you have any concerns? Do you have a current supply of the medication that you are prescribed?

4. Do you have access to the behavioral and mental health services that you need? Do you plan on continuing with those services?

**Education:**

1. When will you be graduating or getting your GED? What are you doing after you graduate? If not graduating, what are the issues? What will it take for you to graduate? When could that happen? What do you need to do?

2. Do you want to attend college or vocational school? If so, do you have everything you need to apply? If accepted, do you have the basic tools or supplies that you need to begin the program? If not, how will you get them?

3. If you don't want to attend college or vocational school, what is your career plan?

**Supportive Relationships:**

1. Do you have adults you feel connected to and who are supportive of you? Who are they? How have they been supportive?

2. Who will be a permanent person in your life after you leave care? Where will you spend the holidays?

3. How is your relationship with your siblings and other family members? What kind of connection do you want with them? If in separate placements, are you having regular visits with your siblings?

# TERMINATION OF COURT SUPERVISION BENCHCARD

| | |
|---|---|
| Relevant Statutes | 42 Pa.C.S. 6301, 6302 & 6351<br><br>Pa.R.J.C.P. 1631 |
| Purpose of Hearing | Hearing at which the judge considers all the evidence, such as reports and recommendations, regarding the permanent plan for the child. The judge confirms, based on the evidence presented, that the child is no longer in need of court-ordered agency services and one of thirteen reasons to terminate court supervision exists. |
| Time Frame | This hearing can occur at any point within a dependency case upon the motion of the parties or *sua sponte*. |
| Rules of Evidence | "Any evidence helpful in determining the appropriate course of action, including evidence that was not admissible at the adjudicatory hearing, shall be presented to the court" (Pa.R.J.C.P. 1608(C)). |
| Next Hearing | Not applicable |

# TERMINATION OF COURT SUPERVISION HEARING

# SUMMARY OF KEY QUESTIONS/DETERMINATIONS

## Reunification

- Is the child/family no longer in need of court-ordered services from the child welfare agency and
  - The child has remained with the parent/guardian, and the circumstances that necessitated the dependency adjudication have been alleviated or
  - The child has been reunified with the parent/guardian and the circumstances which necessitated placement have been alleviated.

## Age of Majority/Aging Out

- Does a youth 18 years of age wish to remain under the court's supervision, and is the youth eligible to remain?
- Does a youth 18 years of age who wishes to leave the court's supervision understand their right to have the court resume supervision if eligible?

## Permanent Legal Custodian

- What reasonable efforts were made to reunify?
- Why is this option preferable to TPR and adoption?
- What are the facts demonstrating the appropriateness of the prospective legal custodian?
- Has there been full disclosure to the permanent family regarding the child's circumstances and special needs?
- What is the plan to ensure that this will be a permanent home for the child?
- What [if any] contact will occur between the child and parents, siblings, and other family members?
- What are the plans to continue any necessary services to the child? How will those services be funded?
- How will any future motions for modification of custody be handled?

## Adoption

- If the dependency judge did not hear the adoption, consider having a short hearing to close the case. Congratulations and goodbyes can be handled during this hearing, providing closure for all involved.
- If there is a post-adoption contact agreement, has it been approved?
- Don't forget that the dependency case needs to be closed. The judge needs to facilitate this process.

These questions are adapted from the text of this chapter and the *Mission and Guiding Principles for Pennsylvania's Dependency System*.

# Chapter 16 – Resumption of Jurisdiction

## 16.1 Overview

Resumption of jurisdiction, an option for children previously involved in the child dependency system, was established through Act 91 of 2012. The Act was implemented as an option for certain children previously under the supervision of the court to provide additional support as they transition to adult living.

Pursuant to Act 91, a child is defined as an individual who: (3) is under the age of 21 years and was adjudicated dependent before reaching the age of 18 years, who has requested the court to retain jurisdiction and who remains under the jurisdiction of the court as a dependent child because the court has determined that the child is:

(i) completing secondary education or an equivalent credential;

(ii) enrolled in an institution which provides postsecondary or vocational education;

(iii) participating in a program actively designed to promote or remove barriers to employment;

(iv) employed for at least 80 hours per month; or

(v) incapable of doing any of the activities described in subparagraph (i), (ii), (iii) or

(iv) due to a medical or behavioral health condition, which is supported by regularly updated information in the permanency plan of the child. 42 Pa.C.S. § 6302.

Prior to Act 91, dependent youth who left the jurisdiction of the court had no recourse for help through the dependency court system once their case was terminated. As such, many children who left care did so without the assurance of ongoing support, something routinely afforded to most children through family, kin, and community connections.

> "So many of the children who age-out of America's foster care system are isolated and struggle to make it as adults…I can attest to the fact that the streets are not where we want our foster youth to end up…We deserve the right to have a voice in the matters that affect our lives…And we deserve the right to be prepared to be successful as adults."
>
> - Raif Walter, 21, whose experiences were chronicled in the documentary *From Place to Place*. https://www.youtube.com/watch?v=eV4hq326Onw

The intent of Act 91 was to provide a safety net for youth previously under the court's supervision. For most children, there is nothing magic about age eighteen. Young people turning eighteen years of age are often not ready for the numerous responsibilities of independent living and often need a fallback option to total independence. In addition, the legislation was fueled by research that demonstrated the dismal outcomes experienced by many former foster youth, including high school dropout rates, joblessness, homelessness, health problems, mental illness, substance abuse, early parenthood, and involvement with the criminal justice system.

Despite these poor outcomes, many dependent youth are determined to leave agency custody and court supervision upon their eighteenth birthday. In the past, these youth, upon choosing this course of action, had minimal opportunity for assistance from the agency and none from the court. However, with the passage of Act 91, eligible children can now request the resumption of court jurisdiction.

Act 91 provides an avenue for the court and the county agency to help these youth become productive and successful members of society. It opens the door to additional court oversight and agency support in a manner that is appropriate to a child's maturing needs and capacity.

Finally, while Act 91 provides additional opportunities and support for children, it simultaneously requires their agreement. **As such, only the child can request a resumption of jurisdiction.** Others can bring forth the concept of resumption, but the child must agree. See 42 Pa.C.S. § 6351(j).

## 16.2 Method of Request and Review

**Resumption of jurisdiction must be initiated at the request of a child.** While the county agency, an attorney, or another entity may file the motion, the child must be in agreement. Because the child is over the age of eighteen and resumption of jurisdiction is a voluntary process, no one can force the process. In addition, no entity or person should attempt to pre-qualify a child for this option. Only the court can determine the child's eligibility and need.

Requests are initiated through the filing of a motion for resumption of jurisdiction**.** Pa.R.J.C.P 1634 provides the averments which must be contained within the motion. A model Motion for Resumption of Jurisdiction can be found on the Unified Judicial System of Pennsylvania website under Dependency Forms.

***Best Practice — Access to the Court***

Because the intent of Act 91 was to provide a safety net for youth aging out of the foster care system, courts are encouraged to make access as easy as possible. To this end, many courts have appointed counsel to represent the child beyond the termination of dependency, for the sole purpose of resumption requests. Unless a conflict of interest exists, the child's GAL during dependency proceedings may be appointed as counsel for him/her to maintain their pre-established attorney-client relationship. This limited representation status should be included in any order that terminates court supervision. This practice provides the child a legal professional who can answer questions, provide advocacy, and file a motion for resumption of jurisdiction upon the child's request.

Regardless of the form by which the request for resumption comes to the court, whether through a written motion, a letter from the child, or an oral motion, courts should schedule a hearing promptly.

## 16.3 Timing of Hearing

Pa.R.J.C.P. 1635 (A) requires that a hearing be held within thirty days of a motion for resumption of jurisdiction being filed. Courts are encouraged to schedule hearings for resumption of jurisdiction based upon the urgency of the request. For children in immediate need of court supervision, the hearing should be scheduled within hours or days. For others, this type of immediacy may not be needed.

## 16.4 Jurisdiction

A Pennsylvania court may resume jurisdiction of an eligible Pennsylvania child until age twenty-one. Jurisdiction cannot be obtained for a previously dependent child of another state nor can resumption of jurisdiction last beyond age twenty-one.

Pa.R.J.C.P. 1634(A) requires that a Motion for Resumption of Jurisdiction be filed in the county that terminated court supervision of the child. While the case may ultimately be transferred to a different jurisdiction, especially in situations where the child has changed residency and requests the transfer, the initial hearing on the motion for resumption should be held in the original court of jurisdiction. This original court of jurisdiction and county agency are likely to be most familiar with the child. Additionally, the child may have an ongoing assignment of an attorney for purposes of resumption only.

It should be noted that resumption of jurisdiction is not a new dependency case, nor is it predicated upon the child's living arrangement when previously under court jurisdiction. Instead, it is the resumption of a previous adjudication and may include children who were residing at home upon termination of court supervision.

When a child meets the eligibility criteria under the law, the court can resume (or re-open) the dependency case. In other words, the case picks up where it left off as if the child decided to continue under the court's supervision beyond age eighteen. This means that the court is not required to find new grounds for dependency, nor is it required to determine if the child is currently being abused or neglected. If the child meets the eligibility criteria, jurisdiction can be resumed.

## 16.5 Counsel and Guardian *Ad Litem* (GAL) Appointments

The court must assign counsel to the child upon the filing of a motion for resumption of jurisdiction. Unlike dependency proceedings, the court is only required to appoint counsel to represent the child's wishes rather than the typical best interest representation of the GAL. (See Pa.R.J.C.P. 1151 and comments to Pa.R.J.C.P. 1634.)

## 16.6 Service

Upon the filing of a motion to resume jurisdiction, service must be provided to the county agency, the attorney for the county agency, the child, the child's attorney, and the guardian or other interested adult if the child requesting resumption of jurisdiction would like the guardian or other interested adult involved in the case. Pa.R.J.C.P. 1634 (C).

## 16.7 Standing

Clearly, the child and the county agency have standing in resumption of jurisdiction matters. Because the child is an adult, parents and/or former guardians do not have standing in these matters. Standing does not determine who attends the hearing. Standing gives a person the right to counsel and the right to participate in all proceedings.

## 16.8 Conduct of the Hearing

***Best Practice — Who Attends/Is Excluded From the Hearing for Resumption Cases***

If the child wants parents, former caregivers, friends, or others, they should be permitted to attend the hearing. The agency, counsel, and the court often identify these individuals through ongoing family finding efforts.

Parents have no right to attend, and the child's wishes on whether they attend or are excluded should be given serious consideration by the court.

Pa. Rule of Juvenile Court Procedure 1635(C) sets forth the findings the court must make at a hearing for Resumption of Jurisdiction. At the hearing, the court shall state its findings and conclusions of law on the record in open court as to whether:

(1) dependency jurisdiction was previously terminated:

(a) within ninety days prior to the child's eighteenth birthday; or
(b) on or after the child's eighteenth birthday but before the child turns twenty-one years of age; and

(2) the child continues to meet the definition of child pursuant to 42 Pa.C.S. § 6302 because the child:

(a) is under twenty-one years of age;
(b) was adjudicated dependent prior to turning eighteen years of age;
(c) has requested the court to resume jurisdiction; and
(d) is:
(i) completing secondary education or an equivalent credential;

(ii) enrolled in an institution which provides postsecondary or vocational education;

(iii) participating in a program actively designed to promote or prevent barriers to employment;

(iv) employed for at least eighty hours per month; or

(v) incapable of doing any of the activities as prescribed in paragraphs (C)(2)(d)(i)-(iv) due to a medical or behavioral health condition, which is supported by regularly updated information in the permanency plan for the child;

(3) reasonable efforts were made by the county agency to prevent the return of the child to juvenile court jurisdiction unless, due to the child's immediate need for assistance, such lack of efforts was reasonable;

(4) it will exercise jurisdiction pursuant to 42 Pa.C.S. § 6351(j) because it is best suited to the protection and physical, mental, and moral welfare of the child;

(5) a guardian or other interested adult should be involved in the child's case;

(6) there are any health or educational needs of the child; and

(7) the county agency has developed an appropriate transition plan.

After the hearing, the court shall enter an order granting or denying the Motion to Resume Jurisdiction. Pa.R.C.P. 1635(D)(1).

***Best Practice — Transition Plan***

Transition Plans for child should focus on the specific needs and help the child be successful. The development of these plans should be led by the child and include supportive persons identified by the child. The plans should include not only the specific services to be provided but also specific actions which will be taken to identify and/or strengthen life-long, supportive connections for the child.

Time is of the essence in resumption of jurisdiction cases. This is likely to be the court's and agency's last opportunity to assist the child. Transition Plans should be focused, meaningful, age-appropriate and individualized.

If the Court resumes jurisdiction, the judge or hearing officer should determine what the agency must provide the child as well as any actions for which the child will be responsible. Resumption of jurisdiction is not a blank check wherein the child has all of their needs met with no expectations placed upon them. Indeed, while the expectations of the court should be appropriate to the age of the child, the court order should clearly identify these expectations. Specific orders should be written with enough detail as to leave no doubt regarding the responsibilities of the county agency, the child, and any other involved entity.

The court should pay particular attention to the agency's responsibility to conduct family finding with the child. The family finding requirement set forth in Pa.R.J.C.P. 1149 applies to all resumption cases. Efforts of the agency may focus more on friends and other contacts as opposed to biological family. Family finding is ongoing unless it is determined by the court that it is no longer necessary. In cases of children with terminated parental rights, the court should consider ordering the agency to reach out to the biological family. It is incumbent upon the court to ascertain the child's wishes in this matter prior to doing so. It is not unusual for children, especially those who have been in care for some time, to desire a relationship with their biological family. If considerable time has passed, it's possible the circumstances necessitating placement have been remedied. In addition to parents, there are often siblings or extended family and kin that may have lost contact with the child and could become a supportive connection in their life.

Finally, because resumption of jurisdiction can only occur or remain in place at the request of the child, it is critical that the court hear directly from him or her. In most instances, this should be an in-person appearance by the child. In those rare circumstances where the child is unable to be physically present in court, the child should participate via technology (phone, video conferencing, etc.). If the child is unable to attend or participate in the hearing to resume jurisdiction, the court should not proceed with the hearing.

## 16.9 Burden of Proof/Evidentiary Standard

Resumption of jurisdiction is not considered a new adjudication of dependency. Instead, it is a re-opening of a previously closed dependency case. As such, unlike the original adjudication which has a clear and convincing standard, resumption of jurisdiction requires a preponderance of evidence, a much lower standard. The burden of proof is carried by the child and his/her legal counsel.

## 16.10 Placement and Service Options

Children requesting resumption of jurisdiction often have very unique and individualized needs. These needs may or may not include placement. If placement is needed, the options may include kinship care, family foster home, group home, institution, transitional living, and supervised independent living placements. In addition, options such as a dormitory, apartment, other more independent setting, or a combination of these may be appropriate. Similar to other cases, the law requires that the child be placed in the least restrictive and most family-like placement that meets their needs.

Additionally, the scope and type of services needed by these youth may be very different than those needed by teenagers who have not yet reached the age of eighteen. While typical independent living skills and/or services may be helpful, other services may be needed by this population. These services may be generated by the county child welfare agency or other human service and/or community service entities.

***Best Practice — Youth Service Array***

Many counties offer independent living services long after court supervision is terminated. As such, youth are able to access a wide range of services without needing to officially request the court resume jurisdiction. This may include adult housing, employment, training, and supportive services. While these services may exist in a county, long wait lists may create access barriers. As such, courts are encouraged to participate in the identification and development of service options which meet the needs of former foster youth.

In addition to general services available to all adults, some Local Children's Roundtables have established a sub-committee to identify the specific needs of former foster youth, potential resources, and effective strategies that promote a balanced approach to safety, accountability, and successful adult living. Additionally, these groups have discussed the flexibility and creativity needed in serving this population.

## 16.11 Review Hearings

The court is required to conduct a permanency hearing for all resumption of jurisdiction cases. See Pa.R.J.C.P. 1635(D)(2)(c) and Pa.R.J.C.P. 1608. All findings and orders required in permanency review hearings apply to resumption of jurisdiction cases. These reviews must occur at least every six months. However, in some instances, the court may want to review the matter more frequently.

During these periodic reviews, the court should inquire about any element of the transition plan that the child may not be following. Sometimes simple remedies or changes may be made that will result in the child's compliance. However, even after being offered an appropriate transition plan, the child may be unwilling to follow it. Pa.R.J.C.P. 1635(E)(1) allows a party to move for termination of court supervision once the goals of the transition plan have been accomplished or the child refuses to cooperate with the plan.

## 16.12 Findings and Orders

The Order for Resumption of Jurisdiction is contained within the Common Pleas Case Management System (CPCMS), Dependency Module. The order includes the required findings pursuant to Pa.R.J.C.P. 1635 and provides an opportunity to fully articulate specific orders the court deems appropriate. Of special note is the requirement to make a reasonable efforts finding. Unlike the reasonable efforts finding required in other dependency hearings, this finding focuses on whether the county agency provided reasonable efforts to prevent the return of the child to juvenile court jurisdiction unless, due to the child's immediate need for assistance, such lack of efforts was reasonable. Pa.R.J.C.P. 1635(C)(3).

After the hearing, the court must enter an order granting or denying the motion to resume juvenile court jurisdiction. In addition, the court must schedule a permanency hearing at least every six months until such time that court supervision is terminated. The Common Pleas Case Management System (CPCMS) Permanency Review Order and CPCMS Termination of Court Supervision Order should be used for ongoing resumption of jurisdiction cases.

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# Chapter 17 – Termination of Parental Rights

## 17.1 Overview

Termination of parental rights (TPR) stemming from child abuse and neglect is one of the most difficult proceedings over which a judge must preside. A TPR order divests the parents of any legal status with respect to the child, including all rights and privileges to have further contact and to be informed of the child's adoption and well-being. Simultaneously, it divests the child of any rights regarding or relationship with the biological parent. It has often been called the "death penalty" of dependency court because of the seriousness and finality of a termination order severing all ties between a child and the biological parents. However, when parents are unable or unwilling to do what is necessary for a safe and timely reunification with their children, another permanency goal must be chosen. For the vast majority of dependent children, adoption is the preferred goal. Before a child can be adopted, parental rights must be terminated.

The federal Adoption and Safe Families Act (ASFA) and the Pennsylvania Juvenile Act require the child welfare agency to request a goal change and file a TPR petition when a child has been in foster care for 15 of the most recent 22 months. 42 U.S.C. § 675(5)(E) and 42 Pa.C.S. § 6351(f)(9).

In certain circumstances, these timeframes need not be strictly followed. These circumstances can include situations where a child is in the care of a relative who does not wish to adopt or the agency alleges, and the court approves other compelling reasons that establish that termination of parental rights is not feasible or in the best interest of the child. 42 Pa.C.S. § 6351(f)(9). The Juvenile Act emphasizes the need for child permanency with the recognition that child development is enhanced in stable, permanent families and that delays in permanency are most often disadvantageous to the child.

Terminating parental rights can occur in three ways: through legal consent, voluntary relinquishment, or involuntary termination. Both legal consent and voluntary relinquishment may serve to preserve a parent's dignity while preventing a lengthy, contested hearing. However, the agency may sometimes oppose a consent or voluntary relinquishment and seek an involuntary termination in order to establish aggravated circumstances as to the parents' other children, present or future. (For more information on aggravated circumstances, see Chapter 20: General Issues, Section 20.2: Aggravated Circumstances.)

A termination action can sever the rights of one or both parents, simultaneously or in separate proceedings. Regardless of the method used, parents in TPR proceedings may experience a wide range of emotions that can be compounded with

issues of mental illness, substance abuse, or developmental disabilities, which may leave them confused about the process. Accordingly, it becomes incumbent upon the court to ensure that all legal requirements under the Adoption Act and procedural due process requirements are strictly followed.

As discussed more fully in Chapter 19: Adoption, when parental rights are terminated, the agency continues with legal custody of the child and becomes the intermediary. The agency has the responsibility to secure an adoptive family and finalize the adoption within a reasonable timeframe. While having an identified adoptive resource is not a prerequisite for TPR, ideally, there should be a strong likelihood of an eventual adoption.

Due to the constitutional issues and the stresses naturally involved, termination of parental rights proceedings should be given high priority. Delaying or deferring termination often means missed opportunities in the life of a child. Moreover, when termination decisions are delayed, a child's emotional issues may deteriorate, negatively impacting timely permanence. A judge should make every effort to reduce delays in TPR hearings.

***Best Practice — Active Judicial Oversight***

The presiding judge should be actively involved in management of a TPR case and take steps to identify issues that may cause unnecessary delay. The use of effective tools, such as pre-hearing conferences, mediation, and other facilitation processes, can help identify any possible problems that may delay prompt disposition and can streamline the issues in dispute.

## 17.2 Jurisdiction of the Court

As is discussed more fully in Chapter 4: Jurisdiction, under 20 Pa.C.S. § 711, only judges with Orphans' Court authority are permitted to preside over TPR hearings in Pennsylvania. The only exception is for Philadelphia, where 20 Pa.C.S. § 713 entrusts these matters to the Family Court Division. However, in those judicial districts in which the jurisdiction of the Dependency Court and the Orphans' Court are separated by statute, the judge who hears the dependency matter may be permitted to have the authority of an Orphans' Court judge for the purpose of concluding the adoption of dependent children, including the TPR hearing, through a local order of the President Judge. 42 Pa.C.S. § 6351(i). (See also Chapter 4: Jurisdiction.) Regardless of which judge is assigned to hear the case, all TPR proceedings are governed by Orphans' Court procedural rules and not the Rules of Juvenile Court Procedure.

## 17.3 TPR Petitions

Termination of parent rights proceedings begin with the filing of a petition to terminate parental rights. While this petition is typically filed by the child welfare agency solicitor, it can also be filed by the child's Guardian *Ad Litem*, by an individual with custody who intends to adopt the child, or by one parent seeking to terminate the rights of the other. 23 Pa.C.S. § 2512. The petition must allege facts in sufficient detail to clarify the petitioner's legal and factual theory of the case and to give the parties notice of the issues.

***Best Practice — Avoiding Delays***

Courts can reduce delays by scheduling a pre-trial conference or utilizing alternative dispute resolution practices, such as mediation or facilitation, to resolve issues when possible.

Courts may also enhance efficiencies by scheduling practices that are based on time estimations provided by assigned counsel, by assigning the case to the judge who handled the juvenile proceedings, and by assuring counsel is available to the parents prior to the hearing.

## 17.4 Scheduling of TPR Hearings

Given that a relatively high percentage of termination cases result in contested hearings, scheduling sufficient time for the proceeding is of utmost importance. Because issues are often complex and long-standing and impact the constitutional rights of parents, sufficient time should be allowed for the parties to present evidence and testimony. If multiple days are needed, the court should make every effort to schedule the hearing on consecutive days.

## 17.5 Service and Notice

The court shall ensure service was made in a proper and timely manner. The proof of service or the efforts attempted to provide service must be placed on the record.

Service of the TPR petition must be by personal service, by registered or certified mail return receipt requested, or by means directed by the court. 23 Pa.C.S. § 2513. Rule 15.4 of the Orphans' Court Rules does not recognize first-class mail as sufficient for notice of an *involuntary* TPR proceeding. The better practice is to require more than a first-class mailing in every TPR case.

If the whereabouts or identity of a parent are unknown, service by publication may be required. The agency should recognize when to proceed with publication upon the advice of the agency solicitor. The court may require notice by publication if it is not satisfied that proper service and notice have been made to any person.

If service cannot be obtained upon the person whose parental rights are sought to be terminated either because service is refused or unsuccessful and no alternative service is directed by the court or because the person's identity or whereabouts are unknown after reasonable investigation, then notice by publication shall be given as directed by the court after a motion in accordance with Pa.R.Civ.P. 430(a) and upon a finding by the court that a reasonable investigation was made. P.R.O.C.P. 15.4(b)(4).

Although not governing Orphans' Court proceedings, the note to Pa. R.C.P. No. 430 can provide some guidance as to good faith efforts to locate someone: "(1) inquires of postal authorities including inquiries pursuant to the Freedom of Information Act, (2) inquiries of relatives, neighbors, friends, and employers of the defendant and (3) examinations of local telephone directories, voter registration records, local tax records, and motor vehicle records." At a minimum, the agency should indicate the steps taken under family finding and other resources available in the child welfare field.

***Best Practice — Locating Absent Parents***

Judges should insist on serious efforts to locate and notify parents when they are not present. Asking any parent or relative present at initial hearings on the record as to the whereabouts of missing parents should be encouraged.

The court should require the agency to develop standards to improve parent location early in the process, such as utilizing tools including a parent locator service and family finding strategies, developing a set of form letters asking for information about missing persons, and inquiring of the local child support service agency.

More information on locating absent parents can be found on the Locating Fathers & Establishing Paternity Bench Card (See Chapter 6: Entering the Child Welfare System).

The court should ensure that the record clearly reflects the efforts made to provide notice, whether they were reasonable, and whether the court is satisfied that service and notice requirements have been met.

## 17.6 Appointment of Counsel

With respect to legal representation for both children and parents in TPR proceedings, 23 Pa.C.S. § 2313 provides as follows:

**Parent**: The court must appoint counsel for a parent in an involuntary TPR proceeding if, upon petition of the parent, the court determines that the parent is unable to pay for counsel without substantial financial hardship. 23 Pa.C.S. § 2313(a.1).

**Child**: The court shall appoint counsel to represent the child in an involuntary termination proceeding when the proceeding is being contested by one or both of the parents. The court may appoint counsel or a Guardian *Ad Litem* to represent any child who has not reached the age of 18 years and is subject to any other proceeding under this part whenever it is in the best interests of the child. 23 Pa.C.S. § 2313(a). The court *may* consider appointing the same attorney that served as the child's Guardian A*d Litem* in the dependency proceedings as the child's counsel in the TPR proceedings provided there is no conflict of interest between the child's legal interests and the child's best interests. *In re T.S.*, 192 A.3d 1080 (Pa. 2018). (See also Pa.R.J.C.P. 1154.) The former GAL would be familiar with the case and should have an established relationship with the child. No attorney or law firm is permitted to represent the child and the adopting parents simultaneously. 23 Pa.C.S. § 2313(a).

***Best Practice — Appointment of Counsel***

While parents have a right to appointed counsel only if they petition the court and show that they are unable to afford their own without "substantial hardship", it might benefit the court to devise a process whereby counsel are made available to all parents. This saves valuable court time, prevents possible reversals on appeal, and promotes timely permanence for children. 23 Pa.C.S. § 2313(a.1).

## 17.7 Discovery

Discovery in Orphans' Court matters is currently governed by local procedure. In the absence of a local rule, discovery matters are to be handled according to the Pennsylvania Rules of Civil Procedure.

In most counties discovery is handled on an informal basis. In a TPR proceeding, courts should require the agency to make the discoverable material in their files available

to counsel and establish timeframes to respond to discovery requests. All reports should be sent to counsel and the parents well in advance of trial and prior to submission to the judge, giving the parties an opportunity to prepare responses or present alternative evidence.

Finally, the court should ensure a full and adequate Orphans' Court record for appellate review by incorporating the dependency record, including the original dependency petition and all orders that followed it, into the TPR record if there is a motion to incorporate the record with all parties in agreement. Hearsay evidence is not admissible in the TPR but is admissible in the disposition and Permanency Review Hearing.

## 17.8 Continuances

Delays of any kind should be discouraged by the court. One of the most common causes of delay in TPR proceedings can be traced back to omissions in the early stages of the dependency process, such as failure to identify the father. When a non-custodial parent is identified and brought into the process as early as possible, it becomes more likely to achieve an earlier resolution. If the parent is not located early in the process, it will be difficult to meet this standard and may delay permanency for the child. (For more information about locating absent parents see Chapter 6: Entering the Child Welfare System.)

Efficient management and court oversight can eliminate many systemic sources of delay. This includes issues regarding notice, scheduling, appointment of counsel, and continuity between the Dependency and Orphans' Court proceedings.

***Best Practice — Limiting Continuances***

Establishing strict criteria for granting continuances can reduce delays. The court should consider the welfare of the child in deciding any party's request for continuance.

## 17.9 TPR Methods

Parental rights can be terminated through three different processes: Alternative Procedure for Relinquishment (often referred to as Consent to Adoption), Voluntary Relinquishment of Parental Rights, and Involuntary Termination of Parental Rights.

***Best Practice — One Judge/One Family***

Having a One Judge/One Family system is extremely beneficial in cases culminating in TPR proceedings. The judge presiding over the matter has become well-acquainted with the family's situation and the attempts made by the agency to bring together a better and stronger family. The judge benefits greatly from this knowledge and perspective when it becomes necessary to consider a TPR.

### 17.9.1 Relinquishment Under the Alternative Procedure (Consent)

A parent or parents may choose to give up their parental rights through the consent procedure under 23 Pa.C.S. § 2504. Unlike voluntary relinquishment, consent does not require the parent or parents' appearance at the court hearing.

The alternative procedure requires that the parent or parents each execute a Consent to Adoption. Once the consent is executed, counsel for the intermediary (the child welfare agency solicitor) must file a petition to confirm consent to adoption (with the consents attached) with the Clerk of the Orphans' Court. Upon receipt, a hearing for the purpose of confirming a consent to an adoption must be scheduled.

The statutory language for a consent is contained in 23 Pa.C.S. §§ 2711-2712 of the Adoption Act. The consent requires two witnesses and cannot be signed until 72 hours after the birth of the child. A written consent may be revoked by the consenting parent up to thirty days after signing. This revocation must be in writing and served upon the agency or adult to whom the child was relinquished. Any consent given outside of the Commonwealth shall be valid if it was given in accordance with the laws of the jurisdiction where it was executed. *Id*.

The hearing on the Petition to Confirm Consent must be scheduled ten or more days after the petition is filed. 23 Pa.C.S. § 2504. Notice of the hearing must be given to the relinquishing parent(s) and other parent, to the putative parent whose rights could be terminated, and to the parents or guardians of a consenting parent who is a minor. *Id.* Notice must be provided by personal service or registered mail or by such other means as the court may require upon the consenter and shall be in the form provided in section 23 Pa.C.S. § 2513(b). *Id.*

### 17.9.2 Voluntary Relinquishment

Parents may also petition the court to voluntarily relinquish their parental rights to the agency or to an adult intending to adopt under 23 Pa.C.S. §§ 2501-2502.

While the Adoption Act requires the filing of a petition prior to the court hearing a parent's voluntary relinquishment of parental rights, in dependency matters this may not be done routinely. Often a voluntary relinquishment occurs after the filing of a petition for involuntary termination of parental rights. In essence, the petition for involuntary termination is filed, but, prior to the TPR hearing, the parent decides to voluntarily relinquish their rights. When this occurs, the court can adopt the involuntary relinquishment petition as the petition for voluntary relinquishment and can simultaneously meet all legal requirements and eliminate delay.

In accepting the voluntary relinquishment of the parent, the judge should take extraordinary steps to ensure the relinquishment is knowingly, intelligently, and voluntarily made. The judge should make sure the parent understands the consequences of relinquishment and is fully aware of the right to have a trial to contest the matter. One method used by many courts is a colloquy that both informs and solicits responses as the basis for the court's determination. A sample colloquy is offered at the end of this chapter.

***Best Practice — Making the Record***

Often, in both voluntary and involuntary terminations, the parents will not appear at the hearing. In either instance it is important for the judge to make a proper record. The record should address that proper notice was provided to the parents and the specific reasons for the termination.

During the hearing, the judge should inquire about whether the parties have reached a voluntary agreement for continuing contact, commonly referred to as a post-adoption contact agreement, open adoption agreement, or Act 101 agreement.

### 17.9.3 Post-Adoption Voluntary Contact Agreements

This agreement entered into by the birth family and the adoptive family, as well as a child age 12 and older, provides for contact between the adoptee or adoptive parents and the birth relatives. See 23 Pa.C.S. §§ 2731-2742. The agreement, set in writing and submitted to the court for approval, may include varying degrees of contact ranging from annual pictures provided to the birth family by the adoptive family to phone calls, emails, or visits between birth relatives and the adoptee.

It should be noted that this post-adoption contact agreement is not voluntary if it is conditioned on the parent completing a voluntary relinquishment or signing a consent to adoption.

The court shall approve the agreement if the court determines that:

1. The agreement has been entered into by all parties knowingly and voluntarily as documented in an accompanying affidavit.
2. The agreement is in the best interest of the child. Factors in this determination may include, but are not limited to:
    i. The length of time the child has been in the care of someone other than the birth parent and the circumstances relating thereto.
    ii. The interaction and relationship of the child with birth relatives (defined in 23 Pa.C.S. § 2732 as parent, grandparent, stepparent, sibling, uncle or aunt by of the child's birth family, whether the relationship is by blood, marriage, or adoption).
    iii. The child's adjustment in the home, school, and community.
    iv. The willingness and ability of birth relatives to respect and appreciate the bond between the child and the adoptive family.
    v. The willingness and ability of the adoptive family to respect and appreciate the bond between the child and the birth relatives.
    vi. Any evidence of abuse or neglect of the child.

23 Pa.C.S. § 2735(b).

It should be noted that the child's siblings, whose parental rights have also been terminated but are not being adopted by the adoptive family of the child, should be represented by a Guardian *Ad Litem* during the development of the agreement. Agreements are enforceable upon the filing of an action in court by any party, but failure to comply with the agreement shall not set aside the adoption decree. 23 Pa.C.S. § 2736. Requests for modification of the agreement can be brought only by the adoptive parent or a child twelve years of age or older. 23 Pa.C.S. § 2737(a). The court must find clear and convincing evidence that modification of the agreement serves the needs, welfare, and best interest of the child. 23 Pa.C.S. § 2737(b). The agreement ceases to be enforceable once the child turns eighteen.

### 17.9.4 Involuntary Termination

The Involuntary Termination section of the Adoption Code, 23 Pa.C.S. §§ 2511-2514, applies to situations in which a parent refuses to relinquish parental rights. In this situation, the petitioner is typically the county child welfare agency but could also be a parent or someone who has custody of a child through a private custody action. In either situation, the law and procedure are the same.

An agency's initiation of an involuntary termination proceeding often comes at the end of months of substantial efforts by the agency to rehabilitate and reunite the family, efforts that ultimately proved unsuccessful. For this reason, it is important that the agency document the services given to the parents and their failure to make progress toward reunification.

While the law provides eleven distinct grounds for involuntary termination of parental rights, discussed in detail below, the most common grounds in cases where the agency is pursuing termination are abandonment, repeated and continued incapacity, services offered by the agency to rectify the situation that led to removal are not likely to remedy the condition within a reasonable period of time, and conditions that led to removal continue to exist twelve or more months after removal. In evaluating the petition for termination of parental rights, the positions of the parties, and the testimonial evidence from the hearing, the judge must examine whether there is **clear and convincing evidence** of parental conduct meeting the statutory requirements for involuntary termination. If so, the judge must consider the effect of the proposed termination on the child and whether termination is in the child's best interests. In making this assessment, the court must consider the extent to which a bond exists between the child and parents and, if a bond exists, the impact that severing the bond will have on the child. The finding of a bond does not preclude termination of parental rights. Instead, the judge's approach must be two-pronged first evaluating the existence of a bond and second the impact that severing the bond will have on the child.

When rendering a decision with regard to a pending Petition for Involuntary Termination of Parental Rights, it is essential that the statutory requirements of each section be met. It is also helpful to the court to set forth a history of the placement of the child. This should include a factual summary in addition to the grounds on which involuntary termination has been based, including the date of initial referral to the agency, date of adjudication of dependency, history of placement(s), and copies of all court orders, which can assist in building the record for the judge's decision.

***Best Practice — Combined Hearings***

In many counties, the Permanency Hearing in which a goal change to adoption is being considered and the TPR Hearing are combined. Combining these proceedings results in one appeal, which can expedite the appellate process and enhance timely permanence for children.

## 17.10 Grounds for Involuntary Termination

Under 23 Pa.C.S. § 2511(a), an involuntary termination of parental rights may be granted under any of the following grounds:

1. **The parent, by conduct continuing for a period of at least six months immediately preceding the filing of the petition, either has evidenced a settled purpose of relinquishing parental claim to a child or has**

**refused or failed to perform parental duties.** In cases in which this ground is alleged, the court should pay attention to the amount and regularity of the parent's visits with the child, attendance at medical and educational appointments, ongoing contact between the parent and child, whether the parent evidenced a commitment to the child and the ultimate goal of reunification, utilized the opportunities offered by the agency, provided gifts, cards, or letters and made contact with the child a more serious priority than personal needs. Similarly important is whether the agency made visitation and contact with the child workable considering the parent's family situation, work schedule, and transportation requirements. Lastly, the court should consider if anyone placed obstacles between the parent whose rights are to be terminated and the child, did the parent make reasonable efforts to overcome the obstacles to form/maintain the parent-child relationship. *In the Interest of K.Z.S.*, 946 A.2d 753, 759 (Pa.Super. 2008).

2. **The repeated and continued incapacity, abuse, neglect, or refusal of the parent has caused the child to be without essential parental care, control, or subsistence necessary for his or her physical or mental well-being and the conditions and causes of the incapacity, abuse, neglect, or refusal cannot or will not be remedied by the parent.** When proceeding under this provision, the agency is not constrained by timeframes. At the same time, parental incapacity, such as substance abuse or involvement in the criminal justice system, does not automatically cause the child to be without essential parental care, control, or subsistence necessary for his or her physical or mental well-being.

   The Pennsylvania Supreme Court reiterated its precedent regarding petitions for termination of parental rights filed against incarcerated parents in two cases. After considering the issue in *In re R.I.S.*, 36 A.3d 567 (Pa. 2011), the court in *In re Adoption of S.P.*, 47 A.3d 817, 830 (Pa. 2012) held that "incarceration, while not a litmus test for termination, can be determinative of the question of whether a parent is incapable of providing 'essential parental care, control or subsistence and the length of the remaining confinement can be considered as highly relevant to whether 'the conditions and causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied by the parent.'"

   The justices concluded that such determinations related to incarceration can provide sufficient grounds for termination under Section 2511(a)(2). *Id*.

   The court also reasserted that appellate courts must apply an abuse of discretion standard in reviewing termination of parental rights decisions and must "defer to the trial judges so long as the factual findings are supported by the record and the court's legal conclusions are not the result of an error of law or an abuse of discretion." *Id.* at 827.

Finally, parental rights may not be terminated solely on the basis of environmental factors such as inadequate housing, furnishings, income, clothing, and medical care if they are found to be beyond the parent's control. 23 Pa.C.S. § 2511(b).

3. **The parent is the presumptive but not the natural father of the child.**

4. **The child is in the custody of an agency, having been found under such circumstances that the identity or whereabouts of the parent is unknown and cannot be ascertained by diligent search for the parent, and the parent does not claim the child within three months after the child is found.**

5. **The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency for a period of at least six months, the conditions which led to the removal or placement of the child continue to exist, the parent cannot or will not remedy those conditions within a reasonable period of time, the services or assistance reasonably available to the parent are not likely to remedy the conditions which led to the removal or placement of the child within a reasonable period of time and termination of the parental rights would best serve the needs and welfare of the child.** The court must determine on a case-by-case basis whether the parent has had sufficient time to correct the problems leading to the child's removal or placement, considering the number and severity of the problems to be corrected and the child's best interests. Also relevant is to what extent services offered were truly available to the parent financially and geographically and whether or not the services addressed the issues that necessitated placement. However, a parent's current vow to cooperate with services offered after a long period of uncooperativeness regarding the necessity or availability of services may be rejected by the court as untimely or disingenuous. *In the Interest of K.Z.S.,* 946 A.2d 753, 758 (Pa. Super. 2008).

6. **In the case of a newborn child, the parent knows or has reason to know of the child's birth, does not reside with the child, has not married the child's other parent, has failed for a period of four months immediately preceding the filing of the petition to make reasonable efforts to maintain substantial and continuing contact with the child and has failed during the same four-month period to provide substantial financial support for the child.**

7. **The parent is the father of a child conceived as a result of rape or incest.**

8. **The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency, twelve months or more have elapsed from the date of removal or placement, the conditions which led to the removal or placement of the child continue to exist, and termination of parental rights would best serve the needs and welfare of the child.**

9. **The parent has been convicted of one of the following in which the victim was a child of the parent:**
   a. **an offense under 18 Pa.C.S. Ch. 25 (relating to criminal homicide);**
   b. **a felony under 18 Pa.C.S. § 2702 (relating to aggravated assault);**
   c. **an offense in another jurisdiction equivalent to an offense in subparagraph (i) or (ii); or**
   d. **an attempt, solicitation or conspiracy to commit an offense in subparagraph (i), (ii) or (iii).**

10. **The parent has been found by a court of competent jurisdiction to have committed sexual abuse against the child or another child of the parent based on a judicial adjudication as set forth in paragraph (1)(i), (ii), (iii) or (iv) or (4) of the definition of "founded report" in section 6303(a) (relating to definitions) where the judicial adjudication is based on a finding of "sexual abuse or exploitation" as defined in section 6303(a).**

11. **The parent is required to register as a sexual offender under 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of sexual offenders) or I (relating to continued registration of sexual offenders) or to register with a sexual offender registry in another jurisdiction or foreign country.**

As previously mentioned, sections (a)(1),(2),(5), and (8) are the provisions most commonly cited when the agency moves to terminate parental rights on an involuntary basis. With respect to any petition filed pursuant to subsections (a)(1), (6) or (8), the court **shall not** consider any efforts by the parent to remedy the conditions described in the petition if they are first initiated subsequent to the giving of notice of the filing of the petition. 23 Pa.C.S.§ 2511(b).

While rare, there may be cases in which the court may refuse to terminate parental rights even if grounds to do so exist. (See *In re R.L.T.M.,* 860 A.2d 190 (Pa. Super. 2004).) The court must take into account the impact of severing close parental ties and the resulting pain this may cause the child when considering the best interests of the child.

## 17.11 Additional Considerations in Involuntary Termination Cases

### 17.11.1 Parent-Child Bond Issues

***Best Practice — Courtroom Observations***

During a Termination of Parental Rights proceeding, the court may observe things indicating a bond or the lack of a bond between a child and a parent. Examples are a child running to a parent, refusing to go to a parent, or crying when removed from a parent. The court should read into the record its own observations, as these events undoubtedly impact the court's decision and should be part of the record.

Once the court has reached a determination that grounds for involuntary termination have been met under 23 Pa.C.S. § 2511(a), consideration of the parent-child bond under 23 Pa.C.S. § 2511(b) is required.

Further, 23 Pa.C.S. § 2511(b) requires a court considering terminating the rights of a parent to "give primary consideration to the developmental, physical, and emotional needs and welfare of the child." This statutory provision does not use the term bond. However, appellate case law has established that in every case the Orphans' Court must evaluate the emotional bond, if any, between the parent and child as a factor in the determination of the child's developmental, physical, and emotional needs. *In the Matter of K.K.R.-S.,* 958 A.2d 529, 533 (Pa. Super. 2008). Failure to make these findings is reversible error. Accordingly, the record should reflect that the parties have presented relevant evidence not just as to the grounds for termination, but also as to the effect a TPR would have on the child. Such evidence must be carefully evaluated by the judge, with specific findings under section 2511(b) set forth in the decision as well as any opinion issued in support of TPR.

***Best Practice — Bond Findings***

The trial court should always make clear findings of fact as to the nature and strength of the bond and relationship of the child with the parents or GALs and with the foster parents. Even when not challenged on appeal, the appellate courts have made this a critical issue to be addressed in the trial court's decision and this analysis should be included in the trial court's opinion. (See *In re Adoption of C.L.G.*, 956 A.2d 999 (Pa. Super. 2008) (en banc)).

The evidence typically proffered for this aspect of the TPR proceeding includes, in addition to any testimony by the parent and child:

- Observations of the caseworkers or others of the interactions between parent and child at visits or at other times they are in contact, such as at the courthouse for hearings;
- Testimony of kinship providers or foster parents as to the child's behaviors before or after visits or telephone calls with a parent;
- The nature and amount of requests by a parent or child for more visits or contact between them;
- Efforts of a parent to maintain a close relationship with their child;
- The absence of contact or missed visits negatively affecting the child; and
- Expert testimony with respect to a bonding assessment, consisting of interviews and observations by the evaluator.

Practice varies with respect to formal bonding assessments in Pennsylvania. In some counties, they are rare, and in other counties, they are routine. Neither the statute nor case law requires the Orphans' Court in a TPR proceeding to order that a formal bonding evaluation be performed by an expert. *K.K.R.S.*, 958 A.2d at 533. There are certain cases where the judge may conclude that one should be done to aid in the final decision-making, as in *In the Interest of K.Z.S.*, 946 A.2d 753 (Pa. Super. 2008). The Superior Court calls this a wise approach"but also recognizes it is not always needed and that the evaluation process itself, in some instances, may be detrimental to the child. *Id*. at 762.

Whether a bond exists is not the full extent of the inquiry. Rather, it is whether the bond exists between the child and parent and whether termination would destroy an existing, necessary, and beneficial relationship. *In re Adoption of C.L.G.,* 956 A.2d 999, 1010 (Pa. Super. 2008) [bond stronger with foster parents]. The presence of some bond does not preclude a TPR, as even an abused child may harbor some emotional attachment to an abusive parent. If the court finds there is a bond between the parent and child, a second analysis must determine whether the bond is worth saving and whether it can be severed without irreparable harm to the child. *K.Z.S.*, 946 A.2d at 764.

Addressing the issue of foster care drift, the Pennsylvania Supreme Court recognized "the challenges facing the foster care system when children have understandably strong, even if unhealthy, bonds to biological parents who have proven incapable of parenting." *In re T.S.M.*, 71 A.3d 251, 253 (Pa. 2013). In this matter, the court reversed the trial court's denial of termination and instead ordered the court to grant termination of mother's parental rights based upon "the substantial, possibly permanent, damage done to these children by the prolonged, unhealthy, pathological bond with Mother, especially as it affected the children's ability to form attachments to foster families who could have provided the necessary love, care, and stability that these children have so needed for the past decade." *Id.* at 271. The court instructed that "Courts must determine whether the trauma caused by breaking that bond is outweighed by the benefit of moving the child toward a permanent home." *Id.* at 253.

In the final analysis, the needs and welfare of the child are paramount. Thus, a TPR under section 2511(b) may be appropriate to provide a child "with the permanence necessary for the 'fulfillment' of her potential in a permanent, healthy and safe environment." *C.L.G.* 956 A.2d at 1011.

### 17.11.2 Putative Fathers

Under 23 Pa. C.S A. § 2503(d), the court may enter a decree terminating the parental rights of a putative father who (1) fails to appear at the TPR hearing for the purpose of objecting to termination of his parental rights, (2) fails to file a written objection to such termination with the court before the hearing and (3) has not filed an acknowledgment of paternity or claim of paternity.

Petitioner's counsel is tasked with meeting notice and service requirements in situations involving a putative or an unknown father despite that parent's anonymity. (See Pa.R.Civ.P.No.430 and 1018.) As noted earlier, with leave of court and after a diligent search, the unknown parent may be notified by publication.

### 17.11.3 Incarcerated Parents

Incarcerated parents present particular issues for a judge's consideration. The Pennsylvania Supreme Court has stated that incarceration neither compels nor precludes termination. *In re Adoption of S.P.*, 47 A.3d 817, 828 (Pa. 2012) (citation omitted). Instead, incarceration can be a factor, and "indeed can be a determinative factor, in the court's conclusion that grounds for termination exist under § 2511(a)(2) where the repeated and continued incapacity of a parent due to incarceration has caused the child to be without essential parental care, control or subsistence and that the causes of the incapacity cannot or will not be remedied." *Id.* A parent's incarceration does not preclude termination of parental rights if the incarcerated parent fails to utilize given resources and to take affirmative steps to support a parent-child relationship. *In re D.J.S.*, 737 A.2d 283, 287 (Pa. Super. 1999). Incarceration is but one factor the judge must consider in analyzing a parent's performance. While incarcerated, a parent is expected to utilize whatever resources are available to him in order to foster a continuing close relationship with his children. *In the Matter of Adoption of Baby Boy A.*, 517 A.2d 1244, 1246 (Pa. 1986). Where the parent does not exercise reasonable firmness in "declining to yield to obstacles," his parental rights may be forfeited. *S.P.*, 47 A.3d at 822.

Additionally, an incarcerated parent's responsibilities are not tolled during incarceration. The judge must inquire whether the parent utilized available resources to maintain a close relationship with the child while he or she was in prison (*Id.* at 1006). A parent is expected to be steadfast in overcoming obstacles to maintaining the parent-child relationship. *K.Z.S.*, 946 A.2d at 759.

Assessing the parent-child bond is also problematic and challenging when a parent is incarcerated. Often, the child has either had minimal contact or no contact

with the incarcerated parent. In these circumstances, direct interaction between the parent and the child could be detrimental to the child. For example, where the children had no contact with the mother for two years because of her incarceration, the judge could consider a bonding assessment that was not based on observation of the children interacting with their mother because the expert testified that a brief reunion with the mother followed by no further contact if termination occurred could be harmful to the children. *In the Matter of K.C.F.*, 928 A.2d 1046, 1052 (Pa. Super. 2007).

Clearly, each case of an incarcerated parent facing termination must be analyzed on its own facts, keeping in mind, with respect to terminations sought on the ground of continued incapacity under 23 Pa.C.S. § 2511(a)(2), that the child's need for consistent parental care and stability cannot be put on hold simply because the parent is doing what she is supposed to be doing in prison. *In re E.A.P.,* 944 A.2d 79, 84 (Pa. Super. 2008). While reasonable efforts should be considered in termination cases, nothing prohibits granting a petition to terminate parental rights even if reasonable efforts have been provided. *In the Interest of D.C.D.,* 105 A.3d 662, 675 (Pa. 2014).

In making its determination, the court should consider the following factual matters:

- Participation in prison parenting programs;
- Completion of required programs, such as sexual offender's counseling, drug and alcohol counseling, domestic violence counseling, or anger management counseling;
- Period of incarceration, earliest release date. (Has the parent been, or will he/she be incarcerated much of the child's young life?);
- Whether the parent has written to the child during incarceration (See *In the Interest of C.S.*, 761 A.2d 1197 (Pa. Super. 2000));
- Parent's ability to articulate a plan as to housing for the child and employment following release;
- Whether the parent maintained communication with CYS to provide requested information or consents (See *In re D.J.S.*, 737 A.2d 283 (Pa. Super. 1999));
- Rehabilitation from criminal activity (See *In re C.S.*, 761 A.2d 1197 (Pa. Super. 2000));
- Disciplinary record while incarcerated;
- Parole or probation violations and revocations; and
- Recidivism.

## 17.12 Decree of Termination of Parental Rights

After the TPR hearing, the court may enter a decree of termination of parental rights. The effects of a decree of termination include:

**Loss of right to object to adoption.** The decree extinguishes all rights of the parent to object to or receive notice of adoption proceedings. 23 Pa.C.S. § 2521(a).

**Award of custody.** The decree gives custody of the child to the agency or the person consenting to accept custody or the petitioner. 23 Pa.C.S. § 2521(b).

**Authority of agency or person receiving custody.** The recipient of custody stands *in loco parentis* to the child and shall have the authority to consent to marriage, to enlistment in the armed forces, and to major medical, psychiatric, and surgical treatment and to exercise such other authority concerning the child as a natural parent could exercise. 23 Pa.C.S. §2521(c).

At the time of the transmittal of a decree of termination, the judge must advise the parents whose rights are terminated, in writing, of their continuing right to place and update personal and medical history information on file with the court and with the Department of Human Services. 23 Pa.C.S. § 2503(e).

***Best Practice — Findings and Orders***

Making a good record from the beginning can make the writing of the Opinion easier in a case that is appealed. The court can bypass the need to write an Opinion by pointing to the place in the record where the reasons for its decision appear. Pa.R.A.P. 1925(a). This procedure may aid in meeting the Children's Fast Track timelines in an appeal situation. (For more information, see Chapter 18: Appeals.)

## Sample Voluntary Relinquishment of Parental Rights Colloquy

The court has been informed that you want to enter a voluntary relinquishment of your parental rights to (child's name and date of birth). In order to accept your voluntary relinquishment of parental rights, the court must complete a colloquy. The colloquy is a series of questions that will help the court determine if you fully understand what voluntary relinquishment is and ensure the court that you are relinquishing your parental rights voluntarily, intelligently, and fully aware of what it means and what the possible consequences of your relinquishment are.

1. What is the highest grade you completed in school?

2. Do you read, write, and understand English?

3. Have you taken anything into your body today that would affect your ability to understand or participate in today's proceedings?

4. Have you received treatment for any mental illness or disability with the past six months?

5. The court was told that you want to enter a voluntary relinquishment of your parental rights to (child's name and date of birth) today. Is that correct?

6. Do you understand that you do not have to agree to have your parental rights terminated?

7. Do you understand you have the right to counsel?

8. Do you understand you have the right to require the agency to prove by clear and convincing evidence that your parental rights should be terminated?

9. Do you understand you have the right to have a trial where the agency could call witnesses?

10. Do you understand at that trial you could cross examine the agency's witnesses, call your own witnesses, and testify on your own behalf?

11. Do you understand if you testify on your own behalf, the agency and GAL could cross-examine you?

12. Do you understand that the GAL is here to represent your child's best interest, that he/she participates in the trial and ultimately makes a recommendation as to whether your rights should be terminated or not?

13. Do you understand that if you voluntarily relinquish your rights, you give up or waive all those things we just discussed?

14. Understanding this, do you wish to voluntarily relinquish your rights to (child's name and date of birth)?

15. Do you understand that if you voluntarily relinquish your parental rights your rights to (child name/age) are forever ended and your child will be placed for adoption?

16. Once the court finds that you entered this voluntary relinquishment your parental rights to (child name/age) are forever terminated. Do you understand that?

17. Have you had enough time to talk about this with your attorney?

18. Are you satisfied with your attorney's representation?

19. Do you have any questions about anything your attorney told you?

20. Do you have any questions about anything I just explained?

21. Has anybody made any promises or threats to get you to voluntarily relinquish your parental rights?

22. Do you believe it is in your best interest and your child's best interest to voluntarily relinquish your parental rights?

23. Is there anything you might want to put on this record right now that you may want your child someday to know?

# TERMINATION OF PARENTAL RIGHTS HEARING BENCHCARD

| | |
|---|---|
| Relevant Statutes and Rules | 23 Pa.C.S. § 2511(a)(1) – (9) (grounds) and 2511 (b) (emotional bond/needs and welfare); Pennsylvania Orphans' Court Rules 15.2, 15.3, 15.4 and 15.6 |
| Purpose of Hearing | Divests parents' legal status and contact. This can be by a contested involuntary termination; a voluntary relinquishment, or a petition to confirm consent (see section 16.9 of this chapter).<br><br>It is often referred to as a "death penalty" proceeding due to the finality of the TPR order which severs all ties between the child and parent. |
| Time Frame | The Federal Adoption and Safe Families Act (ASFA) and the Pennsylvania Juvenile Act require the child welfare agency to file a TPR petition when a child has been in foster care for 15 of the most recent 22 months.<br><br>The Adoption Act does not bar bringing the petition sooner than the ASFA requirements, so long as one of the eleven grounds for TPR as set forth in 23 Pa.C.S. § 2511 is present. |
| Rules of Evidence | The formal rules of evidence in Orphans' Court apply. The burden of proof on the petitioner is to establish at least one of the statutory grounds for TPR by "clear and convincing evidence". |
| Next Hearing | Finalization of Adoption Hearing: If an appeal is taken, file a statement of reasons or prepare an opinion as per the Fast Track Rules.<br><br>Until such time as the appeal is resolved, the adoption is finalized, and dependency is terminated, the statute requires Permanency Hearings at a minimum of every six months.<br><br>**Best practice is to conduct review hearings a minimum of every 3 months.** |

# TERMINATION OF PARENTAL RIGHTS HEARING

# SUMMARY OF KEY QUESTIONS/DETERMINATIONS

- Is each parent identified (paternity established)?

- What is the explanation as to any parent not present?
  - Was proper notice provided? (*The Court must put on the record that service or notice was delivered in a proper, timely manner.*)

- Does each parent have proper legal representation?

- If a consent (and parent is in attendance) or voluntary relinquishment by parent, has there been a complete colloquy with the parent(s) as to his or her understanding of the rights surrendered (*see sample colloquy at the end of this chapter*)?

- Has the agency met its burden as to one or more of the statutory grounds under 23 Pa.C.S. § 2511(a)? (*The court must identify on the record one or more specific grounds for termination (under 23 Pa.C.S. § 2511(a)).*

- Has the agency incorporated into the record all of the prior determinations and proceedings of the Juvenile Court?

- Have the relevant exhibits been formally admitted into evidence and made a part of the record?

- Has there been adequate evidence presented as to the consideration under 23 Pa.C.S. § 2511(b) of any emotional bond between parent and child? (*The court must make a statement on the record regarding bond.*)

- What effect would an order of TPR have on the child? (*The court must make a finding that the needs and welfare of the child are met through the granting of TPR.*)

- Has an adoptive home been identified (only as a consideration for needs and welfare)?

- Is the attorney for the child present and prepared to provide a considered recommendation?

These questions are adapted from the text of this chapter, the *Mission and Guiding Principles for Pennsylvania's Dependency System* and the Termination of Parental Rights Hearing Benchcard provided in the *Enhanced Resource Guidelines* (NCJFCJ, 2016, pp. 363-377).

# Chapter 18 – Appeals

## 18.1 Overview

In recognition of the fact that childhood is brief and final decisions in dependency cases must be rendered as quickly as possible to ensure permanency for the children involved, the Pennsylvania Supreme Court has adopted a special set of expedited Children's Fast Track (CFT) appellate rules. All appeals from orders involving dependency, termination of parental rights, adoptions, custody, and paternity are designated as CFT appeals. (See Pa.R.A.P. 102.) The expedited CFT rules streamline the requirements for filing appeals and submitting records, transcripts, and trial court opinions and speed the processes used by the higher courts to decide appellate issues.

## 18.2 Children's Fast Track (CFT) Rules at a Glance

The distinctive features of appeals under the CFT rules, which became effective March 16, 2009, and apply to all appeals from orders involving dependency, termination of parental rights, adoptions, custody, and paternity, are noted below:

**Notice of appeal and concise statement of errors**:

- The notice of appeal shall include a statement advising the appellate court that the appeal is a Children's Fast Track appeal. Pa.R.A.P. 904(f).
- The clerk must stamp the notice of appeal with "Children's Fast Track" designation in red ink. Pa.R.A.P. 905(b).
- The concise statement of errors complained of on appeal shall be filed and served with the notice of appeal. Pa.R.A.P. 1925(a)(2)(i).

The late filing of a Rule 1925 statement by the appellant will not lead to the automatic finding of waiver. In *In re K.T.E.L.*, 983 A.2d 745, 747 (Pa.Super. 2009), the Superior Court held that in a Children's Fast Track matter, the failure to file a Rule 1925 statement contemporaneously with the notice of appeal pursuant to Rule 905(a)(2) and Rule 1925(a)(2) results in a defective notice of appeal and should be disposed of on a case by case basis.

**Opinion and record:**

- Upon receipt of the notice of appeal and the concise statement, if the reasons for the subject order do not already appear in the record, the judge who entered the order shall, within thirty days, file at least a brief opinion indicating the reasons for the order. Pa.R.A.P. 1925(a)(2)(ii).

- The record on appeal, including transcripts and exhibits necessary for the determination of the appeal, must be transmitted to the appellate court within thirty days after the notice of appeal is filed. Pa.R.A.P. 1931(a)(2).

**Dispositive motions:**

- Dispositive motions must be filed within ten days of filing the concise statement of errors complained of on appeal or within ten days of the trial court's filing of its Pa.R.A.P.1925(a)(2) opinion, whichever period expires last. Pa.R.A.P. 1972(b).

***Anders* Briefs:**

- When counsel believes there are no meritorious issues for appeal, counsel may file a brief with the appellate court requesting to withdraw from representation pursuant to *Anders v. California*, 386 U.S. 738 (1967). Along with the *Anders* brief, counsel should also file a separate petition to withdraw from representation with the appellate court's prothonotary. (See *In re V.E.*, 611 A.2d 1267 (Pa.Super. 1992), in which the Superior Court extended the *Anders* principles to appeals involving the termination of parental rights.) The briefing requirements of *Anders* are appropriate and applicable in an appeal from an order terminating parental rights. *In re S.M.B.*, 856 A.2d 1235, 1237 (Pa.Super. 2004). The Pennsylvania Supreme Court addressed the *Anders* briefing requirements for briefs filed pursuant to briefing schedules established after August 25, 2009. (See *Commonwealth v. Santiago*, 978 A.2d 349 (Pa. 2009)).

## 18.3 Trial Judge's Role in Expediting Appeals

Although the responsibility for expediting CFT appeals rests largely with the appellate court, all parties should seek to ensure these cases are given priority and heard in a timely manner. There are several ways trial judges can help ensure the expedited process runs smoothly.

First, the judge should be sure to place on the record a comprehensive discussion of the reasons for the final order in the case. Pa.R.A.P. 1925(a)(2)(ii) requires the judge who entered the order giving rise to the notice of appeal, if the reasons for the order do not already appear of record, to file of record within 30 days at least a brief opinion of the reasons for the order, or for the rulings or other errors complained of, which may, but need not, refer to the transcript of the proceedings.

If the reasons for the order appear of record, Pa.R.A.P. 1925(a)(1) permits the judge to specify in writing the place in the record where such reasons appear. This is a useful alternative in dependency cases that are appealed because the CFT rules impose a 30-day (as opposed to the usual 60-day) deadline for transmitting the record, including

the transcript and exhibits necessary for the determination of the appeal, to Superior Court.

Second, in exercising its responsibility to prepare and transmit the record to the appellate court, the trial court should give priority to cases involving termination of parental rights or adoption making sure that processes are in place for speedy preparation and transmission of the record.

Finally, if an adoptive home for the child must be found, the trial court must ensure the search for an adoptive family continues pending the decision on the appeal in the same manner as if the case were not being appealed. If an appropriate family is found for the child, visits and placement in the home should proceed while the appeal is pending. The risk that the appeal might be granted is overshadowed by the detriment an extended delay would cause the child if the search were placed on hold during the appeals process if the trial court's ruling was upheld.

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# Chapter 19 – Adoption

## 19.1 Overview

When a child cannot be safely reunited with his or her birth family, adoption is the next most permanent option. It gives the child a permanent family with the same legal standing and protection as a family created through birth. Through adoption, all parental rights and responsibilities are legally and permanently transferred to the adoptive parent(s). In cases where successful, safe reunification is not an option, adoption is the best possible alternative for many children, providing a sense of belonging and security that cannot be found in other temporary living arrangements.

> "When children can't be reunified with their birth parents, adoption is a wonderful alternative to help kids connect with a family. I found a woman to call my mom and I know she will love me forever. I hope all children in foster care have the same chance. "
>
> - J. W., 20, Former Pennsylvania Foster Youth

The adoption hearing is typically the final step in the process of securing a permanent family for the dependent child. It is a time of happiness for both the child and the adoptive family. With all the legal requirements completed and support in place, the adoption hearing is an opportunity for celebration. This is a special day for everyone involved and should be so recognized. The judge presiding over the hearing has an opportunity to assist in the celebration by accommodating the unique wishes and desires of the child and family.

***Best Practice — Adoption Celebrations***

Many counties throughout the Commonwealth take extraordinary steps to make the day of adoption a very special one for children and their adoptive families. Celebrations range from formal Adoption Days, where numerous adoptions are finalized on the same day with accompanying celebration activities, to more simple practices that encourage adopting families to design their own adoption experiences, often including extended family members and friends.

Whatever the process, the judge is in a unique position to recognize the importance of the day and support each family's desire for making the day a special one. Pictures and video recordings are encouraged and can help memorialize the day. In many courts, adoptees are encouraged to come to the judge's bench and bang the gavel to end the ceremony and symbolically begin life in the adoptive family. Other courts provide small tokens to adoptees, such as stuffed animals or books, to help them remember the occasion.

## 19.2 Jurisdiction

Adoption in Pennsylvania is generally governed by the Adoption Act (23 Pa.C.S. §§ 2101-2938). Other laws that may bear on adoptions involving dependent children (described more fully in Chapter 21: Summary of Major Federal and State Child Welfare Legislation) include the Interstate Compact on the Placement of Children (62 P.S. §§ 746-765); the Adoption Opportunities Act (67 Pa.C.S. §§ 7701-7704 (relating to placement of special needs children)) and various federal laws, including the Indian Child Welfare Act (25 U.S.C. §§1901-1963), the Adoption and Safe Families Act of 1997 (See 42 U.S.C. §§ 671-679) and the Fostering Connections Act of 2008 (See 42 U.S.C. §§ 620-629, §§ 670-679). In addition, various Department of Human Services regulations may impact the adoption process.

Under 23 Pa.C.S. § 2302, adoption proceedings may be brought in the court of any of the following counties:

- Where the parent, the adoptee, or the person filing the report/notice of intention to adopt resides;
- Where the agency having custody of the adoptee is located;
- Where the agency that placed the adoptee is located; or
- With leave of the court, where the adoptee formerly resided.

As is discussed more fully in Chapter 4: Jurisdiction, under 20 Pa.C.S. § 711, only judges with Orphans' Court authority are permitted to preside over adoption hearings. The only exception is for Philadelphia, where 20 Pa.C.S. § 713 entrusts these matters to the Family Court Division. However, in those judicial districts in which the jurisdiction of the Dependency Court and the Orphans' Court are separated by statute (see list in Chapter 4, footnote 1), the judge who hears the dependency matter may be permitted to have the authority of an Orphans' Court judge for the purpose of concluding the adoption through a local order of the President Judge. 42 Pa.C.S. §6351(i).

***Best Practice — One Judge/One Family***

As in earlier stages of the dependency process, the "One Judge – One Family" practice is pertinent to the adoption phase. When possible, having the judge who initiated the dependency matter preside over the adoption finalization may help add consistency and closure for the child and the family.

## 19.3 Pre-Adoption Requirements

The court has the ultimate responsibility for ensuring that all required pre-hearing steps are completed. These include:

1. **Pre-Adoptive Home Study & Pre-Placement Report**. This report on the prospective adoptive parent(s) must have been completed within three years prior to placement of the adoptee in the home and updated within one year prior to placement of the adoptee. The pre-placement report must include information regarding the fitness of the adoptive parent(s) and the home environment. (See 23 Pa.C.S. § 2530 for specific elements required in the report).

2. **Report of Intention to Adopt (also known as Notice of Intention to Adopt)**. This report/notice must be filed by the person who has custody of an adoptee and must be filed with the court in which the petition for adoption will be filed. This report must include specific information regarding the person having custody of the child, the child, and the intermediary. 23 Pa.C.S. § 2531. It is often filed simultaneously with the termination of parental rights petition but can be filed later if an adoptive family has yet to be identified for the child. The report/notice must be filed within thirty days of receiving physical care of the adoptee. 23 Pa.C.S. § 2532.

3. **Report of the Intermediary**. Within six months after filing the Report of Intention to Adopt, the intermediary that arranged the adoption placement must make a written report to the Court of Common Pleas, where the adoption will be filed, and notify the prospective adopting parents that the report has been filed. 23 Pa.C.S. §2533(a). (In dependency cases, the intermediary is the county child welfare agency.) The report must contain specific information regarding the intermediary, the child, and the prospective adoptive parents. 23 Pa.C.S. § 2533 (b). Required attachments include the child's birth certificate, any consent necessary for adoption, and a certified decree of the termination of parental rights if the adoption is occurring in any county other than the county in which the termination occurred.

4. **Adoption Subsidy Agreement.** Adoption assistance supports permanency for special needs children by providing the families who adopt these children with resources to assist in their care. The adoption subsidy agreement is the binding agreement that is negotiated between the adopting parent(s) and the county children and youth agency when the county children and youth agency has determined a child eligible for adoption assistance. It articulates ongoing financial and programmatic supports for an eligible adoptee, including reimbursement for allowable one-time expenses related to the adoption process, a monthly subsidy, and Medicaid or medical assistance coverage. Any agreed-upon monthly subsidy amount cannot exceed the amount that would have been provided had the eligible adoptee remained in foster care.

The agreement must be signed and in effect prior to or at the time of the final decree of adoption and terminates upon the eligible child's eighteenth birthday or age twenty-one if the adoption agreement became effective when the child was at least thirteen years old, and the agreement was in effect on or after July 1, 2012.

***Best Practice — Adoption Subsidies and Services***

In most counties, creation of the Adoption Subsidy Agreement is the responsibility of the child welfare agency, subject to the approval of the County Board of Commissioners, and does not involve the court. However, it is certainly in the adoptee's best interest for the court to ensure that the child's ongoing needs have been addressed prior to concluding the court's oversight. The judge should make sure adoptive parents are aware of services and financial resources available prior to the finalization of the adoption, including the availability of post-adoption services should such be needed. The judge should also work with agency administration to ensure a local process that accommodates the timely completion of Adoption Subsidy Agreements without slowing the legal adoption process.

## 19.4 Adoption Hearings

### 19.4.1 Preliminary Matters

The Petition for Adoption is the final pleading and is filed after parental rights have been terminated. The petition must include information and exhibits as delineated in 23 Pa.C.S. § 2701 and 23 Pa.C.S. § 2702.

The consent of a child over twelve years of age is required for an adoption under 23 Pa.C.S. § 2711.

Notice of the adoption hearing must be given by personal service or by registered mail to all persons whose consents are required and to such other persons as the court shall direct. 23 Pa.C.S. § 2721.

There is no requirement that counsel be appointed or that counsel be present for the adoption hearing. Adoptive parents are generally represented by privately retained counsel, an allowable adoption reimbursement expense.

### 19.4.2 Attendance at Hearing

The adoptive parent or parents and the adoptee must attend the hearing. In addition, a representative of the applicable child welfare agency generally attends the hearing but is not required to do so. The court may require the testimony of anyone present.

***Best Practice — Attendance at Adoption Hearings***

Many courts encourage adoptive parents to invite a wide range of guests to witness the adoption, including extended family members, members of church congregations, school friends, work associates, and others. Courts often encourage former caseworkers for the child/family, GALs, and CASA to attend the hearing as well.

Where possible, guests may be allowed to participate through direct testimony or by reading poetry, providing prayers, singing, decorating the courtroom, taking pictures/videos, or simply sharing hopes for the future of the adoptee and the new family. Activities that reflect the adoptee's and adoptive family's values, traditions, and beliefs should be encouraged.

### 19.4.3 Testimony and Investigation

While the adoption hearing can be and often is relatively short, its importance in the lives of children and their new families cannot be understated. The judge's job is to ensure that the event is both memorable and legally sound. A set of questions that may assist judges in this task are found at the end of this chapter. While not exhaustive, the list provides possible questions aimed at eliciting needed information.

***Best Practice — Conduct of Adoption Hearings***

The Adoption Petition provides the court with significant written information about the child and adoptive parents. By reviewing this information prior to the hearing, the judge can glean pertinent information and craft questions that solicit the needed information to meet legal requirements, solidify family relationships, and ease the child/family's concern about this final hearing.

Some judges encourage the adoptive children to sit with the adoptive mother or father on the witness stand or join the judge on the bench, asking them just a few short questions as a means of helping the child feel included in the proceedings.

Prior to the conclusion of the hearing, the judge should ensure evidence and testimony have been provided to sufficiently answer the following questions:

1. Have all legal requirements been met?
2. Why is the adoption in the best interest of the child?
3. What is the child's current adjustment in the home, school, and community?
4. Do the adopting parent(s) understand the rights and responsibilities of this newly created parent-child relationship, including the permanency and obligations of adoption?
5. Has there been full disclosure regarding the child's medical and psychological background?
6. If over the age of twelve years, does the child consent to the adoption?
7. Has the adopting family signed the adoption assistance agreement, and are there any questions regarding the agreement?
8. Are all necessary services and supports in place?
9. Is the new family aware of available services and support to meet the adoptee's current and future needs, and do they know who to contact if they need assistance in the future?
10. Whether a Voluntary Agreement for Continuing Contact (also known as Post Adoption Contact Agreement) filed with the court should be approved? See 23 Pa.C.S. §§ 2733, 2734, and 2735.

## 19.5 Adoption Orders

Once the court is satisfied that the statements made in the petition are true, that the needs and welfare of the adoptee will be promoted by the adoption, and that all legal requirements have been met, the court shall enter a decree finding and directing that the adoptee shall have all the rights of a child and heir of the adoptive parents and shall be subject to the duties of a child to them. 23 Pa.C.S. § 2902. The adoptive parents receive a copy of the decree along with a Certificate of Adoption.

The Certificate of Adoption is issued by the Orphan's Court clerk to the adoptive parent or parents. The certificate cannot disclose the name of any natural parent or the original name of the adoptee. The certificate must be accepted in any legal proceedings in the Commonwealth as evidence of the fact that the adoption has been granted. 23 Pa.C.S. § 2907.

While there is no standard adoption order in the Administrative Office of Pennsylvania's Common Pleas Case Management System (CPCMS) Dependency Module (as this is an Orphan's Court proceeding), a mechanism should be in place to close the dependency proceedings using the CPCMS Dependency Order for Termination of Court Supervision form. Pa.R.O.C.P. 15.6(b) requires the county agency to file a praecipe regarding specific termination of parental rights, adoption, and appellate court information with the clerk of courts using the dependency proceedings caption. This information is used to provide comprehensive information to local courts regarding permanency outcomes for dependent children.

## SAMPLE QUESTIONS FOR THE ADOPTION HEARING

**Questions for adoptive parent(s):**

1. Have there been any changes since the home study was completed?
2. Tell me how you feel about today.
3. Do you know what an adoption is?
4. Do you understand all the responsibilities and the legal obligations that come with the adoption? What does that mean?
5. Tell me something special about (child's name).
6. How does (child's name) fit in with the rest of your family (grandparents, aunts, uncles, brothers and sisters)?
7. Can you introduce any family and friends here today with their relationship to (child's name) (The judge often just goes around the room, allowing everyone to introduce themselves)?

**Questions for the younger adoptee:**

1. Tell me your name.
2. What do you like to do at home with your mom and dad?
3. Who's the best cook in the family?
4. What do you like to do with your brothers/sisters?

**Questions for adoptee over age twelve regarding consent:**

1. Tell me your name.
2. Where do you live and who lives there with you?
3. What grade are you in and how is school?
4. What's your favorite subject?
5. What do you like to do after school?
6. What do you like to do with your mom and dad?
7. Tell me how you feel about your mom and dad.
8. Tell me how your mom and dad feel about you.
9. Do you know what is happening today?
10. Do you know what adoption is?
11. Did you sign the consent for adoption?
12. Do you want to be adopted?
13. Do you wish to be known as the name that was given to the court?

**Questions for the agency representative who prepared the home study:**

1. With whom are you employed (position and length of service)?
2. How did you become involved in the placement of this child and adoptive parents?
3. Did your agency prepare the home study concerning the adoptive parents?
4. Are there any material changes since that report was prepared?
5. Other than normal agency, court, or legal fees, has anything else been promised to be paid concerning the placement of this child?
6. Are you in favor of this adoption?
7. Why do you believe this is in the child's best interest?

**Questions for family and friends (if not already covered above):**

1. Is there anybody in the courtroom who wants to say something about this adoption?
2. Please stand up, identify yourself, and tell us how you feel about today.
3. What hopes do you have for (child's name) and his/her family?

# Chapter 20 – General Issues

## 20.1 Overview

On a daily basis in dependency court, a judge or hearing officer must address a variety of issues, perhaps more so than in any other court. Many of these issues occur during the course of a hearing, and some occur as administrative functions.

While most topical areas in this Benchbook address issues that occur as a result of a carefully considered continuum of events dictated by rule or legislation, some areas occur outside that order of events. This chapter is dedicated to those particular events or functions of a judge or hearing officer that have no set start and end point and can, in fact, occur at any point in the life of a dependency case.

Some areas covered in this chapter are required by rules or statutes, such as aggravated circumstances, documenting judicial findings and orders, and Court Appointed Special Advocates. Others are administrative in nature, such as Common Pleas Case Management System (CPCMS) data and statistical reports or Needs-Based Plan and Budget. Yet others are considered best practice and informational, such as Family Group Decision Making (FGDM), children in court, and transitioning youth. However, all are important to the dependency court process and can provide invaluable support/information to a judge or hearing officer.

The following sections are included in this chapter:


- 20.2 Aggravated Circumstances
- 20.3 “Best Interests” and “Reasonable Efforts” Findings
- 20.4 Family Group Decision Making (FGDM)
- 20.5 Common Pleas Case Management System (CPCMS)
- 20.6 Children in the Courtroom
- 20.7 Educational Success and Truancy
- 20.8 Congragate Care
- 20.9 Transitional Youth
- 20.10 Court Appointed Special Advocates (CASA)
- 20.11 Planning & Funding Services: The Needs-Based Plan & Budget (NBPB)
- 20.12 Trauma

## 20.2 Aggravated Circumstances

Ordinarily, the child welfare agency is required to make reasonable efforts to prevent a child's removal from the family home and, if removal is nevertheless necessary, to reunify the family. However, where aggravated circumstances endangering the safety of the child are present, the agency may be excused from making these efforts by the court. A finding of aggravated circumstances also greatly speeds up the timetable of a dependency case and serves to shift the focus away from efforts to strengthen the child's family toward terminating parental rights and finding some other permanent home for the child.

### 20.2.1 "Aggravated Circumstances" Defined

Under 42 Pa.C.S. § 6302, any of the following situations qualify as aggravated circumstances:

(1) The child is in the custody of a county agency and either:

(i) the identity or whereabouts of the parents is unknown and cannot be ascertained and the parent does not claim the child within three months of the date the child was taken into custody; or
(ii) the identity or whereabouts of the parents is known and the parents have failed to maintain substantial and continuing contact with the child for a period of six months.

(2) The child or another child of the parent has been the victim of physical abuse resulting in serious bodily injury, sexual violence or aggravated physical neglect by the parent.

(3) The parent of the child has been convicted of any of the following offenses where the victim was a child:

(i) criminal homicide under 18 Pa.C.S. Ch. 25 (relating to criminal homicide);
(ii) a felony under 18 Pa.C.S. § 2702 (relating to aggravated assault), § 3121 (relating to rape), § 3122.1 (relating to statutory sexual assault), § 3123 (relating to involuntary deviate sexual intercourse), § 3124.1 (relating to sexual assault) or § 3125 (relating to aggravated indecent assault).
(iii) a misdemeanor under 18 Pa.C.S. § 3126 (relating to indecent assault).
(iv) an equivalent crime in another jurisdiction.

(4) The attempt, solicitation, or conspiracy to commit any of the offenses set forth in paragraph (3).

(5) The parental rights of the parent have been involuntarily terminated with respect to a child of the parent.

(6) The parent of the child is required to register as a sexual offender under Subchapter H of Chapter 97 (relating to registration of sexual offenders) or to register with a sexual offender registry in another jurisdiction or foreign country.

### 20.2.2 Procedures in Aggravated Circumstances Cases

An allegation of aggravated circumstances may be made by the agency or by the child's attorney. 42 Pa.C.S. § 6334(b)(2). It may be included as a motion in the original dependency petition or in a separate and subsequent written motion. Pa.R.J.C.P. 1701. Under Pa.R.J.C.P. 1702, the agency is required to file an aggravated circumstances motion as soon as possible but no later than twenty-one days from the determination aggravated circumstances exist. No such time requirement applies to the child's attorney.

If the agency or child's attorney alleges aggravated circumstances and the court determines by clear and convincing evidence that the child is dependent, the court shall also determine by clear and convincing evidence whether aggravated circumstances exist. 42 Pa.C.S. § 6341(c.1). If the court finds that aggravated circumstances exist, the court shall determine "whether or not reasonable efforts to prevent or eliminate the need for removing the child from the home or to preserve and reunify the family shall be made or continue to be made," and schedule a hearing as required in 42 Pa.C.S. § 6351(e)(3). 42 Pa.C.S. § 6341(c.1).

### 20.2.3 Timing of Hearing

Permanency hearings are required to be held within six months of the date of the child's removal from the child's parents, guardian, or custodian for placement or pursuant to a transfer of temporary legal custody or other disposition, whichever is earliest; or within six months of each previous permanency hearing until the child is returned to the parent, guardian or custodian or removed from the custody of the court. 42 Pa.C.S. § 6351(e)(3)(i). T he court must conduct a permanency hearing within thirty days in the following four situations:

**Aggravated circumstances finding at time of adjudication**. At the time of adjudication of dependency, the court finds (1) that aggravated circumstances exist and (2) that reasonable efforts to prevent or eliminate the need to remove the child from the child's guardian or to preserve and reunify the family need not be made or continue to be made.

**Aggravated circumstances finding at permanency hearing**. At a permanency hearing for a child who has already been found dependent, the court determines (1) that aggravated circumstances exist, (2) that

reasonable efforts to prevent or eliminate the need to remove the child from the child's guardian or to preserve and reunify the family need not be made or continue to be made, and (3) the permanency plan for the child is incomplete or inconsistent with the court's determination.

**An allegation that aggravated circumstances exist regarding a dependent child**. The court receives an aggravated circumstances allegation regarding a child who has been adjudicated dependent.

**Submission of other motions regarding the safety or welfare of a dependent child**. The court receives any motion alleging that a hearing is necessary to protect the safety or physical, mental, or moral welfare of a dependent child.

42 Pa.C.S. § 6351(e)(3)(ii).

### 20.2.4 Effect of Determination

After finding aggravated circumstances, the judge or hearing officer must determine whether further agency efforts to preserve or reunify the family are necessary. If not, the judge or hearing officer must inquire as to whether the county agency has filed or sought to join a petition to terminate parental rights and to identify, recruit, process, and approve a qualified family to adopt the child. 42 Pa.C.S. § 6351(f)(9). In these circumstances, the agency is required to file a petition to terminate parental rights and pursue adoption except where:

(i) the child is being cared for by a relative best suited to the physical, mental, and moral welfare of the child;

(ii) the county agency has documented a compelling reason for determining that filing a petition to terminate parental rights would not serve the needs and welfare of the child; or

(iii) the child's family has not been provided with necessary services to achieve the safe return to the child's parent, guardian or custodian within the time frames as set forth in the permanency plan.

42 Pa.C.S. § 6351(f)(9).

## 20.3 "Best Interests" and "Reasonable Efforts" Findings

Several findings and orders made by the court have a direct impact on the level of federal funding available to meet a child/family's service needs. Primarily, these relate to a child's removal from the home being in the child's best interests and to reasonable efforts made by the agency. With no legal definition for best

interests or reasonable efforts, common sense and judicial discretion prevail. In most cases, the best interests call is relatively easy. Reasonable efforts determinations may not be as obvious. Black's Law Dictionary defines "reasonable" as "fair, proper, or moderate under the circumstances." *Reasonable*, Black's Law Dictionary (7th ed. 2000). Webster's defines "reasonable" as "not beyond what is usual or expected; not extreme or excessive; moderate, fair." *Reasonable*, Merriam-Webster, https://www.merriam-webster.com/dictionary/reasonable (last visited Dec. 13, 2024). Either of these would logically apply to the reasonable efforts standard found in dependency proceedings.

These findings are also tied to the concept of procedural justice. Procedural justice is the idea of fairness in the processes that resolve disputes and allocate resources. In dependency proceedings, this concept is in part exercised through the reasonable efforts findings in which the court decides whether sufficient efforts have been made by the agency at various stages in the proceedings to help the child and parents. This is a very serious finding with very serious consequences. In the absence of the finding, the agency stands to lose federal funding resources, and funding becomes a county responsibility. By contrast, the presence of a reasonable efforts finding signifies the judge or hearing officer's belief that the agency has presented sufficient evidence regarding reasonable efforts.

Every hearing that requires a reasonable efforts finding requires evidence about the reasonable actions of the agency to assist the child and parents. It is not sufficient to simply hear evidence as to the compliance and progress level of the parent or child. Nor should the court include in its analysis agency staffing shortages, caseload sizes, or other systemic issues. **To make this finding, evidence as to the agency's affirmative actions to make reasonable efforts is the sole issue.**



Findings related to reasonable efforts must be addressed at every dependency proceeding, although the particular efforts being reviewed are different at different stages of the process. At the shelter care hearing, reasonable efforts findings must be made on reasonable efforts to prevent removal from the home and reasonable efforts to comply with family finding requirements. At the adjudication and disposition hearings, reasonable efforts findings must be made regarding reasonable efforts to prevent removal from home, reasonable efforts to comply with family finding requirements, and reasonable efforts to place with sibling if the child has a sibling who is also subject to removal from the home. At subsequent permanency hearings, the reasonable efforts focus is on the agency's efforts to finalize the permanency plan (i.e., reunification, adoption, or other), reasonable efforts to comply with family finding requirements, and reasonable efforts to place with sibling.

During the shelter, adjudication, and disposition hearings, sufficient information should be presented to enable the court to make a finding regarding

reasonable efforts to prevent placement. The court must find that to allow the child to remain in the home would be contrary to the child's welfare and:

- Reasonable efforts were made to prevent or eliminate the need for removal of the child from the home.
- Preventive services were not offered due to the necessity for emergency placement, and the lack of services was reasonable under the circumstances. This level of effort was reasonable due to the emergency nature of the situation, safety considerations, and the circumstances of the family.
- Reasonable efforts are underway to make it possible for the child to return home, the court having previously determined, pursuant to 42 Pa.C.S. § 6332, that reasonable efforts were not made to prevent the initial removal of the child from the home.
- No reasonable efforts were made to prevent or eliminate the need for removal of the child from the home.

Pa.R.J.C.P. 1514.

Finally, the court may find that reasonable efforts are not applicable in instances where the child has not been removed from the home.

The Child Welfare Agency has sixty days from the initial removal of the child in which to receive a reasonable efforts determination. This determination is based on actions that occurred or did not occur prior to the child's removal. If no reasonable efforts are found after sixty days from initial placement, federal IV-E funding for the care/support of the child is prohibited for the life of the case and all funding becomes a county responsibility.

The reasonable efforts issue arises again during permanency review hearings. At this point, the court must make a finding regarding whether reasonable efforts have been made by the agency to finalize the permanency plan. **Unlike the initial reasonable efforts finding, a no reasonable efforts finding at this point in a case restricts federal funds from being accessed until sufficient evidence is presented that allows the court to make an affirmative reasonable efforts finding.** An affirmative finding signifies the judge's or hearing officer's belief that the agency has provided a reasonable amount and type of service needed to finalize the permanency plan. Reasonable efforts options at permanency proceedings include:

- Reasonable efforts have been made to finalize the child's permanency plan.

- Reasonable efforts have NOT been made to finalize the child's permanency plan.

- Reasonable efforts to finalize the child's permanency plan are not applicable.

***Best Practice — Communication with the Agency***

Because reasonable effort findings have such a significant impact on the federal financial resources available to assist children and their families, courts are encouraged to communicate clear expectations to the agency. When possible, courts should ask questions to elicit the information needed to satisfy its belief that reasonable efforts have been provided.

Courts are further encouraged to articulate their rationale when a finding of no reasonable efforts is made so as to inform the agency of the systemic changes needed.

## 20.4 Family Group Decision Making

Family Group Decision Making (FGDM) is a collaborative dispute resolution process that engages family and kin in crafting and implementing plans that support the safety, permanence, and well-being of their children. The purpose of FDGM is to build alliances among the family, the child welfare agency, and the court and to enhance cooperation in the process of making decisions about children who need protection or care. At a fundamental level, FGDM is based on the recognition that families have the most information about their family, have the ability to make well-informed decisions, and may end up resisting the intrusion if the system simply tells them what to do to fix the problem. Gatowski, S. et al., *Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* 70 (National Council of Juvenile and Family Court Judges 2016).

**"Family Group Decision Making brings the collective voice of children, families, and communities into the dependency courtroom in an unprecedented manner. It encourages and supports children safely remaining in their own homes/communities and, when placement is needed to protect a child's safety, it encourages and supports the use of kinship resources thereby reducing any potential emotional trauma associated with placement."**

- Honorable Max Baer, Chief Justice of the Pennsylvania Supreme Court

In June 2007, at its inaugural meeting, the Pennsylvania State Roundtable unanimously selected FGDM as a practice to support throughout Pennsylvania, encouraging courts to take full advantage of the practice. Since then, the practice shift to FGDM has been supported by the Pennsylvania Supreme Court as an important element of Pennsylvania's dependency system reform.

### 20.4.1 Benefits of FGDM

Child welfare service plans developed without family involvement are too often indistinguishable from one another despite the fact that each family is unique. By contrast, the FGDM process is capable of resulting in a highly individualized, family-developed service plan that is not only more likely to target the unique and individualized needs of each child and family but will be perceived by family members as their own plan. A core assumption underlying FGDM is that families know themselves best and that involving those needing to change in the development of a plan for change will produce better results. FGDM can assist with timely reunification, but it can also help the family understand when reunification is not possible, overcome resistance to severance of parental ties, and open the door for relative or third-party adoption. Because FGDM usually results in an agreed-upon plan, it helps to avoid lengthy trials and appeals of termination of parental rights (TPR) cases. Gatowski, *supra*, at 71.

**"Listening to FGDM participants discuss the worries they have for children, family strengths, and community assets, and then tapping their collective wisdom to develop and implement a plan makes sense. Bringing these "common sense" plans into the courtroom – plain and simple – works!"**

-Pennsylvania Dependency Court Judge

When properly used, FGDM can accomplish all of the following:

- Provide a forum in which families are able to hold each other accountable, often to a higher degree than formal systems.
- Identify and involve the father and extended kin early in the process.
- Address emerging issues of younger siblings not yet involved with the child welfare system.
- Improve communication among all parties by providing a structure in which the strengths and concerns of a family are discussed and ultimately addressed by the family and their supportive resources.
- Save the court time by bringing the parties into court already in agreement.

### 20.4.2 The FGDM Process

Similar to legal dispute resolution practices like mediation and facilitation, FGDM encourages the resolution of issues prior to entering the courtroom. Unique to FGDM is the utilization of the family itself to identify concerns and potential solutions aimed at ensuring child safety, well-being, and permanence.

The FGDM process begins with a referral for the meeting. This referral most often comes from the caseworker. However, courts are encouraged to either make the referral or order the agency to make the referral.

The process proceeds with the identification of relatives and other persons who care about the child. Participants in family meetings may include not only family members but people from the community, foster parents, faith representatives, service providers, legal professionals, and others committed to the well-being of the child and the family. The caseworker or other child welfare agency representative must also be present to review and accept the family's plan.

The FGDM meeting begins with introductions, a discussion of strengths and concerns, and an explanation of community services the family may wish to use as they create their family plan. Safety concerns are clearly identified through this process, and the family is asked to address these comprehensively in their planning.

**The next step in FGDM, private family time, distinguishes it from other alternative dispute resolution processes. During this phase of the meeting, family members are left alone without agency or other professionals to discuss concerns, develop solutions to those concerns, and create an individualized family plan to address the concerns.**

> "I recommend having this kind of meeting with any family having difficulties. It helped us get some things out in the open that we normally didn't share and helped start healing some wounds. I truly believe it takes a village to raise a child."
>
> - FGDM Family Member Participant

Once the family has developed the plan, it is presented to the agency caseworker for review and acceptance. If any safety issues are not adequately addressed, the caseworker points them out to the family group and requests that they continue private planning time until they are resolved. Once all safety concerns are adequately addressed, the caseworker accepts the family's proposed plan.

"The family conference helped me because I got to hear how my children feel and learn about their concerns. We were able to address the concerns and apply a solution."

- Pennsylvania Parent

A good plan should:

- Be tailored to the family and meet their individual needs.
- Be comprehensive and cover all areas of concern.
- Address all issues of safety.
- Clearly state goals.
- Include timelines for completion of goals.
- Specify consequences if the plan is not followed.

Upon acceptance, the plan is presented to the court for review and final approval as the court-ordered permanency plan. The resulting plan, in effect, is a stipulation by all parties. The plan can take the format of a newly designed document attached to the agency's state-mandated Family Service Plan document or can be embedded directly into the state-mandated Family Service Plan document.

FGDM can be utilized at any phase of the dependency process. Judges and hearing officers are encouraged to begin suggesting FGDM in connection with the shelter hearing and then throughout the life of a dependency case. The process outlined above should be repeated prior to any required permanency review hearing whenever the agency's Family Service Plan or Child Permanency plan is updated, which is typically every six months.

### 20.4.3 The Court's Role

FGDM is a voluntary process for families. In keeping with this core value of the practice, judges and hearing officers should not order a FGDM meeting. Instead, judges and hearing officers are encouraged to ask questions regarding the family's reluctance to participate, further explain the benefits of participation, and order the agency to either make a referral for the family or provide the family with additional information to support their utilization of the process. (See FGDM Benchcard in the Benchcard section.) If a family desires an FGDM meeting and the agency is reluctant to make the referral or provide the meeting, this is the one instance in which the court may order the FGDM to occur.

Judges and hearing officers should ask questions regarding the time frame in which an FGDM meeting can be held and schedule a follow-up court hearing to review/consider adopting the resulting FGDM plan. If safety concerns are adequately addressed, these plans should become a part of the permanency plan ordered by the judge or hearing officer and incorporated into the agency's state-mandated Family Service Plan or Child Permanency Plan document.

***Best Practice — Expedited or Emergency FGDM***

For many reasons, the dependency process has strict timelines related to the scheduling of hearings. This is particularly evident in the initial stages of a dependency matter, with the shelter hearing occurring within 72 hours of a child's placement.

This timeframe has led to the creation of "Expedited or Emergency Family Group Decision Making" meetings in many counties. These meetings follow a format very similar to a regular FGDM meeting. However, they can occur within hours to a couple of days from the time of referral. Most often, these meetings focus on issues of placement resources and the creation of safety plans, rather than the more comprehensive Family Service Plans, and can be incredibly valuable for the family, the court, and the child welfare agency.

Counties involved in the Family Engagement Initiative (FEI) utilize Crisis/Rapid Response Family Meetings. These meetings occur immediately upon the agency determining that a child is at risk of being placed. These meetings frequently eliminate the need for court intervention. In the event a petition must be filed to protect child safety, the family's written plan is presented to the court at the Shelter Hearing.

As with any dependency system practice, court-agency collaboration is a key to FGDM success. All parties need to be educated on the basic premises of the practice including judges, hearing officers, attorneys, advocates and agency staff, which includes administration and line staff. The court should gain a true understanding of the practice, which can occur through meetings with agency staff, local Children's Roundtable Meetings, local FGDM Implementation Team Meetings, and by observing a conference. These steps facilitate a comprehensive understanding of how families come to an agreement and how plans are developed.

***Best Practice — Seeking Revisions in FGDM Plans***

Occasionally the court may not believe the proposed plan developed by the family and accepted by the agency completely addresses issues of child safety, well-being, or permanence. When this occurs, judges and hearing officers are encouraged to ask the family to reconvene in a timely manner to address the identified concerns rather than simply denying the overall plan. In addition, the judge or hearing officer may wish to communicate with the agency to clarify expectations and enhance the likelihood of future plans being approved.

The judge or hearing officer should also inquire as to the timeframe in which a reconvening of the family can occur and schedule a prompt follow-up court hearing at which the revised plan can be presented and approved.

By fully understanding the process, judges, hearing officers, and other legal professionals can ensure fidelity to the practice. This fidelity to the practice is imperative and allows the court to not only have confidence that a plan was properly developed but also an added level of comfort in its decision to accept or not accept a family-developed plan.

Additional information regarding FGDM can be found in the *Pennsylvania Family Group Decision Making Toolkit: A Resource to Guide and Support Best Practice Implementation*, PA FGDM Leadership Team (Fall 2008), https://www.pacwrc.pitt.edu/FGDM.htm.

**"Ultimately FGDM is a philosophy of hope and trust in the capacity, commitment and strengths of children, families, and communities, as well as a belief in the value of collaborative efforts to provide for the safety, well-being and permanence of children."**

-Pennsylvania Dependency Court Judge

## 20.5 Common Pleas Case Management System

Understanding dependency court data is critical to effective case and court management. In 2008, the Administrative Office of Pennsylvania Court's Judicial Automation and Office of Children & Families in the Courts departments were tasked by the Pennsylvania Supreme Court and State Roundtable to develop a case management system for dependency cases. To this end, a dependency module was added to the Common Pleas Case Management System (CPCMS). This module provides standardized forms for dependency findings and orders. The module also produces court management listings and statistical reports. These reports provide information as recommended by the National Council of Juvenile and Family Court Judges (NCJFCJ) on the nine performance measures for juvenile dependency court and the 17 recommended statistical measurements. In addition, the caseload and statistical reports provide county courts with information to assist in the evaluation and enhancement of court processes aimed at securing safe, timely permanence for dependent children. The module also provides a scheduling component with case event tracks, which automatically calculate the required timing of hearings.

The CPCMS Dependency Module provides statewide, uniform, and consistent dependency court orders, as well as a means for collecting both county-specific and statewide dependency data. The system provides this information for judges and hearing officers for all major hearings, including shelter care, adjudication, disposition, permanency reviews, and termination of court supervision, as well as orders for modification of placement and resumption of jurisdiction proceedings. The orders have been reviewed and approved by the Juvenile Court Procedural Rules Committee and the Department of Human Service's Office of Children, Youth, and Families (as to funding and federal program requirements). Accurate use of the CPCMS orders ensures that all necessary court-related language impacting federal funding has been included and provides consistency between judicial districts.

The system has two general purposes. First, it allows courts to track the flow of individual child cases. Second, it provides a broader picture and analysis of the overall effectiveness of the court case flow processes in a particular county and on a statewide basis. These reports can be customized to provide information regarding specific ages and types of cases or by judicial officers, as needed. **It is extremely important the court appoint someone to run reports on a regular basis to ensure the accuracy of the data.** Several of the reports (especially the statistical reports) have indicators of data errors. For example, on the 3920 Dependency Case Inventory Report, data in sections "Returned to Active from Adjudicated" and "Case Reopened without a Petition" are likely to be erroneous data due to data entry errors. Efforts made to ensure accurate data will enable the court to confidently use the reports in its analysis of the dependency system. Accurate data can then be used to plan or strategize changes that are data-informed and not a best guess or assumption.



In addition to the statistical and management reports compiled by the system, judges can access individual case information from within the system. This function can be particularly beneficial if a judge needs to review the case history. From the individual case screen, information can be found regarding the child's current and past placements, the names of the parents and other party participants, and notations of the case event outcomes that include the hearing officer's recommendations and prior orders of the court. Associated case information is also available for any sibling within the judicial district.

A final feature is the chambers' function. In this secure section, judges can keep private notes, make them available for the judge's chambers, or allow other chambers to access the notes. Those judges who access CPCMS from the bench may find this a useful tool. It should be noted that if a judge chooses to use this function, information is securely stored on a server at the AOPC and does not appear on any order or management/statistical report.

### 20.5.1 Management Reports

To assist courts by providing a snapshot of cases that are currently in the dependency system and the status of those cases, the following case management reports are available:

**Dependency Case Report (AOPC 3900).** This report provides a detailed list of all cases recorded in CPCMS. It shows the percentage of cases where the child is receiving services but has not yet achieved permanence, the percentage of cases where the goal is not a permanent option, and the number of children in foster care. This report also provides information on the type of case initiation in the system.

**Dependency Disposition Report (AOPC 3901).** This report provides a detailed list of all cases that have had a disposition recorded during the selected date range. This report can be used to generate a list of cases that were terminated, grouped by disposition type, to evaluate the final case result.

**Dependency Case Processing Summary Report (AOPC 3902).** This report provides a list of all cases filed during a selected date range and grouped by case category, status, event track, or processing status. It documents the number of days a case took to reach adjudication and the number of days until the first permanency hearing.

**Assignment Inventory Report (AOPC 3903).** This report provides a case list by assigned judge or juvenile hearing officer.

**Inventory Report (AOPC 3904).** This report tracks counsel and Guardian A*d Litem* appointments.

**Dependency Daily List (AOPC 3905).** This report provides a list of dependency cases scheduled for the court on any requested day. Under the case participant, this report will also note those individuals who have voluntarily shared that they are self-reported or diagnosed with Autism. This feature can be used for planning any needed accommodations.

**Juvenile Summary of Cases by Attorney (AOPC 3919).** This report displays all assigned dependency cases for a specific attorney as of a selected date.

**Unscheduled Active Juvenile Cases by Event Date (AOPC 3932).** This report lists all cases by selected calendar entry type and date range that do not have a future scheduled event.

**Continued Dependency Cases by Date (AOPC 3934).** This report lists all cases by selected date range in which a continuance was issued. This report can be sorted by individual judicial officer or all judicial officers.

**Hearing Officer Recommendations (AOPC 3938).** This report identifies cases in which a recommendation by a hearing officer has been recorded but there is no corresponding judge's order recorded.

**Scheduled Events Without an Outcome Event (AOPC 3941).** This report identifies cases that were scheduled during a select date range that have no outcome event recorded.

### 20.5.2 Statistical Reports

In addition to management reports, CPCMS provides various statistical reports. These reports can be a useful tool for courts to gain a better understanding of their caseload. The statistical reports provide information about how efficiently courts are processing dependency cases, as well as detailed demographic information. All statistical reports include the option to run the report with case detail. This option provides a list of individual cases under each category to assist users with deeper data analysis or data correction. The following statistical reports are available:

**Dependency Case Inventory (AOPC 3920).** This report provides summaries of cases that were initiated, adjudicated, and closed during a select time period. It is divided into two sections: Active Dependency Case Inventory (cases that have entered and left active status) and Adjudicated Dependency Case Inventory (cases that have entered and left active/adjudicated status).

**End of Period Terminated Cases (AOPC 3921).** This report provides summaries of terminated cases categorized by the age of the child and the age of the case. Within these categories, data is divided by foster care status, and details are provided regarding the average number of days to adjudication, first placement hearing, permanent placement, and other key events.

**Pending Case Metrics (AOPC 3922).** This report provides statistical case data based on age range, gender, race, and ethnicity of active and active/adjudicated cases. Data is segregated by foster care involvement.

**Demographic Detail Report (AOPC 3943).** This report provides a breakdown of the number of cases using various demographic data points (age, race, sex, length of supervision, placement of the child, and permanency plan goal). It can be grouped by judge or hearing officer.

***Best Practice — Management and Statistical Reports***

The court is encouraged to take full advantage of the Common Pleas Case Management System (CPCMS) Dependency Module. Management and statistical reports can be invaluable tools for local courts. These reports, used in conjunction with the Local Children's Roundtable, can aid a county by:

- Providing data to inform system change through the Children's Roundtable Initiative;
- Informing the court on outcomes of dependency cases;
- Creating unified methods to measure practices and outcomes;
- Evaluating current practices and planning for future needs; and
- Establishing monitoring and accountability for all system participants including the courts.

A general familiarity with the system and its capacity for providing case management and statistical reports is important. These documents can assist in the overall evaluation of dependency court processes and help identify any court-related barriers to achieving safe and timely permanence for dependent youth. These reports can be used internally or shared with other dependency partners (as is often done during local Children's Roundtable meetings) to identify challenges and strategize solutions. There is a Benchcard with all the CPCMS reports to use as a quick reference.

## 20.6 Children in the Courtroom

In Pennsylvania, it is required that children be present for all dependency proceedings unless excused for good cause by the court. In no case shall a hearing occur in the absence of a child's attorney. Pa.R.J.C.P. 1128. Children may be present by utilizing advanced communication technology, but at minimum, the child shall appear in person at least every six months unless otherwise provided by Pa.R.J.C.P. 1128. Pa.R.J.C.P. 1129 (a). Having the child participate in the hearing gives the court the opportunity to learn the child's wishes directly, to see how the family or caregivers interact

with the child, and to observe whether, on the surface at least, the child appears to be well cared for and developmentally at an age-appropriate level. Having the child present also reminds all the stakeholders that this process is ultimately about the well-being of the child and not solely a corrective process for parents. **It is critical that the judge or hearing officer see the child to assess the child's well-being. The court is the last defense for the child and must make every effort to ensure safety and well-being.**

Attendance in court also has many benefits for the child. Children who attend hearings have a better understanding of what is happening and how the process works. Even if the child has competent social workers and legal representation to explain the process, they may not fully grasp or understand what is happening until they see it firsthand. A child who understands how the process works may be more likely to ask questions and express views and wishes. Since all parties are expected to attend the hearing, the agency can use the opportunity to facilitate meaningful contact between the child, family, and siblings. This can occur while the family is waiting for court to begin, but, if appropriate, visitation may also occur after the hearing is completed.

**"Everyone has sides to their story, but no one can tell their story the way the youth can."**

- S.R., 21, Former Pennsylvania Foster Youth

On the other hand, there may be circumstances that make it inappropriate or unnecessary for the child to participate in hearings. This decision can only be made by the judge or hearing officer after careful consideration of all the circumstances of the case. The GAL or caseworker may provide insight into whether the child should be present, but the judge or hearing officer should not waive the child's appearance just because the parent, GAL, or caseworker prefers the child not to be present. The court should also consider the child's wishes, as some older children may have very strong opinions about whether they wish to be present at the hearing.

Some reasons that a court may find ARE good enough to waive a child's appearance include:

- Child has a good reason for not wanting to attend a permanency hearing where there are no changes to the child's plan, and the case is showing progress towards permanency.
- The hearing is an aggravated circumstances hearing.
- The child is medically fragile, and attending the hearing might have a health impact.
- A therapist's credible recommendation against attendance.

Some reasons that are **NOT** good enough to justify waiver of attendance include:

- The judge/hearing officer or other participant (parent, GAL, agency) prefers not to have the child in court.

- Children and families are difficult to manage.
- The GAL recommendation differs from the child's wishes.
- The sibling group is too big to accommodate at the table easily.
- Transportation will be difficult.
- Regular school day unless there is a special event scheduled.

In making the decision regarding the presence of a child in court, some accommodations may need to be considered to meet the child's needs. These may include scheduling the hearing at a special time (such as the first or last hearing of the day), arranging for the child to attend the hearing by phone or videoconference, or having the child excluded from sensitive portions of the hearing. In cases involving medically fragile children, a physician might need to be consulted about the ability of the child to attend court. If the physician deems it inappropriate, the court still has an obligation to see the child once every six months. This may require the judge, with permission of all parties and with a court reporter, to go to the child. It is very important that the judge see the child personally.

### 20.6.1 Talking to Children in Court

Having the child present during hearings is most valuable when the court is able to elicit useful information while making it a positive experience for the child. The judge or hearing officer should be prepared for the child's appearance, learning as much as possible about the child from the reports provided by participants such as the GAL, CASA, foster parents, and the case worker, noting what information the child may be able to provide that is not otherwise available. This preparation helps convey that the case is being taken seriously and that the court cares about the child as an individual.

**"I wanted to be in the courtroom letting the judge know that I am a person and that I am trying."**

- J.J., 21, Former Pennsylvania Foster Youth

It is important for the court to consider the voice of the child at all stages of dependency proceedings. The Juvenile Act requires judges and hearing officers to consult with the child regarding the child's permanency plan, including the child's desired permanency goal, in a manner appropriate to the child's age and maturity. 42 Pa.C.S. § 6351(e)(1). If the judicial officer does not consult personally with the child, the court shall ensure that the views of the child regarding the permanency plan have been ascertained to the fullest extent possible and communicated to the court by the guardian *ad litem*, the child's counsel, the court-appointed special advocate or other person designated by the court. *Id*. If the youth is 18 years or older and the permanency goal is Another Planned Permanent Living Arrangement (APPLA), the judicial officer is required to speak directly to the youth. 42 Pa.C.S. § 6351(f.1)(5)(iv)(A).

**"Speaking in court gave me my chance to stand up and say something for myself. It made me feel important, knowing my voice was heard."**

- D.R., 21, Former Pennsylvania Foster Youth

When interviewing a child, the judge or hearing officer should ensure that the interview is conducted in a way that minimizes trauma, anxiety, and fear. The judicial officer should consider who is in the courtroom when the child is speaking and where the child is seated. It may be appropriate, in some cases, to conduct an *in-camera* interview of a child. Some judges and hearing officers do so when sensitive information might be disclosed. However, under Pa.R.J.C.P. 1134, *in-camera* proceedings are to be recorded, and each party's attorney shall be present, including the child's Guardian *Ad Litem* and/or the child's legal counsel. (See Pa.R.J.C.P. 1128 and *In the Interest of J.F.*, 308 A.3d 1252 (Pa.Super. 2024).)

The judicial officer should be aware of both verbal and non-verbal communication by the child, especially with younger children. Often, children may not be able to verbally express their thoughts and emotions, but their actions clearly demonstrate these things. If a factor in the court's decision, the court's observations should be read into the record.

If the child is interviewed and a party or counsel is not present, this constitutes an ex-parte communication with the court, which is generally prohibited. Pa.R.J.C.P. 1136. Although the practice of ex-parte communication with a child is ***strongly*** discouraged, there are varying opinions regarding whether to do so and under what conditions. Based on the intent of the aforementioned rules, if a judge or hearing officer chooses to move forward with ex parte communication, at a minimum, the following should occur:

1. Prior to the interview a waiver/consent to the interview should be given by each party, and if a party is represented, by their counsel. The waiver/consent must be placed on the record, and

    - In the case of an unrepresented parent, the court should consider whether the *in-camera* interview would violate the parent's due process rights. (See comment to Pa.R.J.C.P. 1134.) If an unrepresented parent agrees to the waiver, a colloquy should be placed on the record.

2. The interview of the child shall be conducted on the record. If, for any reason, the communication or interview is held in a place other than the courtroom and has not been recorded, the judge or hearing officer shall place the contents or a summary of the communication or interview on the record immediately after the interview and

3. The Guardian *Ad Litem* and/or counsel for the child must be present. *In the Interest of J.F.*, 308 A.3d 1252 (Pa.Super. 2024).

**A child should never be interviewed alone by the court. This exposes the judicial officer to allegations of impropriety and raises questions of due process and fairness for the parties and counsel.**



To help make the child feel comfortable in the courtroom setting, the judge or hearing officer should take the time to speak to or greet the child before the hearing begins. If the child has been in court before, the judge or hearing officer should ask the child about events that have transpired since the last court hearing (sports, music lessons, vacations, etc.).

When interviewing the child, the judge or hearing officer should consider seating the child near or with someone who makes the child feel safe and secure. The child should be seated where the judge or hearing officer can see and observe whether the child appears to be anxious or afraid, whether anyone is attempting to coach the child, and the normal body language that one would consider in making determinations of truthfulness.

A good way to begin the interview is by asking the child some general questions about school and activities to help put the child at ease. All questions should be in age-appropriate language, taking care not to use legal or words that a child might not understand. For example, use the word *before* instead of the word *prior.* Ask the child simple questions about the home in which he is living, what he likes, what he needs, and most importantly, what he wants.

If the child is newly placed, the judge or hearing officer should question the child about how the child's life is going from a social as well as an academic standpoint. Is the child making friends and adjusting to the new environment? Is there anything the court or the agency can do to smooth the transition?

The judge or hearing officer should also ask the child about the services the agency is providing. Are they appropriate? Are they provided at a convenient time and location? Does the child find the services helpful, and if not, what would be helpful?

It is important to communicate with the child (and with all parties) in a way that encourages and builds upon strengths. One technique that is proven to be useful is Motivational Interviewing (MI). **To effectively utilize MI, judges and hearing officers should talk less and use open-ended questions and reflective listening.** Judicial officers should also be patient and allow the child the time needed to answer difficult questions. Remember that silence is okay. Strengths and accomplishments should be highlighted. For more information on motivational interviewing, see Sylvie Naar-King & Mariann Suarez, *Motivational Interviewing with Adolescents and Young Adults* (2011) and William R. Miller & Stephen Rollnick, *Motivational Interviewing: Helping People Change* (3rd ed. 2013).

***Best Practice — Motivational Interviewing (MI)***

MI is a technique or style of interviewing that is evidence-based and results in more complete information. It is very effective with older youth. MI contains the following elements or principles:

- Expressing empathy through reflective listening. This means understanding the child's perspective without judging, criticizing, or blaming. This is extremely important for older youth.
- Developing discrepancy between child's goals or values and their current behavior. Also important for older youth.
- Avoiding argument and direct confrontation.
- Adjusting to resistance rather than opposing it directly. Don't argue with the child or confront the child head-on. Arguing is counterproductive.
- Support self-efficacy and optimism. The judicial officer should be the cheerleader to encourage and motivate the child to desire and choose positive change and outcomes. Belief in oneself and hope are what many dependent children are lacking.

For more information on motivational interviewing, see Sylvie Naar-King & Mariann Suarez, *Motivational Interviewing with Adolescents and Young Adults* (2011) and William R. Miller & Stephen Rollnick, *Motivational Interviewing: Helping People Change* (3rd ed. 2013).

Judges and hearing officers should avoid using general statements to highlight accomplishments and instead highlight strengths and accomplishments in a specific way. Instead of saying, "You did a great job," say, "You only missed one day of school; you made the honor roll and kept your room clean." Helping youth recognize the specific things they do well or positive changes they've made increases the likelihood that the actions will be repeated and helps youth develop an internalized sense of self-esteem.

In addition to *what* is said, the judge or hearing officer should pay careful attention to *how* it is said. All of the right questions can be asked, but if the judge appears distracted, disinterested, or uncaring, the child will shut down.

Because the child is required to be present in court at least every six months, the judge or hearing officer has the opportunity to develop a positive and trusting relationship

with the child over the time that the case is court-active. The judge or hearing officer should take time to review notes or findings from prior hearings so that interaction with the child is a continuous process. The judge's or hearing officer's demeanor should reflect genuine care and concern for the well-being and the wishes of the child.

**"Sometimes it's not that we don't have anything to say but that we are too intimidated."**

-Former Foster Youth

At the end of the hearing, the judge or hearing officer should carefully explain the reasons for the decisions made and ask the child if he/she has any questions about what was ordered. Many times, what a child wants and what is in the best interest of the child are in conflict. When a judge or hearing officer has to make a decision that is necessary to keep a child safe but will upset the child or make the child unhappy, it is important to tell the child that you understand what he wants, but why you have to make a different decision. Don't make promises to a child that you may not be able to keep.

Finally, everyone in the courtroom should be treated with dignity and respect and know their positions have to be considered by the court. This is especially important for children who have been abused and neglected. Repeat what the child told you and tell the child that you will consider or have considered it. If the child is testifying at the adjudicatory hearing or about some traumatic event, if you believe the child has been truthful, tell the child that you believed her. Thank the child for her testimony, and wish them success.

### 20.6.2 Children as Witnesses

Every person is competent to be a witness unless excluded by statute or rule. Pa.R.E. 601(a). Children fourteen (14) years of age and older are presumed to be competent. For children under fourteen (14) years of age, the court **shall** conduct a competency examination. *Commonwealth vs Moore,* 980 A2d 647, 650 (Pa.Super. 2009).

Any person is incompetent to testify if the court finds that because of a mental condition **or immaturity** the person:

1. is, or was, at any relevant time, incapable of perceiving accurately;
2. is unable to express himself or herself so as to be understood either directly or through an interpreter;
3. has an impaired memory; or
4. does not sufficiently understand the duty to tell the truth.

Pa.R.E. 601(b).

The editors of *Child Welfare Law and Practice: Representing Children, Parents, and State Agencies in Abuse, Neglect, and Dependency Cases* elaborate on each of these characteristics as they apply to children:

> **Capacity to Observe**: To testify, a child must have the physical and mental capacity to observe. Courts sometimes refer to this as the ability to receive correct impressions by the senses. Children's observational capacity develops rapidly during the first year of life, and the capacity to observe almost never poses a barrier to testimony.
>
> **Memory**: Children have good memory capacity, and the capability to recall events should almost never pose a barrier to testimonial competence. Whether a child's memory of particular events is accurate is a matter of credibility, not testimonial competence.
>
> **Capacity to Communicate**: A child must be able to communicate so as to be understood. In nearly all cases, children possess the capacity to communicate.
>
> **Intelligence:** To testify, a witness must possess a threshold level of intelligence but need not be of normal intelligence. Children below average intelligence may testify if they possess the ability to observe, recollect, and relate in a manner that assists the finder of fact.
>
> **Understanding the Difference between Truth and Falsehood**: The child need not comprehend the finer points of truth and falsity, nor must he understand the concept of perjury. The child may articulate the necessary understanding in childlike terms. The fact that a child makes mistakes or is, to some degree, inconsistent does not render the child incompetent. When judges, hearing officers, and attorneys use developmentally appropriate methods to question children, most youngsters demonstrate the necessary understanding.
>
> **Duty to Testify Truthfully**: Children as young as three and four comprehend the duty to tell the truth in court (although children this young are not typically interviewed). For young children, telling the truth means reporting what they saw. If the judge or hearing officer is concerned about a child's understanding of the obligation to testify truthfully, the judge or hearing officer may instruct the child.

*Child Welfare Law and Practice: Representing Children, Parents, and State Agencies in Abuse, Neglect, and Dependency Cases* 330-332 (Marvin Ventrell & Donald N. Duquette eds., 2009).

While children are able to be good witnesses in dependency hearings, the judge or hearing officer should bear in mind that testifying may be a very emotional and traumatic experience for a child. The judge or hearing officer should be vigilant in guiding the examination of the child, particularly when it comes to examination by opposing

counsel or by Pro Se parents. In these circumstances, the judicial officer has the latitude to ask leading questions or allow all counsel to ask leading questions. The judge or hearing officer must balance the need to protect the child from a traumatic experience against the parents' right to cross-examine.

## 20.7 Educational Success and Truancy

### 20.7.1 Educational Success and Truancy

Truancy is an issue that is not new to the dependency system. In fact, truancy is a status offense under the Pennsylvania Juvenile Act (*See* 42 P.S. § 6302(5)) and is a ground for an adjudication of dependency. All too often, truancy is but a symptom of other issues or challenges within a household. For example, a child may become a habitually truant student as a byproduct of untreated mental illness or addiction. Mental health and substance abuse issues may be present in the lives of a parent or the student herself. Perhaps the child's family is struggling with chronic medical issues or a lack of supervision due to the employment obligations of a parent. Perhaps a student suffers from the crippling effects of social anxiety that, left untreated, prevents the child from school attendance. Transportation issues or an unidentified learning disability are additional triggers for truant behavior.

Over a decade ago, the Office of Children and Families in the Courts (OCFC) identified truancy as a Commonwealth-wide area of concern. As a result, OCFC sponsored an Educational Success and Truancy Prevention Workgroup from 2010 through 2017. The workgroup generated reports to the State Roundtable, which is the decision making entity of the OCFC Children's Roundtable Initiative. These reports are available on the OCFC website utilizing the State Roundtable Workgroups/Committees content found under the Children's Roundtable Initiative tab.

The most recent federal data show that in the 2020-21 school year, at least 14.7 million students nationwide were chronically absent. *Chronic Absence*, Attendance Works, https://www.attendanceworks.org/chronic-absence/the-problem/ (last visited Dec. 13, 2024). According to the Pennsylvania Department of Education, high rates of truancy start as early as kindergarten. *Resources and* Toolkits, Commonwealth of Pennsylvania, https://www.pa.gov/agencies/education/programs-and-services/schools/safe-schools/resources-and-toolkits.html (last visited Dec. 13, 2024). Unfortunately, the prevalence of truancy continues to increase due in part to the psychological effects of the 2020 COVID-19 pandemic upon children and families. Thankfully, the collaborative research, investigation, and recommendations of the Educational Success and Truancy Prevention Workgroup provide insight and assistance to judges seeking to understand this complex topic affecting the populations that we serve. As mentioned, this research and guidance is available to judges and hearing officers at the Office of Children & Families in the Courts website.

### 20.7.2 Pennsylvania's Public School Code and Act 138

Pennsylvania's compulsory school attendance law is found within the public school code of 1949, Article XIII Pupils and Attendance, Subarticle (b) Enforcing Attendance. 24 P.S. §§ 13-1325 to 13-1339. A student must comply with compulsory attendance requirements from age 6 to age 18, regardless of the school setting in which they are enrolled or the instructional delivery model they are receiving. 24 P.S. § 13-1326. Compulsory attendance applies to children enrolled in all public schools, including charter and cyber charter schools, as well as privately tutored and homeschooled children.

In 2016, Act 138 substantially reformed the truancy provisions of Pennsylvania's Public School Code in an effort to "improve school attendance and deter truancy through a comprehensive approach to consistently identify and address attendance issues as early as possible with credible intervention techniques…" Education Law Center, Fact Sheet, *A Judge's Guide to Attendance Barriers ('Truancy') and Act 138* (August 2024).

According to Act 138, the first intervention to address truancy shall occur at the school district level. After a student has accrued three (3) unexcused absences, the school must provide written notice to the person in parental relation as to a child's violation of compulsory school attendance within ten (10) days of the child's third unexcused absence. 24 P.S. § 13-1333(a). A school must convene a school attendance improvement conference (SAIC) when a child is habitually truant, i.e. he or she has accrued six (6) unexcused absences from school. 24 P.S. § 13-1333(b). The outcome of the conference shall be documented in a written school attendance improvement plan (SAIP). 24 P.S. § 13-1333(b)(2). A child is "truant" if he or she has incurred three (3) or more school days of unexcused absences during an academic year. 24 P.S. § 13-1326. A child is "habitually truant" if he or she incurs six (6) or more school days of unexcused absences during an academic year. *Id.* When referring a habitually turant child to the county children and youth agency or filing a citation with the court because a child has been habitually truant, the school must provide written verification that it held a school attendance improvement conference. 24 P.S. § 13-1331.1(d).

When a child is habitually truant and the time for the SAIC has passed, a school may file a citation in the office of the appropriate magisterial district judge against the person in parental relation if the child is under the age of fifteen (15) or against the child if the child is over the age of fifteen (15). NOTE: The statute also provides that a referral to the county children and youth agency for services or possible disposition as a dependent child. 24 P.S. § 13-1333.1 (a)(1)(2). On occasion, due to the geographic configuration of school districts, the applicable county welfare agency may be different from the county in which the applicable magisterial district judge presides. The address of the child controls as it relates to the selection of the applicable county welfare agency. Pa. R.J.C.P 1300(A). The address of the school applies as it relates to the applicable magisterial district judge. If a child attends cyber school, the venue is based upon the residence of the child. 24 P.S. § 1327.2(b).

If a school files a citation before a magisterial district judge, those proceedings are governed by Act 138. Magisterial District Judges may impose penalties for truant behavior

in the form of fines, community service, or an appropriate course or program designed to improve school attendance which has been approved by the president judge of the judicial district. 24 P.S. § 13-1333.3(a)(1)-(3). Procedures for further involvement at the Court of Common Pleas differ across the Commonwealth and are further addressed in this chapter relating to diversionary court programs. In some counties, diversionary programs attempt to avoid dependency court intervention if a school district or magisterial district judge makes a referral to a county welfare agency. In other counties, dependency court may be the next step in the judicial process.

**KEY DEFINITIONS – Act 138 (24 P.S. § 13-1326)**

"Compulsory school age" shall mean the period of a child's life from the time the child's parents elect to have the child enter school and which shall be no later than six (6) years of age until the child reaches eighteen (18) years of age. The term does not include a child who holds a certificate of graduation from a regularly accredited, licensed, registered or approved high school.

"Educational entity" shall mean a public school district, charter school, regional charter school, cyber charter school or area career and technical school.

"Excused absence" shall mean an absence from school which is permitted under section 1329.

“Habitually truant" shall mean six (6) or more school days of unexcused absences during the current school year by a child subject to compulsory school attendance under this article.

"Person in parental relation" shall mean a:

**(1)** custodial biological or adoptive parent. **(2)** noncustodial biological or adoptive parent. **(3)** guardian of the person of a child. **(4)** person with whom a child lives and who is acting in a parental role of a child. This definition shall not include any county agency or person acting as an agent of the county agency in the jurisdiction of a dependent child defined under 42 Pa.C.S. § 6302 (relating to definitions). This definition shall not expand the right of a child under any other section of this act.

### 20.7.3 The Impacts of Truancy

So why should Pennsylvania judges care about truancy? Truancy can impact a child’s learning and skill proficiency. Below are 10 ways truancy can impact a child’s education. This is particularly important for our children in the dependency system.

1) According to a report published by the National Center for Children in Poverty, **it is critically important that chronic absenteeism is addressed in the early grades.** While truancy is prevalent in all grades, one can predict that (absent a new traumatic

occurrence within a family's life) a student in high school displaying truant behavior has displayed that behavior throughout his or her academic career.

The aforementioned study notes that "[c]hildren chronically absent in kindergarten show lower levels of achievement in math, reading and general knowledge during first grade. Going to school regularly in the early years is especially critical for children from families living in poverty, who are less likely to have the resources to help children make up for lost time in the classroom. Among poor children, chronic absence in kindergarten predicts the lowest levels of educational achievement at the end of fifth grade." (*See* Hedy N. Chang & Mariajose Romero, *Present, Engaged and Accounted For: The Critical Importance of Addressing Chronic Absence in the Early Grades* 3 (National Center for Children in Poverty Sept. 2008);

2) **Absenteeism in the first month of school can predict poor attendance throughout the school year.** Half of the students who miss 2-4 days in September go on to miss nearly a month of school. (See Linda S. Olson, *Why September Matters: Improving Student Attendance* (Baltimore Education Research Consortium July 2014));

3) **Chronic absence appears to have doubled by the end of the 2021-22 school year.** It is now estimated to affect nearly one out of three students (16 million) nationwide. Hedy Chang, et al., *Pandemic Causes Alarming Increase in Chronic Absence and Reveals Need for Better Data*, Chronic Absence Blog, Attendance Works (Sept. 27, 2022), https://www.attendanceworks.org/our-blog/ (last visited Dec. 16, 2024).

4) **Poor attendance can influence whether children read proficiently by the end of third grade or be retained**. (See *Attendance in the Early Grades: Why it Matters for Reading – A Research Brief* (Attendance Works Feb. 2014).)

5) **By 6th grade, chronic absence becomes a leading indicator that a student will drop out of high school**. *Destination Graduation: Sixth Grade Early Warning Indicators for Baltimore City Schools - Their Prevalence and Impact*, i (Baltimore Education Research Consortium Feb. 2011);

6) **Research shows that missing 10 percent of the school year, about 18 days in most school districts, negatively affects a student's academic performance**. (See *10 Facts About School Attendance*, Chronic Absence, Attendance Works, https://www.attendanceworks.org/chronic-absence/the-problem/10-facts-about-school-attendance/ (last visited Dec. 16, 2024));

7) **Students who live in communities with high levels of poverty are four times more likely to be chronically absent than others often for reasons beyond their control**, such as unstable housing, unreliable transportation and a lack of access to health care. Hedy N. Chang & Mariajose Romero, *Present, Engaged and Accounted For: The Critical Importance of Addressing Chronic Absence in the Early Grades* 13 (National Center for Children in Poverty Sept. 2008);

8) **When students improve their attendance rates, they improve their academic prospects and chances for graduating**. (See Melissa Roderick, et al., *Preventable Failure: Improvements in Long-Term Outcomes when High Schools Focused on the Ninth Grade Year* (The University of Chicago Consortium on Chicago School Research April 2014);

9) **Attendance improves when schools engage students and parents in positive ways and when schools provide mentors for chronically absent students**. (See Stacy B. Ehrich, et al., *Preschool Attendance in Chicago Public Schools: Relationships with Learning Outcomes and Reasons for Absences* 38-39 (The University of Chicago Consortium on Chicago School Research May 2014);

10) **Most school districts and states don't look at all the right data to improve school attendance.** They track how many students show up every day and how many are skipping school without an excuse, but not how many are missing so many days in excused and unexcused absence that they are headed off track academically. (See Charles Bruner, et al., *Chronic Elementary Absenteeism: A Problem Hidden In Plain Sight*, (AttendanceWorks, Child & Family Policy Center November 2011).

### 20.7.4 Educational Terminology Helpful to the Court

The intersection of the education system and the legal system requires judges and hearing officers to be familiar with terminology often utilized in the educational setting. In dependency cases involving truancy, the following terms and acronyms are often utilized:

1) **Individualized Education Plan (IEP):** These plans are learning or emotionally based and are provided to a child who is disabled or gifted. A school district has a responsibility under "Child Find" for children thought to be eligible for special education services and/or accommodations. 22 Pa.Code § 14.121. A student can have one or both types of IEPs and each IEP must be re-evaluated on a yearly basis by the school district. An interesting challenge with habitually truant children is that classroom observation is needed and a lack of classroom time is the root of the truancy problem;

2) **504 Plan or Accommodation**: The Section 504 regulations require a school district to provide a free appropriate public education (FAPE) to each qualified student with a disability who is in the school district's jurisdiction, regardless of the nature or severity of the disability. 29 U.S.C. § 794. Under Section 504, FAPE consists of the provision of regular or special education and related aids and services designed to meet the student's individual educational needs as adequately as the needs of nondisabled students are met. (See Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794);

3) **School Based Behavioral Health (SBBH) Services**: SBBH services bring together schools, county mental health programs and community resources to develop a continuum of services that enable children to have their educational and mental health needs met within their school districts. *School-Based Behavioral Health (SBBH),*

Commonwealth of Pennsylvania, https://www.pa.gov/agencies/dhs/resources/mental-health-substance-use-disorder/school-based-behavioral-health.html (last visited Dec. 16, 2024);

4) **Homebound Instruction**: A school district, area vocational technical school, charter school, independent school, private school, or non-public school may temporarily excuse a student from compulsory attendance on account of illness or other urgent reasons and provide that student homebound instruction while he or she is excused from school. Regulations require that the term "urgent reasons" be strictly construed not to permit irregular attendance at school. 22 Pa Code § 11.25. Homebound Instruction is NOT cyber school at home or homeschooling by a parent. Both of these modes of instruction are governed by different rules and regulations promulgated by the Pennsylvania Department of Education. Homebound instruction requires a physician to complete specific documentation and submit it to the school district.

5) **Cyber Charter School**: There are many alternatives to in-person instruction via Cyber School. However, some cyber charter schools are operated by a public school district and some cyber charter schools are operated by private entities. Some cyber schools offer **synchronous learning** or remote learning that happens in real time with the interaction between the teacher and students that occurs in a face-to-face environment or in a virtual classroom setting. **Asynchronous learning** refers to courses where students access course materials on their own time. There is no set class time and a student is adjudged to be truant based upon individualized attendance policies of the charter cyber school. For instance, a cyber charter school may require a student to access learning for a minimum number of hours per week to achieve attendance requirements. Another cyber school may require all course work to be submitted before a certain time each day in order to avoid an unexcused absence.

6) **Student Attendance Improvement Plan (SAIP) and Student Attendance Improvement Conference (SAIC)**: A school must convene a school attendance improvement conference (SAIC) when a child is habitually truant, i.e. he or she has accrued six (6) unexcused absences from school. The outcome of the conference shall be documented in a written school attendance improvement plan (SAIP). 24 P.S. § 13-1333(b)(2).

### 20.7.5 Truancy Diversionary Court Programs

Many judicial districts in Pennsylvania have created diversionary court programs in an effort to avoid an adjudication of dependency. As stated, quite often, truancy is a byproduct of a larger issue or set of issues at work within a child's home. In establishing either "in-house" truancy prevention programs or by contracting with independent providers to address truancy prevention and remediation, child welfare agencies have successfully aided families in remedying not only truancy concerns but the mental health, substance use, or transportation issues, e.g., that were the root of the truancy problem. This effort to front load services and address the problem through the creation of an action plan can significantly reduce the number of dependency adjudications.

Each truancy court model is unique to the needs and available resources within a given judicial district. Some judicial districts have created programs that solely involve the magisterial district judge system. Other judicial districts employ a multi-tiered approach where the magisterial district judge makes a referral to the child welfare agency after truancy prevention methods have failed, and the matter is then addressed at the Court of Common Pleas level. In this model, a diversionary court case is initiated by the solicitor of the child welfare agency. Other county-based models involve informal school-based presentations from the courts and child welfare agency personnel to increase awareness of the importance of school attendance. However, if a judge chooses to address the issue of truancy amid myriad examples of intervention techniques, the impact remains the same – children return to school to receive the education that they deserve after diversionary programs have removed or lessened specific barriers to education.

## 20.8 Congregate Care

Courts are required to make a finding at each hearing that the youth is placed in the least restrictive setting. Congregate care, a placement setting whereby multiple unrelated children reside with 24-hour supervision, is the most restrictive type of placement for dependent children and includes:

- Shelter (a setting that provides temporary care for a child);
- Group Home (a setting that provides 24-hour care for 7-12 children);
- Residential Facility (a setting that provides 24-hour care to 12 or more children);
- Residential Treatment Facility (a medically necessary setting that provides 24-hour care and therapeutic intervention to children with mental or behavioral health issues or special needs upon recommendation of a doctor).

**It should only be used when all other placement options have been considered and ruled out**, with supporting reasons why there are no less restrictive alternatives available. Pa.R.J.C.P. 1242(C)(3)(c). Statistics show that outcomes for youth placed in congregate care facilities are poor.

### 20.8.1 Factors to Consider Prior to Placement

There are several factors a court should consider before ordering placement in a congregate care facility. These should be explored fully in a hearing:

- Have all kin and contacts identified through family finding been contacted and considered as placement options?
- Have all potential foster care options been contacted?
- What services will be provided to the child at the facility that cannot be provided in a community placement? What are the qualifications of the individuals providing the services?
- What is the distance between the facility and the child's family and support?

- What are the academic options? Children in placement must remain in their home school unless the court finds that it is not in the best interest of the child. Pa.R.J.C.P. 1148(B). If the court finds that the child shall not remain in their home school, next, the judge should consider other educational options. A foster child, including children in congregate care, must be schooled in a public school unless the court finds a public school not to be in the child's best interest. Pa.R.J.C.P. 1148(C). These reasons should be placed on the record. If public school is not in the child's best interest and the child will attend an on-grounds school, will the child receive academic credits that transfer to the child's home school upon discharge, and will the child be able to advance to the next grade level? Will the child's instruction come from teachers or a computer?

### 20.8.2 Visitation

Visitation with family and kin should be ordered and not left to the discretion of a facility. If the facility is a distance from the youth's family and supportive kin, the facility or agency should be ordered to assist the family with visitation by providing gas cards, hotel vouchers, or transportation. The caseworker is required to visit the child at the facility at least once per month and may be able to transport the family.

Visitation is part of all permanency plans. The court is required to make findings in each order that the agency has made reasonable efforts to finalize the permanency plan, so visitation should be addressed in all orders.

Several facilities place conditions on visits with family, especially home passes, via some tier or level system. Unless the facility/agency can articulate safety reasons why off grounds visits and home passes are not appropriate, visits should be ordered. Home pass safety factors may include drug/alcohol relapse, violence, or elopement.

**KEY POINT REGARDING VISITATION**

**Visitation with family and kin should NEVER be used by a facility, the courts, or an agency as a sanction or reward in response to a youth's behavior. For safety reasons, there may be limitations on visits such as supervised or on-grounds visitation but contact with family/kin should not be denied.**

Some facilities have black-out periods. When a child is placed, a facility will require a period of time (from a week to a month typically) when the child can have no contact with their family, friends or kin. The facility will argue that this gives the child time to adjust to the facility. **Courts should seriously question this practice.** A child who is placed

in congregate care usually has a high Adverse Childhood Experience (ACE) score and has experienced significant trauma in his/her life. It is difficult to imagine how further isolation from everything with which a child is familiar will benefit the child.

### 20.8.3 Telephone Calls

Children should be permitted frequent telephone contact with family/kin. Some facilities limit a youth's phone calls. However, a court should consider the number of supporting family/kin in a child's life and order weekly contact with these people regardless of the facility policy. **Telephone calls, as with visitation, should not be used as a reward or sanction for the child's behavior.**

Youth should **ALWAYS** have unlimited telephone access to their attorney, Guardian *Ad Litem,* and caseworker. These calls should **NOT** be monitored in any way by the facility.

### 20.8.4 Age and Developmentally Appropriate Activities

Most agencies have funding sources or contacts to assist children with things such as tickets, dresses, and tuxedos for prom, music instrument rental, and transportation. Facilities like the YMCA often have scholarships for children in placement. Art lessons, dance lessons, and martial arts lessons may be great ways for children to develop skills and practice social skills at the same time. Payment for them should not preclude a child from placement from these typical activities. Overnight stays with friends, dates, and spending time with friends are all typically appropriate activities for youth. Judicial officers should ensure that the agency is supporting child involvement in some kind of safe activity that promotes positive social skills and develops interests, regardless of placement. (See Pa.R.J.C.P. 1608(d)(1)(xvi) and comment to the rule.)

Although psychiatric institutions are exempt from the statutory requirement to provide age and developmentally-appropriate opportunities/activities, the court should still consider ordering the agency and facility to provide them unless safety factors indicate they are not appropriate.

### 20.8.5 Transition Back to the Community

If a child is ordered into congregate care, a plan to return the child to the community should be developed at the initial placement. This should include the involvement of:

1) Family if the goal is reunification;

2) Kin if the child is expected to be returned to kin other than the parents; or

3) Foster family if the child is not likely to be returned to family or kin.

The facility and agency should be ordered to include family in the child's treatment at the facility from the beginning of placement. Services should be identified and initiated

in the home before the child's discharge so that there is no lapse in services between the facility and the community. The services should address the factors that led up to the need for congregate care placement and should be designed to prepare the family for the child's return and prevent the child from returning to congregate care after he/she is discharged. Hopefully, the issues necessitating placement will be eliminated upon the child's return to the community.

Pre-placement visits of increasing duration can help facilitate a successful transition for a child from congregate care into a family with whom the child has never lived. Pre-placement visits offer an opportunity for the child to learn about his/her potential placement family and the family to learn about the child. The child should be able to contribute an opinion about the possible placement. Pre-placement visitation is a trauma-informed strategy that allows the child to slowly become acclimated to the new family and community, decreasing the stress and anxiety that accompanies the unknown.

***Best Practice — Congregate Care Placement with Delinquent Youth***

Courts should keep in mind that most often dependent youth placed in congregate care facilities will also be placed with medium and high-risk delinquent youth. Since dependent youth have not been adjudicated of committing any crime, they should not be treated in the same manner as delinquent youth. Courts should inquire as to how the facility differentiates between the delinquent youth and dependent youth especially as it relates to visitation, telephone calls and off-grounds activities.

### 20.8.6. Transition to Successful Adulthood

Courts should ensure that facilities/agencies are providing the child with skills necessary for transition into adulthood and independent living. Children in congregate care should be able to seek and maintain employment. They should be provided with the experience of making their own decisions in safe and appropriate ways. They should be able to study the driver's safety manual and learn to drive. Opportunities should be provided for them to explore the possibility of attending college, including college visits and preparation classes for SAT and ACT exams. (For more information, see Chapter 13: Permanency Hearing, Section 13.6.10: Services Needed to Help Older Youth Transition to Independence.)

## 20.9 Transitioning Youth

Approximately 23,000 youth age out of the foster care system in the United States every year. *51 Aging Out of Foster Care* Statistics, National Foster Youth Institute, https://nyfi.org/51-useful-aging-out-of-foster-care-statistics-social-race-media (last visited

Dec. 13, 2024). On average, about 1,100 of foster children age out of the foster care system every year in Pennsylvania. *Facts*, Pennsylvania State Resource Family Association, https://www.psrfa.org/being-a-foster-parent/the-facts/ (last visited Dec. 13, 2024). There is a growing body of literature that demonstrates foster children who age out of the system do considerably poorer in transitioning to adulthood than peers who have no child welfare involvement. According to the report of the *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 26,* foster youth transitioning to adulthood:

- Are less likely to have completed high school and be enrolled in secondary education;
- Are less likely to be employed and when employed they earn significantly less money;
- Are three times as likely to have economic hardships, including eviction and food insecurity;
- Have a substantially higher prevalence of serious physical health, mental health, and substance abuse problems that interfere with their daily functioning;
- Are more likely to have been pregnant or have fathered children, less likely to receive prenatal care, and more likely to report unwanted pregnancies; and
- Have considerably higher rates of criminal involvement and incarceration.

Mark E. Courtney, et al., (Chapin Hall at the University of Chicago 2011).

Avoiding these kinds of outcomes calls for effective services designed to facilitate the successful transition to adulthood. These services should be provided as far in advance of the transition out of the child welfare system as possible. The early identification of the need for services and the provision of quality services can be instrumental in supporting youth in making a successful transition to adulthood.

In 1999, the Foster Care Independence Act (FCIA) amended the Chafee Foster Care Independence Program (CFCIP) to provide states with flexible funding, enabling them to design and conduct Independent Living programs for both older youth in foster care and those who have aged out. (For more information, see Chapter 21: Overview of Federal and State Child Welfare Legislation.) The CFCIP was amended in 2002 to include the Educational and Training Vouchers Program (ETV). The ETV was designed specifically to provide resources to meet the education needs of transitioning youth.

In addition to hard skills, such as employment services and housing needs, the court and agency must provide for a youth to develop and maintain connections to supportive adults regardless of placement type. 67 Pa.C.S. § 7504(b)(4), Pa.R.J.C.P. 1608(d)(1)(xi)(F). These individuals are those who are not being paid by the agency to be part of the support system for the youth. While these resources may never provide a home for the youth, they can support the youth in ways above and beyond that of typical community services. Often these people simply provide words of encouragement and advice or a place for the youth to visit on holidays. These people often come in the form of extended relatives, former foster parents, neighbors, teachers, or coaches.

### 20.9.1 Independent Living Services for Transitioning Youth

Foster Care Independence Act (FICA) and the Juvenile Act require all youth in care who are age fourteen or older and subject to an order transferring legal custody to receive age and developmentally appropriate services to help the child plan and prepare for adulthood. 67 Pa.C.S. § 7505. Likewise, youth who are adjudicated dependent and living at home are also eligible for independent living (IL) services. Youth who were discharged from placement on or after their fourteenth birthday are eligible for IL aftercare services (discussed more fully at the end of this section at 20.8.5).

IL is not a permanency goal, of course, and providing IL services does not change the child's permanency plan. Having every child grow up in a family setting is still the ideal. However, every youth in care age fourteen or above should receive IL services designed to provide them with skills they will need in adulthood. The judge or hearing officer should ensure these youth are given a written description of the programs and services that will help them prepare for the transition to living independently. These services may include:

- educational training and counseling;
- career counseling;
- job readiness and job search;
- budget/financial management skills;
- home management skills;
- sex education and family planning services;
- housing search and assistance;
- self-advocacy skills;
- individual and family counseling;
- daily living skills; and
- mentoring.

**"I don't think the needs of older youth in foster care have been addressed. Older youth have needs just like the younger kids do. We all want help."**

- J.J., 19, Former Pennsylvania Foster Youth

As is the case with most child welfare services in Pennsylvania, IL services may vary from county to county. However, all counties are required to provide IL services to youth. These services can come from the county agency or a contracted service provider.

The most common IL service includes a strengths and needs assessment of life skills and an associated curriculum for the provision of life skills. This curriculum typically includes services such as money management, employment services, and education assistance. IL Plans allow for the customization of services to meet the needs of the youth. More information on the IL services in your county can be provided by the county child welfare agency.

The court and the agency, as well as the youth's counsel or GAL, all have a role in securing the necessary resources throughout the youth's time in the system. Therefore, it is important that judges, hearing officers, and attorneys have substantive knowledge of what children in care need, what they are legally entitled to, and what services are available to them.

In light of the importance of these services for youth and the need for strong oversight as the youth moves toward independence, the court should ensure that a referral for specific independent living services tailored to the needs of the youth has been made. At each court review, there should be confirmation of the independent living services that are underway, an inquiry as to whether they need to be continued, and identification of which IL goals have been completed.

### 20.9.2 Transition Planning for Older Youth

As dependent youth approach adulthood, there are many daunting challenges they must face. Transitional planning and the identification and engagement of family and other supportive adults can make the challenges seem achievable. Beginning no less than six months before the child will become 18 years of age, the county shall develop a transition plan in collaboration with the child and, at the child's election, other supportive adults. 67 C.S. § 7505(a)(2). Before the court can terminate its supervision of a child who is 18 years of age or older, a hearing shall be held at least 90 prior to the child turning 18 years of age. Pa.R.J.C.P. 1631(e). The Fostering Connections to Success and Increasing Adoptions Act of 2008 requires the agency to develop a "personalized and detailed transition plan," providing options on housing, health insurance, education, local opportunities for mentors and support services, and workforce and employment services. 42 U.S.C. § 675(5)(H). Pursuant to 67 Pa.C.S. 7505(b), a transition plan shall include: (1) Identification of or detailed options for a suitable place of intended residence. (2) A list, with contact information, of supportive adults and family members. (3) Identification of local opportunities for mentorships and continuing social support. (4) A plan or detailed options for employment, job training or continuing education. (5) Documentation of the child's possession or relevant documents or, if the child does not have possession of the documents, an explanation of the reasons why the child does not have the documents and detailed instructions on how the child may obtain the documents. If the child has a goal of APPLA, see Chapter 13.6.15 Special Findings When the Permanency Goal is APPLA.

***Best Practice — FGDM as Transition Planning***

Courts should encourage the use of Family Group Decision Making (FGDM) as a means to develop the youth's transition plan. FGDM provides the opportunity for the youth to identify those people most important in their lives to become resources after their discharge from court supervision. These people can include family, friends, and potential permanent connections for the child.

Using FGDM as transition planning allows the youth and their supports to develop their own plan for transition with agency and court approval. As with any FGDM plan, a youth is more likely to engage and buy-in to a plan of their own design rather than one that is dictated.

The court should encourage the agency to offer FGDM far in advance of the youth's discharge date to allow for plan implementation prior to termination of court supervision.

Effective judicial oversight will ensure that comprehensive transition plans are developed for youth aging out of care. While federal law does not require a transition plan until ninety days before a youth ages out of the system, the judge or hearing officer should require plans to be presented to the court for early review whenever possible. This will ensure that the judge or hearing officer, the agency, and the youth's GAL have had time to clearly explain to a youth what will occur upon leaving the child welfare system and coordinate any services a youth may need in advance of leaving care.

Among the institutional and personal supports youth generally lose when they exit the child welfare system are:

- Access to the courts for enforcement of orders and legal advocates fighting for their right to access services;
- Consistent adults who are working for their best interest (i.e. foster parent, CASA, GAL, case worker, judge, or hearing officer);
- A sense of security that may have been provided by their child welfare system involvement. Even though youth may have resisted or disliked their environment while in foster care, many experience a loss of some security when they are left alone in an adult world with no support;
- Medical Coverage: in most states, medical coverage will end between the ages of 18 and 19;
- Housing: While in care the state must guarantee a youth's housing needs are addressed, but after leaving, a youth is left to find housing on their own or through a supportive housing program.

Kathleen McNaught & Lauren Onkeles, *Improving Outcomes for Older Youth: What Judges and Attorneys Need to Know* 2 (National Resource Center for Youth Development 2004).

Finally, judges and hearing officers should take the opportunity to explore the youth's backup plan or Plan B. (For more detailed information about termination of supervision with transitional youth, including a checklist of questions to ask the youth, see Chapter 15: Termination of Court Supervision).

### 20.9.3 Educational Issues for Transitioning Youth (Eighteen & older)

As discussed in Chapter 13: Permanency Hearing, Section 13.6.10: Services Needed to Help Older Youth Transition to Independence and consistent with Pa.R.J.C.P. 1608(xi), the court should determine beginning at age fourteen, or preferably earlier, that youth are receiving services to prepare them for independent living and a successful adulthood. Addressing the youth's educational needs and goals increases the likelihood that the youth will find success.

Once a youth is eighteen or older, Pa.R.J.C.P. Rule 1631(e) provides the court and the parties with a clear roadmap for what planning should take place before dependency is terminated, including educational planning.

Below are some examples of educational areas the court may wish to explore depending on the needs of a particular youth:

- Will the youth continue to attend school?

  A child remains of school age and eligible to attend school until he or she graduates high school or until the end of the school term that he or she turns age 21. Alternatives to high school, such as GED programs, exist, but a youth should consult with his or her dependency team regarding the best option for him or her and make an informed choice. A youth who wishes to graduate should have a graduation plan. A youth who plans on changing schools should be aware of the setbacks that changing schools can create for his or her graduation plan.

- Will the youth apply to college?

  If the youth is interested in pursuing a college education, the discharge planning should focus on developing readiness for post-secondary education and retention. This preparation should include preparing for the SATs or ACTs, making college visits, and obtaining assistance to prepare and submit college applications and financial aid forms. Youth in care should have access to post-secondary preparation programs such as Upward Bound or Gear Up.

- Is the youth in a post-secondary program and making progress?

  For youth who are enrolled in post-secondary programs of education or vocation, the court should continue to inquire into the youth's progress to help the youth succeed. Many youth are reluctant to ask for help and need to be encouraged to

access tutoring and other services available at colleges. Housing may be an issue during college breaks, including unexpected emergency breaks for occurrences such as severe weather, natural disasters, accidents, or crimes. Older youth can be afraid that if they reveal a problem, they risk being discharged from care, and they benefit from being reassured that needing support is an expected part of life.

- Does the youth have special needs that should be addressed?

  Children with disabilities may graduate either by meeting graduation requirements or by meeting the goals of their IEP. In addition, beginning at age fourteen, youth with special education will have an individualized transition plan, which can include an array of services to prepare the youth for employment, post-secondary education, and adult living. Youth with special needs may be eligible for post-secondary education and training through the Office of Vocational Rehabilitation. If a youth with special education needs goes on to post-secondary education and training, determine if they have sufficient help and advocacy so that an appropriate accommodations plan can be designed. Such a plan can make a huge difference in a youth's adjustment to and success in post-secondary education.

### 20.9.4 Youth Opting to Remain in Care Past Age Eighteen

Many youth are not aware of their right to remain in care past the age of majority. The Juvenile Act defines a child as an individual who is under the age of twenty-one years and was adjudicated dependent before reaching the age of eighteen years, who has requested the court to retain jurisdiction, and who remains under the jurisdiction of the court as a dependent child because the court has determined that the child is:

(i) completing secondary education or an equivalent credential;

(ii) enrolled in an institution which provides post-secondary or vocational education;

(iii) participating in a program actively designed to promote or remove barriers to employment;

(iv) employed for at least eighty hours per month; or

(v) incapable of doing any of the activities described in subparagraph (i), (ii), (iii) or (iv) due to a medical or behavioral health condition, which is supported by regularly updated information in the permanency plan of the child.

42 Pa.C.S. § 6302 "**Child**"(3). See also 42 Pa.C.S. § 6351(j).

When a youth chooses to remain in care past age eighteen, there are many more services available. Depending on the county, services may include:

- **Housing options while at college**. Youth who remain in the foster care system can remain in the foster home while attending college if the school is in the same community. Additionally, youth who are residing on campus can return to the foster home over the holidays and between semesters. Financial support can be provided to the resource families for these specific situations.

- Youth living at college may receive **per diems or stipends** that would typically be provided to the foster family.

- **Supervised Independent Living (SIL)**. Supervised Independent Living and Independent Living are sometimes used interchangeably, but they are two dramatically different types of services. SIL is a specific placement type. In a SIL placement, the youth, who is adjudicated dependent and still in the custody of the agency with court supervision, is placed in an apartment alone or with roommates. The rent is paid for by the agency. The youth is supervised by the agency and provided with IL services. Some youth may choose SIL as their placement when the goal is Another Planned Permanent Living Arrangement. This is acceptable under ASFA as long as the permanency plan provides the youth with supportive and family-like relationships, as well as the skills and competencies needed to eventually live on his own. In fact, the federal regulations recognize that a dependent older youth's request that independent living be his permanency plan is a compelling reason not to pursue reunification. 45 C.F.R. 1356.21(h)(3)(i).

- **Medical Coverage**. One of the most important benefits of remaining in care is that Medical Assistance (MA) coverage continues while the youth is in care. A youth who opts to leave the system will lose medical coverage and be forced to reapply individually to continue to receive MA. Unfortunately, many youth who leave the system do not follow through or are not eligible for continued MA.

To remain in care past age eighteen, a youth must request the court retain jurisdiction. The youth should make the request of the court, either directly or through the GAL. Ultimately, the youth makes the decision of whether or not to remain in care, but this decision should be fully informed and aided by information from the agency, the GAL, and the court.

### 20.9.5 IL Aftercare Services

Aftercare services are available to youth ages sixteen to age twenty-one who have left the child welfare system for any reason. Aftercare services are simply IL services that are provided to the youth after their discharge from the formal child welfare system. The aftercare services available to youth are similar to IL services that a youth would receive

while in the child welfare system. The process of transitioning services for a youth receiving IL services in the child welfare system to aftercare services should be seamless to the youth.

## 20.10 Court Appointed Special Advocates

Court-Appointed Special Advocates or CASAs, are screened and trained volunteers, who, once appointed, can be a valuable resource as the eyes and ears of the court, bringing forward detailed information about what is happening in the lives of children with whom they work, along with recommendations as to ways to enhance their safety, permanence, and well-being.

In Pennsylvania, the appointment, qualifications, roles, and duties of Court Appointed Special Advocates are governed by the provisions of 42 Pa.C.S. § 6342 and the *Standards Governing the Qualifications and Training of Court-Appointed Special Advocates* adopted by the Juvenile Court Judges' Commission in 1999. (See 29 Pa.B. 3633.)

### 20.10.1 CASA Appointments

The judge or hearing officer may appoint or discharge a CASA at any time during the proceeding or investigation regarding dependency. Issues judges or hearing officers may wish to consider when making a decision to appoint a CASA as a "friend of the court" include whether there:

- are complex issues in the case?
- are a large number of siblings?
- is private counsel involved who could benefit from the support of a CASA volunteer?
- is a need to have intensive services provided in order for the child to remain in the home?
- is a need to have services move very quickly for the family?
- are parents uncooperative?

CASA programs have been shown to be effective in the most complicated and difficult cases. Typically, the children who have a CASA volunteer appointed are more likely to have face-to-face contact with them and their caregivers than those who are represented by attorneys alone. Also, it has been found that these children get more services ordered and implemented, have fewer placements, and are more likely to be adopted. David Youngclarke, et al., *A Systemic Review of the Impact of Court Appointed Special Advocates,* 5 Journal of the Center for Families, Children & the Courts 109, 121 (2004). However, judges and hearing officers should be aware that CASA volunteers are a limited resource and should appoint them based on the complexity and needs in a particular case or for a particular child.

### 20.10.2 CASA Duties and Responsibilities

Generally, CASAs review records, research information and interview everyone involved in the case. They prepare reports and recommendations for the court and monitor the case until conclusion or whatever time period is defined in the Order of Appointment. Perhaps one of their most important roles is developing a relationship with the child to better understand their needs and desires. This enables the CASA volunteer to make recommendations to the court that are truly in the child's best interest. Volunteers generally have only one or two cases at a time, and their activities are monitored by a CASA case manager. Specific powers and duties of CASA, as listed below, are delineated in 42 Pa.C.S § 6342:

- have full access to and review all records relating to the child and other information unless otherwise restricted by the court;
- interview the child and other appropriate persons as necessary to develop recommendations;
- receive reasonable prior notice of all hearings, staff meetings, investigations, or other proceedings related to the child;
- receive reasonable prior notice of the movement of the child from one placement to another, the return of the child to the home, the removal of the child from the home, or any action that materially affects the treatment of the child;
- submit written reports to the court to assist the court in determining the disposition best suited to the health, safety, and welfare of the child; and
- submit copies of all written reports and recommendations to all parties and any attorney of the party.

Understanding the specific and unique role of CASA volunteers as friend of the court may help reduce potential conflict or confusion. As the *Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* point out, conflict or confusion may sometimes arise between CASAs and GALs, presenting the court with opposing points of view. Gatowski, *supra*, at 47. Multi-disciplinary training sessions are often effective in clarifying roles and responsibilities and identifying potential conflicts among system participants. It is important to note that while CASA volunteers should work cooperatively with others, their investigations and recommendations should be independent.

CASA volunteers, under the supervision of their agency, create a written report that details the history of the case, the work they have done, and the results of their investigations, as well as specific recommendations for the children and the family to which they are assigned. CASA reports should be provided in advance to all parties, as well as to the court. The volunteer or other responsible person from the CASA agency

should be available in the courtroom to testify at the request of the court or parties regarding the investigation or recommendations provided within the report. If the court has appointed CASA on a case, the court should hear from them at some point during the hearing, whether that is through testimony or the presentation of their report and recommendations.

### 20.10.3 CASA Resources

The National CASA/GAL Association for Children provides information for local CASA programs and volunteers. In recognition that judges play a key role in developing new programs, sustaining existing programs, and expanding the network, the website provides resources for judges. These can be found under the tab Advocating for Children by selecting Resources for Judges.

The Pennsylvania Court Appointed Special Advocates Association is a statewide non-profit organization that promotes public awareness of the CASA concept, helps local programs develop, and generally supports local programs in Pennsylvania.

## 20.11 Planning and Funding Services: The Needs Based Plan and Budget

While funding issues should never directly influence judicial decisions, the court does play a role in securing federal, state, and local funding for services to help dependent children and their families. This role is both case-specific and administrative in nature. At the case level, the court's orders and the timing of those orders directly impact the local child welfare agency's ability to receive funding for needed services. On an administrative level, courts are asked to review and sign the annual Needs Based Plan and Budget (NBPB) created by the local child welfare agency. In this role, judges can provide valuable insight for future service planning by identifying potential services that could help the children and families that come into their courtrooms. In fact, regular meetings between the judge and child welfare administration are useful for identifying gaps in services and ensuring the quality of services already in place.

Every year, the county child welfare agency is required to submit a Needs-Based Plan and Budget (NBPB). The NBPB covers two fiscal years of funding, including an implementation year and a needs-based year. Each county's NBPB is used in the determination of the Needs Based Plan and Budget allocations for all 67 counties, which is made by the Department of Human Services' Office of Children, Youth and Families (OCYF) and submitted to the Governor's Budget Office.

The NBPB process provides the county with an opportunity to state what funds it will need in the upcoming budget period to cover the cost of (1) county child welfare and juvenile detention staff and (2) all direct and purchased child welfare and juvenile

delinquency services. These costs may include, but are not limited to, Juvenile Act Proceedings costs (including reimbursement for eligible GAL services in dependency cases, assessments, etc.), prevention services, in-home services, foster family services, community-based and institutional services, detention, and secure residential services.

***Best Practice — Court/Agency Collaboration***

Ideally the court and agency should be identifying service gaps/needs throughout the year and communicating with each other about them. Local Children's Roundtables are an excellent venue for these discussions, helping to identify needs as well as potential solutions.

In some counties, court and non-court personnel (usually agency/county program and fiscal personnel) meet to routinely review service delivery, costs, and effectiveness. This administrative process helps to identify services that show positive outcomes for children and families while clarifying court expectations and making the most of limited funding resources. This quality control partnership results in a more effective and more relevant service delivery system.

The statute provides a different reimbursement percentage amount for each service category, with the total reimbursement being a combination of state, federal, and county matching funds.

The NBPB submission by each county should be a collaboration of all system and community partners involved with the child welfare system, including but not limited to the court, the juvenile probation office, the behavioral health and intellectual disability systems, school districts, advocates, providers, and the public. The NBPB must be reviewed and signed by the County Children and Youth Administrator, the Chief Juvenile Probation Officer, the County Commissioners/Executive, and the President/Administrative Judge.

While courts obviously do not directly oversee the child welfare agency, courts do order needed services in dependency matters and oversee these cases. Judges can provide a unique perspective regarding service needs and gaps. A review of the NBPB is intended to provide the agency insight into the court's perspective and expectations, allowing the agency an opportunity to plan and budget accordingly. In addition, a portion of county legal service costs (i.e., solicitor, Guardian *Ad Litem*, and CASA) can be included in the NBPB. Finally, new statutes, procedures, and legal requirements often have associated legal costs of which the court may be aware. Sharing this information with the county agency can greatly assist in the NBPB development.

In March/April of each year, the Office of Children, Youth and Families (OCYF) issues a draft bulletin containing the instructions for the NBPB. This draft is issued to all county children and youth agency directors and county juvenile probation chiefs, as well as the private provider community. On or about May 15, the final NBPB bulletin for the following fiscal year is issued. The county NBPBs must be submitted to OCYF no later than August 15.

Once OCYF receives each county's submission, OCYF regional and headquarters staff review the submission and request additional information pursuant to written questions. OCYF then decides on an allocation for each county based on the past history and expenditures, trends of the county, special circumstances of the county, and the narrative of the county. The Deputy Secretary for OCYF then certifies a total budget for all counties' child welfare and delinquency allowable costs and certifies the Needs-Based Plan and Budget to the Governor's Budget Director. This certified amount is presented to the Legislature along with the Governor's budget submission.

## 20.12 Trauma

### 20.12.1 Trauma Overview

> ***"If we save the body, but in so doing, destroy the mind and soul, what good have we really done?"***
>
> - Honorable Max Baer, Chief Justice of Pennsylvania Supreme Court

Trauma-informed judicial practice is paramount in dependency cases. Based on the life experiences and events bringing families into dependency court, one can easily conclude that most of the individuals who come before the judge or hearing officer experienced some form of trauma or traumatic stress. According to the *Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases,* trauma-informed judicial practice recognizes the impact that trauma has on the lives of children and their families, trauma triggers that may evoke a trauma reaction, and the vulnerabilities of trauma survivors. Gatowski, *supra*, at 144. This requires all those working within a system to possess the knowledge of both trauma and people's reactions to trauma. Beyond this understanding, trauma-informed practice requires courts, from judges to maintenance staff, to know how to effectively interact with traumatized individuals. Simple changes to the way one approaches people and the manner in which one speaks to them can make a huge difference in the responses people have. Just as trauma can pervade every area of a person's life, so too can trauma-informed practice.

Such a commitment begins with an understanding of trauma. The definition of trauma, in its simplest form, is an "event that threatens someone's life, safety or well-being." Kristine Buffington, et al., *Ten Things Every Juvenile Court Judge Should Know About Trauma and Delinquency* (National Council of Juvenile and Family Court Judges

2010). Depending on the circumstances, context, connectedness, and psychological makeup, trauma can affect individuals in many ways. For the judicial officer, it is important to note that trauma can cause neurobiological changes leading to an easily triggered fight, flight, or freeze response. The behaviors seen in the courtroom need to be considered in light of the trauma histories of the participants. Using a trauma-informed approach means considering whether trauma played a role in the behavior of the individual. It also means that all parties are treated in a trauma-informed way, presuming trauma of some sort has happened until it is known otherwise.

The federal Substance Abuse and Mental Health Services Administration (SAMHSA) has developed a set of core principles that make up trauma-informed systems. A court's culture, reflecting these six values, recognizes the importance of people, both those being served and those serving. The more ingrained these principles, the more attuned the system is to the precept, "first, do no harm."

The six core principles are:

- **Safety:** participants and staff feel physically and psychologically safe.
- **Peer support**: peer support and mutual self-help are vehicles for establishing safety and hope, building trust, enhancing collaboration, and utilizing lived experience.
- **Trustworthiness and transparency**: decisions are conducted with the goal of building and maintaining trust.
- **Collaboration and mutuality:** importance is placed on partnering and leveling power differences.
- **Cultural, historical, and gender issues:** cultural and gender-responsive services are offered while moving beyond stereotypes/biases.
- **Empowerment, voice, and choice:** organizations foster a belief in the primacy of the people who are served to heal and promote recovery from trauma.

*Strategic Plan: Fiscal Year 2023-2026*, National Mental Health and Substance Abuse Library, Substance Abuse and Mental Health Services Administration 7 (2023).

These core principles are consistent with the *Mission and Guiding Principles for Pennsylvania's Child Dependency System* (2009). They reflect the mission of Pennsylvania's dependency system: protecting children, promoting strong families, and promoting child well-being, leading to timely permanency. The principles also underscore Pennsylvania's strengths-based and family-engagement approach to children and families in the dependency system.

### 20.12.2 Trauma-Informed Courtroom

The National Council of Juvenile and Family Court Judges (NCJFCJ) developed a working definition of trauma-informed courts: "a system that ensures physical and social environments are sensitive to reducing stress, practices reflect an understanding of trauma triggers, and policies are designed to help promote healing. Inherent in this approach is that all system professionals, children, and families benefit from the focus on safety and well-being that is instilled in trauma-responsive environments." Gatowski, *supra*, at 78.

Judges and hearing officers should be keenly aware that traumatic experiences may impact a child's or parent's responsiveness to services and their ability to communicate effectively with their attorney, caseworker or the court. To counter these effects, dependency courts across the Commonwealth are striving to be trauma-informed and trauma-responsive.

Trauma-informed and responsive courts integrate the following elements which can reduce the trauma and stress associated with the court process:

- ***Safety***. Everyone has a right to feel safe in courthouses and court-operated facilities. Judges and hearing officers, with the assistance of the deputy sheriff and court staff, should create an environment of safety, including not sitting a victim of domestic violence or sexual assault next to the alleged perpetrator, using video or teleconferencing when appropriate, taking testimony *in camera* and ensuring that the deputy sheriff or courthouse security is visible, but not intimidating, at all times.

***Best Practice — Trauma-Informed Courtroom Procedures***

| COURTROOM EXPERIENCE | REACTION OF TRAUMA SURVIVOR | TRAUMA-INFORMED APPROACH |
|---|---|---|
| Individuals who are frightened and agitated are required to wait before appearing before the judge. | Increased agitation, anxiety, acting out. | Clearly provide scheduling information in the morning so participants know what will be expected of them and when. To the greatest extent possible, prioritize who appears before you and when. |
| A judge conducts a sidebar conversation with attorneys. | Suspicion, betrayal, shame, fear. | Tell the participants what is happening and why. |

*Essential Components of Trauma-Informed Judicial Practice*, SAMHSA's National Center on Trauma-Informed Care and SAMHSA's National GAINS Center for Behavioral Health and Justice: Essential Components of Trauma-Informed Judicial Practice 6 (Substance Abuse and Mental Health Administration 2013). (See this resource for additional trauma-informed courtroom procedures.)

- ***Physical Environment***. Ideally, a dependency courtroom should be stress reducing. Courtrooms that are more child and family-friendly can go a long way to decreasing trauma. Consider providing pens and notebooks for parents and older children to enable them to take notes. Crayons and coloring books can reduce stress for younger children during court hearings. Also, consider providing simple conveniences like boxes of tissues and snacks within reach. People, including attorneys, court staff, and sheriff's deputies, walking in and out of the courtroom during a hearing can cause stress to the parties. Develop a policy on entering the courtroom during court hearings. Finally, minimize the space between the judicial officer and the participants. Consider coming off of the bench and holding the hearing at a table. If that isn't practical, come off of the bench at the beginning of the hearing to greet the parties and thank them for coming.

***Best Practice — Trauma-Informed Courtroom Environment***

| PHYSICAL ENVIRONMENT | REACTION OF TRAUMA SURVIVOR | TRAUMA-INFORMED APPROACH |
|---|---|---|
| The judge sits behind a bench, and participants sit at the table some distance from the bench. | Feeling separate, isolated, unworthy, and afraid. | The judge comes out from behind the bench and sits at a table in front. |
| Multiple signs instruct participants about what they are not allowed to do. | Feeling intimidated, lacking respect, untrustworthy, treated like a child. | Eliminate all but the most necessary signs; word those that remain to indicate respect for everyone who reads them. |
| A court officer jingles handcuffs while standing behind a participant. | Anxiety; inability to pay attention to what the judge is saying; fear | Eliminate this type of nonverbal intimidation. Tell court officers not to stand so close. Respect an individual's personal space. |

*Essential Components of Trauma-Informed Judicial Practice*, SAMHSA's National Center on Trauma-Informed Care and SAMHSA's National GAINS Center for Behavioral Health and Justice: Essential Components of Trauma-Informed Judicial Practice 8 (Substance Abuse and Mental Health Administration 2013). (See this resource for additional trauma-informed courtroom environment.)

- ***Timely Hearings***. Long periods of waiting in the courthouse can increase or cause trauma and anxiety. Starting hearings on time can reduce much of the trauma and anxiety associated with waiting. During wait times, ensure that victims and

perpetrators can wait in separate areas. Have a staff person visible to increase the feeling of safety. Provide distractions to waiting, such as magazines, books, and toys for children to play with. Have a children's waiting room that is filled with things for children to do and introduce therapy/facility dogs into waiting areas. Strive for time-specific scheduling of hearings.

• ***Trauma-Informed Hearings***. A trauma-informed court hearing includes the right to be heard, emphasizing strengths, explaining decisions on the record, and making timely decisions. At the onset of a hearing, the judicial officer should ensure that there are no language barriers. The judge or hearing officer should explain the purpose of the hearing. Utilizing Motivational Interviewing techniques helps the judicial officer receive the best information from the parties. Judicial officers should understand that what may appear to be hostility or non-cooperation may just be a symptom of the underlying trauma. Judicial officers should set the tone for everyone in the courtroom. Require and model respectful, positive, and encouraging interactions. Link concerns to concrete examples and, rather than asking "why?" move to planning for a different action/outcome next time. Hold all parties accountable when needed. Doing so creates an atmosphere of procedural fairness. Make sure that everyone leaves the courtroom knowing what they need to do prior to the next hearing. Help prioritize multiple tasks and orders. Set clear expectations and let parties ask questions about those expectations so they understand.

***Best Practice — Managing Anxiety in the Courtroom***

Having a highly anxious person in the courtroom can be difficult, both from the standpoint of getting reliable information and clear understanding of expectations. A continued escalation in anxiety could lead to defensive behavior. Judicial officers have an opportunity to calm things down. Take a brief recess, offer water to sip (through a straw can be especially soothing to children), reposition the facility/therapy dog next to the anxious person. Judges and hearing officers can even lead the courtroom through a calm breathing exercise. For more information on how to do that, see the Trauma Benchcard.

- ***Trauma-Responsive Services***. Judges and hearing officers should set the expectation that families be treated in a trauma-responsive manner. Judges and hearing officers should order services that recognize the impact that trauma has on the lives of children and families and the potential triggers and vulnerable nature of children and families who have been exposed to trauma. Judicial officers should consider ordering services that are specific to gender, sexual orientation, or identity.

When there are multiple services available, allow children and families to have a choice with whom they work. When necessary, trauma treatment should occur by professionals trained in one of the evidence-based models for trauma treatment.

***Best Practice — Court Facility Dogs***

Therapy dogs provide comfort and security during dependency proceedings. Their presence is a calming influence and helps many individuals relax, leading to a reduction in stress symptoms. Benefits include better information from participants, a sense of connectedness, and soothing through touch.

In 2024, 22 jurisdictions had facility dogs. Many different therapy dog programs exist. Some examples are **Courthouse Companionship — Roxy Therapy Dogs** (Bucks County), **Therapy Dogs United** (Erie County), **and 4 Paws 4 A Cause** (Venango County). For more information about the benefits of facility dogs, see **Comfort Dogs for Courts- OCFC.**

### 20.12.3 Trauma-Informed Communication

Judges and hearing officers should consider trauma when directing comments and questions to parties. Using a trauma lens approach to interacting with people means moving away from blaming or shaming communication and instead using language that conveys understanding and hopefulness, motivating people towards change. Be careful in addressing traumatic experiences, and use a soothing and gentle voice. Watch for signs of people becoming triggered by hearing about past traumatic events. Examples of some helpful statements are:

- "What has happened to you?"
- "What do you think?"
- "What can we do to support you in solving the problem?"
- "Please."
- "Thank you."
- "Your commitment really shows."
- "It's clear you are trying."
- "I read in the court report that you followed last month's visit schedule without any problems. This helps your child."
- "I'd like to refer you to a doctor who can help us better understand how to support you."
- "I can see you are confused."
- "I can hear you are frustrated."

- See *Essential Components of Trauma-Informed Judicial Practice*, SAMHSA's National Center on Trauma-Informed Care and SAMHSA's National GAINS Center for Behavioral Health and Justice: Essential Components of Trauma-Informed Judicial Practice (Substance Abuse and Mental Health Administration 2013).

***Best Practice — Trauma-Informed Courtroom Communication***

| JUDGE'S COMMENT | PERCEPTION OF TRAUMA SURVIVOR | TRAUMA-INFORMED APPROACH |
|---|---|---|
| "Your drug screen is dirty." | *"I'm dirty.* There is something wrong with me." | "Your drug screen shows the presence of drugs." |
| "I'm sending you for a mental health evaluation." | "*I must be crazy*. There is something wrong with me that can't be fixed." | "I'd like to refer you to a doctor who can help us better understand how to support you." |

*Essential Components of Trauma-Informed Judicial Practice*, SAMHSA's National Center on Trauma-Informed Care and SAMHSA's National GAINS Center for Behavioral Health and Justice: Essential Components of Trauma-Informed Judicial Practice 4 (Substance Abuse and Mental Health Administration 2013). (See this resource for additional information on courtroom communication.)

Non-verbal communication is equally important. Look at people when they are talking and listen without judgment or bias. Consider body language. Does body language convey attentiveness? Make eye contact frequently, but don't stare. Don't read or look at the computer screen while people are talking. Actively listening shows respect and concern.

### 20.12.4 Services for Trauma

- Screening and Assessment:

  Many screening tools have been developed to help professionals quickly decide which people have been exposed to traumatic events. Some tools can be administered without training, while others require some form of training. Examples of screening tools and other useful information can be found at the The National Child Traumatic Stress Network |(NCTSN) website.

  One quick measure of traumatic/stressful events children have been exposed to is the Adverse Childhood Experiences (ACEs) scale. The ACE score is a number from one to ten that helps judges and hearing officers understand the urgency of further assessment for trauma. The higher the number, the more adverse experiences in the life of a child. Research using the ACE score shows that high ACE scores are associated with poorer life outcomes, physical problems in later

life, and an increased likelihood of mental health issues. For more information on ACEs, see Chapter 2: Act 118 of 2022: Family Finding, Section 2.2: The Importance of Meaningful, Life-long Connections. Assessments are formal evaluations done by professionals to provide information about a person's trauma history, its effect on their life, current functioning, and recommendations about treatment needs. If judicial officers have specific questions that they would like answered, make sure the clinician doing the assessment knows what information is needed. For example, judicial officers may want to know how trauma is affecting a child's current behavior and what can be done to address those behaviors.

- Evidence-Based Treatments for Trauma:

  There are specific treatment modalities that address trauma issues and those that are trauma-informed treatment. These are not the same. Trauma therapy addresses the direct issues of a traumatic experience and includes core elements such as educating clients about trauma, increasing their sense of safety, identifying their trauma triggers, developing emotional regulation skills, developing trauma-informed parenting skills, addressing grief and loss, and processing traumatic memories. National Child Traumatic Stress Network, Justice Consortium Attorney Workgroup Subcommittee, *Trauma: What Child Welfare Attorneys Should Know* 13 (2017). Trauma-informed treatment generally means that clinicians and other professional staff have been trained in aspects of trauma and how to approach/respond to people from a trauma perspective but are not necessarily trained in treating Post-Traumatic Stress Disorder or other problems related directly to the trauma.

  Trauma-informed courts should order therapeutic services that are specifically geared to address the issues of children and parents who have been victims or exposed to traumatic events when needed. Traditional therapy and interventions may not be sufficient. If such resources do not exist within the community, the court should collaborate with the agency and other system partners to develop these needed services. More information about trauma treatment and interventions can be found on the NCTSN website at Interventions | The National Child Traumatic Stress Network.

### 20.12.5 Secondary Traumatic Stress and Vicarious Trauma

Judges and hearing officers face many challenges during the course of a work week. Many are handled with skill and knowledge. Some are handled with finesse and professionalism. Dependency judges and hearing officers face the challenge of helping children and families, and the rewards are innumerable. All too often, dependency judges and hearing officers carry thoughts or mental images with them of the abuse and neglect children have endured or the violence the children may have been witness to in their homes. While it is easy to presume that children and parents who come into the courtroom have experienced trauma, little thought is given to how the repeated exposure to these

accounts affects judges, hearing officers, and others who are regularly in the courtroom and what can be done to mitigate its impact.

This repeated exposure can cause secondary traumatic stress (STS). STS is behavioral and emotional responses resulting from indirect exposure to trauma. These responses can mimic the symptoms of Post-Traumatic Stress Disorder. Vicarious trauma (VT) is often used interchangeably with STS, but it has been described as the result of many incidents of STS. *Self-Care Toolkit,* Trauma-Responsive Courts Curriculum, Office of the State Courts Administrator Office of Court Improvement (www.flcourts.org Aug. 2016). Symptoms that may present themselves when individuals are suffering from either STS or VT include:

- Avoidance,
- Hypervigilance,
- All-or-nothing thinking,
- Argumentativeness or irritability,
- Numbing (often with the help of drugs or alcohol),
- Negative thinking,
- Strained personal relationships.

Christina Rainville, *Understanding Secondary Trauma: A Guide for Lawyers Working with Child Victims* 34.9 ABA Child Law Practice 129, 133 (Sept. 2015).

These symptoms may be labeled as workplace problems or poor performance but, in many cases, are the result of STS/VT. *Id.* Other symptoms are physical in nature and can include exhaustion, headaches, insomnia, and chronic illness. *Id.* It is important to attend to the issue of STS when symptomology is present.

One way to attend to issues of STS is to increase protective factors, such as resiliency, that mitigate the effects of STS. Resiliency is a term used to describe an individual's ability to withstand or bounce back from adversity. Some resiliency is inherent to a person's personality and psychological makeup. Building resiliency takes attentiveness to things that enhance a person's sense of self and those that bring peace and happiness to an individual. The process of attending to these things is known as self-care. Self-care is extremely important and will vary from person to person. When judges and hearing officers are faced with red flag symptoms indicating STS/VT, carefully examining self-care might prompt actions that can be helpful. Self-care items to consider include:

- Regular exercise,
- Good nutrition,
- Activities and hobbies,
- Connections with family, friends and community,
- Clear work boundaries,
- Taking breaks and vacation time from work.

The task is to gauge how well you are taking care of yourself and meeting your own needs for positive interactions and activities that bring pleasure, joy, and peacefulness. Make time to add in any of these things that are missing. Strategies that may be useful on an individual level include:

- Practice mindfulness or relaxation,
- Consider yoga,
- Laugh. When was the last time you watched a funny movie or read a funny book?
- Make a list of all the enjoyable and meaningful things about work,
- Recognize what you can't control and take control of what you can,
- Get a massage,
- Look at possibilities, not barriers,
- Get up a little earlier in the morning; it takes the pressure off,
- Talk to a friend or colleague,
- Get professional help when needed.

On an organizational level, judges and hearing officers can work to create a trauma-informed work culture that is supportive of individuals and fosters a sense of collaboration and shared responsibility. Isolation compounds stress so collaboration can be an effective tool in combatting STS/VT. Use your local Children's Roundtable to generate ideas about creating a positive work environment focused on wellness. Recognize successes, even the small ones. Have regular discussions about STS/VT and attend trainings on trauma and its impact on professionals working with traumatized individuals. Check-in with colleagues and offer support.

For more information on STS/VT, see the American Bar Association's resources on trauma and legal practice, The National Child Traumatic Stress Network or books like *Trauma Stewardship: An Everyday Guide to Caring for Self while Caring for Others* by Laura van Dernoot Lipsky and Connie Burk. For confidential support, judges can reach out to the Pennsylvania Chapter of Judges Concerned for Judges at 888-999-9706 or find resources on their website at Judges Concerned for Judges | PENNSYLVANIA.

### 20.12.6 Complex Cases

Courts are occasionally presented with issues for which there is often little or no statutory, rule, or case law guidance. Examples of some of these are religious choices, international travel, LGBTQIA, elective medical procedures, vaccinations, tattoos and body piercings, and birth control. This is obviously not an exhaustive list, but it includes many issues presented to dependency court judges and hearing officers

Many of these issues are emotionally charged, and individuals before the court often have strong, personal opinions. In some cases, the judge/hearing officer may have a strong personal opinion on the issue. If the judge or hearing officer is unable to set aside personal beliefs to the point that impartiality, bias, or prejudging are issues, the judge or hearing officer should determine if recusal is appropriate.

Before any decision is made to grant relief, the court should insist on medical, psychological, and other relevant evidence on the issue. Ultimately the decision must be made on what is in the best interests of the child.

If the permanency plan goal is reunification, the court should give significant weight to the opinions and wishes of the parents. However, if the goal is a permanent legal custodian or adoption, the opinions and wishes of whoever is ultimately going to have legal responsibility for decisions affecting the child should be given significant weight. The court should be wary of the motives and reasons for the positions of parents and caregivers as they may reflect the desires of the person holding the position and not what is best for the child at the time the decision must be made.

The same considerations apply to evidence and testimony presented by medical or psychological experts. The court should determine whether the expert's testimony is focused on the particular child or whether the expert's personal viewpoints on an issue are influencing their opinion.

The court should consider the views of the child the same as it would any other opinion of the child. The child's age, maturity, stability, development, and intelligence should all be taken into consideration. Whether the child is being influenced by peers, parents, guardians, or others such as a caseworker or GAL should be explored. A caseworker, attorney, CASA, or other professional working with the child may be intentionally or unintentionally projecting their personal beliefs on the child.

Some factors the court should consider are:

- Will the decision place the child in unnecessary danger?
- Will the decision enhance age and developmentally appropriate activities for the child?
- Will the decision permanently impact some aspect of the child's life?
- Are there other options to the proposed/requested activity/event and have they been investigated or explored?
- Can the activity/event be delayed until the child reaches adulthood and is able to make the decision on their own?
- Will the activity/event prevent future problems or issues?

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## BEING TRAUMA-INFORMED

### In th e Court ro om:

Create a calm environment

Begin in a timely manner

Welcome people and thank them for coming

Insist on starting with strengths

Assume trauma

Be respectful and courteous

Use plain language

Check for understanding

Be aware of possible trauma triggers

Don't allow badgering, aggressive language or intimidation

Use therapy or comfort dogs

Allow comfort objects and support people to be present

Have distractions such as snacks, coloring pages, small toys or puzzles available for the children.

Reframe a situation as an opportunity for personal growth

Use supportive and hopeful language

### Outside th e Courtr oom:

Create safe waiting areas

Know your biases

Assess how trauma-informed the court & county systems currently are

Bring issues related to becoming trauma-informed to the local children's roundtable

Encourage development of trauma informed resources as needed

Look for the strengths in people

Take care of yourself

# Foundations of Trauma-Informed Systems

## Safety

~ physical and emotional ~

## Choice

~ opportunities to make decisions and experience a sense of control ~

## Empowerment

~ prioritizing competency, validation, and skill-building ~

## Collaboration

~ working together and sharing power ~

## Trustworthiness

~ built on respect and transparency ~

*"The system shall recognize and address the trauma a child experiences as a result of abuse & neglect and as a result of placement."*

*PA Mission and Guiding Principles*

## USING SUPPORTIVE AND HOPEFUL LANGUAGE

- What has happened to you?
- What do you think?
- What can we do to help you solve the problem?
- Your commitment really shows.
- It's clear you're trying to change.
- Sounds like you are saying…
- What do you need to help you get to (the goal)?
- Tell me something good.
- Thank you for coming today.

## CALM BREATHING EXERCISE

- Sit comfortably
- Take a slow breath in through your nose to the count of 3
- Hold breath to the count of 2
- Exhale slowly through your mouth to the count of 5
- Wait 2 seconds
- Repeat as many times as needed, typically 5 to 10 times

## TRAUMA

⇒ **An event *or***

⇒ **A series of events *or***

⇒ **Set of circumstances**

**Experienced by a person as**

⇒ **Physically harmful *or***

⇒ **Emotionally harmful *or***

⇒ **Life threatening**

**And has lasting adverse effects on a person's**

⇒ **Functioning and**

⇒ **Mental well-being *or***

⇒ **Physical well-being *or***

⇒ **Social well-being *or***

⇒ **Emotional well-being *or***

⇒ **Spiritual well-being**

**(SAMHSA)**

Parents often have their own trauma history. Unresolved issues may lead to:

- Failure to engage in needed services
- Increase in symptoms
- Retraumatization
- Relapse
- Withdraw from service relationships
- Poor treatment outcomes
- Avoidance or withdraw from supportive individuals including family

### Building Connections: (to the child)

1. Tell me about something good that's happened recently.
2. What have you learned at school this week?
3. What is your favorite (song, sport, television show, etc.)?

### To the caseworker or other professional:

1. How was the child screened for trauma?
2. Is there a need for an assessment?
3. Has there been an assessment?
4. What was the result of the assessment?
5. Have the recommendations been implemented?

### If treatment for trauma was indicated:

1. Is the child currently in treatment?
2. Is the clinician skilled in providing trauma treatment?
3. Is the treatment specifically addressing the trauma?
4. How is the child responding?
5. Is the child being prescribed psychotropic medication?

   If so, ask the Blue Box Questions

**WHEN A CHILD IS ON PSYCHOTROPIC MEDICATIONS**

What is the child's diagnosis? Is it the correct diagnosis?

What is the medication's intended effect? Is it effective?

Are we monitoring for adverse effects?

If doing well, have we thought about tapering the medication?

What is the opinion of the treating physician?

6. Are the professionals on the case communicating and working as a team?

# Chapter 21 – Overview of Federal and State Child Welfare Legislation

## Federal Child Welfare Legislation

### 21.1 Adoption Assistance and Child Welfare Act of 1980

In 1980 Congress signed into law the Adoption Assistance and Child Welfare Act of 1980 (AACWA). This legislation sought to develop for the first time a comprehensive federal scheme to reform the foster care system. The legislation offered funding to states contingent on their revamping their child welfare and foster care programs according to the structure provided by the federal government. If the state undertook the required restructuring, the federal government would pay a portion of the state's child welfare services costs. Generally, the states had to match the funding up to 30%.

AACWA required three major changes in the child welfare system. First, it required that states make reasonable efforts to prevent the removal of children from their families by providing the necessary services. Second, it required that the child welfare system make reasonable efforts to reunify the family for 18 months, after which the child could be moved to a permanent alternative. Third, it offered adoption subsidies to families who adopted children with special needs that required additional financial considerations.

### 21.2 Adoption and Safe Families Act

The Adoption and Safe Families Act (ASFA) was enacted in 1997 to correct the misperceptions generated by AACWA. ASFA maintains the basic formula of AACWA and reaffirms the federal government's commitment to preserving families by maintaining the requirement that state child welfare agencies make reasonable efforts to prevent the removal of children from the home and to make it possible for children to safely return home. 42 U.S.C. § 671(a)(15)(B). However, ASFA makes clear that the intention is to put children first. The Act states: "in determining reasonable efforts to be made with respect to a child . . . the child's health and safety shall be of paramount concern." 42 U.S.C. § 671(a)(15)(A). If continuation of reasonable efforts to prevent the removal of a child from the home or to make it possible for a child to safely return home is inconsistent with the child's permanency plan, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan and to finalize the permanency plan. 42 U.S.C. § 671(a)(15)(C). Reasonable efforts are not required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that (i) the parent has subjected the child to aggravated circumstances (as defined in state law); (ii) the parent has committed murder of another child of the parent, committed voluntary

manslaughter of another child of the parent, aided or abetted, attempted, conspired, or solicited to commit such murder or voluntary manslaughter, or committed a felony assault that results in serious bodily injury to the child or another child or the parent; or (iii) the parental rights of the parent to a sibling have been terminated involuntarily. 42 U.S.C. § 671(15)(D). Unless the court has found that reasonable efforts are not required, the child welfare agency must make reasonable efforts to reunite the family. Even though ASFA does not define reasonable efforts, it makes it clear that every child for which reasonable efforts are being made must have a case plan. A case plan is defined as a written document that includes at least the following:

(A) A description of the type of home or institution in which a child is to be placed, including a discussion of the safety and appropriateness of the placement and how the agency which is responsible for the child plans to carry out the voluntary placement agreement entered into or judicial determination made with respect to the child in accordance with section 672(a)(1) of this title.
(B) A plan for assuring that the child receives safe and proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitate return of the child to his own safe home or the permanent placement of the child, and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan.
(C) The health and education records of the child, including the most recent information regarding:
(i) the names and addresses of the child's health and educational providers;
(ii) the child's grade level performance;
(iii) the child's school record;
(iv) a record of the child's immunizations;
(v) the child's known medical problems;
(vi) the child's medications; and
(vii) any other relevant health and education information concerning the child determined to be appropriate by the state agency.
(D) Where appropriate, for a child age 14 or over, a written description of the programs and services that will help such child prepare for the transition from foster care to a successful adulthood.
(E) In the case of a child with respect to whom the permanency plan is adoption or placement in another permanent home, documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangement for the child, to place the child with an adoptive family, a fit and willing relative, a legal guardian, or in another planned permanent living arrangement, and to finalize the adoption or legal guardianship. At a minimum, such documentation shall include child specific recruitment efforts such as the use of state, regional, and national adoption exchanges including electronic exchange systems to facilitate orderly and timely in-state and interstate placements.

42 U.S.C. § 675(1).

ASFA made other changes to AACWA to more quickly move a child through the child welfare system. The agency's case plan must be judicially reviewed at least every six months to ensure that the plan is being followed and that the case is moving forward. ASFA also requires that a permanency planning hearing be held at least every twelve months that the child is in foster care. If a child has been in foster care for 15 of the most recent 22 months then the agency must petition for the termination of parental rights, unless one of three specified exceptions applies: (1) the child is being cared for by a relative; (2) the agency has documented a compelling reason for determining that terminating parental rights would not be in the best interest of the child; or (3) the agency has not provided, consistent with the time period in the case plan, such services to the family as the agency deems necessary for the safe return of the child. 42 U.S.C. § 675(5)(e).

If the court has waived reasonable efforts because the reunification of the family is not in the best interests of the child, the agency does not need to wait fifteen months to terminate parental rights.

In addition, ASFA allows the agency to pursue concurrent planning without financial penalties. 42 U.S.C. § 671(a)(15)(F). Under a concurrent plan, the agency is free to make reasonable efforts to reunify the family while at the same time trying to identify other appropriate permanent placements for the child. That way, if reunification is not achieved, an alternative placement will already be identified. ASFA expands the available permanency options by recognizing permanent legal guardianship as a form of permanency. This allows individuals who do not want to adopt to become permanent guardians of a child. Although not as secure as adoption, it does provide the child with a stable environment and an opportunity to maintain ties to his/her biological parents. In a further effort to move children through the child welfare system, ASFA also encourages adoption by paying a state for every adoption that is achieved over a set baseline.

## 21.3 Child Abuse Prevention and Treatment Act

The Child Abuse Prevention and Treatment Act (CAPTA) was enacted in 1974 and was most recently amended in 2019 as part of the Victims of Child Abuse Act Reauthorization Act of 2018. CAPTA has three main goals: (1) to provide federal funding in support of states' efforts to prevent child maltreatment and respond to reports of child abuse and neglect; (2) to provide funding for the training of professionals involved in preventing and responding to child abuse and neglect; and (3) to provide a means for disseminating information on abuse and neglect to the Secretary of the Department of Health and Human Services (DHHS), Congress and the public.

The statute sets forth fourteen specific areas for which funding will be granted through DHHS when states apply for a grant for purposes of assisting in improving the State child protective services system. 42 U.S.C. § 5106a. CAPTA provides funding for state plans that mandate the reporting of suspected child maltreatment, implement assessment tools to determine which reports are valid and which lack sufficient evidence

of abuse and neglect, and implement action plans on valid reports of abuse that are appropriate to the level of risk of harm to the child involved. Funding is also available for the training of professionals involved in preventing and responding to child abuse and neglect. *Id*. CAPTA requires that a GAL be appointed to every child involved in a judicial proceeding involving child abuse and neglect allegations. *Id*.

CAPTA provides money not only for training GALs but also for the training of professional and paraprofessional personnel in medicine, law enforcement, judiciary, social work and child protection, education, and other relevant fields who are engaged in or intend to work in the prevention, identification, and treatment of child abuse and neglect. *Id*.

CAPTA also establishes a National Clearinghouse for Information Relating to Child Abuse. 42 U.S.C. § 5104. One of the functions of the Clearinghouse is to maintain, coordinate, and disseminate information on all effective programs, including private and community-based programs that have demonstrated success with respect to the prevention, assessment, identification, and treatment of child abuse and neglect and that hold the potential for broad-scale implementation and replication. 42 U.S.C. § 5104(b)(1).

## 21.4 Every Student Succeeds Act

The Every Student Succeeds Act (ESSA) (20 U.S.C. § 6301, *et seq*.) was signed into federal law in 2015, replacing No Child Left Behind (2002). ESSA moves from broad oversight at the federal level to more decision-making at the local and state level. It addresses educational content, assessments, accountability, and teacher quality, among other things. Pertinent to dependency matters, ESSA includes a provision that addresses barriers to educational achievement for foster youth and provides for educational stability. According to ESSA, there is a presumption that foster youth are to remain enrolled in their school of origin unless a judge determines that it is not in the youth's best interest considering factors such as appropriateness of the current school setting and proximity of the school of origin to current placement. If a determination is made that remaining in the school of origin is not in the youth's best interest, the youth must be enrolled in another school immediately, regardless of whether educational records have transferred.

## 21.5 Family First Prevention Services Act

The Family First Prevention Services Act (42 U.S.C. §§ 50701-50772) was signed into federal law on February 9, 2018. It reforms the federal funding streams Title IV-E and Title IV-B of the Social Security Act. The intent of the law was to provide prevention services to families who are at risk of entering the child welfare system by providing federal reimbursement for mental health and substance abuse services and in-home parent training. These services are required to be trauma-informed and should be evidence-based.

Additionally, it attempts to improve the well-being of children in placement by encouraging the most family-like setting by discontinuing federal reimbursement when placement in congregate care is unnecessary. The act requires that qualified residential treatment programs be trauma-informed and provide treatment that addresses the serious emotional and behavioral needs of their clients. It limits federal reimbursement for congregate care facilities that are not qualified residential treatment programs to two weeks.

Judges and hearing officers should be aware that the act requires courts to approve or disapprove the placement within sixty days of entering the placement. An assessment must be done within thirty days of placement assessing the need for congregate care or if the child's needs could be met with a family member, kinship caregiver or foster home. A team of professionals and family members should participate in the assessment and decision-making process. (See Connie Hickman Tanner & Hon. Karen Howze (Ret.), *The Role of the Court in Implementing the Family First Prevention Services Act of 2018* (National Council of Juvenile and Family Court Judges 2019).

## 21.6 Foster Care Independence Act (Chafee)

The Foster Care Independence Act (also known as "The Chafee Foster Care Independence Program" or "Chafee Act") became law in 1999. The overall purpose of the Act is to provide funding to the states that will assist children who are transitioning from foster care to independent living. It is aimed specifically at those children who are likely to remain in foster care until they are eighteen years old. As previously stated, it is well known that adolescents face a number of problems in transitioning from foster care to independent living. Challenges include: homelessness, non-marital childbearing, poverty, delinquent or criminal behavior and criminal victimization.

To address these problems the Chafee Act does five primary things:

(1) Establishes an improved independent living program, known as the John H. Chafee Foster Care Independence Program.

(2) Increases from $1,000 to $10,000 the amount of assets a youth may have and still remain eligible for foster care funded by Title IV-E. 42 U.S.C. § 672(a)(3)(b).

(3) Requires states to train foster parents. 42 U.S.C. § 677(b)(3)(D).

(4) Authorizes increased funds for adoption incentive payments to the states to assist in finding permanent placements for children in foster care. 42 U.S.C. § 673(b).

(5) The Chafee option in the Chafee Act allowed foster youth to preserve Medicaid eligibility up to ages twenty, twenty-one, or twenty-two, depending on the state. Since the implementation of the Affordable Care Act in January 2014, all states have been mandated to provide full Medicaid coverage to foster youth until their twenty-sixth birthday, regardless of their income or resources.

## 21.7 Fostering Connections to Success and Increasing Adoptions Act

The Fostering Connections to Success and Increasing Adoptions Act was enacted in October 2008. The stated purpose of the act is to connect and support relative caregivers, improve outcomes for children in foster care, provide for tribal foster care and adoption access and improve incentives for adoption. The ultimate goal is to move children out of foster care and into safe, permanent homes. The Act amends parts B and E of Title IV of the Social Security Act to:

- find, approve and support relative caregivers;
- increase efforts to preserve sibling ties;
- mandate coordination and improved oversight of education and health needs;
- encourage adoptions;
- provide federal assistance and protection to Native American and Alaskan native children;
- preserve educational stability and enhance education support; and
- support the training of lawyers and judges.

The Act is intended to move children in foster care into homes with relatives and adoptive parents so they can enjoy the benefits of a safe and secure environment as they grow up. To this end, the Act has specific provisions to assist relatives and adoptive families to connect with children in foster care.

To encourage placement with relatives the Act provides for the following:

- Notice to relatives when children enter care: The Act provides that within thirty days after the removal of a child from parental custody, the agency must exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of the child. 42 U.S.C. § 671(a)(29).

- Subsidized guardianship payments for relatives: The Act also provides states with federal funds for support payments that enable children to leave foster care and live permanently with grandparents and other relatives when they cannot return home or be adopted. Payments usually last until the child reaches age eighteen, but in certain circumstances, children may continue to receive guardianship assistance to age twenty-one. The Act also clarifies that children who leave foster care after age sixteen for kinship guardianship are eligible for independent living services and education and training vouchers. 42 U.S.C. § 677.

- Licensing standards for relatives: States may waive non-safety related licensing standards for relatives on a case-by-case basis. The Department of Health and Human Services is required to report to Congress on the use of licensing waivers and on recommendations for increasing the percentage of relative foster family homes that are licensed. 42 U.S.C. § 671(a)(36)(B).

- Family Connection grants: The Act increases resources for Kinship Navigator programs and provides grants for Family Group Decision Making, Family Finding and Residential Family-Based Substance Abuse Treatment. 42 U.S.C. § 627(a)(1).

- Support for keeping siblings together: The Act requires states to make reasonable efforts to place brothers and sisters together when they must be removed from their parents' home, provided it is in the children's best interests. 42 U.S.C. § 671(a)(31)(A). In the case of separated siblings, states must make reasonable efforts to provide for frequent visits or other interaction, unless it would be harmful to the children. 42 U.S.C. § 671(a)(31)(B).

To encourage placement with adoptive families the Act provides for the following:

- Incentives for adoption: The Act expands state incentives to find adoptive families for children in foster care, especially older youth and children with special needs, by increasing the payment for each adoption over the baseline. It also extends the incentive program for an additional five years. 42 U.S.C. § 673.

- Adoption assistance: The Act also allows children with special needs to receive federally supported adoption assistance without regard to income of the birth family. 42 U.S.C. § 673.

To encourage better healthcare, education and opportunities for children in foster care the Act provides for the following:

- Extended foster care for older youth: Federal support is provided to states that extend foster care services for one to three years for young people who turn eighteen without a permanent family. This significantly increases the young person's opportunities to successfully transition to adulthood.

- Educational stability: States are required to make sure children placed in foster care are kept in the same school where possible, or otherwise transferred promptly. 42 U.S.C. § 675(1)(G). The act also provides more federal support for school-related transportation costs. 42 U.S.C. § 675(4)(A).

- Healthcare coordination: State child welfare and Medicaid agencies are required to better coordinate health care; ensure appropriate screenings, assessments and follow-up treatment; share critical information with appropriate providers; and provide oversight of prescription medications. 42 U.S.C. §622(b)(15).

The Act also expands federal support for training of people who are caring for and working with children in the child welfare system, including relative guardians, staff of private child welfare agencies, court personnel, attorneys, GALs and CASAs. 42 U.S.C. § 674(a)(3)(B).

## 21.8 Interstate Compact on the Placement of Children

The Interstate Compact on the Placement of Children (ICPC) is a statutory law that has been passed by all 50 states, Washington D.C. and the U.S. Virgin Islands. It establishes uniform legal and administrative procedures for placing children across state lines. Given that a state's jurisdiction over a child ends at the state line, having a legal framework for placing children in another jurisdiction safeguards the interest of the child and ensures that the child's needs will be met even as the child leaves the jurisdiction. Before a child from one state can be placed in another jurisdiction, each state's Compact Administrator must approve the placement.

The Compact applies to the following kinds of placements:

(1) Placements with parents, close relatives and non-agency guardians unless a parent, close relative or non-agency guardian makes the placement;
(2) Adoptive placements;
(3) Foster home placements;
(4) Child-caring facilities, including residential treatment, group homes and institutions; or
(5) Placements of adjudicated delinquents in institutions in other states.

The safeguards provided by the Compact include the following:

(1) Provides for home studies and an evaluation of each interstate placement before the placement is made;
(2) Allows the prospective receiving state to ensure all its applicable child placement laws and policies are followed before it approves an interstate placement;
(3) Gives the prospective receiving state the opportunity to consent to or deny a placement before it is made;
(4) Provides for continual supervision and regular reports on each interstate placement;
(5) Guarantees the child's legal and financial protection by fixing these responsibilities with the sending agency or individual; and
(6) Ensures that the sending agency or individual does not lose legal jurisdiction over the child once the child is moved to the receiving state.

Under the Compact, legal and financial responsibility for the child remains with the sender until the placement is terminated. The receiving state does not have to pay for placement. Financially and legally it is as if the child remained with the sending state. A placement is terminated when a child reaches majority, is adopted or returns to the sending state. The sending state may also terminate the placement with the concurrence of the receiving state.

More information is available in Chapter 4: Jurisdiction, Section 4.4.2: Interstate Transfers and Chapter 15: Termination of Court Supervision, Section 15.4.4: Transfer of Court Jurisdiction. Information can also be found on the website of the Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC) at https://aphsa.org/aaicpc/.

## 21.9 Indian Child Welfare Act

The Indian Child Welfare Act (ICWA) (25 U.S.C. §§ 1901-1963) was enacted in 1978 in response to the historical discrimination experienced by Native American families and tribes when their children were unnecessarily removed from the home to assimilate them into the dominant culture. With ICWA, Congress determined that maintaining an Indian child in his or her culture or placing an Indian child in a culturally appropriate placement best serves the needs of that Indian Child. 25 U.S.C. §1902.

ICWA applies to any child protective proceeding where the right to custody of an Indian child is at issue. A child custody proceeding as defined by ICWA includes foster care placement, termination of parental rights, pre-adoptive placement and adoptive placement proceedings. 25 U.S.C. § 1903. ICWA also applies when an Indian parent wants to voluntarily place the child in foster care or for adoption. ICWA defines an "Indian child" as a child who is a member of a federally recognized Indian tribe or is eligible for membership in a federally recognized Indian tribe and is the biological child of a member of a federally recognized Indian tribe. Each tribe has the exclusive right to set its own requirements for membership. *Id*.

If it is believed that a child could have ties to a federally recognized American Indian tribe or if someone alludes to the child having ties, it is the child welfare agency's responsibility to make efforts to determine the ties and to contact the tribe or tribes. While Pennsylvania does not have any federally recognized Indian tribes, the ICWA legislation remains applicable to children coming before Pennsylvania courts. In all cases involving the foster care placement of or termination of parental rights to an Indian child, the Indian custodian of the child and the Indian child's tribe have a right to intervene at any point in the proceedings.

ICWA gives the Indian tribe exclusive jurisdiction over child protection proceedings involving children domiciled on its reservation. However, a state court may enter emergency orders to protect an Indian child who is domiciled on the reservation but found off the reservation "in order to prevent imminent physical damage or harm to the child." 25 U.S.C. § 1922. State courts should allow participation for family members and tribes by telephone, video conferencing or other methods if it possesses the capability. ICWA also mandates that the court appoint counsel for an indigent parent or Indian custodian in a removal, placement or termination proceeding.

Upon petition of either parent the Indian custodian, or the Indian child's tribe, the state court must transfer the proceedings to the jurisdiction of the Tribe unless there is good cause or the parent objects. 25 U.S.C. § 1911(b). Even if the tribe opts not to request

that the case be transferred, the tribe retains the right to intervene at any point in the proceeding.

Where the court knows or has reason to know that an Indian child is involved in a child custody proceeding, notice of the proceeding and the right to intervene must be given to the child's parents or Indian custodian and the Indian child's tribe. 25 U.S.C. § 1912(a). If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice must be given to the Secretary of the Interior. *Id*. No foster care placement or termination of parental rights proceeding can be held until at least ten days after receipt of notice by the parents or Indian custodian and the tribe or the Secretary of Interior. *Id.* Any of these may request an additional twenty days. *Id*.

Notice to the parents, Indian custodians and the tribe is critical, and cases (even adoptions) have been overturned due to a lack of notice to the tribe. Therefore, the agency and counsel should document their efforts to provide notice with the court. Notice must be provided by registered mail, return receipt requested. *Id*.

ICWA requires a higher standard of evidence for both foster care placements and termination of the parental rights. For foster care placement, the court must make a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. 25 U.S.C. § 1912(e). For termination of parental rights proceedings, the court must make a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. 25 U.S.C. § 1912(f).

Any party seeking foster care placement or termination of parental rights of an Indian child shall satisfy the court that active efforts have been made, from the moment the possibility of placement arises, to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these active efforts have been unsuccessful. While they appear similar, there are some differences between active efforts and reasonable efforts. For a discussion of active efforts, see *ICWA Guide Online: 12. Active Efforts Requirement,* National Indian Law Library, Native American Rights Fund, https://narf.org/nill/documents/icwa/faq/active.html (last visited Dec. 18, 2024).

ICWA also specifies placement preferences for both foster care placements and adoptive placements. As with any foster care placement, the placement must be the least restrictive possible, must be in as family-like a setting as possible and must meet the child's special needs. In addition, unless there is good cause to the contrary, the priority for foster care or pre-adoptive placement of an Indian child should be:

(i) a member of the Indian child's extended family;
(ii) a foster home licensed, approved or specified by the Indian child's tribe;

(iii) an Indian foster home licensed or approved by the state's licensing authority;
(iv) an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs; or
(v) other licensed foster homes.

25 U.S.C. § 1915(b).

Unless there is good cause to the contrary, the priority for adoptive placement of an Indian child should be:

(i) a member of the child's extended family;
(ii) other members of the Indian child's tribe; or
(iii) other Indian families.

25 U.S.C. § 1915(a).

The Native American Rights Fund has prepared an online edition of *A Practical Guide to the Indian Child Welfare Act,* which is available at the National Indian Law Library, Native American Rights Fund, https://www.narf.org/nill/documents/icwa (last visited Dec. 18, 2024).

## 21.10 The Multi-Ethnic Placement Act

The Multi-Ethnic Placement Act of 1994 (MEPA), as amended by the Interethnic Provisions of 1996 (IEPA), is intended to remove barriers to permanency for minority children. MEPA prohibits state agencies and other entities that receive federal funding from delaying or denying a child's foster care or adoptive placement on account of the prospective parent's race, color or national origin, or denying anyone the opportunity to become a foster or adoptive parent on account of race, color or national origin. 42 U.S.C. § 671(a)(18). MEPA also requires that states recruit foster and adoptive parents who reflect the racial and ethnic diversity of the state's foster care population. 42 U.S.C. § 622(b)(7).

MEPA does affect the application of the Indian Child Welfare Act. ICWA. 42 U.S.C. § 674(d)(4).

Practices prohibited by MEPA include setting a specific time period during which the agency only searches for a racially or ethnically matching placement, establishing a list of placement preferences based on racial or ethnic factors, and requiring special justifications for trans-racial placements. Joan Heifetz Hollinger, *Overview of the Multiethnic Placement Act (MEPA)* 2 (1999 updated 2006-07).

## 21.11 Preventing Sex Trafficking and Strengthening Families Act

The federal Preventing Sex Trafficking and Strengthening Families Act was enacted in 2014 (P.L. 113-183). The purpose of the Act is to protect and prevent foster youth from becoming victims of sex trafficking. Additionally, it provides changes to child welfare that will enable better outcomes for youth in care. Pennsylvania addressed the federal law by enacting Act 94 of 2015 which includes the addition of Chapter 57: Sex Trafficking and Missing and Abducted Children to Title 23 and Act 75: Activities and Experiences in Out-of-Home Placement Act of 2015.

The law defines sex trafficking victims and sex trafficking. It defines a victim of severe sex trafficking as anyone forced, coerced or induced by fraud, or is under the age of eighteen, to perform a commercial sex act. Forms of sex trafficking are not limited to prostitution but can include other activities such as pornography, stripping, and exchanging sex acts for necessities such as food and shelter. The Act further requires child welfare agencies to immediately, and no later than twenty-four hours after receiving information, report to law enforcement any youth that they have reasonable cause to believe is a victim of sex trafficking. For youth who are missing, abducted, or have run away, the Act requires that the child welfare agency, immediately and no later than twenty-four hours, make a report to law enforcement and the National Center for Missing and Exploited Children.

A second part of the federal law is Supporting Normalcy for Children in Foster Care. This section defines a reasonable and prudent parenting standard and requires states to establish this standard for foster parents. Foster parents and kinship caregivers are to exercise sensible decision-making to maintain the health, safety, and best interest of the child in their care. The law allows for children in foster care to be involved in age and developmentally appropriate activities and permits foster parents to give permission for extracurricular, enrichment, cultural, and social activities.

Improvements to the permanency goal “Another Planned Permanent Living Arrangement” (APPLA) were made with the elimination of the APPLA as a permanency goal for children under the age of eighteen. For children age eighteen and older, APPLA may only be considered once all of the other permanency options have been ruled out. For further information about APPLA, including procedures that must be followed once a goal of APPLA is established, see Chapter 12: Permanency Options, Section 12.6: Another Planned Permanent Living Arrangement.

To support youth who are in foster care in making a successful transition to adulthood, the Act requires that foster children age fourteen or older be directly involved in their own case planning and permits them to choose up to two members of the case planning team. It also requires that they be provided independent living services. For foster children leaving foster care at age eighteen or older, the child welfare agency must ensure that they have, or provide them with, a birth certificate, social security card, health insurance information, a copy of medical records and a driver’s license or state- issued ID card.

# Pennsylvania Child Welfare Legislation

## 21.12 The Pennsylvania Adoption Act

The Pennsylvania Adoption Act, 23 Pa.C.S. §§ 2101-2938, governs the voluntary relinquishment and involuntary termination of parental rights. The Adoption Act has not been amended to incorporate the requirements of parental rights termination under ASFA. Those provisions have been adopted in the Juvenile Act. Except in Philadelphia, where proceedings of this nature come under the jurisdiction of the Family Court division, the Orphans' Court divisions of the Courts of Common Pleas have jurisdiction over relinquishment and termination proceedings, regardless of whether they are brought under the Juvenile Act or the Adoption Act. 23 Pa.C.S. § 2301, 20 Pa.C.S. § 711. In counties other than Philadelphia, the judge who adjudicated the child dependent or conducted permanency or other dependency court hearings in the matter may be assigned by the President Judge to preside in Orphans' Court over these separate proceedings. 42 Pa.C.S. § 6351(i).

Venue is flexible, in that termination or relinquishment proceedings may take place where the biological parents of the child reside or where the adopting parents reside. If termination or relinquishment of parental rights is in the county where the biological parent or parents live, nothing in the law prevents the adoption from taking place where the adopting parents reside, even if their residence is in a different county. Venue is also appropriate in the county where the adoption agency or child welfare agency that placed or has custody of the child is located. 23 Pa.C.S. §§ 2302-2303.

### 21.12.1 Voluntary Relinquishment of Parental Rights

Essentially, the Adoption Act provides that a parent or parents may relinquish parental rights over a child (1) to an agency that will place that child for adoption or (2) directly to an adult or an adult couple intending to adopt the child. Any person may be adopted, regardless of age, and any individual may adopt. 23 Pa.C.S. §§ 2311-2312. For an adult child to be adopted, the biological parents' consent is not necessary, nor is it necessary for the biological parents to relinquish their parental rights. For the adoption of a minor child, relinquishment or termination of the parental rights is necessary to make way for the adopting parent or parents.

A petition to voluntarily relinquish parental rights can be filed by the parent or parents of a child who has been in the custody of an agency for at least three days or by a parent or parents who have executed and delivered written notice of a present intent to transfer custody of the child to the agency. 23 Pa.C.S. § 2501. A parent can also petition to relinquish parental rights to an adult who has filed a report of intention to adopt if the child has been in that adult's exclusive care for at least three days. 23 Pa.C.S. § 2502. The court must schedule a hearing for a date not less than ten days after the petition is filed. 23 Pa.C.S. § 2503(a). At least ten days' notice of the hearing must be given to the

petitioner, and a copy of the notice shall be given to the other parent, to the putative father whose parental rights could be terminated if he fails to respond, and to the parents or guardian of a petitioner who has not reached eighteen years of age. 23 Pa.C.S. § 2503(b).

Section 2503 requires that, prior to entering a decree of termination of parental rights pursuant to voluntary relinquishment, the court must ask any parent who is both in court and named in the decree "whether he or she has received counseling concerning the termination and the alternatives thereto." 23 Pa.C.S. § 2505(c). If the parent has not received counseling from a qualified agency or individual, the court may refer the parent for counseling with that parent's consent. *Id*. A referral may not delay the completion of the hearing on the petition for more than fifteen days. *Id*.

### 21.12.2 Involuntary Termination of Parental Rights

A brief summary of the statute on involuntary termination of parental rights is provided here. For a more detailed discussion, see Chapter 17: Termination of Parental Rights.

Sections 2511-2514 of the Adoption Act apply to situations in which a parent or parents refuse to give up parental rights despite what the petitioner believes to be just cause. In this situation, the petitioner may be the child protective services agency, a natural parent seeking to end the rights of the other natural parent, an attorney representing a child, a GAL representing a child who has been adjudicated dependent, or an individual who has custody or stands *in loco parentis* and who has filed a Report of Intention to Adopt. 23 Pa.C.S. § 2512. In evaluating the petition and the positions of the parties, including testimonial evidence from the hearing, the court must examine whether a parent's conduct meets the statutory requirements for involuntary termination pursuant to 23 Pa.C.S. § 2511(a). If the evidence proves the petitioner's claim, the court must consider the effect of the proposed termination on the subject child or children and what is in their best interests.

Grounds for involuntary termination under 23 Pa.C.S. § 2511(a) are listed and discussed in Chapter 17: Termination of Parental Rights. However, even if grounds to terminate exist under § 2511(a), the court cannot terminate parental rights unless it is in the child's best interest. § 2511(b) requires the court to "give primary consideration to the developmental, physical and emotional needs and welfare of the child." 23 Pa.C.S. § 2511(b) also seeks to assure that parental rights are not terminated solely on the basis of environmental factors that are beyond the parent's control, such as "inadequate housing, furnishings, income, clothing and medical care" due to poverty.

As part of an evaluation of the needs and welfare of the child, the court must consider the existence of a bond between the parent and child. Section 2511(b) does not require a formal bonding evaluation but where even a minimal bond is found to exist, the court must consider the effect termination of that bond would have on the child.

### 21.12.3 Relinquishment of Parental Rights under the Alternative Procedure

The alternative procedure process under 23 Pa.C.S. §2504 is essentially a hybrid of voluntary relinquishment and involuntary termination, in that it is chosen by the parent or parents (as in voluntary relinquishment) yet does not require their appearance at the court hearing (as in involuntary termination). For further details on this option, see Chapter 17: Termination of Parental Rights.

## 21.13 The Pennsylvania Child Protective Services Law

The Child Protective Services Law (CPSL), 23 Pa.C.S. §§ 6301-6388, is primarily a reporting statute that was enacted in 1975 to encourage the reporting of incidents of child abuse. The CPSL was amended in 2006 and, after recommendations submitted to the Governor by the PA Task Force on Child Protection, in 2013 and 2014. These changes broaden its scope by imposing mandatory reporting requirements on more individuals and broadening the definition of abuse and perpetrator of child abuse, among other things. Act 115 of 2016 further amended the CPSL with the addition of engaging a child in a severe form of trafficking in persons or sex trafficking as a definition of child abuse.

The purposes of the statute are enumerated in § 6302(b):

- Encourage complete reporting of suspected child abuse.
- Involve law enforcement agencies in responding to child abuse.
- Establish in each county a child protective service capable of investigating reports swiftly and competently.
- Provide children with protection from further abuse.
- Provide rehabilitative services to the parents and child.
- Preserve and stabilize family life whenever appropriate and provide children with an alternative permanent family when family unity cannot be maintained.
- Ensure that each county agency establishes a program of protective services to assess the risk of harm to a child, respond adequately, and prioritize services to children most at risk.

Because both the Juvenile Act and the CPSL were enacted to protect the safety and well-being of children, there is some overlap between the two laws. However, there are significant differences as well. First, the CPSL sets forth an extensive list of individuals who must report child abuse “when the person has reasonable cause to suspect” that a child is a victim of child abuse. 23 Pa.C.S. § 6311(a). Pennsylvania has established a statewide hotline for the purpose of receiving reports of child abuse. Any mandated reporter suspecting an instance of child abuse is required to report the incident. The Juvenile Act does not require that reporters call the child abuse hotline to report non- abuse concerns, such as those concerning an ungovernable child. Similarly, even if a court finds what may be a founded instance of child abuse under the CPSL, the court does not have to enter an adjudication of dependency. For example, although an isolated incident of abuse has occurred, its isolated nature may lead a court to find that a child nevertheless

has adequate parental care. In practice, however, many courts will adjudicate dependent the victim of even a single incident of abuse, even if they allow the birth parents to maintain physical or legal custody of the child.

Like the Juvenile Act, the CPSL allows for the removal of a child from the home in cases where the safety and well-being of the child is at risk. The CPSL allows a medical professional to take custody of a child if protective custody is immediately necessary to protect the child. 23 Pa.C.S. § 6315(a)(2). A child may also be taken into custody under the provisions the Juvenile Act. 42 Pa.C.S. § 6324. Within twenty-four hours of taking the child into custody the county agency must be notified and the county agency must seek a court order permitting the child to be held for a longer period of time if continued placement is needed. 23 Pa.C.S. § 6315(b). Additionally, within seventy-two hours of taking a child into custody, a shelter care hearing must be conducted. 23 Pa.C.S. § 6315(d). If the child is alleged to be without proper parental care or control or dependent, the county agency must file a dependency petition under the Juvenile Act within forty-eight hours of the hearing. *Id.* Filing a petition of dependency invokes the procedures of the Juvenile Act.

The filing of a dependency petition alleging child abuse triggers the question of whether aggravated circumstances exist which would allow the court to relax the reasonable efforts requirement of the Juvenile Act and hold a permanency hearing within thirty days. (See Chapter 20: General Issues, Section 20.2 Aggravated Circumstances.) The allegations of abuse reported under the CPSL may or may not constitute aggravated circumstances as defined in the Juvenile Act. The first factor to examine is the perpetrator. Aggravated circumstances under the Juvenile Act must be committed by a parent. 42 Pa.C.S. § 6302. Under the CPSL, the reported abuse may be by a perpetrator other than the parent. The CPSL defines a perpetrator as a person who has committed child abuse as defined in the CPSL. 23 Pa.C.S. § 6303. The term includes only: (i) a parent of the child; (ii) a spouse or former spouse of the child's parent; (iii) a paramour or former paramour of the child's parent; (iv) a person 14 years of age or older and responsible for the child's welfare or having direct contact with children as an employee of child-care services, a school or through a program, activity or service; (v) an individual 14 years of age or older who resides in the same home as the child; (vi) an individual 18 years of age or older who does not reside in the same home as the child but is related within the third degree of consanguinity or affinity by birth or adoption to the child; and (vii) an individual 18 years of age or older who engages a child in severe forms of trafficking in persons or sex trafficking as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000. 23 Pa.C.S. § 6303. In addition, only a parent of the child, a spouse or former spouse of the child's parent, a paramour or former paramour of the child's parent, a person 18 years of age or older and responsible for the child's welfare, and a person 18 years of age or older who resides in the same home as the child may be considered a perpetrator for failing to act. *Id*.

Therefore, if the parent is not the perpetrator, aggravated circumstances do not exist even if the child is a victim of child abuse.

If the parent is the perpetrator, the second factor to consider is the harm done to the child. For a full definition of the term child abuse see 23 Pa.C.S. § 6303(b.1). The CPSL defines both bodily injury and serious bodily injury. 23 Pa.C.S. § 6303. Portions of the definition of child abuse in the CPSL only require bodily injury or the likelihood of bodily injury. 23 Pa.C.S. § 6303(b.1). However, the Juvenile Act continues to use the term serious bodily injury as part of the definition of aggravated circumstances.42 Pa.C.S. § 6302. These will be only a subset of the physical abuse cases reported under the CPSL. Therefore, not every abuse case under the CPSL is an aggravated circumstances case.

Aggravated circumstances include incidents of sexual violence by the parent to the child or the child's sibling. 42 Pa.C.S. § 6302. The definition of sexual violence included in the Juvenile Act is very similar to the definition of sexual abuse or exploitation in the CPSL, with a few exceptions. The major difference is that the definition of sexual abuse or exploitation in the CPSL includes rape, sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault, incest, indecent exposure, prostitution, sexual abuse and sexual exploitation. 23 Pa.C.S. § 6303. The definition of sexual violence in the Juvenile Act includes rape, indecent contact, or incest. 42 Pa.C.S. § 6302. With these exceptions, it seems that any other indicated or founded case of sexual abuse by a parent would constitute aggravated circumstances under the Juvenile Act.

Aggravated circumstances also include incidents of aggravated physical neglect by the parent to the child or the child's sibling. *Id.* The Juvenile Act defines aggravated physical neglect as any omission in the care of a child which results in a life-threatening condition or seriously impairs the child's functioning. *Id.* The CPSL states that serious physical neglect endangers a child's life or health, threatens a child's well-being, causes bodily injury or impairs a child's health, development or functioning and requires either a "repeated, prolonged or unconscionable egregious failure to supervise a child in a manner that is appropriate considering the child's developmental age and abilities or the failure to provide a child with adequate essentials of life, including food, shelter or medical care." 23 Pa.C.S. § 6303. A comparison of these two definitions reveals that the definition of aggravated physical neglect included in the Juvenile Act encompasses only the most serious of those child abuse cases that involve serious physical neglect under the CPSL. " For example, an infant diagnosed with failure to thrive might qualify as a victim of 'serious physical neglect' under the CPSL, because the diagnosis necessarily includes a danger to the child's development. The failure to thrive diagnosis, however, might not support a finding of aggravated circumstances under the Juvenile Act because the effects on the child may not rise to the level of serious functional impairment. Thus, courts and agencies should take care to avoid assuming that every neglect case under the CPSL will become an aggravated circumstances case under the Juvenile Act." Riya S. Shah, Esq. & Joanna Darcus, *Child Abuse and the Law* 10 (Juvenile Law Center 7th ed. 2007).

Just as the Juvenile Act relaxes the rules of evidence for certain purposes in dependency cases, evidence that would normally be excluded may be considered under the CPSL in the following situations:

- Whenever a person required to report abuse under CPSL is unavailable due to death or removal from the jurisdiction of the court, the written report of that person

is admissible in evidence in any noncriminal proceeding arising out of child abuse. Any hearsay contained in the reports may be given such weight as the court finds appropriate but shall not by itself support an adjudication based on abuse.

- Privileged communications except those between a lawyer and client and between a minister and penitent, may be considered as evidence in any proceeding regarding child abuse or the cause of child abuse.

- Evidence of child abuse of a kind that would ordinarily not occur except due to acts or omissions of a parent or other person responsible for a child constitutes prima facie evidence of child abuse on the part of that parent or responsible person.

- Any consideration afforded to a child victim or witness pursuant to 42 Pa.C.S. Chapter 59 Subchapter D in any prosecution or adjudication shall be afforded to a child in child abuse proceedings in court.

23 Pa.C.S. § 6381.

## 21.14 Pennsylvania Family Finding and Kinship Care (Act 118 of 2022)

Pennsylvania's Family Finding Legislation, Act 118 of 2022 (formerly known as Act 55 of 2013 and Act 14 of 2019), Family Finding and Kinship Care (67 Pa.C.S. §§ 7501-7509), is intended to ensure that family finding occurs on an ongoing basis for all children entering the child welfare system. The intent of Act 118 is to ensure that family finding occurs on an ongoing basis for all children entering the child welfare system, to promote the use of kinship care when it is necessary to remove a child from the child's home, and to ensure that each child leaving foster care at 18 years of age or older is prepared for the transition to adulthood. 67 Pa.C.S. § 7501.

Family finding is the ongoing practice of identifying and engaging extended family members and adults who have or could have significant, positive connections with a child or family that has been accepted for services in order to (1) build a network of support for the child and the child's family; (2) promote positive, long-term connections for the child; (3) include relatives and kin in social service planning and delivery; and (4) identify a safe and familiar placement for the child, when necessary. 67 Pa.C.S. § 7502.

Family finding is to begin once a child/family is accepted for service by the agency based on the needs and problems of the individual. A family is accepted for service when, on the basis of the needs and problems of an individual, they are admitted or received as a client of the county agency or as required by a court order. *Id*. Family finding is an ongoing activity that can only be discontinued when a judge finds that it no longer serves the best interest of the child, is a threat to the child's safety, or the child is in a pre-adoptive placement and court proceedings to adopt the child have been commenced. 67 Pa.C.S. § 7503. Family finding shall be resumed if the court or the county agency, if the child is not under the jurisdiction of a court, determines that it serves the best interest of the child and

is not a threat to the child's safety. *Id*. For more information, see Chapter 2: Act 118 of 2022: Family Finding.

## 21.15 The Pennsylvania Juvenile Act

Child abuse and neglect cases in Pennsylvania are governed primarily by the Juvenile Act, the Child Protection Services Law (CPSL), and the Adoption Act. The Juvenile Act governs both dependency and delinquency, while the CPSL deals solely with child protection, and the Adoption Act provides for termination of parental rights and adoptions.

Pennsylvania's Juvenile Act was originally enacted in 1972 and was amended in 1998 to come into compliance with ASFA. The Juvenile Act has the following declared purposes related to dependency matters:

- To preserve the unity of the family whenever possible or to provide another alternative permanent family when the unity of the family cannot be maintained.
- To provide for the care, protection, safety, and wholesome mental and physical development of children coming within the provisions of the Juvenile Act.
- To achieve the foregoing purposes in a family environment whenever possible, separating the child from parents only when necessary for his welfare, safety or health, or in the interests of public safety.
- To provide means through which the provisions of the Juvenile Act are executed and enforced and in which the parties are assured a fair hearing and their constitutional and other legal rights are recognized and enforced.

42 Pa.C.S. § 6301.

The Juvenile Act is the major vehicle for state intervention in the life of a family when the safety and well-being of a child is at stake. It provides the statutory framework for providing a safe, permanent, and stable home for every child.

The Juvenile Act sets out ten specific categories for finding a child dependent and in need of state intervention. (For a listing, see Chapter 4: Jurisdiction and the definition of dependent child at 42 Pa.C.S. § 6302.) Most commonly, a child is found dependent under the first category which states a child is dependent if the child "is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental or emotional health, or morals." *Id*.

The Juvenile Act allows the state to remove a child from his home if circumstances warrant, but the court can only hold a child for seventy-two hours before commencing a

shelter care hearing. 42 Pa.C.S. § 6332. The shelter care hearing is an informal hearing to determine (a) whether shelter care is necessary; (b) whether allowing the child to remain in the home would be contrary to the welfare of the child; (c) whether reasonable efforts were made to prevent such placement; or (d) if, in case of emergency where services were not offered, whether lack of efforts were reasonable. *Id*. The shelter care hearing is *not* a substitute for the adjudicatory hearing. (For more information, see Chapter 6: Entering the Child Welfare System/Shelter Care Hearing.)

The adjudication hearing determines whether the allegations of abuse or neglect for dependency jurisdiction are sustained by clear and convincing evidence and support state intervention. (See Chapter 7: Adjudication.) In determining if the child is dependent, the court considers whether the child is without proper parental care and control and, if so, whether state intervention is required to provide such care and control. If the child has been removed from the home, the adjudication hearing must be held within ten days of the child's removal. Pa.R.J.C.P. 1404.

In many jurisdictions in Pennsylvania a disposition hearing is held immediately following the adjudication hearing. However, the court has twenty days from the date of the adjudication hearing to commence the disposition hearing if the child has been removed from the home. Pa.R.J.C.P. 1510. (See Chapter 10: Disposition.) Although the adjudication hearing and the disposition hearing may be held on the same day, they are separate proceedings held to determine separate issues. The disposition hearing determines who will have custody and control of the child once the child is found dependent at the adjudication hearing, as well as any services to be provided to the child and parents.

The Juvenile Act requires that a permanency hearing be held no later than six months from the date that the child is removed from the home and every six months thereafter. 42 Pa.C.S. § 6351(e)(3). (See Chapter 13: Permanency Hearing.) Note that the Pennsylvania Juvenile Procedural Rules and the *Mission & Guiding Principles for Pennsylvania's Dependency System* strongly recommend frequent judicial review and oversight including a minimum of three-month reviews for all dependent youth. The purpose of the permanency hearing is to determine or review the permanency plan of the child, the date by which the goal of permanency for the child might be achieved, and whether placement continues to be best suited to the safety, protection, and physical, mental, and moral welfare of the child.

# Family Finding

# Key Questions for Legal AND Relational Permanence

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## For the Children and Youth Agency

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3. **How** have you included the identified family and kin into case planning and service delivery?
4. **Permanency Hearings:** Family finding is ongoing. What have you done to **continue** identifying and including family and kin?
5. **How** have you exhausted family and kin as a placement resource option?
6. What resources are being provided to extended family to support connections or placement?

FAMILY FINDING IS NOT AN ACCURINT SEARCH OR A PLACEMENT

## Legal Requirements of Family Finding

1. **Identify and build family and kin relationships**
2. **Include the identified family and kin in the planning and service delivery**
3. **Create a network of ongoing support**

FAMILY FINDING IS ENSURING MEANINGFUL, HEALTHY CONNECTIONS FOR CHILDREN & PARENTS

## For the Youth and Parents

1. Has your Caseworker or lawyer talked to you about the people in your life whom you love?
2. With whom in your life do you enjoy talking or spending time?
3. Tell me what your week looks like. What activities do you do throughout the week/month? **(You can ask the child or parent to keep a monthly list/calendar of activities)**
4. If you had to go out of town for the weekend, with whom would your child stay? **When directed to a youth**: If your parent had to go out of town for the weekend, with whom would you want to stay?

# Family Group Decision Making
# Key Questions

## For the Children and Youth Agency

1. Has there been a Family Group Decision Making conference?
2. If yes, …
   - When?
   - Who was there?
   - What was the purpose?
   - Did the family develop a plan that the agency accepted? Please provide a copy of the plan.
   - Is there a scheduled follow-up conference?
3. If no,...
   - Was Family Group Decision Making explained and offered to the family?
   - Why did the family decline the offer?

## For the Parent or Guardian

1. Has anyone explained or offered to you a process called Family Group Decision Making?
2. Do you have family or friends who you believe would come together to help you develop a plan to keep your child safe?
3. If you have been offered a Family Group Decision Making conference and declined such, help me understand why you prefer that the professionals make the decisions for you and your family.
4. If you have NOT been offered a Family Group Decision Making Conference, would you like the agency to provide you information on how you and your family can have one?
5. Do you understand what happens at a Family Group Decision Making conference?

## For the Youth

1. Has the agency or your lawyer explained or offered to you a Family Group Decision Making conference?
2. Do you have family or friends who you believe would come together to help you?
3. Do you understand what happens at a Family Group Decision Making conference?
4. Would you like to have family and friends come together to develop a plan for how they can support you?
5. Have you had a Family Group Decision Making Conference to assist with transition planning?



# SHELTER CARE HEARING BENCHCARD

| | |
|---|---|
| Relevant Statutes | 42 Pa.C.S. §§ 6325, 6332, 6334<br><br>Pa.R.J.C.P. 1240, 1242 (B) (3), 1243 |
| Purpose of Hearing | An informal hearing to determine (a) whether shelter care is necessary; (b) whether allowing the child to remain in the home would be contrary to the welfare of the child; (c) whether reasonable efforts were made to prevent such placement; or (d) if, in case of emergency where services were not offered, whether lack of efforts were reasonable. Shelter care hearing is **not** a substitute for the adjudicatory hearing. |
| Time Frame | Hearing within **72 hours** of removal (42 Pa.C.S. § 6332).<br><br>If the child is not released and a parent or guardian or other custodian has not been notified of the hearing, did not appear or waive appearance at the hearing, and files his affidavit showing these facts, the court shall rehear the matter without unnecessary delay and order release of the child, unless it appears from the hearing that shelter care is required under 42 Pa.C.S. § 6325.<br><br>Upon application or the filing of a dependency petition, a shelter care hearing will also be conducted in those cases where removal of a child has not yet occurred, but is planned or a voluntary agreement is revoked by the parent and the agency intends to keep the child in care. |
| Rules of Evidence | All evidence helpful in determining the questions presented, including oral or written reports, may be relied upon to the extent of its probative value. Thus hearsay may be admissible. |
| Next Hearing | Child in Custody: Adjudicatory hearing within **10 days** of the filing of the petition.<br><br>Child Not in Custody: Adjudicatory hearing as soon as practical but within **45 days** of the filing of the petition. |

# SHELTER CARE HEARING
# SUMMARY OF KEY QUESTIONS/DETERMINATIONS

- Are there sufficient facts to support the shelter care application?
- Is custody with the agency warranted? Where will the child be placed (kinship care, foster care or other)?
- If a shelter care application was submitted by a person other than the agency, is that person a party to the proceedings?
- Would remaining in the home be contrary to the welfare and best interests of the child?
- Is the placement proposed by the agency the least disruptive and most family-like placement to meet the needs of the child?
- If the father is absent, is the father known? What is his relationship with the child? Can the father safely care for the child?
- Has family finding been done to identify all possible family and caregivers, on both the maternal and paternal side?
- Has the agency reasonably engaged in family finding?
- Has the family been offered a Family Group Decision Making Conference?
- Were reasonable efforts made by the agency to prevent the child's placement?
- Were the services offered by the agency relevant to the family's problems? Were they adequate, accessible and well-coordinated? Were there other cost-effective services that should have been offered?
- If services were not offered in the case of an emergency placement, whether the lack of efforts was reasonable?
- Are any additional orders needed concerning the conduct of the parents, such as restraining orders or orders expelling an allegedly abusive parent from the home?
- Are any additional orders needed concerning the agency's efforts to provide services?
- Are additional orders needed to address the immediate needs of the child, such as immediate medical treatment, evaluation or other examinations?
- What steps have been taken to ensure the educational needs of the child are being met? Does the child have an Individual Education Plan (IEP)?
- Has visitation been provided within 72 hours of the child's removal from their home? What are the terms and conditions for parental visitation or sibling visitation
- What consideration has been given to financial support of the child?
- Has the court made a determination as to whether the child is an Indian Child as defined by the Indian Child Welfare Act (25 U.S.C. § 1901 *et seq*.) and the Bureau of Indian Affairs regulations (25 C.F.R. § 23.2)?

These questions are adapted from the text of this chapter, the *Mission and Guiding Principles for Pennsylvania's Dependency System* and the Preliminary Protective Hearing Checklist provided in the *Enhanced Resource Guidelines* (NCJFCJ, 2016, pp.161-175)

# LOCATING FATHERS & ESTABLISHING PATERNITY BENCHCARD

***Identifying and locating fathers early in dependency matters helps children establish or maintain important connections. Doing so also expedites permanency.***

**Judges and hearing officers should ask whether the county agency caseworker has:**

1. Utilized family finding to locate father and paternal relatives. What specifically was done?
2. Complied with the requirement of the Fostering Connections Act? If so, how?
3. Asked the mother, child or relatives about the father's whereabouts?
4. Utilized the federal, state or other parent locator systems?
5. Sent letters to the last known address of the father?
6. Visited the last known address of the father, talked to neighbors and family members in the community where father previously resided?
7. Checked local jails, prisons, correctional facilities, probation and parole agencies, and immigration authorities?
8. Checked public benefits information (e.g., social security or public assistance)?
9. Checked with the child support enforcement agency?
10. Checked driving and vehicle registration records?
11. Used technology and social media to locate the father?

**Judges and hearing officers should also:**

1. Ask the mother and other relatives about the father's identity and location at the first and all subsequent hearings, until the issue is resolved.
2. Obtain information under oath or via an affidavit establishing parentage.
3. Ask the child about the father's identity, location and names of paternal kin (if appropriate).
4. Require the agency to promptly obtain information through any action noted above.
5. Order the agency to follow up on information gained from court hearings.
6. At every hearing, require information about progress in identifying and locating the father.
7. Impose deadlines for searches or for filing affidavits detailing search efforts.
8. Ensure court orders and records reflect effort to identify and locate fathers.
9. Consider a finding of "No Reasonable Efforts" if the agency has not made attempts to locate father.

# LOCATING FATHERS & ESTABLISHING PATERNITY

# BENCHCARD

***Establishing paternity after a putative father is located is critical. The father can then assert and protect his constitutional rights to the care and custody of his child.***

**Judges and hearing officers should:**

1. Arrange for the paternity case to be expedited so the father can be engaged and supported in the dependency case, if the cases are being handled separately.

2. Question the putative father directly about his:

    a. Relationship to the mother.
    b. Desire to be a father.
    c. Efforts to have or maintain a relationship with his child, such as:
        - How often he sees the child;
        - How often he speaks with the child;
        - Whether he provides formal or informal financial or other support to the child;
        - Whether his name is on the birth certificate;
        - If he has filed a claim or acknowledgement of paternity;
        - If he was living with or married to the mother when she was pregnant or when the child was born; and
        - Whether he has been prevented from contact with the child.

3. Require paternity testing, when appropriate.

4. Request at every hearing information about progress being made to establish paternity.

5. Be clear in the court order once paternity and "legal" fatherhood are established.

6. Inform the father of his right to counsel and availability of court-appointed counsel.

7. Expect the same level of service delivery provided to father as is provided to mother.

These questions are adapted from the text of this chapter, the *Mission and Guiding Principles for Pennsylvania's Dependency System* and the State Roundtable Workgroup on Fatherhood.

# ADJUDICATION HEARING BENCHCARD

| | |
|---|---|
| Relevant Statutes | 42 Pa.C.S. §§ 6302-6341<br><br>Pa.R.J.C.P. 1240 - 1243, 1340 - 1342, 1406 (discovery) |
| Purpose of Hearing | To determine by **clear and convincing evidence** whether a child is dependent pursuant to the definition of dependent child in 42 Pa.C.S. § 6302. |
| Time Frame | Hearing within **10 days** of the petition if the child is in custody.<br><br>The time frame may be extended for another 10 days if the court finds that despite due diligence, evidentiary material is not available and there is clear and convincing evidence that the life of the child is in danger if the child were released (42 Pa.C.S. § 6335(a)(1) & (2)).<br><br>If the child is not in custody, the hearing should be within **45 days** (Pa.R.J.C.P. 1404). |
| Rules of Evidence | The Rules of Evidence apply to the adjudication hearing. Further, the statute also provides that a party has the right to present evidence and to cross-examine witnesses (42 Pa.C.S. § 6338). |
| Standard of Proof | Clear and Convincing Evidence: 42 Pa.C.S. § 6341(c)<br><br>Stipulations and agreements cannot substitute for the presentation of evidence from the parties and/or disinterested parties. The court must make an effort to ensure the presentation of evidence. |
| Next Hearing | Child in Custody: A disposition hearing must be held within 20 days of the findings of clear and convincing evidence of adjudication (Pa.R.J.C.P. 1408 & 1510).<br><br>The majority of jurisdictions in Pennsylvania hold the adjudicatory and disposition hearings consecutively for the purposes of timeliness and convenience. |

# ADJUDICATION HEARING

# SUMMARY OF KEY QUESTIONS/DETERMINATIONS

- Which allegations of the petition have been proven by clear and convincing evidence or admitted, if any?
- Do the facts prove that the child was without proper parental care and control?
- Do the facts prove that immediate, proper parental care and control is unavailable to the child without state intervention?
- Are there aggravated circumstances?
- Is there a legal basis for continued court and agency intervention?
- Have reasonable efforts been made to prevent the need for placement or safely reunite the family?
- Has the father been identified? If not, what specific actions have been completed to locate him? Is the father an able and willing caretaker? If yes, is adjudication warranted?
- Has family finding been done to identify all possible family and kin?
- Has a determination been made as required by the Indian Child Welfare Act?
- Has the family been offered a Family Group Decision Making conference?
- Is the basis for dependency truancy alone? If so, have the underlying causes been investigated? Are there problems at home preventing the child from attending school? Is there a lack of proper parental care and control? Has the school done an attendance improvement plan? Are the parents and/or the child receiving interventions/services? Does the child have a learning issue that has not been identified? Is the child being bullied in school? Are there transportation and/or safety issues that can be resolved? (See www.ocfcpacourts.us)

**If the disposition hearing will not immediately follow the adjudication hearing:**

- Where will the child live until the disposition hearing?
- Is there a need for further testing or evaluation of the child and/or parents in preparation for disposition?
- Is the agency taking steps to evaluate relatives as possible support for the child or parent?
- Is the agency continuing to try to notify noncustodial parents?
- If the child will be in foster care, what are the plans for parental visitation and sibling visitation?
- If siblings are not placed together, what reasonable efforts has the agency made to prevent or remedy this?
- If the child will be in foster care, will the parent or guardian be able to continue making educational decisions for the child or should an educational decision maker be appointed? Are there any other educational needs to address?

These questions are adapted from the text of this chapter, the *Mission and Guiding Principles for Pennsylvania's Dependency System* and the Adjudication Hearing Checklist provided in the *Resource Guidelines* (NCJFCJ, 1995, p. 52).

# VISITATION BENCHCARD
## Oversight vs. Support Matrix

| | **Supervised** | **Unsupervised** |
|---|---|---|
| **With Support** | Child's safety and well-being are at risk and require supervision. Parent needs support to understand and meet child's needs or develop/maintain attachment and connection to the child.<br><br>*Example: Children recently removed due to neglect or abuse. Goal may be reunification or adoption; support is appropriate for either.* | Child's safety and well-being are assured and visits may occur without any need for supervision. Parent needs support to refine their ability to understand and meet child's needs or develop/maintain attachment and connection to the child.<br><br>*Example: Parent and child transitioning to child's return home; reunification goal.* |
| **Without Support** | Child's safety and well-being are at risk and require supervision. Parent does not demonstrate capability to have insight into child's needs and/or parent's own need to change their behavior.<br><br>*Example: Visitation solely for the purpose of providing the child with contact with the parent; closely supervised. Reunification is not likely or is not a goal or parent is pursuing prerequisite treatment goals before parenting can become a priority.* | Child's safety and well-being are assured, parent is attuned to and responsive to child's needs, parent-child bond is strong. Placement not due to lack of parenting ability or protective capacity.<br><br>*Example: Homelessness due to job loss; reunification goal.* |

# VISITATION BENCHCARD

APPENDIX I

## Frequency and Duration Guide for Visitation

| Infants and Toddlers<br>0-3 | Preschool<br>3-5 | Children<br>6-9 | Children<br>10-12 | Children<br>13-17 |
|---|---|---|---|---|
| The first visit occurs within 72 hours of the removal of a child from the parents/ guardians<br><br>**Infants and toddlers have a minimum visitation of 3 times per week. More frequent visitation is considered for infants and toddlers, due to their developmental need to secure attachment and bonding with caretakers in the early months and years of life. (Smariga, 2007, Dependency Resource Companion).**<br><br>Visitation frequency addresses, through the development of a visitation plan, beginning at the shelter hearing and included in the shelter order | The first visit occurs within 72 hours of the removal of a child from the parents/ guardians<br><br>Children have a minimum of weekly visitation. More frequent visitation is considered when possible<br><br>Visitation frequency addresses, through the development of a visitation plan, beginning at the shelter hearing and included in the shelter order<br><br>The frequency of the visitation is progressive and reviewed at every hearing | The first visit occurs within 72 hours of the removal of a child from the parents/ guardians<br><br>Children have a minimum of weekly visitation. More frequent visitation is considered when possible<br><br>Visitation frequency addresses, through the development of a visitation plan, beginning at the shelter hearing and included in the shelter order<br><br>The frequency of the visitation is progressive and reviewed at every hearing | The first visit occurs within 72 hours of the removal of a child from the parents/ guardians<br><br>Children have a minimum of weekly visitation. More frequent visitation is considered when possible<br><br>Visitation frequency addresses, through the development of a visitation plan, beginning at the shelter hearing and included in the shelter order<br><br>The frequency of the visitation is progressive and reviewed at every hearing | The first visit occurs within 72 hours of the removal of a child from the parents/ guardians<br><br>Children have a minimum of weekly visitation. More frequent visitation is considered when possible<br><br>Visitation frequency addresses, through the development of a visitation plan, beginning at the shelter hearing and included in the shelter order<br><br>The frequency of the visitation is progressive and reviewed at every hearing |
| The frequency of the visitation is progressive and reviewed at every hearing<br><br>When possibly to safely do so, parents are encouraged to attend collateral contact activities, in addition to their traditional visits (i.e. medical appointments) | **Consideration is given to preschool schedules**<br><br>When possible to safely do so, parents are encouraged to attend collateral contact activities, in addition to their traditional visit (i.e. preschool meetings, programs) | **At this age, consideration is given to children becoming involved in school activities and sports. As such, it may be necessary to consider an increase in duration when an increase in frequency will disrupt those activities enjoyed by the child.**<br><br>When possible to safely do so, parents are encouraged to attend collateral contact activities, in addition to their traditional visit (i.e., sports, educational planning meetings) | **Duration, over frequency, is more strongly considered at this stage as children become more independent and collateral activities become more socially important.**<br><br>When possible to safely do so, parents are encouraged to attend collateral contact activities, in addition to their traditional visit (i.e., school programs, sports) | Duration, over frequency, is more strongly considered at this stage as children become more independent, collateral activities become more socially important and **the older teenagers may obtain employment.**<br><br>When possible to safely do so, parents are encouraged to attend collateral contact activities, in addition to their traditional visit (i.e., school activities, community activities, job searches) |

***All bolded information highlights individualized needs for that age group**

### Transitioning Youth ages 18 – 21 Years:

- Visitation during this stage should be at the discretion of the transitioning youth.
- Consideration should be given to the cognitive and developmental needs of the youth that would require additional planning and oversight.

# DISPOSITION HEARING BENCHCARD

| | |
|---|---|
| Relevant Statutes | 42 Pa.C.S. § 6351 (a) and (b)<br><br>Pa.R.J.C.P. 1340, 1501, 1509, 1510, 1512, 1514, and 1515. |
| Purpose of Hearing | A hearing at which the judge considers all the evidence, such as reports and recommendations, regarding the child's placement. The judge also reviews the case plan developed by the parties to determine if it addresses all of the child's identified needs. |
| Time Frame | Not later than 20 days after adjudication if the child has been removed from the home.(42 Pa.C.S. § 6341(c). The court may continue the hearing for a reasonable time to receive reports and other evidence bearing on the disposition or the need for treatment, supervision, or rehabilitation. 42 Pa.C.S. § 6341(e). *Dependency proceedings cannot be deferred.* |
| Rules of Evidence | In disposition hearings, all evidence helpful in determining the questions presented, including oral and written reports, may be received by the court and relied upon to the extent of its probative value. Thus, hearsay may be considered. 42 Pa.C.S. § 6341(d). |
| Next Hearing | <u>Permanency Hearing to determine or review the child's permanency plan:</u> within 6 months of the date the child was removed from the home or date of disposition, whichever is earlier. 42 Pa.C.S. § 6351(e).<br><br><u>Permanency Hearing:</u> Or within 30 days if there is an allegation of aggravated circumstances or the court finds that reasonable efforts are not required to reunify the family. 42 Pa.C.S. § 6351(e).<br><br>**The best practice is to conduct review hearings a minimum of every 3 months.** |
| Appeal Rights | On the record to all parties |

# DISPOSITION HEARING

## SUMMARY OF KEY QUESTIONS/DETERMINATIONS

- What is the appropriate disposition of the case and long-term plan for the child? (i.e., What disposition does the predisposition report recommend?)
- Where should the child be placed?
- Is this the least restrictive, most appropriate, most family-like placement option?
- Does the agency-proposed case plan reasonably address the identified needs of the child and parent? Have both the father and mother been included in the development of the plan?
- Has the father been identified? Has paternity been established? If not, what specific actions have been taken or are needed?
- What is the concurrent plan for the child? Was the concurrent plan established in a timely manner? Is it appropriate to the child's circumstances?
- Are any evaluations, tests, counseling, or treatment necessary?
- What services are necessary to achieve the permanency plan? Are services specific to the needs of the father, the mother, and the child(ren)?
- Has the agency made reasonable efforts to eliminate the need for placement or prevent the need for placement?
- What, if any, child support should be ordered?
- What visitation with parents is appropriate? Have relatives or kin resources been exhausted for visitation location and oversight? Has a visitation plan been presented to the court that outlines details of the visitation plan, including assistance to the parent, such as transportation?
- What visitation with siblings is appropriate?
- When will the case be reviewed?
- Has family finding been done to identify all possible family and caregivers?
    - Has any possible kinship placement been identified?
    - What, if any, are the obstacles to placing the child with family/kin?
- Has the family been offered a Family Group Decision Making conference?
- Does the family understand what Family Group Decision Making is?
- Remember to advise all parties of the following:
    - Right to appeal within thirty days;
    - Right to proceed without payment of costs;
    - Right to appointed counsel.
- If not already determined, has the court made a determination as to whether the child is an Indian Child as defined by the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963 and the Bureau of Indian Affairs regulations, 25 C.F.R. § 23.2?

These questions are adapted from the text of this chapter, the *Mission and Guiding Principles for Pennsylvania's Dependency System* and the Disposition Hearing Benchcard provided in the Gatowski, S. et al., *Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* 244-249 (National Council of Juvenile and Family Court Judges 2016).

# PERMANENCY HEARING BENCHCARD

| | |
|---|---|
| Relevant Statutes | 42 Pa.C.S. § 6351<br><br>Pa.R.J.C.P. 1607 (Scheduling of Permanency Hearings) & 1608(C) (Evidence in Permanency Hearings). |
| Purpose of Hearing | The child should attend every hearing unless waived by the judge. At the permanency hearing the court determines if the child welfare agency has made reasonable efforts to finalize the permanency plan in effect for the child.<br><br>The court will make a permanency decision as to whether the plan for the child should be: reunification, adoption, legal custodianship, placement with a relative or another permanent living arrangement. The court should also consider concurrent planning for the child to achieve permanency more quickly.<br><br>Time is of the essence for permanency of children. The purpose of the permanency hearing is to determine when the child will achieve the permanency goal or whether modifying the current goal is in the best interest of the child. |
| Time Frame | A permanency hearing must be held within 6 months of the child's removal from the home or a transfer of temporary legal custody or other disposition, whichever is earlier.<br><br>A permanency hearing must be held within 30 days of a determination that reasonable efforts to reunify the family are not required. |
| Rules of Evidence | Evidence of conduct by the parent that places the health, safety or welfare of the child at risk, including evidence of the use of alcohol or a controlled substance, can be presented to the court regardless of whether it was the basis for the determination of dependency.<br><br>"Any evidence helpful in determining the appropriate course of action, including evidence that was not admissible at the adjudicatory hearing, shall be presented to the court" (Pa.R.J.C.P. 1608(C) (1)). |
| Next Hearing | A permanency hearing must be held every 6 months until the child is removed from the jurisdiction of the court.<br><br>**Best practice is to conduct review hearings a minimum of every 3 months.** |

# PERMANENCY HEARING
# SUMMARY OF KEY QUESTIONS/DETERMINATIONS

- Were reasonable efforts made by the agency to reunify the family and to finalize a permanent plan?
- Is the plan in the best interest of the child?
    - Will placement be continued for a specific time, with a continued goal of family reunification? Have adoptive parents been identified?
- If legal custodianship is the plan, why is it preferable to TPR and adoption?
- If/when will the custody of the child be transferred to an individual or couple on a permanent basis?
- If APPLA is the plan:
    - Has the county agency documented a compelling reason that it would not be best suited to the safety, protection and physical, mental and moral welfare of the child to be returned to the child's parent, guardian or custodian, to be placed for adoption, to be placed with a legal custodian or to be placed with a fit and willing relative?
    - Has family finding been thoroughly conducted?
    - Have all efforts to achieve a more preferred permanency goal been exhausted?
    - Have circumstances changed such that another plan should be considered?
    - Is the child placed in the most family-like setting possible?
- What are the child's special needs? Who is to provide the services to meet the child's needs?
- Is the visitation plan still appropriate or do revisions need to be made?
    - Does the frequency and duration of the visits seem appropriate based on the child's age and needs?
    - Have relatives or kin resources been exhausted for visitation location and oversight?
    - Has a visitation plan been presented to the court that outlines details of the visitation plan, including assistance to the parent or siblings such as transportation?
- What are the child's educational needs?
    - Will the child remain in the same school?
    - If the child has been moved, does the child need new assessments?
    - If the child has been moved, is there monitoring to make certain his or her transition is successful?
    - Is the child appropriately placed, attending school, and making progress?
    - Does the child have a parent or guardian making reliable education decisions or should an EDM be appointed?
- If not already determined, has the court made a determination as to whether the child is an Indian Child as defined by the Indian Child Welfare Act, 25 U.S.C. § 1901 *et seq*. and the Bureau of Indian Affairs regulations, 25 C.F.R. § 23.2?

These questions are adapted from the text of this chapter, the *Mission and Guiding Principles for Pennsylvania's Dependency System* and the Permanency Hearing Benchcard provided in the *Enhanced Resource Guidelines* (NCJFCJ, 2016, pp. 319-329).

# TERMINATION OF COURT SUPERVISION BENCHCARD

| | |
|---|---|
| Relevant Statutes | 42 Pa.C.S. 6301, 6302 & 6351<br><br>Pa.R.J.C.P. 1631 |
| Purpose of Hearing | Hearing at which the judge considers all the evidence, such as reports and recommendations, regarding the permanent plan for the child. The judge confirms, based on the evidence presented, that the child is no longer in need of court-ordered agency services and one of thirteen reasons to terminate court supervision exists. |
| Time Frame | This hearing can occur at any point within a dependency case upon the motion of the parties or *sua sponte*. |
| Rules of Evidence | "Any evidence helpful in determining the appropriate course of action, including evidence that was not admissible at the adjudicatory hearing, shall be presented to the court" (Pa.R.J.C.P. 1608(C)). |
| Next Hearing | Not applicable |

# TERMINATION OF COURT SUPERVISION HEARING

# SUMMARY OF KEY QUESTIONS/DETERMINATIONS

## Reunification

- Is the child/family no longer in need of court-ordered services from the child welfare agency and
  - The child has remained with the parent/guardian, and the circumstances that necessitated the dependency adjudication have been alleviated or
  - The child has been reunified with the parent/guardian and the circumstances which necessitated placement have been alleviated.

## Age of Majority/Aging Out

- Does a youth 18 years of age wish to remain under the court's supervision, and is the youth eligible to remain?
- Does a youth 18 years of age who wishes to leave the court's supervision understand their right to have the court resume supervision if eligible?

## Permanent Legal Custodian

- What reasonable efforts were made to reunify?
- Why is this option preferable to TPR and adoption?
- What are the facts demonstrating the appropriateness of the prospective legal custodian?
- Has there been full disclosure to the permanent family regarding the child's circumstances and special needs?
- What is the plan to ensure that this will be a permanent home for the child?
- What [if any] contact will occur between the child and parents, siblings, and other family members?
- What are the plans to continue any necessary services to the child? How will those services be funded?
- How will any future motions for modification of custody be handled?

## Adoption

- If the dependency judge did not hear the adoption, consider having a short hearing to close the case. Congratulations and goodbyes can be handled during this hearing, providing closure for all involved.
- If there is a post-adoption contact agreement, has it been approved?
- Don't forget that the dependency case needs to be closed. The judge needs to facilitate this process.

These questions are adapted from the text of this chapter and the *Mission and Guiding Principles for Pennsylvania's Dependency System*.

# TERMINATION OF PARENTAL RIGHTS HEARING BENCHCARD

| | |
|---|---|
| Relevant Statutes and Rules | 23 Pa.C.S. § 2511(a)(1) – (9) (grounds) and 2511 (b) (emotional bond/needs and welfare); Pennsylvania Orphans' Court Rules 15.2, 15.3, 15.4 and 15.6 |
| Purpose of Hearing | Divests parents' legal status and contact. This can be by a contested involuntary termination; a voluntary relinquishment, or a petition to confirm consent (see section 16.9 of this chapter).<br><br>It is often referred to as a "death penalty" proceeding due to the finality of the TPR order which severs all ties between the child and parent. |
| Time Frame | The Federal Adoption and Safe Families Act (ASFA) and the Pennsylvania Juvenile Act require the child welfare agency to file a TPR petition when a child has been in foster care for 15 of the most recent 22 months.<br><br>The Adoption Act does not bar bringing the petition sooner than the ASFA requirements, so long as one of the eleven grounds for TPR as set forth in 23 Pa.C.S. § 2511 is present. |
| Rules of Evidence | The formal rules of evidence in Orphans' Court apply. The burden of proof on the petitioner is to establish at least one of the statutory grounds for TPR by "clear and convincing evidence". |
| Next Hearing | Finalization of Adoption Hearing: If an appeal is taken, file a statement of reasons or prepare an opinion as per the Fast Track Rules.<br><br>Until such time as the appeal is resolved, the adoption is finalized, and dependency is terminated, the statute requires Permanency Hearings at a minimum of every six months.<br><br>**Best practice is to conduct review hearings a minimum of every 3 months.** |

# TERMINATION OF PARENTAL RIGHTS HEARING

# SUMMARY OF KEY QUESTIONS/DETERMINATIONS

- Is each parent identified (paternity established)?

- What is the explanation as to any parent not present?
  - Was proper notice provided? (*The Court must put on the record that service or notice was delivered in a proper, timely manner.*)

- Does each parent have proper legal representation?

- If a consent (and parent is in attendance) or voluntary relinquishment by parent, has there been a complete colloquy with the parent(s) as to his or her understanding of the rights surrendered (*see sample colloquy at the end of this chapter*)?

- Has the agency met its burden as to one or more of the statutory grounds under 23 Pa.C.S. § 2511(a)? (*The court must identify on the record one or more specific grounds for termination (under 23 Pa.C.S. § 2511(a)).*

- Has the agency incorporated into the record all of the prior determinations and proceedings of the Juvenile Court?

- Have the relevant exhibits been formally admitted into evidence and made a part of the record?

- Has there been adequate evidence presented as to the consideration under 23 Pa.C.S. § 2511(b) of any emotional bond between parent and child? (*The court must make a statement on the record regarding bond.*)

- What effect would an order of TPR have on the child? (*The court must make a finding that the needs and welfare of the child are met through the granting of TPR.*)

- Has an adoptive home been identified (only as a consideration for needs and welfare)?

- Is the attorney for the child present and prepared to provide a considered recommendation?

These questions are adapted from the text of this chapter, the *Mission and Guiding Principles for Pennsylvania's Dependency System* and the Termination of Parental Rights Hearing Benchcard provided in the *Enhanced Resource Guidelines* (NCJFCJ, 2016, pp. 363-377).

## BEING TRAUMA-INFORMED

### In th e Court ro om:

Create a calm environment

Begin in a timely manner

Welcome people and thank them for coming

Insist on starting with strengths

Assume trauma

Be respectful and courteous

Use plain language

Check for understanding

Be aware of possible trauma triggers

Don't allow badgering, aggressive language or intimidation

Use therapy or comfort dogs

Allow comfort objects and support people to be present

Have distractions such as snacks, coloring pages, small toys or puzzles available for the children.

Reframe a situation as an opportunity for personal growth

Use supportive and hopeful language

### Outside th e Courtr oom:

Create safe waiting areas

Know your biases

Assess how trauma-informed the court & county systems currently are

Bring issues related to becoming trauma-informed to the local children's roundtable

Encourage development of trauma informed resources as needed

Look for the strengths in people

Take care of yourself

# Foundations of Trauma-Informed Systems

## Safety

~ physical and emotional ~

## Choice

~ opportunities to make decisions and experience a sense of control ~

## Empowerment

~ prioritizing competency, validation, and skill-building ~

## Collaboration

~ working together and sharing power ~

## Trustworthiness

~ built on respect and transparency ~

*"The system shall recognize and address the trauma a child experiences as a result of abuse & neglect and as a result of placement."*

*PA Mission and Guiding Principles*

## USING SUPPORTIVE AND HOPEFUL LANGUAGE

- What has happened to you?
- What do you think?
- What can we do to help you solve the problem?
- Your commitment really shows.
- It's clear you're trying to change.
- Sounds like you are saying…
- What do you need to help you get to (the goal)?
- Tell me something good.
- Thank you for coming today.

## CALM BREATHING EXERCISE

- Sit comfortably
- Take a slow breath in through your nose to the count of 3
- Hold breath to the count of 2
- Exhale slowly through your mouth to the count of 5
- Wait 2 seconds
- Repeat as many times as needed, typically 5 to 10 times

## TRAUMA

⇒ **An event *or***

⇒ **A series of events *or***

⇒ **Set of circumstances**

**Experienced by a person as**

⇒ **Physically harmful *or***

⇒ **Emotionally harmful *or***

⇒ **Life threatening**

**And has lasting adverse effects on a person's**

⇒ **Functioning and**

⇒ **Mental well-being *or***

⇒ **Physical well-being *or***

⇒ **Social well-being *or***

⇒ **Emotional well-being *or***

⇒ **Spiritual well-being**

**(SAMHSA)**

Parents often have their own trauma history. Unresolved issues may lead to:

- Failure to engage in needed services
- Increase in symptoms
- Retraumatization
- Relapse
- Withdraw from service relationships
- Poor treatment outcomes
- Avoidance or withdraw from supportive individuals including family

### Building Connections: (to the child)

1. Tell me about something good that's happened recently.
2. What have you learned at school this week?
3. What is your favorite (song, sport, television show, etc.)?

### To the caseworker or other professional:

1. How was the child screened for trauma?
2. Is there a need for an assessment?
3. Has there been an assessment?
4. What was the result of the assessment?
5. Have the recommendations been implemented?

### If treatment for trauma was indicated:

1. Is the child currently in treatment?
2. Is the clinician skilled in providing trauma treatment?
3. Is the treatment specifically addressing the trauma?
4. How is the child responding?
5. Is the child being prescribed psychotropic medication?

   If so, ask the Blue Box Questions

**WHEN A CHILD IS ON PSYCHOTROPIC MEDICATIONS**

What is the child's diagnosis? Is it the correct diagnosis?

What is the medication's intended effect? Is it effective?

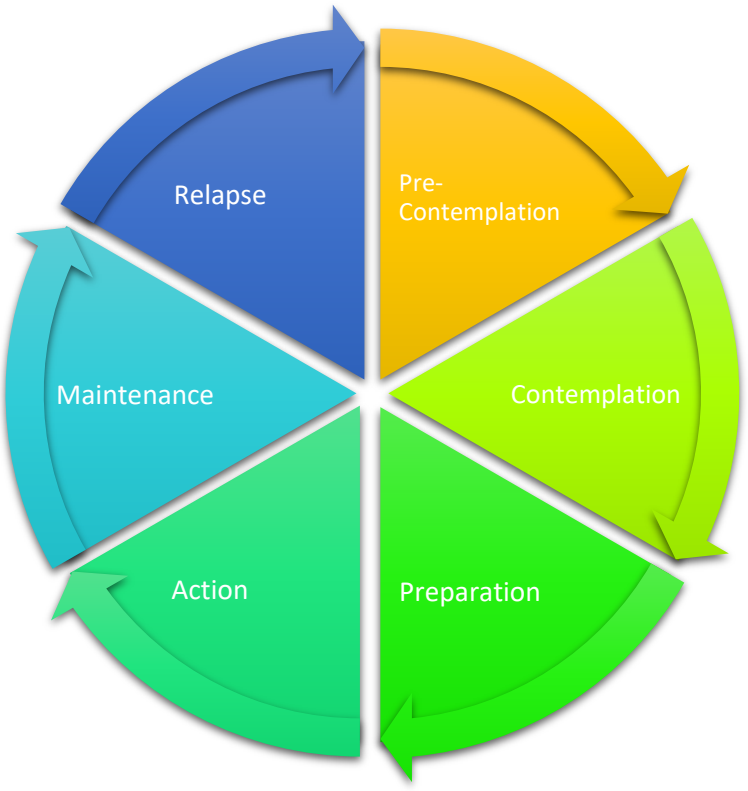
Are we monitoring for adverse effects?

If doing well, have we thought about tapering the medication?

What is the opinion of the treating physician?

6. Are the professionals on the case communicating and working as a team?

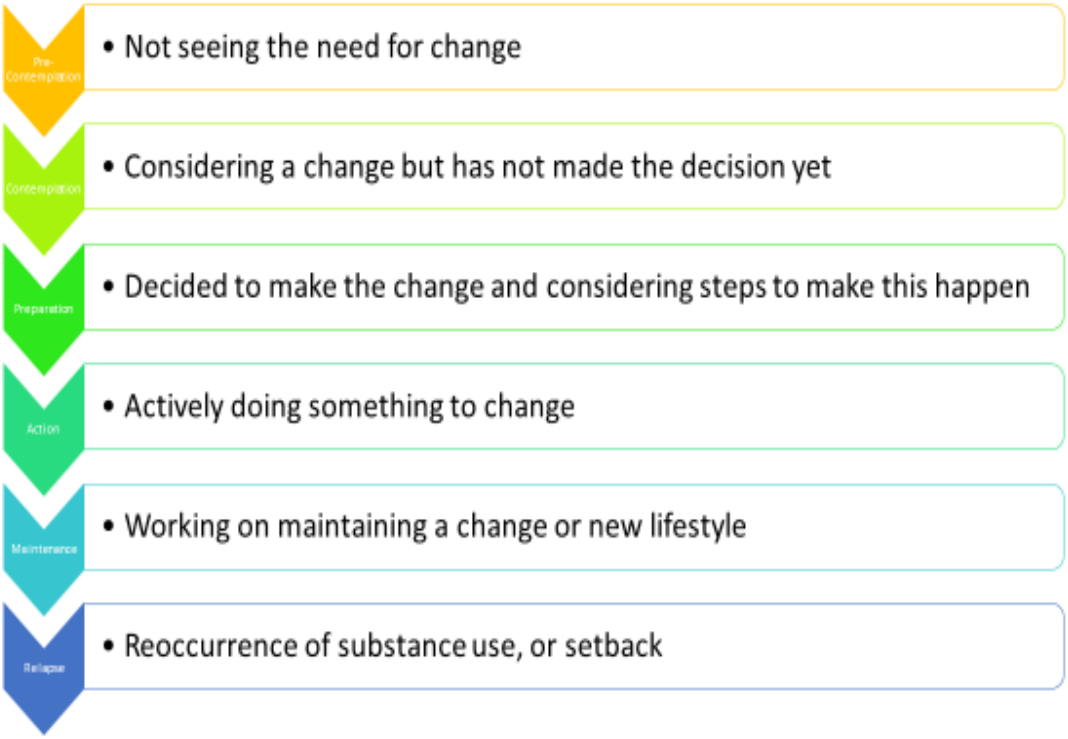
# Stages of Change in the Recovery Process & Recovery Supports




Does he or she have the following to support them in recovery?

- Health
- Home
- Purpose
- Community

Who are his or her supports in recovery?



# Questions for Each Stage of Change in the Recovery Process

**Pre-Contemplation** – not seeing the need for change

- People use drugs because they see benefits in some way. What are the good things about your drug use? What do you like about it?
- What may happen if things continue as they are?
- What would be different if you went into treatment?

**Contemplation** – considering a change but has not made the decision yet

- What makes you think that you need change?
- What could you do to reduce any barriers while you're deciding what to do?
- Can you tell me about any downsides of drug use? What are some a things that you wouldn't miss about your drug use?
- What are the worst things that may happen if you continue using? What are the best things that might happen if you stop using?

**Preparation** – decided to make the change and considering steps to make this happen

- You were saying that you were trying to decide to continue or go to treatment. If you decide to change, what would you have to do to make that happen?
- It shows a lot of strength/courage/determination to think about change. How can I support you?
- I understand some of the barriers/difficulties that you have discussed. How can I help you get past some of these? Is there something else that could help you?

**Action** – actively doing something to change

- I hear you have considered goals/plans/values, how can we work together to make them happen?
- What are some short term goals that you have for yourself in recovery?
- Have you ever done any of these things before? What has worked/not worked in the past?

**Maintenance** – working on maintaining a change or new lifestyle

- What sorts of things are important to you?
- Give me some characteristics in yourself that we can use to maintain recovery?
- What are a few long term goals you have for yourself in recovery?
- What importance has your support network had in your recovery? Whose support network are you part of?
- Do you have a prevention plan developed to support your recovery and deter relapse?

**Relapse** – reoccurrence of substance use, or setback

- I understand that you may see relapse as a failure, it takes a lot of courage to admit you made a mistake. How can we use this experience as a way to empower your continued journey in recovery?
- It shows a lot of strength/courage/determination to think about change. How can I support you?
- You have found recovery in the past and I know that you can again. What can we do to support you in your journey of recovery?

# Common Pleas Case Management System (CPCMS)

In 2008, the Administrative Office of Pennsylvania Court's Judicial Automation and Office of Children & Families in the Courts departments were tasked by the Pennsylvania Supreme Court and Pennsylvania State Roundtable to develop a case management system for dependency cases. To this end, a dependency module was added to the Common Pleas Case Management System (CPCMS). This module provides standardized forms for dependency findings and orders. The module also produces court management listings and statistical reports. These reports provide information as recommended by the National Council of Juvenile and Family Court Judges (NCJFCJ) on the Nine Performance Measures for Juvenile Dependency Court and the 17 recommended statistical measurements.

## Statistical Reports

| | |
|---|---|
| **Dependency Case Inventory (AOPC 3920)** | This report provides case summaries that were initiated, adjudicated, and closed during a select time period. It is divided into two sections: Active Dependency Case Inventory (cases that have entered and left Active status) and Adjudicated Dependency Case Inventory (cases that have entered and left Active/Adjudicated status). |
| **Demographic Detail Report (AOPC 3943)** | This report provides a breakdown of the number of cases using various demographic data points (age, race, sex, length of supervision, placement of the child, and permanency plan goal). It can be grouped by judge or hearing officer. |
| **End of Period Terminated Cases (AOPC 3921)** | This report provides summaries of terminated cases categorized by the age of the child and the age of the case. Within these categories, data is divided by foster care status, and details are provided regarding the average number of days to adjudication, first placement hearing, permanent placement, and other key events. |
| **Pending Case Metrics (AOPC 3922)** | This report provides statistical case data based on age range, gender, race, and ethnicity of Active and Active/Adjudicated cases. Data is segregated by foster care involvement. |

Refer to Benchbook, Chapter 20.5.

# Management Reports

| | |
|---|---|
| **Dependency Daily List (AOPC 3905)** | This report provides a list of dependency cases scheduled for the court on any requested day. Under the Case Participant, this report will also note those individuals who have voluntarily shared that they are self-reported or diagnosed with Autism. This feature can be used for planning any needed accommodations. |
| **Continued Dependency Cases by Date (AOPC 3934)** | This report lists all cases by selected date range in which a continuance was issued. This report can be sorted by individual judicial officer or all judicial officers. |
| **Dependency Case Report (AOPC 3900)** | This report provides a detailed list of all cases that are or have been recorded in CPCMS. It shows the percentage of cases where the child is receiving services but has not yet achieved permanence, the percentage of cases where the goal is not a permanent option, and the number of children in foster care. Information on the type of case initiation in the system can also be found in this report. |
| **Dependency Disposition Report (AOPC 3901)** | This report provides a detailed list of all cases that have had a disposition recorded during the selected date range. This report can be used to generate a list of cases that were terminated, grouped by disposition type, to evaluate the final case result. |
| **Dependency Case Processing Summary Report (AOPC 3902)** | This report provides a list of all cases filed during a selected date range and grouped by case category, status, event track or processing status. It documents the number of days a case took to reach adjudication and the number of days until the first permanency hearing. |
| **Assignment Inventory Report (AOPC 3903)** | This report provides a case list by assigned judge or juvenile hearing officer. |
| **Inventory Report (AOPC 3904)** | This report tracks counsel and guardian *ad litem* appointments. |
| **Juvenile Summary of Cases by Attorney (AOPC 3919)** | This report displays all assigned dependency cases for a specific attorney as of a selected date. |
| **Unscheduled Active Juvenile Cases by Event Date (AOPC 3932)** | This report lists all cases by selected Calendar Entry Type and date range that do not have a future scheduled event. |
| **Hearing Officer Recommendations (AOPC 3938)** | This report identifies cases in which a recommendation by a hearing officer has been recorded but there is no corresponding judge's order recorded. |
| **Scheduled Events Without an Outcome Event (AOPC 3941)** | This report identifies cases that were scheduled during a select date range that have no outcome event recorded. |

# Autism (ASD) in the Dependency Courtroom

*"When you meet one person with Autism, you've met one person with Autism." ~Dr. Stephen*

## Things to Consider

**Does anyone on your docket today have ASD?**

- Ask my staff
- Ask attorneys (Guardian ad Litem, Solicitor, Parent Attorney)
- Check CPCMS (Diagnosed or Self-Reported)

**Do you have a sensory room or sensory items available in your courtroom?**

- noise-reduction headphones
- fidget toys
- sunglasses
- comfort/therapy dogs- if the child feels safe with dogs

**Is the child or parent displaying behaviors related to ASD (refer to the other side of this Benchcard)?**

- poor eye contact
- appear distracted
- not answering questions
- fidgeting, rocking, or flapping motions
- overly agreeable when asked questions

**Is the child or parent receiving any services related to Autism?**

- Individualized Education Plan (IEP) at School
- County Mental Health/Intellectual Disabilities

## Words Matter

Person with Autism

⇩

Autistic Person

---

Treatment

⇩

Supports/Services/ Accommodations

---

High/Low Functioning

⇩

Low/High Support Needs

---

Disorder

⇩

Condition/Disability

# WHAT AM I TELLING YOU?

## A GUIDE FOR JUSTICE PROFESSIONALS ABOUT INDIVIDUALS ON THE AUTISM SPECTRUM

Created with support and reviewed by individuals on the spectrum.

| WHAT YOU SEE/HEAR | WHAT YOU THINK | WHAT AM I TELLING YOU? |
|---|---|---|
| Little to no eye contact | Something to hide<br>Trying to be deceptive | Eye contact makes me anxious and is difficult for me. I cannot look at you if you want me to hear and understand you. I may need a break from eye contact. |
| Aloof, inappropriate comments<br>Outbursts or monotone speech | No remorse, rude<br>Not listening, not paying attention | I do not understand the social implications of how I am speaking to you. I tell it like it is. |
| Mimicking what you are saying | He is mocking me or not taking me seriously | I have to repeat what you say to try to comprehend it and sometimes repeating things helps me calm down. |
| Unusual facial expressions and body language<br>Excessive movement | Using drugs or other substances, has an intellectual disability, or appears rude | Autism causes my body to behave and react differently. I am trying to listen to you and do what you ask but sometimes my body won't let me. It is more difficult for me to communicate using "typical" facial expressions and body language. |
| No immediate response or no response at all | Not listening, not caring | I heard you but I need extra processing time. Please slow down, allow me time to answer your question before asking again, and repeat yourself as necessary. |
| Plugging my ears, closing my eyes | Non-compliance | It is too bright and loud in here, my senses are overloaded and my flight or fight response is in overdrive. Please give me some time to calm down. |
| Not wanting to be touched | Hiding Something | Even the lightest touch hurts me. Please warn me if you are going to touch me. |
| Refusing to comply | Deceptive, Uncooperative | My world is very chaotic. Routine helps make the world calmer. When my routine is disrupted I become very agitated and anxious. Please give me time to adjust to the change. |
| Very agreeable, admits to anything | Guilty | Making friends is hard. I have learned that doing what others want makes having friends easier. Sometimes I agree or admit to things because I have been told that that is the way to get along with other people. |
| Repeating the same directions numerous times | Not Listening | I learn better by seeing. Can you please show me what you want me to do? |


PHILADELPHIA AUTISM PROJECT
*Guided by the Autism Community*

ASERT bringing autism resources together. PAautism.org

*Pennsylvania's leading source of autism-related resources and information.*

**877-231-4244**

*The ASERT Collaborative is funded by the Office of Developmental Programs, PA Department of Human Services.*

4/05/21

# ORDER FOR PROTECTIVE CUSTODY

## Pa.R.J.C.P.1210

When an agency requests an emergency removal order, the judge is required to make specific findings. These include whether reasonable efforts were made to prevent placement of the child, whether remaining in the home would be contrary to the welfare and best interests of the child, and whether the agency has reasonably engaged in family finding.

For this reason, the judge needs specific information when an emergency removal request is made. When asking questions of an agency seeking a verbal, emergency order removing a child from a home, the judge should try to avoid questions that require simple yes/no answers. Open-ended questions are preferable. The agency should provide facts supporting the request as opposed to a caseworker's conclusions.

**Ask Open Ended Questions**

**Look for Facts**

Removal of the child from his or her home should be based upon the result of a safety threat that could not be remedied or mitigated. Additionally, if an order for protective custody is granted, additional considerations should simultaneously be made. These considerations may result in the judge adding specific expectations in their order.

## SAFETY THREAT

- **What is the safety threat that requires immediate removal from the home?**
- **Can the threat/danger be removed or mitigated by services that can be provided to the family?**
- **Will removal of the child from the home eliminate the safety threat?**

**If removal of the child is necessary to eliminate the safety threat:**

### FAMILY FINDING

- **What specific family finding efforts has the agency made?**
- **What kin/family have been identified and explored to take the child(ren)?**
- ***The court is not restricted in placing a child with kin just because the kin does not meet agency regulations. The key question is whether the child(ren) will be safe with the kin.***
- **What support/services can the agency provide family/kin so that the child(ren) may be immediately placed with them?**

# ORDER FOR PROTECTIVE CUSTODY

## Pa.R.J.C.P.1210

## Additional Considerations

### MEDICAL/PSYCHOLOGICAL



- How will removal of the child impact the child's medical or psychological care?
- Does the child have prescription medication that must go with the child? (If yes, this should be a condition of the order.)

### SCHOOL/EDUCATION

How will removal of the child impact the child's education?



### SIBLINGS

- Are there any siblings? (full, ½, step)
- Are all siblings being placed together?
- If siblings are not being placed together, what is the reason(s) they are not being placed together?
- Is the reason a valid reason? (i.e. safety of one of the siblings)?

*The agency stating that no one (foster or kin) will take all of the children is rarely a valid reason to separate siblings. It often requires greater effort by the agency to find an appropriate placement or provide supportive services.*

### TRANSPORTATION

Are there any transportation issues that will occur due to placement? (school, visitation, medical appointment, getting to court)



# TIPS FOR TALKING TO CHILDREN

## KNOW THE CHILD

- Review written Agency Reports
- Meet with Counsel
- Keep notes for future hearings
- Begin and end with positive comments

Communicating with children who enter the dependency system requires significant effort and understanding on the part of the judge or hearing officer. Having the ability to effectively communicate with youth often provides some of the most important information in a hearing.

A judge and hearing officer must always keep in mind that coming to court can be an intimidating and often traumatic experience for a child. Efforts to minimize the trauma and intimidation are critical to effective communication with a child. It is the judge's and hearing officer's responsibility to make those efforts.

If the judge or hearing officer doesn't have time to obtain information before seeing the child, the judge or hearing officer can attempt to obtain the information from the child by asking the child directly. Some possible questions may include:

- So, what have you been doing since I last saw you?
- What fun things do you like to do?
- If you had the chance to do something fun, what would it be?

If the child won't open up or repeatedly states they don't know, try this question, "If you did know, what would it be?". The judge or hearing officer can also volunteer activities: movies, sports, or someone the child would like to visit.

Before the hearing is concluded the judge or hearing officer should ask the child if they understand what happened at the hearing and what is expected of the child before the next proceeding and then say "Good-bye (child's name), I'll see you (date of the next hearing)".

# Tips for Engaging Children

1. Greet the child as soon as the child enters the courtroom, “Hi (child’s first name), how are you?”

2. Shake the child’s hand depending on the child’s age and maturity.

3. Invite the child to experience the judge’s or hearing officer’s perspective showing them a gavel, and let them bang it.

4. Allow the child’s picture to be taken with the judge or hearing officer while the child is sitting in the their chair.

5. Ask the child about something he/she has done since the last proceeding: birthday, vacation, school event (concert, field trip), athletic event, church event, or visit with a relative or friend.

6. Encourage a new interest the child may have discovered (i.e. photography, jogging, painting, sports, attending church). The child should be asked questions about how they got involved in the activity and what they enjoyed about it.

*The court may be able to assist parents or resource parents in helping the child develop the interest by ordering the agency to provide materials, supplies, etc. If the child is in a residential placement, ordering that the child be permitted to explore these types of interests is often necessary to ensure the facility allows the child to be involved in the activity.*

# Resources and References

## Online Resources/Information Clearinghouses

There are a number of national-level policy and research organizations and government agencies that share a focus on child welfare issues and the role of the court system in the processing of child abuse and neglect cases. The websites of these organizations and agencies are excellent sources of information on numerous topics and provide the latest in commentary, research, best practice guidelines, innovative programs, and other initiatives in various jurisdictions. Many also highlight training and technical assistance opportunities. Overviews and links to some of the more prominent and comprehensive sites are provided below by clicking the blue, underlined text. Please use the electronic version of the Benchbook at the Office of Children and Families of the Court website: https://ocfcpacourts.us.

### A. ACEs Too High

This news website highlights the latest headlines, research, and developments regarding Adverse Childhood Experiences (ACEs). It also provides research, practice, national initiatives, and the ACE Study resources. The site includes links to other trauma-informed sites, the principal investigator of the ACE study, Dr. Vince Felitti's presentations, and ACE score information and questionnaires.

### B. American Bar Association's (ABA) Center on Children and the Law

The ABA Center on Children and the Law is a program of the Young Lawyers Division that aims to improve children's lives through advances in law, justice, knowledge, practice, and policy. Specific projects include:

- ABA Permanency Project
- Capacity Building Center for Courts
- Family Justice Initiative
- Quality Legal Representation
- Commission on Youth at Risk

The Center has established a **Legal Center for Foster Care & Education,** which is a collaboration between Casey Family Programs and the Center in conjunction with the Education Law Center-PA and the Juvenile Law Center. It is supported by the Conrad N. Hilton Foundation, Walter S. Johnson Foundation, Raikes Foundation, Casey Family Programs, Foster Youth Services Coordinating Program, Pennsylvania Department of Human Services, and Legal Aid Society of Greater Cincinnati. The site includes publications, such as the *Foster Care & Education 101 (Blueprint for Change) — Legal Center for Foster Care & Education*, and a series of guidelines on special education issues and the role of the court.

The Center is also part of the **National Alliance for Parent Representation.** This project provides training and technical assistance to jurisdictions seeking to pursue justice for parents and families through effective legal, legislative, and policy advocacy. It also includes information on the quality of legal representation for parents and resources to support practice and parents.

### C. Capacity Building Center for Courts (CBCC)

The center is funded by the Children's Bureau and is supported through the collaborative efforts of the American Bar Association (ABA), the National Council of Juvenile and Family Court Judges (NCJFCJ), the National Association of Counsel for Children (NACC), Public Knowledge, and Westat. Its mission is to create integrated capacity-building plans that engage Court Improvement Programs (CIPs) in system improvement work, provide direct support to CIPs, and create learning opportunities and resources to elevate legal and judicial practice nationwide. The site contains information on several focus areas, including continuous quality improvement and the Indian Child Welfare Act.

### D. Casey Family Programs (CFP)

Casey Family Programs (CFP) is the nation's largest operating foundation entirely focused on foster care. The goal of the foundation is to safely reduce the number of children in foster care and improve the lives of those who remain in care through research and policy recommendations. The website includes a library of materials on foster care and child welfare issues and is an excellent resource for research and commentary on educational issues, kinship care, racial disproportionality, congregate care, and youth aging out of the foster care system, among other topics. *Resources - Casey Family Programs*

### E. ACEs — Dr. Nadine Burke Harris

Dr. Nadine Burke Harris, MD, is the surgeon general of California and founder of the Center for Youth Wellness in San Francisco. She is a national expert on trauma and Adverse Childhood Experiences (ACEs). Dr. Harris has spoken of the importance of recognizing and treating trauma in children. The Center's mission is to improve the health of children and adolescents exposed to adverse childhood experiences. The website has a section on ACEs & Toxic Stress that discusses the science behind ACEs and their effects on individuals' health.

Popular resources are:

- TedTalk: How Childhood Trauma Effects Health Across a Lifetime
- *The Deepest Well: Healing the Long-Term Effects of Childhood Adversity* (2018) by Nadine Burke Harris, M.D.
- *The Science of ACES and Toxic Stress Part 1*

## F. Child Welfare Information Gateway (CWIG)

The CWIG website serves as an information clearinghouse on child welfare issues and is sponsored by the Children's Bureau of the Administration for Children and Families, U.S. Department of Health and Human Services. References are categorized into the following topic areas:

- Family Centered Practice
- Child Abuse and Neglect
- Preventing Child Abuse and Neglect
- Responding to Child Abuse and Neglect
- Supporting and Preserving Families
- Out-of-Home Care
- Achieving and Maintaining Permanency
- Adoption
- Management and Supervision
- Systemwide

## G. Courts Catalyzing Change: Achieving Equity and Fairness in Foster Care Initiative

The Courts Catalyzing Change Initiative is directed by the National Council of Juvenile and Family Court Judges with funding from Casey Family Programs and support from the Office of Juvenile Justice and Delinquency Prevention (OJJDP) of the U.S. Department of Justice. The purpose is to bring together judicial officers and other system experts to set a national agenda for court-based training, research, and reform initiatives to reduce the disproportionate representation and disparate treatment of children of color in the dependency court system. The webpage includes the *Right from the Start: The Courts Catalyzing Change Preliminary Protective Hearing Benchcard - NCJFCJ*.

## H. Education Law Center (ELC)

Since 1975, the Education Law Center of Pennsylvania (ELC) has worked to make good public education a reality for Pennsylvania's most vulnerable children—poor children, children of color, children with disabilities, English language learners, children in foster homes and institutions, and others. The ELC's website offers detailed, helpful information about education.

## I. Center on the Developing Child at Harvard University

The mission of the Center on the Developing Child is to drive science-based innovation that achieves breakthrough outcomes for children facing adversity. Its belief is that advances in science provide a powerful source of new ideas focused

on the early years of life. Founded in 2006, the Center catalyzes local, national, and international innovation in policy and practice focused on children and families. The Center designs, tests, and implements ideas in collaboration with a broad network of research, practice, policy, and community leaders for maximum impact on lifelong learning, behavior, and both the physical and mental health of young children. The website features research, implications, and policy applications about many areas of child development. Most notable is the work they have done on Toxic Stress and Resilience. Some resources available on this website are:

- *The Science of Neglect: How Child Neglect Harms Brain Development in Children*
- *ACEs and Toxic Stress: Frequently Asked Questions: What Are ACEs? And How Do They Relate to Toxic Stress?*

## J. Juvenile Law Center (JLC)

The Juvenile Law Center (JLC) is a public interest law firm for children in the United States, founded in 1975 and based in Philadelphia. The Center advocates for rights, dignity, equity, and opportunity for youth in the child welfare and justice systems. The Center authored the *Pennsylvania Judicial Deskbook, 4th Edition*, published in 2004. Other publications of interest are available in the Resources section, which includes access to a resource library, toolkits, and guides.

## K. Kempe Center for the Prevention and Treatment of Child Abuse and Neglect

The Kempe Center for the Prevention and Treatment of Child Abuse and Neglect is recognized as a world leader in child abuse treatment programs and has been at the forefront of the fight against child abuse. The Kempe Center is the organization that contains information from the **National Center on Family Group Decision Making (FGDM)** to promote and support family and community involvement and leadership in decision-making about children who need protection or care. The Center provides training, technical assistance, research, and resources to communities implementing FGDM, and its website has links to a series of policy briefs, FGDM FAQs, and articles on the history of FGDM and other related topics.

## L. National Association of Counsel for Children (NACC)

The mission of the National Association of Counsel for Children (NACC) is to strengthen the delivery of legal services for children, enhance the quality of legal services, and improve courts and agencies that serve children. Publications available through the website include:

- *Child Welfare Law and Practice: Representing Children, Parents and State Agencies in Abuse, Neglect, and Dependency Cases, (The Red Book, 4th Edition) (Oct. 2023)*
- *Children's Justice: How to Improve Legal Representation of Children in the Child Welfare System. Donald N. Duquette (2016)*

## M. The National Child Traumatic Stress Network (NCTSN)

The National Child Traumatic Stress Network (NCTSN) was established by Congress in 2000. It is administered under the Substance Abuse and Mental Health Services Administration (SAMHSA) and the UCLA-Duke University National Center for Child Traumatic Stress (NCCTS). The website provides resources for different types of trauma and for professionals in many roles who come into contact with people suffering from trauma. There is information about what trauma is, treatment and practices for trauma and trauma-informed care. In addition to written resources, the NCTSN also hosts online and in-person training. Some resources that might be of interest to the legal community include:

- *Trauma: What Child Welfare Attorneys Should Know | The National Child Traumatic Stress Network*
- *Helping Traumatized Children: Tips for Judges | The National Child Traumatic Stress Network*
- *NCTSN Bench Cards for the Trauma-Informed Judge | The National Child Traumatic Stress Network*

## N. National Court Appointed Special Advocates (CASA) Association

While the National CASA website is primarily devoted to information for local CASA programs and volunteers, the Association recognizes that judges play a key role in developing new programs, sustaining existing programs, and expanding the network. The website provides a link to resources for judges. It can be accessed here: Resources for Judges - National CASA/GAL Association for Children.

The Pennsylvania CASA Association is a statewide non-profit organization that promotes public awareness of the CASA concept, helps local programs develop, and generally supports local programs in Pennsylvania.

## O. National Center for Juvenile Justice (NCJJ)

The National Center for Juvenile Justice (NCJJ) is the nation's only non-profit research organization solely dedicated to the juvenile justice system. Founded in 1973 as the research division of the National Council of Juvenile and Family Judges, the Center serves as a resource for independent and original research directly or indirectly related to delinquency and child abuse and neglect.

The Center provides information and analysis on the nature, extent, and trends in juvenile crime and victimization in the United States; conducts evaluations of prevention and intervention programs; conducts assessments of case processing; and compiles and analyzes state laws.

## P. National Center for State Courts (NCSC)

The National Center for State Courts (NCSC) provides an overview, FAQs, and links to articles and reports on dependency court issues through its Information and Resources division. Specific categories include:

- Dependency court reform
- Educational Success and Stability
- Family drug treatment courts
- Infants and toddlers
- Involving Children and Parents
- Judicial Guides Checklists and Tools
- Mediation and Family Group Conferencing
- Older Youth
- Performance measurement
- Racial and ethnic disproportionality
- Representation
- Safely Reducing the Number of Children in Foster Care
- Tribal Courts
- Well-Being
- Data exchange and IT systems

## Q. National Council of Juvenile and Family Court Judges (NCJFCJ)

The website contains links to many of the National Council of Juvenile and Family Court Judges' (NCJFCJ) resources, including the widely referenced work on court practices in child abuse and neglect cases: Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases (2016).

NCJFCJ publishes *The Juvenile and Family Court Journal*, a quarterly compilation of articles on juvenile justice and family law topics. It has also conducted research and published reports and technical assistance briefs on other specific child welfare issues and programs.

## R. The National Institute for Permanent Family Connectedness (NIPFC)

The mission of the National Institute for Permanent Family Connectedness (NIPFC) is to advance permanency for all children and youth, with Family Finding as a core strategy and a method that adds value to service systems. Every child has a family, and family members can be found when we try. Loneliness can be devastating, even dangerous, and is experienced by most children in out-of-home care. The single factor most closely associated with positive outcomes for children is meaningful, lifelong connections to family. The website includes training resources, articles, and video/audio podcasts about family finding topics.

## S. Office of Children & Families in the Courts (OCFC)

The Office of Children and Families in the Court (OCFC) was created by the Supreme Court of Pennsylvania to make more positive outcomes for children involved in child abuse, neglect, and dependency cases. The OCFC's work is guided by four principles: protect children, promote strong families, promote child well-being, and provide timely permanency. The website contains a link to a resource center for judges and other legal professionals, which includes information regarding the Children's Roundtable Initiative, Family Engagement Initiative, three-month court reviews, and expedited children's fast-track appeals. Additionally, the website provides specific information for children/youth, parents, family and community members, and human service professionals. The website also contains valuable information on all of the State Roundtable Workgroups and links to the reports and resources developed by the workgroups.

The Pennsylvania Benchbook Resource Companion- 2nd Edition can also be accessed on the website. *Benchbook Resource Companion – Office of Children & Families in the Courts – Office of Children & Families in the Courts*.

## T. Substance Abuse and Mental Health Services Administration (SAMHSA)

The Substance Abuse and Mental Health Services Administration (SAMHSA) is the agency within the U.S. Department of Health and Human Services that leads public health efforts to advance the behavioral health of the nation. SAMHSA's mission is to reduce the impact of substance abuse and mental illness on America's communities. The website includes resources on recovery and treatment, issues, conditions, and disorders; substances; and professional and research topics.

## U. The Unified Judicial System of Pennsylvania (UJS)

The website for the Unified Judicial System (UJS) of Pennsylvania is a rich resource that hosts the sites for both the Administrative Office of Pennsylvania Courts (Judicial Administration) and the Office of Children and Families in the Courts (Judicial Administration/Operations). Supreme Court opinions and Superior Court opinions, juvenile rules committee, dependency court forms, and data dashboard information can also be found.

## V. Making It Permanent, Reasonable Efforts to Finalize Permanency for Foster Children, by Cecilia Fiermonte and Jennfier L. Renne

This resource is cited in Chapter 12 of the Benchbook and is made available via OCFC website for reference.

# Glossary and Acronyms

**Adjudication Hearing** – The trial stage of child dependency proceedings during which the court determines, by clear and convincing evidence, whether allegations of abuse, neglect or dependency concerning a child are sustained by the evidence and, if so, are legally sufficient to support state intervention on behalf of the child (see Chapter 7: Adjudication).

**Adoption and Safe Families Act of 1997 (AFSA)** – This Act amended titles IV-B and IV-E of the Social Security Act to clarify certain provisions of P.L. 96-272 and to speed the process of finding permanent homes for children. AFSA imposes upon states the requirement to focus on the child's need for permanency rather than the parent's actions or inactions (42 U.S.C. § 671 *et seq*.) (see Chapter 21: Overview of Federal and State Child Welfare Legislation).

**Adoption** – Adoption is the legal and permanent establishment of a relationship between adult individual(s) who are not the biological parents and a child of biological parents whose parental rights have been terminated. When a child cannot safely return home, adoption is the preferred legal permanency option under ASFA and the Juvenile Act. Under the adoptive relationship, the child becomes the heir and is entitled to all other privileges belonging to a natural child of the adopting parent (see Chapter 19: Adoption).

**Adoption Disruption** – Termination of an adoptive placement prior to the finalization. Failure of an adoption after finalization is termed "dissolution."

**Adoption Hearing** – Court proceeding in which a permanent parental relationship is legally established between adult individual(s) who are not the biological parents and a child of biological parents whose parental rights have been terminated (see Chapter 19: Adoption).

**Aggravated Circumstances** – Particular situations or offenses, defined by the Juvenile Act, where no attempts need to be made to reunite a child, who has been adjudicated dependent, with his or her family. These situations arise when a court determines, by clear and convincing evidence, that a parent has subjected a child to aggravated circumstances and further determines that reasonable efforts need not be extended (see Chapter 20: General Issues, section 20.2).

**Alternative Dispute Resolution (ADR)** – ADR approaches provide an opportunity for parents to be empowered to determine their own solutions. This is a shift from the traditional adversarial court approach to a more family focused, strength-based and solution-focused approach. The initiation of these approaches requires a significant change in traditional court directed resolution or litigation, but its benefits far override any difficulties with implementation. These approaches are typically voluntary for the family, but all seek to engage the family in the identification of needed services, preferably prior to court intervention. Some ADR approaches include, but are not limited to: Family Group Decision Making, Mediation, Facilitation and pre-trial conferences.

**Another Planned Permanent Living Arrangement (APPLA)** – ASFA defines APPLA as "any permanent living arrangement not enumerated in the statute" (42 U.S.C. § 475(5)(C)). It is the least preferred option for ensuring permanency for a child and may only be used for a youth aged 18 or older. ASFA and the Juvenile Act require the agency provide the court with a "compelling reason" why one of the other permanency options (reunification, adoption, legal custodianship, permanent placement with a fit and willing relative) is not available to the child. APPLA is not to be viewed as a catchall or as long-term foster care; the placement should be both planned and permanent (see Chapter 12: Permanency Options).

**Child Abuse Prevention and Treatment Act (CAPTA)** – The Child Abuse Prevention and Treatment Act (1974) was most recently reauthorized by Victims of Child Abuse Act Reauthorization Act of 2018. The Act provides federal funding to states in support of assessment, prevention, prosecution, investigation and treatment activities. It also sets forth a minimum definition of child abuse and neglect (see Chapter 21: Overview of Federal and State Child Welfare Legislation).

**Child's Permanency Plan (CPP)** – Upon placement of a child, the county children and youth agency is required to collaborate with all stakeholders to develop and prepare a CPP (amendment to the Family Service Plan) for each child. The CPP should never be developed in isolation. The county children and youth agency must involve the parents, child, youth, relatives, kin, and other stakeholders in the development of the CPP. The CPP also provides a wide variety of information for the courts and should be provided to all parties. The CPP includes specific information regarding the child, such as circumstances that made placement necessary, the child's permanency goal and concurrent planning goal, the placement type and location, medical and educational information, appropriateness of the placement, justification for the placement's level of restrictiveness and anticipated duration of the placement.

**Children's Roundtable Initiative** – The Children's Roundtable Initiative, supported by the Office of Children and Families in the Courts (OCFC) within the Administrative Office of Pennsylvania Courts (AOPC), was established by the Supreme Court of Pennsylvania in 2006. The Children's Roundtable embodies a collaborative, cross-system statewide infrastructure that allows for effective administration and communication via a three-tiered system. The first tier of the infrastructure is comprised of local Children's Roundtables. These exist in each judicial district, are convened by a judge, and are collaboratively facilitated with the child welfare administrator. The intermediate level (tier 2) of the infrastructure is comprised of Leadership Roundtables**.** There are eight Leadership Roundtables dividing Pennsylvania's sixty judicial districts into groups based on size. Membership includes the lead dependency judge, child welfare administrator, and one additional local children's roundtable member. Issues are identified during Leadership Roundtable meetings, and common themes are brought to the highest roundtable level (tier 3), the State Roundtable. The State Roundtable is comprised of at least two members from each Leadership Roundtable and others with specific expertise in child dependency matters (see Chapter 1: The Charge for Pennsylvania's Dependency System).

**Common Pleas Case Management System (CPCMS) Dependency Module** – The CPCMS was developed by the Supreme Court of Pennsylvania, Administrative Office of Pennsylvania Courts as a means to unify dependency court orders and data throughout the Commonwealth. Forms for the CPCMS Dependency Module can be found on the Unified Judicial System of Pennsylvania website at Dependency Forms | Forms | Unified Judicial System of Pennsylvania(see Chapter 20: General Issues, section 20.5).

**Concurrent Planning** – A foster care case management strategy where the caseworker works intensively toward reunification of a child with his or her own family while, at the same time, implementing an alternative plan for the child's permanency. The purpose is to overcome barriers and delays in securing permanent families for children who are in out-of-home care by doing concurrent rather than sequential planning (see Chapter 10: Disposition Hearing and Chapter 13: Permanency Hearing).

**Congregate Care** – A state-licensed placement setting that consists of twenty-four hour supervision for children in settings such as group homes (7-12 children), childcare institutions (12 or more children), or residential treatment facilities.

**Court Appointed Special Advocate (CASA)** – A specially screened and trained volunteer, appointed by the court, who conducts an independent review of child circumstances, including the abuse, neglect, or other dependency matters, and submits a formal report(s) to the court offering advisory recommendations as to the best interests of the child (see Chapter 20 General Issues, section 20.9).

**Crisis Response Family Meeting** – Styled after an Ohana conference, a crisis response meeting happens immediately to twenty-four hours after an emergent event threatening or requiring the removal of a child from their home. The meeting is narrowly focused on safely maintaining the child in his/her home or finding a relative or kin with whom the child can safely remain.

**Critical Incident** – A substantiated report of child abuse occurring within a facility, formal licensing actions, certain criminal incidents or delinquent acts, all suspicious deaths and certain other events as defined by the Department of Human Services Office of Children, Youth and Families notification procedure for placement decisions.

**Disposition Hearing** – The court proceeding which follows the adjudication hearing and at which the court determines the resolution of the case, such as whether placement of the child in out-of-home care is necessary and what services the child and family will need to reduce risk and address the effects of maltreatment (see Chapter 10: Disposition Hearing).

**Educational Decision Maker (EDM)** – An educational decision maker is a responsible adult appointed by the court to make decisions regarding a child's education when the child has no parent or guardian or when the court has limited the parent's or guardian's

right to make such decisions for the child. The educational decision maker acts as the child's representative concerning all matters regarding education unless the court specifically limits the authority of the educational decision maker.

**Facilitation** – A method of Alternative Dispute Resolution (ADR). As with other ADR processes, facilitation is voluntary and focuses on engaging the family to help them identify their strengths and needs in an effort to develop solutions for their specific case. This process typically involves all parties and support persons, who upon agreement seek a final order from the judge or hearing officer.

**Family Engagement Initiative (FEI)** – An initiative developed by the Pennsylvania State Roundtable and implemented in phases throughout Pennsylvania which combines a set of casework and court practice changes aimed at enhancing safe, timely permanence for children. Practices include an updated and enhanced practice of Family Finding, utilization of Crisis and Rapid Response Family Meetings, and a plan for raising the quality legal representation for children, parents, and the agency. Additionally, all elements of the Permanency Practice Initiative (see that entry for definition) continue to be used.

**Family Finding** – A process, required by Act 118 of 2022, used to identify and engage family members (including extended family) and kin. Far more than a web-based search, this process provides the skills to engage both connected and disconnected family members and safe kin in an effort to provide permanent placements, service planning and delivery and a supportive network of connections for youth and parents. Family Finding must begin when the agency accepts a family for service and continues until the court finds it is no longer necessary. This process is particularly effective when used in conjunction with Family Group Decision Making (see Chapter 2: Act 118 of 2022: Family Finding).

**Family Group Decision Making** – A method of bringing family members together to reach a consensus on a recommendation to the court for a safe and permanent plan for a child. Unlike traditional child welfare case conferencing, the family is "in-charge" of the meeting and responsible for creating the recommended plan. The caseworker's participation primarily involves the sharing of information/resources and acceptance of the family's plan (if safety concerns are adequately addressed). Unique to this practice is "private family time" that excludes any non-family member (see Chapter 20: General Issues, section 20.4).

**Family Service Plan (FSP)** – A plan developed for the family by the child welfare agency in junction with the family, which includes, but is not limited to, items such as: identifying information on the family members, the circumstances that necessitated placement, the services to be provided to achieve the objectives of the plan, the actions to be taken by the parents, children, the county agency or other agencies, and the dates when these actions will be completed.

**Foster Family** – A family providing temporary care and supervision for a child placed in their home. The foster family provides parental care and supervision and works with the agency staff to help achieve permanence for the child.

**Guardian *Ad Litem* (GAL)** – A lawyer appointed by the court to represent the best interests of an allegedly abused or neglected child. A GAL differs from legal counsel for the child who specifically represents the child's legal interests before the court (see Chapter 5: Right to Legal Representation).

**Independent Living (IL)** – A service added to the Social Security Act in 1985. The Act was further amended by the Chafee Foster Care Independence Act (CFCIA) in 1999. Independent Living services must be provided to all youth in care who are age 14 years of age or older, no matter what placement they are in and regardless of their permanency plan. Independent Living services can include, but are not limited to: career counseling and placement, educational counseling and support, instruction in budgeting and home management, family-planning and sexual health counseling, and instruction in self-advocacy (see Chapter 20: General Issues, section 20.8).

**Individualized Education Program/Plan (IEP)** – A written document developed for a child with a disability regarding the special education, related services, supplemental aid and services and other accommodations that the school district must provide to the child. The IEP also describes the child's current educational performance and states measurable annual and short-term progress goals.

**Interstate Compact on the Placement of Children (ICPC)** – A federal law designed to provide the legal framework for placements, including adoptive placements, in which more than one state is involved (see Chapter 21 - Overview of Federal and State Child Welfare Legislation and Chapter 4: Jurisdiction).

**Indian Child Welfare Act (ICWA)** – A federal act that addresses the removal of Indian children from their home and their placement (see Chapter 21 - Overview of Federal and State Child Welfare Legislation and Chapter 4: Jurisdiction).

**Kin** – A person with a previously established close relationship with the child or family, such as a godparent, coach, teacher, or neighbor.

**Kinship Care** – Full-time care of a child by a relative or kin. The relative or kin must become a licensed foster parent and may become the adoptive parent if parental rights are terminated.

**Least Restrictive** – The requirement to place a child in a family-like setting when they must be removed from their family.

**Mediation** – A process by which a neutral mediator assists all parties in voluntarily reaching a consensual agreement about issues at hand and agreeing upon a plan of action.

***Mission & Guiding Principles for Pennsylvania's Child Dependency System*** – The foundational document created by the Pennsylvania State Roundtable, which identifies four fundamental mission priorities for all professionals involved in Pennsylvania's child welfare system: protecting children; promoting strong families; promoting child well-being; and providing timely permanency. These mission priorities are embedded into all aspects of this Benchbook (see Chapter 1: The Charge for Pennsylvania's Dependency System for a reproduction of the Mission and Guiding Principles document).

**Multiethnic Placement Act (MEPA)** – A federal act intended to remove barriers to interethnic adoption (see Chapter 21: Overview of Federal and State Child Welfare Legislation).

**Out-of-Home Care** – Kinship care, foster family care, or residential care provided by a person, organization, or institution to children who are placed outside their families, usually under the jurisdiction of a juvenile or family court.

**Permanency Goal** - A permanency goal is selected based upon the particular needs and best interests of the child and is designed to provide the child continuity of relationships with nurturing parents or caretakers and the opportunity to establish lifetime family relationships. Both ASFA and the Juvenile Act identify the following hierarchical permanency goals for children: (1) reunification, (2) adoption, (3) permanent legal custodianship, (4) permanent placement with a fit and willing relative, or (5) another planned permanent living arrangement but only when the other four goals have been rule out and the child is at least eighteen years of age. The permanency goal for the child should be identified as early as possible. The agency is required to complete a written Family Service Plan (FSP) which includes the permanency goal for the child within 60 days of accepting a family for service (see Chapter 12: Permanency Options).

**Permanency Hearing** – A special type of post-dispositional proceeding designed to reach a decision concerning the permanent living arrangement for a child with a family. The time of the hearing represents a deadline within which the final direction of a case is to be determined (see Chapter 13: Permanency Hearing).

**Permanency Hearing to Change Goal** – A permanency hearing to change a goal, often referred to as a "goal change hearing," initiates the permanent removal of a child from parents. Most dependency cases begin with a permanency goal of reunification with the parents or guardians. During the permanency review process, the judge or hearing officer monitors the parents' compliance with the permanency plan and their progress toward remedying the circumstances that led to the removal of the child. When reasonable efforts have been made to reunify the child with the parents but the child has remained in care and reunification is not viable or imminent, the judge must consider changing the goal from reunification to another permanency goal (see Chapter 14: Permanency Hearing to Consider Change of Goal ("Goal Change Hearing")).

**Permanency Practice Initiative (PPI)** – An initiative developed by the State Roundtable (SRT) and implemented in phases throughout Pennsylvania which combined a set of

casework and court practice changes aimed at enhancing safe, timely permanence for children. Practices included Family Group Decision Making, Family Finding, 3-month judicial reviews, CPCMS Dependency Module, and local Children's Roundtables. The initiative was successfully ended by the SRT in 2017 but its practices form the foundation of the SRT's current Family Engagement Initiative.

**Permanent Legal Custodianship (PLC)** – In Pennsylvania, legal custodianship is the equivalent of legal guardianship under ASFA (42 U.S.C. § 675(7)). It is a formal legal arrangement that transfers custody of a minor child from the natural parent to a relative or other caregiver. In the hierarchical scheme of permanency options outlined by ASFA and the Juvenile Act, legal custodianship is less desirable than reunification or adoption, but more preferred than permanent placement with a fit and willing relative, or another planned permanent living arrangement (see Chapter 12: Permanency Options).

**Permanent Placement with a Fit and Willing Relative** – Both ASFA and the Juvenile Act provide for permanent placement with a fit and willing relative as the fourth alternative for permanent placement – after reunification, adoption, and permanent legal custodianship. Placement with a relative offers many advantages as it allows for the continuation of family bonds and may dampen the traumatic impact of removal, and may preserve the child's cultural identity. It is also an exception to the termination of parental rights if the child has been out of the home for 15 of the most recent 22 months (42 Pa.C.S. § 6351(f)(9)(i)). However, permanent placement with a fit and willing relative is one of the least well-defined options provided in the statute. Neither ASFA nor the Juvenile Act define "relative" or "fit and willing" nor do they create new legal authority for the relative (see Chapter 12: Permanency Options).

**Putative Father** – The alleged or supposed male parent; the person alleged to have biologically fathered a child whose parentage is at issue (see Locating Fathers & Establishing Paternity Benchcard).

**Rapid Response Family Meeting** – A rapid response meeting happens within twenty-five to seventy-two hours after an emergent event threatening or requiring the removal of a child from their home. The meeting is narrowly focused on safely maintaining or safely returning the child in his/her home or finding a relative or kin with whom the child can safely remain.

**Reasonable Efforts** – Federal law requires that "reasonable efforts" be made to prevent or eliminate the need for removal of a dependent, neglected or abused child from the home and to reunify the family if the child is removed. The requirement is designed to ensure that families are provided with services to prevent their disruption and to respond to the problems of unnecessary disruption of families and foster care drift. To enforce this provision, the court must determine, in each case where federal reimbursement is sought, whether the agency has made the required reasonable efforts (See Chapter 20: General Issues, Section 20.3: "Best Interests" and "Reasonable Efforts" Findings).

**Relative** – Someone related "within the third degree of consanguinity or affinity to the parent or stepparent of the child and who is at least 21 years of age" (Act 118 of 2022)

**Resource Family** – An adult or family unit recruited, trained, and supported to serve children and families involved with a child welfare agency. Resource families may be emergency placement homes, foster families, adoptive homes, kinship families and/or respite families.

**Reunification** – The return of children to the custody of their biological parents when they have been involved in a period of out-of-home care after being removed from the home (see Chapter 12: Permanency Options).

**Review Hearing** – Proceedings that follow disposition at which the court reviews the status of the case, examines the progress made by the parties, provides for correction and revision of the case plan, and generally ensures that the case is progressing (see Chapter 13: Permanency Hearing).

**Risk Assessment** – The process by which the caseworker assesses the current level of risk to a child to determine the likelihood of future harm, abuse or neglect as prescribed by the Pennsylvania Risk Assessment Model. Information on this can be found at 55 Pa. Code § 3490.321. Standards for risk assessment.

**Safety Plan** – A casework document developed when it is determined that the child is in imminent or potential risk of serious harm. In the safety plan, the caseworker targets the factors that are causing or contributing to the risk of imminent serious harm to the child, and identifies, along with the family, the interventions that will control them and ensure the child's protection.

**Shelter Care Hearing** – The first court hearing in a child abuse or neglect case which occurs either immediately before or immediately after a child is removed from home on an emergency basis. The purpose of the proceeding is to evaluate the child welfare agency's concerns that allowing the child to remain in the home would be detrimental to the child (see Chapter 6: Entering the Child Welfare System – Shelter Hearing).

**Status Review Hearing** – A hearing that allows the judicial officer to address one or two very specific issues prior to the next permanency review hearing.

**Subsidized Permanent Legal Custodianship (SPLC)** – A permanent legal custodianship arrangement that includes a subsidy similar to foster care payments to ensure that the custodian is financially able to meet the needs of the child. The subsidy ends when the child reaches the age of 18. Therefore, SPLC may **not** be appropriate if the foster or kin family is not willing to provide support to the child after the child turns 18 (see Chapter 12: Permanency Options).

**Supervised Independent Living (SIL) Placements** – Living situations in which an older youth has a greater degree of independence than would be allowed in group or institutional care; for example, a youth may be placed in an apartment, alone or with roommates (see Chapter 20: General Issues, section 20.8).

**Termination of Parental Rights (TPR)** – The extinguishment of the legal relationship of parent and child on the basis of abuse, neglect, abandonment or similar grounds (see Chapter 17: Termination of Parental Rights).

**Transitioning Youth** – Young adults between the ages of sixteen and twenty-three. Special attention is often given to this group so that their transition from the child-serving system to adulthood and/or the adult-serving system is streamlined. In many instances, transitioning youth involved in the foster care system move to the responsibilities of adulthood without the benefit of parental or family support.

**Voluntary Placement Agreement (also known as Voluntary Agreement for Care or Voluntary Entrustment)** – Arrangement with the child welfare agency for the temporary placement of a child into foster care, entered into prior to court involvement and typically used in cases in which short-term placement is necessary for a defined purpose, such as when a parent enters into in-patient hospital care; a method of immediately placing a child in foster care with parental consent prior to initiating court involvement and thereby avoiding the need to petition the court for emergency removal.

**Voluntary Relinquishment** – A legal process through which a biological parent voluntarily gives up parental rights with the intent that the child will be adopted. (see Chapter 17: Termination of Parental Rights)

The definitions are adapted from the text of this Benchbook, *the Mission and Guiding Principles for Pennsylvania's Dependency System* and the following sources: *Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* (1995), NCJFCJ; Adoption and Permanency Guidelines: Improving Court Practice in Child Abuse and Neglect Cases (2000), NCJFCJ; and *Pennsylvania Judicial Deskbook: A Guide to Statutes, Judicial Decisions and Recommended Practices for Cases Involving Dependent Children* (2004), Juvenile Law Center and DHS OCYF bulletins 3130-12-03 & 3490-06-01.

# ACRONYMS

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| **AACWA** | **ADOPTION ASSISTANCE AND CHILD WELFARE ACT** |
| **AC** | **AGGRAVATED CIRCUMSTANCES** |
| **ACE** | **ADVERSE CHILDHOOD EXPERIENCE** |
| **ADR** | **ALTERNATE DISPUTE RESOLUTION** |
| **AFSA** | **ADOPTION AND SAFE FAMILIES ACT, PUBLIC LAW 105-89** |
| **ABA** | **AMERICAN BAR ASSOCIATION** |
| **ADR** | **ALTERNATIVE DISPUTE RESOLUTION** |
| **AOPC** | **ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS** |
| **APPLA** | **ANOTHER PLANNED PERMANENCY LIVING ARRANGEMENT** |
| **CAPTA** | **CHILD ABUSE AND PREVENTION AND TREATMENT ACT** |
| **CASA** | **COURT APPOINTED SPECIAL ADVOCATES** |
| **CFCIP** | **CHAFEE FOSTER CARE INDEPENDENCE PROGRAM** |
| **CIP** | **COURT IMPROVEMENT PROGRAM** |
| **CPCMS** | **COMMON PLEAS CASE MANAGEMENT SYSTEM** |
| **CPP** | **CHILD PERMANENCY PLAN** |
| **CPS** | **CHILD PROTECTIVE SERVICE** |
| **CRT** | **CHILDREN'S ROUNDTABLE** |
| **CYS** | **CHILDREN AND YOUTH SERVICES (COUNTY-LEVEL AGENCIES)** |
| **D/D** | **DEPENDENT/DELINQUENT** |
| **DHS** | **DEPARTMENT OF HUMAN SERVICES** |
| **EDM** | **EDUCATIONAL DECISION MAKER** |
| **ESC** | **EMERGENCY SHELTER CARE** |

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| **ESSA** | **EVERY STUDENT SUCCEEDS ACT** |
| **FEI** | **FAMILY ENGAGEMENT INITIATIVE** |
| **FF** | **FAMILY FINDING** |
| **FCIA** | **FOSTER CARE INDEPENDENCE ACT** |
| **FGDM** | **FAMILY GROUP DECISION MAKING** |
| **FSP** | **FAMILY SERVICE PLAN** |
| **GAL** | **GUARDIAN AD LITEM** |
| **GED** | **GENERAL EQUIVALENCY DIPLOMA** |
| **GPS** | **GENERAL PROTECTIVE SERVICE** |
| **ICPC** | **INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN** |
| **ICWA** | **INDIAN CHILD WELFARE ACT** |
| **ID** | **INTELLECTUAL DISABILITY (REPLACED MR)** |
| **IDEA** | **INDIVIDUALS WITH DISABILITIES EDUCATION ACT** |
| **IEP** | **INDIVIDUAL EDUCATION PLAN** |
| **IL** | **INDEPENDENT LIVING (SERVICE)** |
| **JCJC** | **JUVENILE COURT JUDGES COMMISSION** |
| **JLC** | **JUVENILE LAW CENTER** |
| **JPO** | **JUVENILE PROBATION OFFICER** |
| **LRT** | **LEADERSHIP ROUNDTABLE** |
| **LCRT** | **Local Children's Roundtable** |
| **MA** | **MEDICAL ASSISTANCE** |
| **MEPA** | **MULTIETHNIC PLACEMENT ACT** |
| **NACC** | **NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN** |

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| **NBPB** | **NEEDS BASED PLAN AND BUDGET** |
| **NCSC** | **NATIONAL CENTER FOR STATE COURTS** |
| **NCJFCJ** | **NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES** |
| **OCFC** | **OFFICE OF CHILDREN AND FAMILIES IN THE COURT** |
| **OCYF** | **OFFICE OF CHILDREN, YOUTH, AND FAMILIES** |
| **PA.R.J.C.P.** | **PENNSYLVANIA RULES OF JUVENILE COURT PROCEDURE** |
| **PLC** | **PERMANENT LEGAL CUSTODIANSHIP** |
| **PPI** | **PERMANENCY PRACTICE INITIATIVE** |
| **PRH** | **PERMANENCY REVIEW HEARING** |
| **RTF** | **RESIDENTIAL TREATMENT FACILITY** |
| **SCM** | **SHARED CASE MANAGEMENT** |
| **SIL** | **SUPERVISED INDEPENDENT LIVING (PLACEMENT)** |
| **SPLC** | **SUBSIDIZED PERMANENT LEGAL CUSTODIANSHIP** |
| **SRT** | **STATE ROUNDTABLE** |
| **TPR** | **TERMINATION OF PARENTAL RIGHTS** |

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