

# 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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# 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, has developed this Benchbook to assist new and experienced judicial officers in their efforts to provide timely and comprehensive action in child welfare cases and assure safe and permanent homes for children who are abused, neglected, or dependent. In order to achieve this goal, the Benchbook provides:

- A summary of the legal requirements for dependency court proceedings, as well as detailed information on a number of special 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, and proposed colloquies to assist in the conduct of hearings.

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 might also include **Chapter 2: The Role of Judges and Masters**, 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.

Other essential background information is provided in **Chapter 3: 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 have a preliminary responsibility to appoint counsel for children, parents, and guardians, the Benchbook also includes a discussion of these matters in **Chapter 4: Right to Legal Representation**.

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 5: Entering the Child Welfare System/Shelter Care Hearing**), proceeding in sequence through adjudication (**Chapter 6: Adjudication**, supplemented by **Chapter 7: Visitation**), disposition (**Chapter 8: Disposition**), post-dispositional review (**Chapter 9: Permanency Options**, **Chapter 10: Permanency Hearing**, and **Chapter 11: Permanency Hearing to Consider Change of Goal (“Goal Change Hearing”)**), and concluding with termination hearings (**Chapter 12: Termination of Parental Rights**, supplemented by **Chapter 13: Appeals**) and adoption hearings (**Chapter 14: 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, the critical questions to be addressed, and the findings and content of the order.

To further assist judges and masters presiding over these hearings, the Benchbook includes a separate set of **Bench Cards**. The two-sided bench card for each hearing incorporates essential material from the corresponding hearing checklist in a shortened, easily accessible format located at the end of each hearing chapter. The bench cards are fashioned after those developed by the National Council of Juvenile and Family Court Judges for the widely used *Resource Guidelines* and *Adoption and Permanency Guidelines*, but are specific to Pennsylvania law and procedures.

Following the core chapters devoted to dependency hearings, **Chapter 15: General Issues** contains useful 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, the appropriate handling of child testimony, and considerations applicable to youth aging out of dependency.

**Chapter 16: 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 in the child welfare area, 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 policy making, research organizations, and information clearinghouses, as well as various tools and guidelines that have been developed for judicial officers who handle child welfare cases.



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

*“In recent years, the Federal Government has increased their focus on achieving safety, permanency, and well-being for abused and neglected children. Through a combination of legislation, regulations, and executive policy guidance, the Federal Government has encouraged agencies, courts, and other stakeholders to work together to place children who are in the child welfare system into safe, permanent, and loving homes” (Flango and Kauder, 2008, p. 1).*

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 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 goal 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 “themes” include:

**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 master to actively listen and ask questions that challenge all those before the court to expedite safe permanency for the child and families involved in each individual case. More frequent and timely court oversight can effectively move children to safe permanency quicker.

**One judge/one family.** In view of the complexity of most dependency matters, having one judge hear the family’s entire dependency case, from initial hearing until conclusion of court involvement, is preferred. In jurisdictions utilizing masters or hearing officers, the approach applies to those judicial officers and includes the oversight of the judge. This practice promotes stability and continuity throughout the case to help ensure safe, timely permanency for children.

**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 counsel for all parties are well-trained and well-equipped to provide comprehensive and thorough client representation. Additionally, counsel should be appointed as early as possible upon filing of a dependency petition, preferably prior to 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. Safety assessments, decisions, plans, and follow-up regarding 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 demonstrated again and again 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. The issue of timeliness and recommended optimal time requirements will be highlighted throughout the Benchbook.

**Concurrent planning.** The court holds the ultimate responsibility to ensure permanency for all dependent children, either by safe reunification or by securing a safe, alternative permanent home for the child. Simultaneous planning for both options may be 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.** This Benchbook emphasizes the importance of family connections, even in cases where families may not be reunified, and calls attention to the damage that can be caused to children when proper steps are not taken to maintain these connections while ensuring child safety.

**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 their only links to their families and many older siblings feel responsible for the care and well-being of younger siblings. Ongoing, safe, sibling contact should be a priority 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.** Locating 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.

**Using kinship care and “least restrictive” placements.** With the passage of the Fostering Connections to Success and Increasing Adoptions Act of 2008, the need to identify kin has become more important than ever. In the past, kin have often not been considered as resources, because popular belief dictates that if the parents are 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 can be found more often and with more success. Once located, a thorough and unbiased assessment may identify appropriate kinship resources.

**Early implementation of visitation.** 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 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 reunification, achieving other permanency planning outcomes and decreasing time in care (PA DPW/OCYF, 1999, p. 11).

**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. The identification and delivery of services is best accomplished through a collaborative process with the family. This collaborative process may begin before the court has taken jurisdiction of the matter.

**Creating a culture and expectation of 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.

**Recognizing and reducing trauma for children and families.** It is all too easy to see the physical toll that abuse and neglect at home can have on children who come into court. However, just as significant and often overlooked is the traumatic toll that the dependency process itself can have on children and families. Families are complex social structures and their disruption has the potential to be injurious to both children and adults. Michael Town, a 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. The broader concept of trauma is addressed throughout the Benchbook and in more detail in the Science Companion in order to provide a fuller understanding of how courts can better serve children.

“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



*Mission and*  
*Guiding Principles*  
*For*  
**PENNSYLVANIA'S  
CHILD DEPENDENCY SYSTEM**

Prepared By:

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## Introduction

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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

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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

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### 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

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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**

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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**

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***“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**

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### **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**

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### **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**

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### **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**

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### **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**

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### **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.



# Chapter 2 - The Role of Judges and Masters

## 2.1 Role of Judges

The *Mission and Guiding Principles for Pennsylvania's Dependency System* reproduced in Chapter 1 articulates three major roles for judges in the dependency court: (1) Oversee and manage the progress of individual cases; (2) Demonstrate commitment and leadership in efforts to improve the system as a whole; and (3) Promote collaborative efforts with the child welfare agency and the community (PA Children's Roundtable Initiative, 2009, p.15).

### 2.1.1 Oversight and Management of Individual Cases

As the *Resource Guidelines* emphasize, child welfare cases—because of their length, their scope, and continuous nature of the determinations that they require—involve the court in the lives of the parties and the operations of the child welfare agency to a degree unlike any other court case. Because the decisions are “interlocking and sequential,” the court must perform a more managerial and directive function than in other litigation. 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 (NCJFCJ, 1995, p. 14). 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.
- 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 and 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 inquiry into paternity issues; finding and notifying absent parents; identifying any domestic violence issues and, if appropriate, issuing protective orders; identifying potential relative placement options; and establishing visitation schedules.
- Conducting **expedited review hearings** at critical stages of the case.
- **Taking the initiative** to solicit pertinent information if it is not otherwise presented during the hearing.
- Setting aside **sufficient time for hearings** to ensure that all parties have an opportunity to be heard and all issues can be addressed.

**\*Best practice – Court Scheduling\***

In dependency cases, it is important that court administration, not the child welfare agency, control the scheduling process and manage all court hearing dates and times. 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 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 methods of **alternative dispute resolution** to allow family members to become active participants in the decision-making process.
- 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.
- Identifying **Indian Child Welfare and Interstate Compact** issues at an early stage of the case to avoid delay and disruptions in efforts to achieve permanency.
- Ensuring that a **proper record** is made at each and every hearing, starting at shelter care and throughout the life of the case. All written documents and reports introduced and admitted should be used as evidence during the hearing.

In addition to these managerial functions, the judge 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; and (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 fully understand the court’s order.

### **2.1.2 Commitment and Leadership in System Improvement Efforts**

Judges should be active participants in the development of policies, rules, and standards by which the court and related agencies and systems function (NCJFCJ, 1995, p. 18). Judicial impartiality does not preclude a judge from acting as an advocate 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 the Adoption and Permanency Guidelines 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 (NCJFCJ, 2000, p. 6). 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 both encourage progress toward common goals and identify areas in need of improvement (PA Children's Roundtable Initiative, 2009, p.15).

Judges can also play an important role in ensuring competent representation for parents and children who appear in dependency proceedings. They can join in efforts to establish initial training and experience thresholds, standards of practice, and ongoing specialized training requirements for court-appointed counsel. They can communicate the expectation that hearings will proceed as scheduled, barring exceptional circumstances, and that all parties will be prepared to proceed. Finally, judges can contribute to the training of attorneys, as well as other system stakeholders by participating in seminars and conferences (NCJFCJ, 1995, p. 22).

### **2.1.3 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 (NCJFCJ, 2000, p. 6). Judges should initiate or participate in meetings with child welfare agency representatives at the state and local level. They should encourage greater cooperation in the development of 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 (Hardin, 2002, p. 13).

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), it was established by the Supreme Court of Pennsylvania in 2006. The Children's Roundtable is convened by the courts and collaboratively operated with judges as leaders. 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 (PA Children's Roundtable Initiative, 2009, p.15).

The Adoption and Permanency Guidelines encourage judges to help the community understand that child protection is a community responsibility (NCJFCJ, 2000, p. 6). This can be accomplished by appearing regularly in the community to inform citizens about the child welfare system and to encourage volunteer participation (PA Children's Roundtable Initiative, 2009, p.16). 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.

## **2.2 Role of the Master**

Ideally, a dependency case should be heard by a judge 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 (NCJFCJ, 1995, p. 20). However, in Pennsylvania as in many other jurisdictions across the nation, judge-supervised judicial officers (referred to hereafter as “masters”) 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 masters (Pa.R.J.C.P. 1187). In fact, the judicious use of masters 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/master team can maintain consistency in case processing and outcomes. Finally, a master who is 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 (NCJFCJ, 1995, p.21).

In Pennsylvania, the President Judge (or his or her designee) may appoint masters to hear designated dependency matters. Following appointment, masters 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 master 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 permanency goal of adoption has been approved by a judge, all subsequent reviews or hearings may be heard by the master unless a party objects. Masters 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 master.

The parties to a case retain the right to have a hearing before a judge, rather than a master. Pa.R.J.C.P. 1185 directs the master to inform all parties of this right before beginning the hearing. If a party objects to having the matter heard by the master, the case should be scheduled for an immediate hearing before a judge.

Under Pa.R.J.C.P. 1190, masters 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 master's findings and recommendations 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 master'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.

The master's decision is subject to approval by the judge. Within seven days of receipt of the master's findings and recommendation, the judge is to review the findings and recommendation of the master 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 master for more specific findings; or (4) conduct a rehearing (Pa.R.J.C.P. 1191). When the judge, in rejecting the master's recommendation, modifies a factual determination, a rehearing is to be conducted. The judge may reject the master's findings and enter a new finding or disposition without a rehearing if there is no modification of factual determinations (See *In re Perry*, 313 Pa.Super. 162, 459 A.2d 789 (1983)). Rule 1191 does not prohibit the court from modifying conclusions of law made by the master.

The Pennsylvania Judicial Deskbook advises that, because the findings and recommendations of a master do not become an order of a court unless confirmed in writing by a judge, the judge is ultimately responsible for the work of the masters and must have confidence that the masters are well trained and knowledgeable in the substantive and procedural aspects of the practice of dependency law (Field, 2004, 19). The Deskbook recommends that judges: "(1) make sure that each master is fully trained in dependency law and procedure; (2) set up model guidelines for the conduct of hearings, including timeframes, sample questions and forms of orders; (3) meet regularly with masters to ensure that any issues or problems are addressed early and adequately; and (4) make sure that masters approach each case fully prepared to ensure the rights of all parties, to hear testimony, to listen to and understand the facts presented, and to make fully informed recommendations in an articulate form of order" (Field, 2004, p. 20).



# Chapter 3 - Jurisdiction

## 3.1 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 belonging to the Court of Common Pleas is vested in the court as a whole, for the sake of administrative efficiency cases may be allocated among divisions—specialized units of judges given responsibility for particular kinds of court business. 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 and regulations may be found in Chapter 16: Overview of Federal and State Child Welfare Legislation.)

## 3.2 Dependency Jurisdiction in General

Juvenile courts are given authority to hear proceedings and make dispositions in cases in which children are alleged to be dependent. A multi-part definition of “dependent child” is provided in 42 Pa.C.S. § 6302. A dependent child is one who:

- lacks “proper parental care and control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, or morals”;
- has been placed for care or adoption illegally;
- has been abandoned, or otherwise lacks a parent, guardian or legal custodian;
- is habitually truant without justification while subject to compulsory school attendance;

- has committed a delinquent act and is under ten;
- has habitually disobeyed reasonable parental commands and is ungovernable and in need of care, treatment or supervision;
- was adjudicated dependent previously, remains under the court's jurisdiction, and has committed acts qualifying him as ungovernable;
- has been referred pursuant to an informal adjustment and has committed acts qualifying him as ungovernable; or
- was born to a parent whose current conduct poses a risk to the child's health, safety or welfare and whose parental rights with regard to another child were involuntarily terminated within the 3 years preceding this child's birth.

### 3.3 Divisional Responsibilities

Juvenile courts operate under the guidelines established in the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.* 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 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.) Because only 20 of Pennsylvania's 60 judicial districts have Orphans' Court Divisions,<sup>1</sup> 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 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 transferred to the Orphans' Court, but rather a separate file is opened and the case proceeds independently and concurrently. For the sake of continuity, however, the judge who adjudicated the child dependent or conducted

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<sup>1</sup> 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.



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-master 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.

### **3.4 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.

#### **3.4.1 Inter-County Transfer Cases**

Under Pa.R.J.C.P. 1302, a court has the authority to transfer a dependency case at any time. Upon transfer of a case, the transferring court shall transmit certified copies of all documents, reports, and summaries in the child's court file. CPCMS allows for electronic case transfer from county to county. The electronic transfer of cases must also be accompanied by copies of physical documents.

**\*Best Practice - Case Transfers\***

When cases are being transferred from county to county, the court and agency should consider the resources of the receiving county and needs of the child/family. Some children/families may require a specific service that may not be available in the receiving county. The loss of such a service may delay progress and create a barrier which may hinder the child/family's long-term goal. In these situations, it may be beneficial for the sending county to maintain jurisdiction and cross county lines to provide the service. A judge should exercise caution in these cases.

It can also be beneficial for a judge to make a courtesy call to the judge in the receiving county to provide some background on the case. Consideration should be given whether judicial calls should be on the record with notice to counsel.

### **3.4.2 Interstate Transfer**

Most transfers of children across state lines in the child welfare arena are governed by three interstate compacts.

- 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 who are placed into foster or residential care and are Title IV-E eligible receive medical cards, 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 62 P. S. § 731.
- The **Interstate Compact on the Placement of Children (ICPC)** governs the transfer and continued supervision of children who are 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 placing 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 four primary situations in which children may be sent to other states (ASPHA, 2002, p. 4):

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

The Compact clearly spells out who must use the Compact when they “send, bring, or cause a child to be brought or sent” to another party state. These persons and agencies, called “sending agencies,” are the following (ASPHA, 2002, p. 4):

- a state party to the Compact, or any officer or employee of a party state;
- a subdivision, such as a county or a city, or any officer or employee, of the subdivision;
- a court of a party state; and
- any person (including parents and relatives in some instances), corporation, association, or charitable agency of a party state.

While the majority of placements that cross state lines are governed by the ICPC, 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 or in boarding schools, or “any institution primarily educational in character” (ASPHA, 2002, p. 4) (see Article II(d); see also Regulation No. 4). Article VIII(a) 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.

### **3.4.3 International Transfers**

Placement of children from other countries in 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 US 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 <http://www.refugeesinpa.org>.

### **3.5 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.

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

If it is believed that a child could have ties to an 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 proceeding.

More information on American Indian tribes and child welfare and ICWA can be found at the National Indian Child Welfare Association website at <http://www.nicwa.org/> or U.S. Department of the Interior, Bureau of Indian Affairs at <http://www.bia.gov/>.

# Chapter 4 - Legal Representation in Dependency Matters

## 4.1 Overview

High quality representation of all parties in dependency proceedings is necessary to produce good outcomes for children and families. It is clear that 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.

Historically, there has been a recognized deficiency in the quality of legal representation in dependency cases across jurisdictions. This is attributable to a variety of factors, including unclear role definition, lack of standards of practice, low expectations, high caseloads, 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 (PA Children's Roundtable Initiative, 2009, p. 14). 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 counsel for all parties are well-trained and well-equipped to provide comprehensive and thorough client representation. Additionally, counsel should be appointed as early in the case as possible, preferably prior to the Shelter Hearing.

Attorneys should also be engaged in systemic efforts to improve the handling of dependency cases. They should understand the culture change going on 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 and children in trainings aimed at improving practice in the county.

With quality legal representation as a stated system objective, a number of 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 recognition of 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.

## 4.2 Legal Representation in Dependency Matters in Pennsylvania

### 4.2.1 Judge's Role

Judges should understand that attorneys working on dependency cases often receive limited compensation or, in some cases, none; they should be acknowledged for the public service they are providing. However, 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 assure those attorneys are of the highest quality.

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

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 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 specifically set forth the duties and responsibilities of the GAL in Pa.R.J.C.P. 1154.

The GAL should always be kept apprised of any 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. This includes ensuring that the GAL has access to all relevant court and agency records, such as reports on the child's guardians, reports on the child, and the child's medical 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, and 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 to the court the child's wishes and best interests.

"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

### **4.2.3 Legal Counsel for the Child**

#### **\*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 simply does not provide adequate time for the GAL to understand the child's wishes or best interests.

Instead the GAL should meet with the child immediately upon appointment to the case to ascertain the child's wishes if the child is of appropriate age. The visits should continue on a regular basis in a manner appropriate to the child's age and maturity (Pa.R.J.C.P. 1154).

In many jurisdictions, GAL caseloads are overwhelming, making regular meetings with child clients challenging. To address this issue, some jurisdictions have begun teaming GALs with caseworkers who meet with children and report back to the GALs.

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.

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 are a result of the "acts of the parent". These reasons are identified in 42 Pa.C.S. § 6302 (definition of a dependent child) and include (1), (2), (3), (4), and (10).

If, however, the child's own behavior plays a role in the allegation of dependency, there may be underlying legal liability, in which case the child may need separate 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 interest.

### **4.2.4 Shared Case Management/Dual Jurisdiction**

Shared Case Management occurs when a child is adjudicated as both Dependent and Delinquent. In this situation, the child is in need of

representation from a GAL and/or legal counsel for the dependency matter, as well as 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 best interests of the child in the dependency matter; legal counsel represents the child's legal interests in the dependency matter; and if necessary separate legal counsel represents the child's legal interests in a delinquency case.

#### **4.2.5 Counsel for Parents**

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

“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 counsel is requested by a party 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 should 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 not present 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 contact with parents on a regular basis to keep them aware of the proceedings and get updates regarding any 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 can be compounded by various disabilities and life struggles. 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 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.

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

### **4.3 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 refuse representation.

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 parents’ rights toward 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 should explain that if the parent chooses to question witnesses, these questions should be open-ended to avoid the appearance of advocacy.

- **Explanation of the meaning of the court's rulings and orders.** Finally, the court should rule immediately and explain clearly to the parent what it is that the court is expecting.

#### **4.4 County Solicitors**

Unlike counsel for the parents or the child, who are 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). 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 advisor and counselor, as well as legal representative of the agency. The solicitor is also responsible for ensuring that agency staff are prepared for hearings.

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

#### **\*Best Practice – Solicitor/Agency Preparation\***

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 devising 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.

#### **4.5 Waiver of Counsel**

A child may waive legal counsel only; at no time may a child waive the right to a GAL. All other parties may waive their right to counsel for any proceeding. A party 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 Pa.R.J.C.P. 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 normal 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 “stand-by” counsel if a party waives counsel at any proceeding or stage of a proceeding. 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 must inform the party of the right to counsel again at each subsequent hearing.



# *Chapter 5 - Entering the Child Welfare System/Shelter Care Hearing*

## **5.1 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 large 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 home.

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. As such, there are several ways in which children may enter care. 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; or
- 5) the court accepting supervision of a child pursuant to another state's order.

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.

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).

While Pa.R.J.C.P. 1201 and 1202 allows specified medical professionals, police and the agency to take a child into temporary protective custody, the agency must assert that protective custody is needed and the child must remain in the custody of the agency. 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, with an emergency shelter care hearing to follow within 72 hours (Pa.R.J.C.P. 1240).

Lastly, 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.

**\*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. But family cooperation and identification of needed services may be accomplished through Alternative Dispute Resolution (ADR), including mediation, facilitation, as well as various types of family conferencing (PA Children's Roundtable Initiative, 2009, p. 13).

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 (NCJFC, 2000, p.13). 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 15: General Issues.

## **5.2 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, or the acceptance of jurisdiction or supervision over a case originating in another state.

### **5.2.1 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 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.

As is recommended therein, the agency should prepare a case plan whenever a child is placed pursuant to a voluntary agreement. The case plan should include, at a minimum, each treatment goal that must be achieved for reunification to occur, the services to be provided, and the terms of visitation.

### **5.2.2 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. 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, and (3) a finding that remaining in the home is contrary to the welfare and best interests of the child.

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.

## **5.3 Shelter Care Hearing**

### **\*Best Practice – Presiding over Shelter Care Hearings\***

Although judges and masters 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.

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

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 assure 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 ASFA, parental rights are secondary to the basic interests of the child in these proceedings, and "the health and safety of the child supersede[s] 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, kinship caretakers are required to become licensed foster parents and should be encouraged by the judge or master 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 within 60 days.

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.

Additionally, while in agency care and in placement, any move of a child from one placement to a different placement (regardless of the level of care) should occur only via court action.

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 and the family's needs and in so doing must consider a multitude of issues. As such, a minimum of 30 minutes (and preferably up to 60 minutes) should be allocated for a shelter care hearing.

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 possibly the parents), 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.).

**\*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 if the case advances to TPR and adoption.

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;
- 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; and
- early inquiry into paternity issues and location of, notice to, and engagement of absent parents.

**\*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 true father of the child. Fathers and paternal relatives may prove invaluable to dependent children, as placement resources, additional supports, 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 through the agency 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 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.

Since the hearing must take place on short notice to everyone involved (even the judge or master 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.

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

### **5.4.1 Parent Counsel**

Although the time frame 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 (PA Children's Roundtable Initiative, 2009, p. 14). 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 master should take a direct approach at the outset of the hearing in advising them of the availability of court-appointed 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 master 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)).

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

The court must assign a Guardian *Ad litem* for the child, and the child may not waive such appointment (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); 42 Pa.C.S. § 6302; see Chapter 4: Right to Legal Representation, for further details.)

#### \*Best Practice – Assignment of Counsel\*

Both children and families 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 emergency nature of these hearings may preclude the provision of counsel for parents at the Shelter Care Hearing. However, if counsel cannot be provided for the Shelter Care Hearing, the parent should be provided counsel as early in the process as is possible.

Ideally, all counsel—including the child’s GAL and/or legal counsel, the parent attorney/advocate 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.

## 5.5 Conducting the Hearing

The judge or master 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 (Pa.R.J.C.P. 1241 (comment) & 1243).

In addition to advising the parties of their right to counsel, the judge or master 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 master, the right to have the matter heard by a judge should 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, seeking 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 FGDM conference, or for the utilization of Family Finding 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. If possible, a court reporter should make the record. If not recorded, full minutes of the hearing must be kept (Pa.R.J.C.P. 1242(B)). All witnesses, including agency caseworkers, should 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. 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 (Pa.R.J.C.P. 1409 comments).

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)). All parties shall be treated with proper respect and fairness.

### **5.5.1 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 (Pa.R.J.C.P. 1242(B)(3)).

## **5.6 Findings and orders**

The judge or master is required to set forth his/her findings as to the following (Pa.R.J.C.P. 1242(C) AND (E)); (NCJFCJ, 1995, p. 41):

1. Were there sufficient facts to support the shelter care application?
2. Is custody with the agency warranted? Where will the child be placed (kinship care, foster care, group home, kinship care, etc.)?
3. Would remaining in the home be contrary to the welfare and best interests of the child? If the court can answer yes to this question the final order should include the statement, “It is contrary to the welfare of the child to remain in the home. It is in the best interests of the child to be placed.” This language must be included in the initial order removing the child from the home (shelter order or the emergency order) in order for the agency to claim federal reimbursement of placement expenses for the child for the duration of this placement episode.

4. Is the placement proposed by the agency the least disruptive placement to meet the needs of the child?
5. If a shelter care application was submitted by a person other than the agency, is that person a party to the proceedings?
6. Are any additional orders needed concerning the conduct of the parents or agency efforts to provide services?
7. Are additional orders needed to address the immediate needs of the child, such as immediate medical treatment or evaluation?
8. Were reasonable efforts made by the agency to prevent the child's placement?
9. If services were not offered in the case of an emergency placement, was the lack of efforts reasonable?

**\*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. (CPCMS 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 and affects the agency’s ability to qualify for federal funding for the placement of the child and services to the family.

In addition, the judge or master may place in the order any conditions imposed upon any party; a determination of placement or temporary care of the child; transfer of custody to the non-custodial parent; and any orders for visitation (Pa.R.J.C.P. 1242(E)). Although a judge cannot require services at this stage, the court can ask the agency to offer service 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.

## **5.7 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).



### 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
- \_\_\_ Tribe (if ICWA applies)

\_\_\_ Ask County Attorney and County 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:**

**WHO MAY BE NEEDED:**

- \_\_\_ 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

- \_\_\_ 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.

\_\_\_ Receive all relevant and material evidence to determine need for shelter care.

- Receive all material and relevant 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.

**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
  - Siblings

(Note: Visitation should be frequent and meaningful so as to be reduce trauma of placement.)



**8. EDUCATIONAL STABILITY:**

\_\_\_\_ Ask county agency to provide details regarding the child's school placement.

**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.



## SHELTER CARE HEARING BENCHCARD

Relevant Statutes	42 Pa.C.S. §§ 6325, 6332, 6334  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 <b>not</b> a substitute for the adjudicatory hearing.
Time Frame	<p>Hearing within <b>72 hours</b> of removal (42 Pa.C.S. § 6332).</p> <p>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.</p> <p>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.</p>
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	<p><u>Child in Custody</u>: Adjudicatory hearing within <b>10 days</b> of the filing of the petition.</p> <p><u>Child Not in Custody</u>: Adjudicatory hearing as soon as practical but within <b>45 days</b> of the filing of the petition.</p>



## SUMMARY OF KEY QUESTIONS/DECISIONS SHELTER CARE HEARING



- 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?
- Has Family Finding been done to identify all possible family and caregivers?
- 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 were 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 or evaluation or other examinations?
- What steps have been taken to ensure educational stability for the child?
- What are the terms and conditions for parental visitation or sibling visits?
- What consideration has been given to financial support of the child?

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 Resource Guidelines (NCJFCJ, 1995, p.43).

# Chapter 6 - Adjudication

## 6.1 Overview

The adjudication hearing is the bench trial before a judge or master in which a determination is made as to whether the child is in fact “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 or not they are appropriate. In many jurisdictions the adjudication and disposition are held jointly as a means to expedite the process. While the combining of the hearings is acceptable, it should be noted that burden of proof differs between the two hearings and findings for each hearing must be recorded and committed to the order. (See Chapter 8: Disposition.)

## 6.2 Dependency

In view of the focus at the adjudication hearing on whether or not there is dependency, the judge or master 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 3: Jurisdiction.) The agency must check mark in its petition (a CPCMS statewide form) the specific subsection of Section 6302 under which the child’s situation is covered, which generally are in the categories of neglect (including failure to thrive, parental incapacity), abuse (physical, sexual, emotional), or status offenses (truancy, incorrigibility, ungovernability). There is also a subsection that applies to a parent who has had parental rights 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.

## 6.3 Pre-Hearing Requirements and Considerations

### 6.3.1 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 matter may not be as urgent, and the hearing may be held any time within 45 days of the filing date (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 (PA Children's Roundtable Initiative, 2009, p. 13). Even if a child is not in shelter care, 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 such practices as Family Group Decision Making (FGDM), Mediation, and Family Finding.

It is highly recommend that when a child is in shelter care, 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 (NCJFCJ, 1995, p. 47).

#### \* Best Practices - Continuances\*

Continuances are necessary in any court setting, but their use should be strictly limited in dependency cases. 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" (Pa.R.J.C.P. 1122, comments). 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, such as 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.

### **6.3.2 Appointment of Counsel**

All parties should have the opportunity to receive adequate 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.

Any unrepresented parties must be advised of their right to legal counsel. Parents have a right to counsel at adjudicatory hearings, even if obtaining counsel may cause a delay in the hearing (*In Interest of S.N.W.*, 524 A.2d 514 (Pa. Super. 1987)). Further, parents are entitled to effective assistance of counsel (*In re: N.B.*, 817 A.2d 530 (Pa. Super. 2003)). 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 re: D.K.*, 922 A.2d 929 (Pa. Super. 2007)).

### **6.3.3 Notification**

All parties to the adjudication hearing should receive formal notification. This includes the agency solicitor, the child's GAL and/or legal counsel, parents, foster parents, pre-adoptive parents or relatives providing care for the child, the county agency, the Court Appointed Special Advocate if any, and any other persons as directed by the court (Pa.R.J.C.P. 1361).

The importance of locating and notifying absent and putative fathers is discussed in Chapter 5: Entering the Child Welfare System.

### **6.3.4 Discovery**

A comprehensive set of rules (Pa.R.J.C.P. 1340-1342) govern discovery and inspection for all phases of dependency proceedings, beginning with the period preceding the adjudication hearing. 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 Pa.R.J.C.P. 1340 notes, however, the purpose of the discovery rules 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. However, the disclosure is required only as to reports that will be submitted as evidence, and the names of confidential sources who have reported possible abuse are not to be disclosed.

### 6.3.5 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 master appointed for the purpose. Moreover, nothing in the rule precludes the court from ordering the parties to conference outside of the presence of a judge or master. Again, it may be useful to explore the use of techniques such as mediation, facilitation or FGDM during the pre-adjudication phase. (See Chapter 5: Entering the Child Welfare System, for a discussion of best practices related to pre-trial voluntary agreements for services.)

### 6.3.6 Stipulations

After the petition is filed, the agency and the 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 (PA Children's Roundtable Initiative, 2009, p. 13). All of these possibilities obviously lessen the need for extensive court hearings. Nonetheless, the court must still make an independent determination that the child is dependent; thus, any stipulation is subject to rejection if the judge is not convinced by the information available that dependency has been established. If the stipulation is rejected by the court, a full adjudicatory hearing is conducted (Pa.R.J.C.P. 1405(B)).

When adjudications are uncontested, in the form of an admission by the parents or an agreement or stipulation among the parties, the *Resource Guidelines* 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, are important to the case review, and are ultimately the benchmark against which progress is measured (NCJFCJ, 1995: 47).

### 6.3.7 Reports and *Ex Parte* Communication

The judge or master 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 (see Chapter 15: General Issues) may be present.



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 master cannot base the ultimate decision on any 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 master are improper (Pa.R.J.C.P. 1406 and 207 Pa.Code § 33(3)(A)). All parties must be informed of any *ex parte* letter or contact that a judge or master 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.

### **6.3.8 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 re: L.C. II*, 900 A.2d 378, 381 (Pa. Super. 2006): “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.” 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 re: 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). This right to be heard has also been extended to a foster parent and a preadoptive parent.

## **6.4 Conducting the Hearing**

The judge or master 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, its importance should be established by the judge or master's tone at the outset. It is akin 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 master should explain, whenever necessary, how the hearing will proceed.

The hearing proceeds with due process considerations of notice of the contentions and an opportunity of all parties to present testimony and other evidence, in accordance with the usual rules of evidence. All witnesses are subject to cross-examination, even by a *Pro Se* party who has waived counsel (Pa.R.J.C.P. 1406(C)).

## 6.5 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)). The court is not free to apply a best interest of the child standard (*In re: Haynes*, 473 A.2d 1365 (Pa. Super. 1983)); (Pa.R.J.C.P. 1409 Comment).

## 6.6 Findings and Orders

Under Pa.R.J.C.P. 1408, the court must enter a finding that specifies which of the allegations in the petition have been sustained and are the basis for the finding of dependency. The findings may be announced orally at the conclusion of the hearing and later set forth in a written order. 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 (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) A statement as to whether the court finds the child to be dependent from clear and convincing evidence.
- (2) The specific factual findings that form the bases of the court's decision.
- (3) Any legal determinations made.
- (4) Any orders directing the removal of a child from the home or changes in the child's current residential status, including orders as to placement, visitation, or changes in custody.
- (5) Any orders as to services, investigations, evaluations, studies, treatment plans, reports, or other steps that may assist in the preparation for the disposition hearing.

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 5: Entering the Child Welfare System, for a fuller discussion of reasonable efforts requirements).

In Pennsylvania, dependency findings and orders for adjudication hearings are contained within the CPCMS Dependency Module. These court 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.



## ADJUDICATORY 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  Father and attorney  
 Guardians/custodians and attorney  GAL and/or attorney  
 Tribe (If ICWA applies)  
 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 parents *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:**

Placement:

- Determine the child's placement prior to disposition.
- Ask county agency to evaluate relatives and friend of the family as possible caregivers.

Services:

- If disposition is to be set at a later time, ask county agency to address what services can be given to the parents prior to disposition.
- Offer family the opportunity to have a FGDM Conference.
- Order services appropriate to the family that will allow 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 parties are in agreement with the plan (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 visit.

Educational Issues:

- Determine if the child's educational needs are being met.

**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 county agency to detail efforts made to avoid protective placement of 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 need for removal was reasonable due to the following emergency circumstances:

\_\_\_ County agency has NOT made reasonable efforts to prevent or eliminate the need or placement because:

\_\_\_\_\_

**7. SCHEDULE NEXT HEARING:**

\_\_\_ Disposition Hearing **Date:** \_\_\_\_\_  
(*Note:* The Hearing must be held within twenty (20) 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.





## ADJUDICATION HEARING BENCHCARD

Relevant Statutes	<p>42 Pa.C.S. §§ 6302-6341</p> <p>Pa.R.J.C.P. 1240 - 1243, 1340 - 1342, 1406 (discovery)</p>
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	<p>Hearing within <b>10 days</b> of petition if the child is in custody.</p> <p>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) &amp; (2)).</p> <p>If the child is not in custody, the hearing should be within <b>45 days</b> (Pa.R.J.C.P. 1404).</p>
Rules of Evidence	The statute does not set forth specific details on the admissibility of evidence so it is in the trial court's discretion as to whether evidence is admissible. The statute does provide that a party has the right to present evidence and to cross-examine witnesses (42 Pa.C.S. § 6338).
Standard of Proof	<p>Clear and Convincing Evidence 42 Pa.C.S. § 6341(c)</p> <p>Stipulations and agreements cannot substitute for the presentation of evidence from the parties and/or disinterested parties. The court must make an effort to assure the presentation of evidence.</p>
Next Hearing	<p><u>Child in Custody</u>: Disposition hearing must be held within 20 days of the findings of clear and convincing evidence of adjudication (Pa.R.J.C.P. 1408 &amp; 1510).</p> <p>The majority of jurisdictions in Pennsylvania hold the adjudicatory and disposition hearings consecutively for the purposes of timeliness and convenience.</p>



## KEY QUESTIONS/DECISIONS ADJUDICATION HEARING

- Which allegations of the petition have been proved 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 Family Finding been done to identify all possible family and caregivers?
- Has the family been offered a Family Group Decision Making Conference?

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

- Where will the child be placed 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 caretakers?
- Is the agency continuing to try to notify noncustodial parents?
- If the child will be in foster care, what are the terms for parental visitation, sibling visits, and financial support of the child?

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 7 - Visitation

## 7.1 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, once broken, cannot easily be restored. 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. And even when some other permanency goal has replaced reunification, regular visitation may nevertheless be in the best interests of the child.

For all of these reasons, it is important that courts exercise oversight over visitation arrangements, and not leave this responsibility solely to the agency. The court should determine initially 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.

## 7.2 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 in the court's orders at the end of each hearing.

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 age of 6 months and 3 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. Older children, though vulnerable, have language skills to better cope with change, and thus usually need less frequent visits to maintain their connections. But the visits may need to be longer.

The court, on a case by case basis, should ensure that the quantity and quality of visits are appropriate for the family. It is not recommended that visitation be left to the discretion of the agency. A visit should, if practical, include daily living activities. Interactions should be sensitive to the parents' and child's emotions. It is natural for children to become agitated following visits and 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 critical, a positive drug screen at any point in the life of the case should not be the sole basis for suspending or cancelling a visit. The visitation plan should be modified over time with strategic planning of the initial arrangements, the middle phase, and finally, the transition plan.

Visitation also calls for oversight by the court as to the appropriate level of supervision. This includes moving to unsupervised visits as quickly as safety allows, 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 the use of technology for video conferencing and virtual visits using web cams. Parents should also be encouraged to attend medical appointments, school functions and other activities of the child. Consider also involvement of foster parents, who are invaluable in programs where special training allows them to role model and assist at visits with parenting techniques. Consider arranged visits with foster parents to nurture relationships.

**\*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 (PA Children's Roundtable Initiative, 2009, p. 12).

### **7.3 Legal Requirements Governing Visitation**

As long as the goal is reunification, 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)). This standard reflects the parents'

constitutionally protected liberty interest in such visitation, and also the significant consideration of allowing a parent to maintain a meaningful and sustaining relationship with his or her child (*Id.*) (See also *In re: B.G.*, 774 A.2d 757 (Pa. Super. 2001); *In re: C.J.*, 729 A.2d 89 (Pa. Super. 1999)).

The term “grave threat” is not specifically defined in case law other than to limit visits by a parent who suffers from “severe mental or moral deficiencies” (*In Interest of Rhine*, 456 A.2d 608, 613 (Pa. Super. 1983)). Poor parental judgment during visits is not enough to limit a parent’s visitation, nor a contention that the parents at visits are “undercutting” the authority of foster parents, or that the caregivers complain of “acting out” by the child after the visit (*In re: B.G.*, *supra*).

For the most part, the Juvenile Act does not contain any guidelines as to 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 (2) weeks” (55 Pa. Code § 3130.68). Note that the regulation specifies only a minimum required frequency, however; courts should be reluctant to approve “cookie-cutter” minimum visitation plans that always provide for visits every two weeks, without consideration of each child/family’s unique needs. Relying solely on the administrative regulation provides parents with 52 hours per year or 2 ¼ days of visitation. Clearly this level of visitation is minimal at best.

There are three exceptions to the regulation that the agency must 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. The same is the case when visitation has been freely refused in writing by the parents. Finally, the regulation authorizes 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 regulation serves only as an internal guide for the agency, and does not set a standard for the court order. Accordingly, the court’s obligation is to apply the “grave threat” standard if reunification is the goal (*In re: C.J.*, *supra*).

## **7.4 Sibling Visitation**

The preferred method for ensuring sibling contact is to place siblings together. When this is not possible, frequent, ongoing sibling contact and visitation is critical. Visitation with siblings can be of great value in serving the best interests of the child (PA Children’s Roundtable Initiative, 2009, p. 11-12). Federal law (see the account of the “Fostering Connections to Success and Increasing Adoptions Act of 2008” in Chapter 16) recognizes the special relationship siblings may have with one another and requires states to make “reasonable efforts” in dependency cases to provide “for frequent visitation or other ongoing interaction between the siblings.” 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 as well. 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 under Pennsylvania law, a sibling does not have *standing* to seek a court-ordered visitation with a minor sibling (*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 (*In the Interest of C.F.*, 647 A.2d 253 (Pa. Super. 1994)).

"I was happy that my youngest brother and I were always placed together so I could keep an eye on hm. 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

## 7.5 Visitation Arrangements

There are a wide array of approaches to visitation across Pennsylvania. In one county, visits take place on weekends at the courthouse, with organized play therapy available. 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. Regardless of the location and setting, visitation should support the development of healthy family relationships.

In some instances, supervision may be required to ensure the child's 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.

## 7.6 Visits with Incarcerated Parents

Visitation with an incarcerated parent is subject to the same general standards as visitation in other cases, depending primarily on the case plan goal; however, the fact of confinement brings up difficult practical concerns. Accommodations to the incarcerated parent need not be made (*In re: C.J.*,

*supra*). Nonetheless, perhaps there can be some time planned for a visit in conjunction with the inmate being brought to the courthouse for a juvenile court hearing. Videoconferencing at a state institution set up for a hearing can also be kept open for a short period of visual and audio contact. Also, a county prison can establish a visitation area that is child-friendly, and not so intimidating for a child visitor.

## 7.7 “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 master to use his or her experience and wisdom, 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.*, *supra*, 674 A.2d at 706:

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.

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 properly supervised. An older child’s preference should also carry great weight, particularly where the child is of high school age.

If the child is in a pre-adoptive home, maintaining parental visits will generally serve no purpose. Moreover, visits will likely prolong or delay emotional transitions and create confusion and anxiety for the child.





# Chapter 8 - Disposition

## 8.1 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 the purposes of 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 master 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, as well as 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 and 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/Permanency Plans, professional reports or evaluations are not available), the court may adjudicate the child and defer disposition. If the child has been removed from the home, the disposition hearing must be held within 20 days after adjudication (Pa.R.J.C.P. 1408 & 1510). In these circumstances, the child is typically ordered to remain in the current placement setting, if placed out-of-home, until the disposition hearing. Bifurcating the process in this manner allows more time to obtain information on the case and aids the judge or master in making the most appropriate decision on the custody and placement of the child. This also allows the agency the opportunity to more fully engage the family in identifying the most appropriate services.

### **\* 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 master can 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 (PA Children's Roundtable Initiative, 2009, p. 13).

## **8.2 Preliminary Matters**

As is the case with other dependency hearings, notice must be provided to all parties in advance of the dispositional hearing. Notice of the hearing must be provided to the agency solicitor, the child's GAL and/or legal counsel, parents, foster parents, pre-adoptive parents or relatives providing care for the child, the county agency, the Court Appointed Special Advocate if assigned, and any other persons as directed by the court (Pa.R.J.C.P. 1501).

Likewise, parties at the dispositional hearing are entitled to be represented by counsel, as discussed more fully in Chapter 4: Right to Legal Representation.

In addition, the rules governing discovery and inspection in dependency cases (Pa.R.J.C.P. 1340-1342), discussed above in Chapter 6: Adjudication, also apply prior to dispositional hearings.

## **8.3 Reports**

At the dispositional 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 (Pa.R.J.C.P. 1509).

The Family Service Plan (FSP) is the plan developed for the family by the agency. Creation of this plan should be accomplished with the family's input. Under 55 Pa. Code § 3130.61, the FSP must include identifying information on the family members, the circumstances which necessitated placement, service objectives and services to be provided to achieve the objectives, actions to be taken by the parents, children, the county agency or other agencies, and the dates when these actions will be completed. In counties that use Family Group Decision Making (FGDM) to identify needed services the FGDM plan is often incorporated into the FSP document.

The agency is generally 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 dispositional hearing, it may be appropriate to bring the parties back for a post-hearing review of the completed FSP.

Additionally, upon placement of a child, the agency is required to prepare a Child's Permanency Plan (CPP) (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 which 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 (55 Pa. Code § 3130.67).

**\*Best Practice – Concurrent Planning\***

In all cases where children are removed from the home, the agency should engage in 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 primary 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 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 reviews the status of the concurrent plan at future hearings, but the concurrent plan should initially be established at disposition.

The services provided in any plan should be specifically tailored to the child and family. Each family with whom the system works is different and therefore services need to be tailored to fit each family's individual needs. The identification and delivery of services is best accomplished through a collaborative process with the family. In many counties this is identified through a FGDM meeting or other family conference.

## **8.4 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 the resolution of the issues, as opposed to simply acquiescing in a court-imposed ruling.

In some counties alternative dispute resolution processes such as mediation or facilitation may be utilized to reach this agreement. Regardless of the method used, the agreement should address, in detail and with completeness, how this matter will move to resolution in a definite and acceptable time frame. Particular emphasis should be placed on the facts which led the agency to initiate dependency proceedings, and a 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 master inform the parents what improvement on their part must be shown before the child can come home.

**\*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.

## **8.5 Conduct of the Hearing**

The judge or master sets the stage for what happens in the courtroom, starting with an introduction, an explanation of the judicial role and a description of what is going to 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 the manner in which 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 the child and the family leaves the hearing with hope.

All procedures and rules of evidence applicable to adjudication hearings are applicable 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 (42 Pa.C.S. § 6341(d)). The court may entertain both testimonial evidence and documentary evidence during the proceeding. Testimonial evidence may be offered by all persons and agency representatives who have current knowledge of the child and the family, so the court can use this relevant knowledge in making permanency decisions for the child. Documentary evidence from the agency, private providers, schools and health care providers, should be secured by counsel and the Guardian, and provided to the court and all parties. Written reports can directly assist a judge in reaching a decision, in addition to giving caseworkers additional perspective as to 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 set, which will provide touch points for later reviews.

The key discussion in a disposition hearing is whether it is **clearly necessary** that the child be placed or continued 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 attempt to place the child and his or her siblings, if possible, with a safe relative minimizing any potential trauma. Each child has a family, immediate and extended. Locating members of that extended family 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 has great latitude to impose conditions and limitations which 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 which speaks to the needs and problems of the child and parents.

"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

**\*Best Practice – Maintaining Family Connections\***

The single most identified factor contributing to positive outcomes for children is the maintenance of meaningful connections and relationships with safe, supportive family members. 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. By doing that, we honor relationships between family members, give a family the opportunity to heal and develop trust with the agency, and provide a child with a much-needed sense of belonging (PA Children's Roundtable Initiative, 2009, p. 10).

Depending on the nature of the case, a judge or master may consider asking the family to engage in FGDM, if it has not yet been undertaken. Although a judge or master should not order a FGDM conference, as this is a voluntary practice, the judge or master 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 so as to 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 useful. With the parties working together to find solutions in a non-adversarial environment, 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 15: General Issues).

Should no agreement be reached, the court will make the determination as to whether the child can stay at home with safety measures in place or should be placed away from the home, and if so, where, specifically, the child is to reside.

## 8.6 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.

### **\*Best Practice – Active, Ongoing Court Oversight \***

When placement out of the home is necessary the court should include the type of placement and 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 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 master requesting the case be returned to the court within 30 days to determine the actual placement of the child and issue a new order.

If a child is moved prior to a court hearing the case should be brought back before the court to make a determination on the appropriateness of the move. This practice can provide insight to the court on the frequency of moves endured by the child. In all situations, care should be exercised to limit placement moves and the corresponding trauma that moves have on the child. Finally, in any placement move experienced by the child, the court should re-examine the child’s educational stability and plan.

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

Under 42 Pa.C.S. 6351(b), before entering a dispositional order that would remove the child from the home, the court must formally find that remaining in the home would be “contrary to the welfare, health or safety of the child” and, unless there are “aggravated circumstances” in the case (see Chapter 15: General Issues), must also determine the following:

- Whether the agency made reasonable efforts to prevent placement;
- Whether an emergency situation made it reasonable to make no preventive efforts; or

- Whether, in a case in which a previous determination was made at a shelter care hearing that reasonable efforts were not made to prevent removal from the home, reasonable efforts are now under way to make it possible for the child to return home.

Under Pa.R.J.C.P. 1515, other areas to be covered in the order include:

- The terms, conditions and limitations of the disposition;
- The name of the person or organization that is to provide care or supervision of the child;
- Any evaluations, test, counseling or treatments (with time frames for completion where applicable);
- Any ordered Family Service Plan or Permanency Plan, if not already prepared;
- Visitation schedules or limitations related to parents, siblings and other family members;

In Pennsylvania, dependency findings and orders for dispositional hearings are contained within the CPCMS Dependency Module. These court 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.

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 10: Permanency Hearing) and be distributed immediately to all parties.





## DISPOSITION HEARING CHECKLIST

### 1. TIMELY HEARING:

\_\_\_\_ **Date** Child Removed: \_\_\_\_\_  
\_\_\_\_ **Date** of Disposition Hearing Care Hearing: \_\_\_\_\_

(Note: The Disposition Hearing must take place no later than twenty (20) days after child is adjudicated dependent.)

### 2. NOTICE 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                      \_\_\_\_ Father and attorney  
\_\_\_\_ Guardians/custodians and attorney      \_\_\_\_ GAL and/or attorney  
\_\_\_\_ Tribe (If ICWA applies)  
\_\_\_\_ Determine 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/Preadoptive 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 child is in foster care for fifteen (15) of the last twenty two (22) 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.

\*\* 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 and 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.

**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.

**7. SCHEDULE NEXT HEARING:**

- \_\_\_ 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.

## DISPOSITION HEARING BENCHCARD

Relevant Statutes	42 Pa.C.S. § 6351 (a) and (b)  Pa.R.J.C.P. 1340-1342; 1408, 1510 & 1512 (A) (1).
Purpose of Hearing	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 problems affecting the child.
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)).
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	<p><u>Permanency Hearing:</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)).</p> <p><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)).</p> <p><b>Best practice is to conduct review hearings a minimum of every 3 months.</b></p>



## KEY QUESTIONS/DECISIONS DISPOSITION HEARING



- 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 problems and needs of child and parent?
- 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?
- 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?
- 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 the family been offered a Family Group Decision Making Conference?

These questions are adapted from the text of this chapter, the Mission and Guiding Principles for Pennsylvania's Dependency System and the *Disposition Hearing Checklist* provided in the Resource Guidelines (NCJFCJ, 1995, p. 63-64).

# Chapter 9 - Permanency Options

## 9.1 Overview

ASFA amended the Social Security Act, at 42 U.S.C. § 675(5)(C), requiring states to establish a hierarchy of permanency goals for children in the child welfare system, giving the highest preference to reunification. Subsequent amendments to the Juvenile Act, at 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 and welfare.
3. Place the child with a permanent legal custodian, where adoption is not best suited to the child’s safety and welfare.
4. Place the child permanently with a fit and willing relative, where legal custodianship is not best suited to the child’s safety and welfare.
5. Place the child in some other court-approved and permanent living arrangement, in instances where the agency has shown a “compelling reason” for ruling out all of the above four options.

The court’s role in reviewing the permanency goal, as well as the concurrent plan goal (discussed more fully in Chapter 8: Disposition) 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 8: Disposition.)

## 9.2 Reunification

Reunification of a child and parent is the preferred permanency choice under ASFA and the Juvenile Act (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 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. 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 (PA Children's Roundtable Initiative, 2009, p. 9).

Examining the agency's efforts to reunite the family provides insight into whether the child can be safely reunited with his or her parents. Factors the court should consider have been enumerated in *Making it Permanent: Reasonable Efforts to Finalize Permanency Plans for Foster Children* (Fiermonte and Renne, 2002, p. 12-17):

- Whether the services provided to the parents by the agency 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 master 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.
  - If possible, depending on the age of the child, the judge or master should talk to the child directly to determine the child's wishes. (See the discussion of "Children in Court" in Chapter 15: General Issues.) In any case, the child's advocate should inform the judge 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 master should inquire of the agency if the parent has consistently kept the visitation appointments and if the visitations have been meaningful and effective.
- 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 day

care 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 concerns 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 master must assure that the child is not out of the home because the parents do not know what is required of them to get the child returned home. The judge or master should also ensure that what needs to be completed is specific and understandable and that it serves the best interests of the child.

### **9.3 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)). 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 the fact that it ends the court's oversight, so that the family has the opportunity to 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 to ensure the adoption process is thorough so that the placement is not challenged later. The judge or master should inquire at the permanency hearings as to efforts the agency is making to find a permanent adoptive home for the child. Once the permanency plan has been changed to adoption, the agency is required to make reasonable efforts to identify, recruit, and process prospective adoptive homes for the child. Reasonable efforts include determining the child's wishes, looking at current caregivers and relatives as possible adoptive families or identifying other possible prospective adoptive parents.

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 just 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.

In looking for adoptive parents the agency should first consider the current caregivers and relatives. The agency must determine the willingness of current caregivers and relatives 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. Relatives often hesitate because they believe that the child may return to the parent, for example. 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 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 16: Summary of Major Federal and State Child Welfare Legislation).

Some children are hard to place 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. 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 are contained in Chapter 16: Summary of Major Federal and State Child Welfare Legislation).

Regardless of who the prospective adoptive parents are or where they reside, the agency should make certain that the prospective adoptive parents are well informed about the adoption process and the fact 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 particularly important 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

## 9.4 Permanent Legal Custodianship (PLC)

Legal custodianship in Pennsylvania, as defined in 42 Pa.C.S. § 6357, is the equivalent of legal guardianship under 42 U.S.C. § 675 (7) as amended by ASFA, and 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 other planned permanent living arrangements (42 Pa.C.S. § 6351(f.1)(3)). It has a higher preference than relative placement because it provides permanency and stability without ongoing state oversight, while often maintaining ties with siblings, extended family members and the 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 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 a permanent legal custodianship in order for the court to establish it. However, since the court will no longer have an oversight role following a permanent transfer of legal custody, it is imperative the custodian and the parent be able to maintain a cooperative relationship, with both parties having a clear understanding of the duties and responsibilities of custodianship.

The Department of Public Welfare's Office of Children, Youth and Families (OCYF) has published Bulletins delineating the rights and duties of the custodian and the parents. The 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 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, however, this is technically a new proceeding.) The biological parent or the legal custodian may also file motions to have the legal custodianship terminated. 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 custodian wishing to be relieved of custodial responsibilities, the court must decide whether to continue or revoke the legal custodianship on the basis of the best interests of the child.

In considering whether legal custodianship serves the best interests of the child, the court must be acutely aware of the pros and cons of the arrangement (Fiermonte and Renne, 2002, p. 52):

Pros:

- Legal guardianship is sometimes better for relative caregivers when termination of parental rights is inconsistent with cultural or family traditions.

- The child may not want parental rights to be terminated; legal guardianship 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 guardian is not the child's legal parent, the guardian's ability to make permanent, binding decisions on behalf of the child is limited.
- Lack of permanency may cause some concern to the child.
- A biological parent whose rights are not terminate may attempt to undo the arrangement.
- Legal guardianships are inherently less stable and less permanent than adoption.

## 9.5 Permanent Placement with a Fit and Willing Relative

The Pennsylvania Kinship Care Program Bulletin outlines that when a child is initially removed from the home, the agency should give first consideration to placing the child with a relative; therefore a child's initial placement will likely be with a relative if one is available. Ideally, that relative will choose to adopt or become the legal custodian of the child if reunification is not possible. If the relative is unwilling, the court is obligated to determine if there is another appropriate person 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 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 and the Juvenile Act all strongly support relative placements in lieu of placements with strangers whenever possible. Moreover, periods of placement with relatives are not counted for purposes of the requirement that a petition for termination of parental rights be filed whenever a child has been out of the home for 15 of the most recent 22 months (42 Pa.C.S. § 6351(f)(9)(i)).

On the other hand, relative placement as a 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 really feel capable of caring for the child but feels compelled to do so. The authors of *Making it Permanent* suggest

the following pros and cons be considered when a permanency goal of relative placement is proposed (Fiermonte and Renne, 2002, p. 69):

Pros

- Relatives often have a sense of familial responsibility and may be 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 kin more easily than living with strangers.

Cons

- Relatives often receive fewer services than nonrelatives.
- 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 parent.

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 Program established in Act 25 of 2003, which defines a relative as 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 25 of 2003).

In general, "fit and willing" can be defined as the ability to ensure the child's safety and meet the child's needs (Child Welfare Information Gateway, 2008, p. 2). 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 (Act 25 of 2003). 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.

**\*Best Practice – Kinship Caretaker\***

The judge or master should inquire as to whether the kinship caretaker has cooperated with the agency to finalize the foster care licensing process and encourage the potential kinship resource to complete the process as soon as possible. The judge or master should also ensure that the agency is providing all necessary services to support the kinship resource.

Following placement with a relative, the agency continues to be involved in the case and provide supervision. The level of supervision required may vary depending on the resources of the relative 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 master should make sure that the agency has made reasonable efforts to ensure the placement is suitable for the child and the relative is not taking the child unwillingly, or solely in order to prevent the termination of parental rights. The judge should inquire as to the following issues (Fiermonte and Renne, 2002, p. 67-70):

- Whether the relative should adopt or enter into a guardianship
- Whether the child has a bond with the family
- Whether nonrelatives 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 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
- Whether all the necessary services have been provided

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; 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.

## **9.6 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 (42 Pa.C.S. § 6351(f.1)(5)) require the agency provide the court with a “compelling reason” why one of the other permanency options is not available to the child. While the least preferred of all options, APPLA should not be viewed as a catchall or as 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).

This does not mean a permanent foster care situation cannot be approved, as long as there is an understanding that the living situation will be permanent and the relationship between the foster parent and the child will endure. Permanent foster care means the child will not be moved from home to home and have his/her life disrupted until he/she ages out of the system, but rather that the child has a home that is stable and promotes physical and emotional well-being even after the dependency case is terminated. The OCYF has published a bulletin which states that permanent foster care is only acceptable if the agency has documented that (1) it would be in the child’s best interest not to return home, be adopted, or be placed with a legal custodian or a relative; and (2) this particular foster family intends to provide for this child permanently and their commitment to the child extends beyond the child reaching the age of 18 (OCYF Bulletin 3130-01-01, 2001, p. 99).

In some situations, the permanent plan may be APPLA with group care and supervised independent living services being provided to the child. Group care suggests the child is unable to function in a family setting and requires additional attention that can only be provided in a group setting. The court should periodically review the placement and inquire as to whether any other

placement options have become available. Perhaps the child has developed a relationship with a mentor that could lead to a legal custodianship or perhaps a relative is now available who was not previously available for relative placement.

**\*Best Practice – Family Finding\***

It is imperative that the court ensure all children, especially those with a goal of APPLA, have meaningful and significant connections with responsible, caring adults. One strategy being used throughout Pennsylvania is known as Family Finding. Much more than a web-based search, Family Finding offers methods and strategies to locate and engage the relatives of children living in out-of-home care. Family Finding is used to provide each child with lifelong, supportive adult connections. Where possible, courts should encourage the use of Family Finding methods (PA Children's Roundtable Initiative, 2000, p.13).

Independent living (IL) is the provision of services to help an adolescent live independently. It is important to note that IL is a service not a permanency option. IL services are typically provided at age 16 up to age 21. The judge or master 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 master should make sure that services are sufficient and will continue until the adolescent reaches the age of majority. The authors of the Pennsylvania Judicial Deskbook suggest that the following services should be provided (Field, 2004, p.171):

- Safe and adequate housing
- Access to education
- Job skills training and access to employment
- Means to maintain family connections, including connections with siblings and extended family
- Means to maintain cultural identity and connections to peers
- Access to health care, including physical, mental and dental health services and gynecological services for girls
- Training in the use of transportation systems, financial management, home management and self-advocacy

(More information on IL services is available in the "Transitioning Youth" section of Chapter 15: General Issues.)

Whatever the APPLA, the court continues its permanency reviews every six months, or more frequently if it appears likely that the child's circumstances may change and a more preferred option may become available. At the reviews the judge or master should affirm that the services continue to be provided and that the child is developing long-term relationships with adults, whether they be extended family members, foster parents or mentors. The court should always be looking for a more permanent home for the child.





# Chapter 10 - Permanency Hearing

## 10.1 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, whenever they occur, are denominated "permanency hearings" in Pennsylvania. Moreover, the Juvenile Act specifies a long list of determinations that must be made at all permanency hearings—again, whenever they occur.

However, 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, and minor plan adjustments that may be necessary in view of changes in circumstances. In later permanency hearings, on the other hand, the focus is likely to shift to the 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 11: Permanency Hearing: To Consider Goal Change).

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.

## 10.2 Timing of Permanency Hearings

Permanency hearings must be held within the time frames dictated by 42 Pa.C.S. § 6351(e) and Pa.R.J.C.P. 1607. Generally speaking, courts are required to hold permanency hearings every six months from the start of a case until its final resolution. But in cases involving "aggravated circumstances," including criminal misconduct, gross abuse or neglect, or abandonment on the parent's part, a faster timetable is imposed (for a more complete discussion of aggravated circumstances, see Chapter 15: General Issues).

A 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.

A permanency hearing must be held within 30 days of (42 Pa.C.S. § 6351(e)(3)(ii) and Pa.R.J.C.P. 1607(A)):

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;
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 parent 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.

Note that these mandated time frames 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.

**\*Best Practices – 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 ever 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 advance hearing dates.

Judges and masters should take the lead in scheduling status hearings that address single issues that should not be left unattended between permanency hearings. 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.

### **10.3 Pre-Hearing Conferences**

Courts should consider holding pre-hearing conferences that include all parties and their legal representatives for review in complex cases. This enables the judge or master 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.

### **10.4 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 master 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.

As noted above, however, hearings that are denominated "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 master 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 FSP Status Hearings**—Pennsylvania statutes encourage an expedited court process through adjudication and disposition. Ideally, adjudication occurs within 10 days of petition filing and most courts routinely consider dispositional issues immediately after adjudicatory determinations are made. Review of the appropriateness of the Family Services Plan (FSP) 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. Consequently, a fully developed FSP might not be available for consideration at the time of disposition.

The court has statutory discretion to proceed with disposition even if a FSP is not available. But waiting six months for the next *required* permanency review to examine the FSP is probably too long, given the short permanency time frames envisioned by ASFA and Pennsylvania statutes.

In these instances, it makes sense for the court to schedule an expedited FSP status hearing that allows for an in-court examination of the FSP (with all parties present). 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 probably 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 and, depending on the court, a report summarizing case progress to date. The report usually also addresses 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 is crucial to successful reunification or permanency. At this hearing the judge or master should make sure 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.

This hearing marks the beginning of a transition in focus from examining case progress to the initiation of some definitive steps to finalization of the child’s permanency plan. Serious discussion of a child’s concurrent plan is appropriate if substantial case progress has not occurred.

**\*Best Practice – Concurrent Planning\***

In all cases where children are removed from the home, the agency should engage in 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 primary 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 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 future hearings, but the concurrent plan should initially be established at disposition.

**12-Month Permanency Hearing** — By this time (unless extenuating circumstances apply) the focus of the permanency hearing process should clearly shift to finalization of the child’s permanent plan. If the plan goal remains reunification but the child cannot now be returned home, the judge or master should set very clear expectations regarding what needs to happen to achieve this goal within a clearly defined time frame. In these situations it is also appropriate for the judge or master to schedule expedited status reviews to ensure that steps are being taken to return the child home. The judge or master should make it clear, that if expectations are not met, a goal change is likely to occur at the next permanency hearing.

**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, to schedule a permanency hearing to consider changing the goal (with the agency being required to file the appropriate pleading requesting termination of parental rights or permanent legal guardianship) or a hearing to determine the specifics of an APPLA-type permanent plan.

**Permanency Hearing: To Consider Change of Goal** — (see Chapter 11)

## **10.5 Conduct of the Hearing**

### **10.5.1 Courtroom Management**

At times permanency hearings can be more contentious than adjudication hearings. Often, the facts alleged in the petition for dependency and even the issue of dependency itself are not in dispute. However, after time has elapsed, the parties are not always in agreement 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 particularly emotionally devastating to both child and parents.

The permanency hearing must be driven by the judge or master. It is important for the judge or master to set the tone for the hearing, and to control the proceedings. The judge or master should make it clear what the issues are and keep the parties focused.

At the onset, the judge or master should state the purpose of the hearing and what the court is going 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 relevant!

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 master 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 master's demeanor should reflect the seriousness of the proceedings, particularly when interacting with parents. The parties should feel that they have the opportunity to be heard at the appropriate time. The judge or master should strongly discourage people from speaking unless they are being addressed by a lawyer or the court. The judge or master should control the

emotions of the parties, making it clear that parties and others who have relevant evidence, or who have a legitimate interest in the child or the outcome, will be heard, but that persons who are out-of-control may be asked to leave the courtroom.

**\*Best Practices – 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 easier to follow as well.

Remember to allow additional time in cases with multiple siblings as the court must independently review the case and plan for each child.

The court should have basic questions for caseworkers, foster parents, service providers, therapists, etc. in order to assess compliance, progress, and 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, The Adoption and Permanency Guidelines recommend that the court should not accept stipulations to the plan or agreed orders without full examination of the parties to ensure their understanding of the issues under consideration and that the plan meets the best interests of the child (NCJFCJ, 2000, p. 20).

The judge or master must demand that the professionals involved in the case—the lawyers, caseworkers, services providers, and others—be prepared. If the lawyers and others know that the judge or master has high expectations, they will be prepared.

The judge or master should be an active listener, and should ask questions to supplement the record, to clarify matters, or to 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 master 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 *Resource Guidelines* recommend that 30 minutes be allocated for a routine review hearing, while the *Adoption and Permanency Guidelines* recommend 60 minutes for a true permanency hearing (NCJFCJ, 1995: 74; NCJFCJ, 2000: 19). In allocating time for a hearing, the court should include the time it takes (at least five minutes) to complete the written court order contained in the AOPC's CPCMS so the order can be distributed to all parties at the conclusion of the hearing (see the discussion of Court Orders, below).

### **10.5.2 Persons in Attendance**

As is the case with other hearings in dependency matters, participation in permanency hearings is restricted. However, age-appropriate children, parents (including putative fathers), relatives, other adults with custody, and anyone else with a proper interest should be permitted to attend. The judge or master should ensure that all parties, including the parents, have legal representation. If the parents are not represented, the judge or master should make sure they understand they are entitled to representation and that they are voluntarily choosing to proceed without representation (see Chapter 4: Right to Legal Representation).

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 needs to know the child's wishes regarding the permanency plan. Even though these may be contrary to the child's best interest, it is important for the judge or master to view the case "through the eyes of the child." To that extent, whenever possible, the child should be present so that the judge or master can hear directly from the child. The judge or master should consult with the child in a manner appropriate to the child's age and maturity. If the child is not present in court, or does not wish to speak to the judge or master, the views of the child must be ascertained to the fullest extent possible and communicated to the court by the GAL, attorney, or CASA. The judge or master must ensure that the child's wishes are known in every case (further information on accommodating children in court is provided in Chapter 15: General Issues).

If paternity has not been established at this point, it is important for the judge or master 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 master should direct the caseworker to take affirmative action to engage or involve the father. If the father is incarcerated, the judge or master should demand the caseworker make personal contact with the father at the correctional facility. Most correctional



facilities have videoconferencing capabilities allowing the father to participate by videoconference or at least by teleconference.

Foster parents, pre-adoptive parents and relatives providing care are all entitled to timely notice and the opportunity to be heard at permanency hearings, although this does not give them legal standing in the proceeding unless they have been awarded legal custody (42 Pa.C.S. § 6336.1). If the foster parents, pre-adoptive parents, or kinship caregivers have not submitted a written report (see discussion below, under “Admissibility of Evidence, Reports and other Documents”) or do not ask to be heard, the judge or master 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 foster parents are helping to facilitate the permanency goal, and working toward safe reunification in partnership with the agency.

## **10.6 Matters to be Determined**

42 Pa.C.S. §6351(f) and (f.1) require the court to ensure that ten basic issues be determined at permanency review hearings. If these matters are not covered by counsel, then the judge or master should take the lead. Following this chapter are checklists 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.

### **10.6.1 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 masters should ask why placement is still needed, whether the child is or should be placed with siblings, if there is any family member available for placement or visitation with the child, if the placement is meeting the child’s needs, if the child is happy, safe, and adjusted to the placement. An additional inquiry into the services needed to assist a child who is sixteen years of age or older to make the transition to independent living should also be made (see the discussion of Transitioning Youth in Chapter 15: General Issues.)

**\*Best Practices – Kinship Care\***

The judge or master should encourage kinship care where such care provides for the safety of the child. If relatives are not known to the agency or readily available, inquiries should be made as to the agency's use of Family Finding or other family engagement techniques.

If relatives and extended family are available, Family Group Decision Making should be considered. It allows the family to develop its own plan that provides for the child's safe care and, as a consequence, the family becomes invested in the plan and is more likely to follow the plan and make progress on the goals (PA Children's Roundtable Initiative, 2009, p.13).

**10.6.2 Appropriateness of Placement**

The determination of the appropriateness of the placement involves the consideration of the child's needs and is based on information about things such as 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 or not these are being provided (PA Children's Roundtable Initiative, 2009, p.13).

If the child is displaying behavioral issues, or if the placement was due to truancy or ungovernability, the judge or master 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 16 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

**\*Best Practices – Proximity to School and Community\***

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 community or placing the children with a person known to them. If the child was involved in sports or music 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.

The judge or master should consider whether or not the child would have to change schools when entering placement. If at all possible, transfers should be avoided. This is especially important for children in their senior year of high school.

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

**10.6.3 Appropriateness, Feasibility, and Extent of Compliance with the Permanency Plan**

When making a determination as to the compliance and progress of parents or guardians, the judge or master may want to consider asking a caseworker for an opinion of 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 master should rate the level of compliance as "no, minimal, moderate, substantial or full." In determining progress the court should concentrate on changes in behaviors rather than on whether the parent "attended" all sessions or completed certain tasks.

**\*Best Practices – 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 master 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 to finalize the permanency plan.

In permanency hearings involving children who have been in placement for 12 to 18 months or longer, on the other hand, 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.

**10.6.4 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. 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 offering appropriate and reasonable services. The judge or master should not hesitate to hold the agency accountable for failure to make reasonable efforts. However, once a finding of no reasonable efforts has been made, federal and state funding for the costs of the child’s placement may be lost by the county, until the agency comes into compliance by providing reasonable efforts.

Based upon the information received during the hearing, the judge or master should assess the level of progress as “no, minimal, moderate, substantial or full.”

### **10.6.5 Appropriateness and Feasibility of Current Placement Goal**

At every permanency review, the court should determine whether the placement goal is appropriate and feasible, and if not, whether a new placement goal should be set. The judge or master 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 before reaching a decision. The judge or master should state on the record or in writing the reasons the goal is or is not appropriate and feasible.

For more detailed discussion of goal changes, see Chapter 11: Permanency Hearing: To Consider Change of Goal.

### **10.6.6 Likely Date that Placement Goal Might Be Achieved**

Judges and masters 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.

### **10.6.7 Reasonable Agency Efforts to Finalize Permanency Plan**

At the permanency hearing, the judge or master must determine whether or not the agency made reasonable efforts to finalize the permanency plan that is in effect. Although it may be harsh to render a finding of no reasonable efforts, it is important to hold the agency to its obligation to make reasonable efforts to finalize the plan (see Chapter 5: Entering the System/Shelter Care Hearing for more information on reasonable efforts determinations).

### **10.6.8 Whether the Child is Safe**

The judge or master 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 master 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 master 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, the child should be present at the hearing. 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 master 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 master should demand that a picture be received, in order to create a record of the child's physical development and growth.

### **10.6.9 Services Needed to Help Older Youth Transition to Independence**

Although the agency is only required to provide services to transition a child into independent living when the child is 16 years of age or older, in reality this process should begin much earlier. These services should be ordered whenever it becomes appropriate. Information on the individual needs of the child and the development of skills should be sought. General areas of inquiry might be vocational and career counseling, secondary and post-secondary education, employment, daily living skills and the possession of necessary identification and documents such as a birth certificate and a social security card. Children with disabilities should have a transition plan included in their Individual Education Plan if they are eligible for special education services. Some children may need to transition into a supervised living environment through the adult mental health system. This process takes a long time and should be initiated before the 16<sup>th</sup> birthday (See the discussion of Transitioning Youth in Chapter 15: General Issues).

### **10.6.10 Whether a Termination of Parental Rights (TPR) Petition Should Be Filed**

Absent compelling reasons to do otherwise, 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, usually adoption, and to file a petition for termination of parental rights (For more detailed discussion, see Chapter 11: Permanency Hearing: To Consider Change of Goal and Chapter 12: 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 the maintenance of parental rights.

When considering whether or not to order a petition for termination to be filed, the judge should consider several factors including whether or not aggravated circumstances have been filed and found (see the discussion of aggravated circumstances in Chapter 15: General Issues); the length of time the child has been in placement; and whether or not the agency is in the process of identifying an adoptive resource for the child.

Under certain circumstances, there may be a compelling reason not to file a termination petition. These include that the child is being cared for by a relative and that relative does not wish to pursue an adoption; 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 by the agency for the child to be reunited with the parent(s) within the time frames set by the permanency plan (for more information, see Chapter 12: Termination of Parental Rights).

A TPR petition should be filed when there have been aggravated circumstances founded with no reasonable efforts and the child has been in care for 6 months or longer; when the child has been abandoned and no parent has made substantial or continuing contact for a period of 6 months; or at any time when it is clear to the judge or hearing officer 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 12 years of age or older. The judge may also want to consider whether post-permanency counseling is appropriate for either the child or parent (for more information, see Chapter 14: Adoption).

Note that, once the child has been in care for 15 out of 22 months, the court may want to consider a goal change even if termination of parental rights is not an option. It is certainly time to assess whether the parents are meeting expectations, whether the child is happy and safe in the current placement, and whether another permanency goal should be considered.

#### **10.6.11 When and How the Child Will Achieve Permanency**

Finally, on the basis of 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 parents or guardian, in cases in which reunification is in the child's best interests; otherwise, 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 upon what is best suited to the child's safety, protection and welfare (42 Pa.C.S. § 6351(f.1)).

### **10.7 Admissibility of Evidence, Reports and other Documents**

A judge or master has broad discretion concerning the admissibility of evidence, reports, and documents at a permanency hearing. The judge or

master 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(D)).

Per Rule 1608(E), the modified or updated FSP must be submitted to the court 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, Family Plan, 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). Any such reports should be submitted to all counsel, ideally prior to review by the judge or master.

If requested, due process requires that the judge or master permit cross-examination of those who have provided information upon which the judge or master 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 (Pa. 1981)).

#### **\*Best Practice – Handling Reports\***

Some courts have designated a person or department to receive written reports and distribute them to the judge or master and counsel in advance of the hearing. This practice gives the judge or master and counsel an opportunity to receive and review the report prior to the hearing and essentially at the same time.

Note: If a parent is not represented, due process requires that the report be provided to the parent when given to the court and counsel.

## **10.8 Findings and Orders**

After a permanency review hearing, the judge or master must issue a written court order. 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.



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.

**\*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—not all parents or children can or will read the written order.

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 new fast-track rules.

***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 implementation of specific orders. This can increase accountability and encourage timely case progress.***

The judge or master 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 CPCMS Dependency Module. These court 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.

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 or guardians; and any conditions, limitations, restrictions, and obligations in its permanency order imposed upon any parties to the action.

## **CHECKLISTS OF SUGGESTED QUESTIONS**

Note: These lists of questions are not exhaustive. It is important to adapt the questions to a specific case and, within a case, to tailor the questions for each sibling, parent, and guardian. Additionally, the judge or master 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 issue 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? (In an applicable case.)
- ✓ In cases where the removal was based upon the child's conduct (truancy, ungovernability, etc.), what progress has been made in alleviating the conditions that led to the original placement?
- ✓ Is the child safe? If not—why?
- ✓ 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 16 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 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? (For additional information—see Chapter 15: General Issues for more information on aggravated circumstances.)
- ✓ 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 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?
- ✓ When will the child be placed in another living arrangement intended to be permanent in nature which is approved by the court in cases where 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 and willing relative?

**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 foster parent).
- ✓ 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 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?
- ✓ 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?
- ✓ Has your attorney or your caseworker talked to you about continuing services and supervision after you turn 18? Have you agreed to continued services and supervision?
- ✓ If you have not agreed to continued services and 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?
- ✓ For children 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? Do you attend your child's medical and dental appointments? Does your child seem happy? Does your child seem healthy?
  - Does your child need anything?
  - 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?





## PERMANENCY HEARING BENCHCARD

Relevant Statutes	<p>42 Pa.C.S. § 6351</p> <p>Pa.R.J.C.P. 1607 (Scheduling of Permanency Hearings) &amp; 1608(D) (Evidence in Permanency Hearings).</p>
Purpose of Hearing	<p>The child should attend every hearing unless waived by the judge. At the permanency hearing the court determines if the agency has made reasonable efforts to finalize the permanency plan in effect for the child.</p> <p>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.</p> <p>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.</p>
Time Frame	<p>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.</p> <p>A permanency hearing must be held within 30 days of a determination that reasonable efforts to reunify the family are not required.</p>
Rules of Evidence	<p>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. "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(D)).</p>
Next Hearing	<p>A permanency hearing must be held every 6 months until the child is removed from the jurisdiction of the court.</p> <p><b>Best practice is to conduct review hearings a minimum of every 3 months.</b></p>



## KEY QUESTIONS/DECISIONS PERMANENCY HEARING



- 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?
- What date will the child be returned home?
- If/when will the child be legally free to be adopted?
  - If adoption is the goal, when will the petition for TPR be filed?
  - Are the parents currently willing to relinquish parental rights?
  - 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?
- What are the child's special needs? Who is to provide the services to meet the child's needs?

These questions are adapted from the text of this chapter and the Mission and Guiding Principles for Pennsylvania's Dependency System and the Permanency Hearing Checklist provided in Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases (NCJFCJ, 1995, p.75-76) and Adoption and Permanency Guidelines: Improving Court Practice in Child Abuse and Neglect Cases (NCJFCJ, 2000, p. 20-22)

## *Chapter 11 - Permanency Hearing: To Consider Change of Goal ("Goal Change Hearing")*

### **11.1 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 master 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 master also assesses whether the agency has offered reasonable services and made reasonable efforts to reunify the child with the parents or guardians.

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 court must consider changing the goal from reunification to another permanency goal. In many cases, this means a change to adoption.

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 so as to assure that all parties understand (see the general discussion of the conduct of permanency hearings in Chapter 10: Permanency Hearings).

It should be noted that, under Pa.R.J.C.P. 1187(A), a master 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 to adoption by the judge, the master may hear all subsequent review hearings, unless a party objects or exercises the right to have a hearing before the judge.

### **11.2 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 22 months (42 Pa.C.S. § 6351(f)(9)). This requirement is consistent with federal law, as amended by ASFA (42 U.S.C. § 675 (5)(C) and (E)).

In addition, there are other points when the agency should request 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 6 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 15: General Issues, for more information on aggravated circumstances).

In most cases the goal change is initiated by the child welfare agency, but there is no reason why any party may not seek a goal change.

- A. The agency** — The agency generally initiates the request for goal change through an amendment to the family service plan. This amendment gives notice to the parents that the agency is requesting a goal change.
- B. The court** — There is nothing in the rules 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.
- C. The parent** — A parent can 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.
- D. The child**
  - 1. The Guardian *Ad litem* 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 goal change be ascertained to the fullest extent possible and communicated to the court by the child, the GAL, attorney, or CASA pursuant to 42 Pa.C.S. § 6351(e.1).
  - 2. In cases where the child is 12 years of age or older, the child must consent to adoption and 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.
  - 3. The Guardian *Ad litem* or counsel for the child may also file a petition for termination of parental rights (23 Pa.C.S. § 2512(a)(4)).

**\*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 in 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 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 a hearing to change the goal will occur at the next scheduled Permanency Hearing. 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.

### **11.3 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 include (42 Pa.C.S. § 6351(f)(9)):

1. that the child is being cared for by a relative who does not wish to pursue an adoption;
2. that the agency has documented a “compelling reason” why filing a termination petition that would not serve the child’s needs and welfare; or
3. that services necessary to achieve reunification within the time frames set by the permanency plan were not provided by the agency.

When considering whether to change the goal and to order the filing of a petition for termination of parental rights, the judge should consider several 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 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 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.

**\*Best Practices – 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 12: Termination of Parental Rights).

In addition to promoting judicial economy, the combined hearing has other benefits. If an appeal is taken, there is one appeal, which should result in a faster resolution of all the issues. This of course leads to faster permanency for a child.

Additionally, 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 termination 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.

## **11.4 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. 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. The subsidy ends when the child reaches the age of 18. Therefore, SPLC may **not** be appropriate if the foster family is not willing to provide support to the child after the child turns 18.

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 9: 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 9: 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, and supervised independent living. *These arrangements are not, however, a permanency goal—APPLA is the permanency goal.*

APPLA is the least favored of all permanency options. Accordingly, before changing the goal to APPLA, the court should demand the agency document compelling reasons that all other permanency options are not possible for the child. When changing a goal to APPLA, the court should enter detailed findings in support of a goal of APPLA. Some possible compelling reasons to order a goal change to APPLA might include:

1. an older child who requests emancipation or independent living;
2. a child and a parent have a significant bond that precludes termination of parental rights, but the parent is unable to care for the child due to emotional, mental, or physical disability or limitations and the foster parents are committed to providing a home until the child reaches majority and will facilitate visitation;
3. a child needing long-term medical or psychiatric care that cannot be provided in a family or foster care setting.

**\*Best Practice – Ensuring Connections\***

It is imperative that the court ensure all children, especially those with a goal of APPLA, have meaningful and significant connections with responsible, caring adults. One strategy being used throughout Pennsylvania is known as Family Finding. Much more than a web-based search, Family Finding offers methods and strategies to locate and engage the relatives of children living in out of home care. Family Finding is used to provide each child with lifelong, supportive adult connections (PA Children's Roundtable Initiative, 2009, p. 11).

Yet another strategy being used in various jurisdictions includes partnering with the business and faith communities to provide mentorship opportunities for older youth. These partnerships are providing invaluable adult support and connections for older youth, especially as they transition to adulthood.

Where possible, courts should encourage the development and use of models that ensure children are connected to responsible, caring adults.

## **11.5 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 master 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 APPLA, 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 stronger connections to his or her birth family.

Upon ordering a goal change, the judge 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.

In deciding whether to change the visits, the judge should consider the following:

1. Is there a concurrent plan of reunification?
2. Have the parents been consistently visiting?
3. What is the bond with 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 having frequent visits, consider a gradual reduction in visits so as to minimize the loss.
11. Seek an opinion from the child's therapist or other expert on any reduction of visits and the effect that it may have on the child.

## 11.6 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 removal and placement of the child. In the ordinary permanency hearing, the court is generally looking at what has transpired between review hearings. At the time of a permanency hearing with a goal change emphasis, the full history and record is relevant.

While compliance with the FSP is an issue bearing on the goal change, what the court is really examining is the 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 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.

## 11.7 Findings and Orders

As it does following any permanency hearing, the court issues a written court order at the conclusion of a goal change hearing. The order is especially important where 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 10: Permanency Hearings).

In Pennsylvania, dependency findings and orders for permanency hearings include those in which change of goal occurs are contained within the CPCMS Dependency Module. These court 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.

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 goal change occurs.

# Chapter 12 - Termination of Parental Rights

## 12.1 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 of 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 file a TPR petition when a child has been in foster care for 15 of the most recent 22 months. TPR proceedings are governed by Pennsylvania's Adoption Act, 23 Pa.C.S. § 2501 *et seq.*, with legal grounds for termination being specified in 23 Pa.C.S. § 2511. The Adoption Act does not bar bringing the petition sooner than the ASFA requirements, so long as one of the nine grounds for TPR as set forth in 23 Pa.C.S. § 2511 is present.

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 a termination of parental rights is not feasible or in the best interest of the child.

Specific details as to the time frames and exceptions are set forth in the Juvenile Act in 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 voluntarily 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 15: General Issues).

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 on the court to ensure that all legal requirements under the Adoption Act and procedural due process requirements are strictly followed.

As is discussed more fully in Chapter 14: 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 the responsibility for finalizing the adoption within a reasonable time frame. 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, as well as 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 delay in TPR hearings.

**\*Best Practice – Active Judicial Oversight\***

The presiding judge should be actively involved in management of the TPR case and take steps to identify issues that may cause unnecessary delay (PA Children's Roundtable Initiative, 2009, p. 14). 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.

## **12.2 Jurisdiction of the Court**

As is discussed more fully in Chapter 3: 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 3: Jurisdiction).

## 12.3 TPR Petitions

Termination of parent rights proceedings begin with the filing of a petition to terminate parental rights (23 Pa.C.S. § 2512). 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. 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.

## 12.4 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.

### **\*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.

## 12.5 Service and Notice

The court should 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 15.6 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 whereabouts are unknown, or a parent's identity is unknown, service by publication may be required. The agency should recognize when to proceed with publication upon advice of its solicitor. The court may require it if not satisfied that proper service and notice has been made as to any person.

**\*Best Practice – Locating Absent Parents\***

Judges should insist on serious efforts to locate and notify parents when they are not present at earlier stages of litigation. Asking any parent or relative present at initial hearings on 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, to utilize tools such as parent locator service, family finding strategies, or to develop a set of form letters asking for information about missing persons and inquire of the local child support service agency (PA Children's Roundtable Initiative, 2009, p. 10).

If a petition seeks the *involuntary* termination of parental rights of any individual (including a putative parent), and service cannot be accomplished by personal delivery, or upon an adult member of the household, or by registered or certified mail to a last known address (returned as undelivered), Rule 15.4 and 15.6 of the Orphans' Court Rules provide for further notice by publication if required by general rule or special order of the local Orphans' Court. This additional step is not required under Orphans' Court Rules 15.2 and 15.3 as to voluntary relinquishment petitions. Unknown persons, if a reasonable investigation was made, do not require notice under Pa.O.C. Rule 15.6.

Although not controlling as to Orphans' Court proceedings, one can find some guidance in the note to Pa.R.C.P.No. 430 as to illustrations of a good faith effort 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 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 the "Family Finding" program and resources available in the child welfare field.

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.

## **12.6 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 must 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 under 18 years old who is the subject any TPR proceeding whenever it is in the best interests of 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 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)).

## 12.7 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. Courts should require the agency in a TPR proceeding to make the discoverable material in their files available to counsel and establish time frames 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 Orphan’s Court record for appellate review by making the dependency record—including the original dependency petition and all orders that followed it—a part of the TPR record.

## 12.8 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.

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 orphan's 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.

## **12.9 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.

### **12.9.1 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 a 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. § 2711-12 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 written and delivered to the adoption agency, the attorney handling the matter, or the court scheduled to hear the matter.

The hearing on the Petition to Confirm Consent must be scheduled ten or more days after the Petition is filed. 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. 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).

### **12.9.2 Voluntary Relinquishment**

Parents may also petition the court to voluntarily relinquish their parental rights to the agency (or in some cases 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 routinely done. 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. When this occurs, the court can adopt the involuntary relinquishment petition as the petition for voluntary relinquishment and in doing so 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 times, 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.

### **12.9.3 Involuntary Termination**

The "Involuntary Termination" section of the Adoption Code, 23 Pa.C.S. § 2511-13, applies to situations in which a parent refuses to relinquish parental rights. In this situation, the petitioner is typically the county child welfare agency.

**\*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, and benefits greatly from this knowledge and perspective when it becomes necessary to consider a TPR.

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 which 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 nine 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, and failure of services offered by the agency to rectify the situation that led to intervention. 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, then 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 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 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.

## 12.10 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, in light of the parent's family situation, work schedule, and transportation requirements.

**(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 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 time frames. 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." And parental rights may not be terminated solely on the basis of environmental factors such as inadequate housing, furnishings, income, clothing and medical care if found to be beyond the control of the parent.

**(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 a diligent search for the parent which has been made 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. 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 (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, 12 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:

- I. an offense under 18 Pa.C.S. Ch. 25 (relating to criminal homicide);

- II. a felony under 18 Pa.C.S. § 2702 (relating to aggravated assault);
- III. an offense in another jurisdiction equivalent to an offense in subparagraph (i) or (ii); or
- IV. an attempt, solicitation or conspiracy to commit an offense in subparagraph (i), (ii) or (iii).

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 (*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” standard (*In re Adoption of K.J.*, 936 A.2d 1128 (Pa. Super. 2007)).

## 12.11 Additional Considerations in Involuntary Termination Cases

### 12.11.1 Parent-Child Bond Issues

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 (Pa. Super. 2008)). 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.

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, in others they are routine. Neither the statute nor case law require the Orphans' Court in a TPR proceeding to order that a formal bonding evaluation be performed by an expert (*In the Matter of K.K.R.-S.*, *supra*). 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) (calling this a "wise approach" but also recognizing it is not always needed, and that the evaluation process itself in some instances may be detrimental to the child).

Whether a bond exists, however, is not the full extent of the inquiry; rather, it is whether the bond indicates a beneficial relationship that should be preserved (*In re: C.L.G.*, 956 A.2d 999 (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 (*In the Interest of K.Z.S.*, *supra* at 764). In the final analysis, the needs and welfare of the child are paramount. Thus, a TPR under section 2511(b) is appropriate to provide a child "with the permanence necessary for the 'fulfillment' of her potential in a permanent, healthy and safe environment" (*In Re: C.L.G.* at 1011).

**\*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 guardians 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 (*In Re. C.L.G.*, 956 A.2d 999 (Pa. Super. 2008) (*en banc*)).

### 12.11.2 Putative Fathers

Under 23 Pa. C.S.A. § 2503, 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 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 (Pa.R.C.P.No.107, 430, 1018, 1018.1). As noted earlier, with leave of court, and after a diligent search, the unknown parent may be notified by publication.

### 12.11.3 Incarcerated Parents

Incarcerated parents present particular issues for a judge's consideration. First, it is well established that incarceration, alone, is not sufficient to support termination under any subsection of 23 Pa. C.S. § 2511 (a) (*In re Adoption of C.L.G.*, 956 A.2d 999, 1006 (Pa. Super. 2008)). On the other hand, 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 (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 (*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 (*In re A.L.D.*, 797 A.2d 326 (Pa. Super 2002)).

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 (*In re Burns*, 379 A.2d 535 (Pa. 1977)).

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 for the children (*In re 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)).

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;
- Period of incarceration, earliest release date. (Has the parent been, or will he/she be incarcerated much of the child’s young life?);
- Rehabilitation from criminal activity (*In re: C.S.*, 761 A.2d 1197 (Pa. Super. 2000));
- Whether the parent has written to the child during incarceration (*In re: 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; and
- Whether the parent maintained communication with CYS to provide requested information or consents (*In re D.J.S.*, 737 A.2d 283 (Pa. Super. 1999)).

## 12.12 Decree of Termination of Parental Rights

After the TPR hearing, the court may enter a decree of termination of parental rights. As articulated in 23 Pa.C.S. § 2521, 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.

**Award of custody.** The decree gives custody of the child to the agency (or the petitioner, if the TPR was sought by a person seeking to adopt).

**Authority of agency or person receiving custody.** The recipient of custody stands *in loco parentis* to the child and may exercise whatever authority a natural parent has, including authority to consent to marriage, to enlistment in the armed forces, and to major medical, psychiatric and surgical treatment.



At the time the transmittal of a decree of termination, the judge must advise terminated parents 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 Public Welfare (23 Pa.C.S. § 2503).

**\*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 13: 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. 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?
5. Do you understand you have the right to counsel?
6. 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?
7. Do you understand you have the right to have a trial where the agency could call witnesses?
8. Do you understand at that trial you could cross examine the agency's witnesses, call your own witnesses, and testify on your behalf?
9. Do you understand if you testify on your own behalf, the agency and GAL could cross-examine you?
10. 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?
11. Do you understand that if you voluntarily relinquish your rights, you give up or waive all those things we just discussed?
12. Understanding this, do you wish to voluntarily relinquish your rights to (child's name and date of birth)?

13. 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?
14. Once the court finds that you entered this voluntary relinquishment your parental rights to (child name/age) are forever terminated. Do you understand that?
15. Have you had enough time to talk about this with your attorney?
16. Are you satisfied with your attorney's representation?
17. Do you have any questions about anything your attorney told you?
18. Do you have any questions about anything I just explained?
19. Has anybody made any promises or threats to get you to voluntarily relinquish your parental rights?
20. Do you believe it is in your best interest and your child's best interest to voluntarily relinquish your parental rights?
21. 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	<p>23 Pa.C.S. § 2511(a)(1) – (9) (grounds) and 2511 (b) (emotional bond/needs and welfare);</p> <p>Pennsylvania Orphans’ Court Rules 15.2, 15.3, 15.4 and 15.6</p>
Purpose of Hearing	<p>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 12.9 of this chapter).</p> <p>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.</p>
Time Frame	<p>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 15 of the most recent 22 months.</p> <p>The Adoption Act does not bar bringing the petition sooner than the ASFA requirements, so long as one of the nine grounds for TPR as set forth in 23 Pa.C.S. § 2511 are present.</p>
Rules of Evidence	<p>The formal rules of evidence in Orphans’ Court apply. The burden of proof on the agency is to establish at least one of the statutory grounds for TPR by “clear and convincing evidence”.</p>
Next Hearing	<p><u>Finalization of Adoption Hearing:</u> If an appeal is taken, file a statement of reasons or prepare an opinion as per the Fast Track Rules.</p> <p>Until such time that the appeal is resolved, the adoption is finalized and dependency is terminated statute requires Permanency Hearings at a minimum of every six months.</p> <p><b>Best practice is to conduct review hearings a minimum of every 3 months.</b></p>



## KEY QUESTIONS/DETERMINATIONS TERMINATION OF PARENTAL RIGHTS HEARING

- 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 GAL present and prepared to provide a considered recommendation?

# Chapter 13 – Appeals

## 13.1 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 (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.

## 13.2 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 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 must be filed and served with the notice of appeal required by Rule 905 (Pa.R.A.P. 1925(a)(2)(i)).

### **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 must, within 30 days, file at least a brief opinion indicating the reasons for the order (Pa.R.A.P. 1925(a)(2)(ii)).
  - 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.*, 2009 WL 3367060 (Pa. Super. October 21, 2009), the Superior Court distinguished the filing of a Rule 1925 statement under the new Children’s Fast Track rules from those instances where a Rule 1925 statement was ordered by the trial court (See *Commonwealth*

*v. Lord*, 555 Pa. 415, 719 A.2d 306 (1998) and *Commonwealth v. Castillo*, 585 Pa. 395, 888 A.2d 775 (2005)). Under the new Children's Fast Track rules, the failure to file a timely Rule 1925 statement is treated as excusable under Pa.R.A.P. 902 as a defective notice of appeal, rather than the failure to comply with an order of court.

- The record on appeal, including transcripts and exhibits necessary for determination of the appeal, must be transmitted to the appellate court within 30 days after the notice of appeal is filed (Pa.R.A.P. 1931(a)(2)).

#### **Dispositive motions:**

- Dispositive motions must be filed within 10 days of filing the concise statement of errors complained of on appeal or within 10 days of trial court's filing of its Rule 1925(a) opinion, whichever period expires last (Pa.R.A.P. 1972(b)).

#### **Anders Briefs:**

- When counsel believes that 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 recently addressed the ***Anders*** briefing requirements for briefs filed pursuant to briefing schedules established after August 25, 2009. ***See Commonwealth v. Santiago***, (Pa. 2009).

### **13.3 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 to 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. When a case is appealed, Pennsylvania requires the trial court to write an opinion that discusses the reasons for its decision. In lieu of a written opinion, however, Pa.R.A.P. 1925(a) authorizes the court to indicate the place in the record where the reasons for its decision 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 and make 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 adopting 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 if the search were placed on hold during the appeals process and the trial court's ruling upheld.



# Chapter 14 - Adoption

## 14.1 Overview

When a child cannot be safely reunited with his or her birth family, adoption is generally seen as the next most permanent option, because it gives the child a permanent, legal 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. 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.”

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 needed legal requirements completed and service supports 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.

“When children can’t be reunited 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

### **\*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.

## 14.2 Jurisdiction

Adoption in Pennsylvania is generally governed by the Adoption Act, 23 Pa.C.S. § 2101 *et seq.* Other laws that may bear on adoptions involving dependent children (described more fully in Chapter 16: Summary of Major Federal and State Child Welfare Legislation) include the Interstate Compact on Placement of Children, 62 P.S. § 761, *et seq.*; the Adoption Opportunities Act, 62 P.S. § 771-74 (relating to placement of special needs children); and various federal laws, including the Indian Child Welfare Act, the Adoption and Safe Families Act of 1997, and the Fostering Connections Act of 2008. In addition, various Department of Public Welfare 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 3: 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 3, 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” 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 (PA Children’s Roundtable Initiative, 2009, p. 14).

## 14.3 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 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 parents 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 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 a permanent resource family has yet to be identified for the child. The report/notice must be filed within 30 days of receiving physical care of the adoptee (23 Pa.C.S. § 2532).
- 3. Report of the Intermediary.** Within 6 months after filing the Report of Intention to Adopt, the intermediary that arranged the adoption placement must make a written report to the court where the adoption will be filed and notify the adopting parents that the report has been filed. (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.** This is a binding agreement that is negotiated between the adopting parent and the agency having custody of the adoptee. It articulates ongoing financial and programmatic supports for the adoptee, including reimbursement for allowable expenses related to the adoption process. Any agreed-upon monthly subsidy rate cannot exceed the amount that would have been provided had the adoptee remained in foster care. The agreement must be completed prior to the final adoption order and terminates upon the child's eighteenth birthday.

**\*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.

## **14.4 Adoption Hearings**

### **14.4.1 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. § 2701-2.

The consent of a child of 12 or older is required for an adoption under 23 Pa.C.S. § 2711.

Notice of the adoption hearing, by personal service or registered mail, must be given to the child, the agency and any other persons the court directs (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.

### **14.4.2 Attendance at Hearing**

The adopting parent or parents and the adoptee must attend the hearing. In addition, the child welfare agency generally attends the hearing. The court may require 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, 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.

**14.4.3 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 which may assist judges are found at the end of this chapter. While not exhaustive, the list provides possible questions aimed at eliciting needed information.

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 12 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?

**\*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 adopted children to sit with the adoptive mother or father on the witness stand or join the judge on the bench, asking just a few short questions as a means of helping the child feel included in the proceedings.

While the judge must take steps to finalize all legal requirements in these final proceedings, special steps should also be taken to ensure a tone that is neither adversarial nor confrontational.

## **14.5 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 must enter a decree so finding and directing that the adoptee shall have all the rights of a child to and heir of the adoptive parents and be subject to the duties of a child to them (23 Pa.C.S. § 2902). While the court enters its decree, it is not distributed to any party (see 23 Pa.C.S. § 2905). Instead, the adoptive parents receive a Certificate of Adoption.

The Certificate of Adoption reciting that the court has granted the adoption is issued by the 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 and is valid in Pennsylvania.

Finally, while there is no standard adoption order in the AOPC's 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 Children's Roundtable Initiative, 2009, p.14).



## SAMPLE QUESTIONS FOR THE ADOPTION HEARING

### **Questions for adoptive parents:**

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. Can you testify today that you adopted (child's name) long before you got here today and today just makes it final?
5. Do you understand all the responsibilities and the legal obligations that come with the adoption? What does that mean?
6. Tell me something special about (child's name).
7. How does (child's name) fit in with the rest of your family (grandparents, aunts, uncles, brothers, and sisters)?
8. Can you introduce any family and friends here today with their relationship to child's name (here court 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 12 for 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. Did you sign the consent for adoption?
10. Do you want to be adopted today or do you think you've been adopted long before today?
11. Do you wish to be known as the name that was given to the court?

**Questions for the Agency:**

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 the family?

# Chapter 15 – General Issues

## 15.1 Overview

On a daily basis in dependency court a judge or master must address a variety of issues, perhaps more so than in any other court. Many of these issues occur during the course of the 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 master that have no set start and end point and can, in fact, occur at any point in the life of a dependency case.

It is important to note the areas discussed in this chapter, while as important as any information discussed in this Benchbook, do not fit into the carefully constructed sequence of events of a dependency case, but may occur at any point in the process.

Some areas covered in this section are required by rule or statute, 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 data and statistical reports or Needs Based Plan and Budget; and yet others are considered best practice and informational such as Family Group Decision Making, 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 master.

The following sections are included in this chapter:

- 15.2 – Aggravated Circumstances
- 15.3 – Family Group Decision Making
- 15.4 – Common Pleas Case Management System (CPCMS)
- 15.5 – Children in the Courtroom
- 15.6 – Transitioning Youth
- 15.7 – Court Appointed Special Advocates (CASA)
- 15.8 – Planning & Funding Services: The Needs-Based Plan and Budget



## 15.2 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. 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.

### 15.2.1 “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. § 126 (relating to indecent assault).
  - (iv) an equivalent crime in another jurisdiction.
  
- (4) The [parent of the child has been convicted of] 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.

### **15.2.2 Procedures in Aggravated Circumstances Cases**

An allegation of aggravated circumstances may be made by the agency or by the child's attorney. It may be included as a motion in the original dependency petition or in a separate and subsequent written motion (42 Pa.C.S. § 6334(b) and Pa.R.J.C.P. 1701). Under Pa.R.J.C.P. 1702, the agency is required to file an aggravated circumstances motion within 21 days of determining that such circumstances exist, but no such time requirement applies to the child's attorney.

A judge or master presented with an allegation of aggravated circumstances must first (if it has not already done so) make a finding, based on clear and convincing evidence, as to dependency (42 Pa.C.S. § 6331 (c)). If the judge determines (or has already determined) that the child is dependent, it must then make a separate finding, also on the basis of clear and convincing evidence, as to whether aggravated circumstances exist. Once both of these findings are made, the judge proceeds to 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 schedules a permanency hearing to consider what the child's permanency plan should be (42 Pa.C.S. § 6331(c.1) and 6351(e)(2)).

### **15.2.3 Timing of Hearing**

Ordinarily, permanency hearings are required to be held every six months in dependency cases. Under 42 Pa.C.S. § 6351(e)(3)(ii) and Pa.R.J.C.P. 1607, however, the court must conduct a permanency hearing within 30 days in the following four situations:

**Aggravated circumstances finding at time of adjudication.** If at the time of an 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, it must proceed to a permanency hearing within 30 days.

**Aggravated circumstances finding at permanency hearing.** If, 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, it must likewise proceed to a permanency hearing within 30 days.

**An allegation that aggravated circumstances exists regarding a dependent child.** Whenever the court receives an aggravated circumstances allegation regarding a child who has been adjudicated dependent, it must hold a permanency hearing within 30 days.

**Submission of other motion regarding safety or welfare of a dependent child.** Likewise, whenever 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, it must hold a permanency hearing within 30 days.

#### **15.2.4 Effect of Determination**

After finding aggravated circumstances, the judge must determine whether further agency efforts to preserve or reunify the family are necessary. If not, the judge 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 terminate parental rights and pursue adoption except where:

- (i) the child is being cared for by a family 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.





## 15.3 Family Group Decision-Making

Family Group Decision-Making (FGDM) is a collaborative dispute resolution process that engages family groups in crafting and implementing plans that support the safety, permanence and well-being of their children. The purpose of FGDM 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 only resisting the intrusion if the “system” simply tells them what to do to fix the problem (NCJFCJ, 2000, p. 13).

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.

“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, is encourages and supports the use of kinship resources thereby reducing any potential emotional trauma associated with placement.”

- Honorable Max Baer,  
Pennsylvania Supreme Court  
Justice

### 15.3.1 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

“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. Brining these “common sense” plans into the courtroom – plain and simple – works!” -Pennsylvania  
Dependency Court Judge

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 plan, it helps to avoid lengthy trials and appeals of termination of parental rights cases (NCJFCJ, 2000, p. 14).

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 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.
- Help establish reasonable efforts in TPR.

Research has shown that the FGDM process produces plans that are highly individualized, enjoy high rates of consensus, and are accepted in 95 percent or more of cases. Some studies also suggest that plans generated by FGDM provide more child and family safety (as measured by re-referrals/re-abuse), more timely decisions, and more stability (as measured by number of placement changes) (Burford, 2009).

### 15.3.2 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, however, 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

#### **\*Best Practice: Encouraging Use of FGDM\***

FGDM is a voluntary process for families. In keeping with this core value of the practice, judges and masters should not order a FGDM meeting. Instead judges and masters 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 (PA Children's Roundtable Initiative, p.9).

Judges and masters should ask questions regarding the time frame in which a 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 Family Service Plan ordered by the judge or master and incorporated into the agency's state-mandated Family Service Plan document.

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 comprehensively address these in their planning.

The next step in FGDM distinguishes it from other alternative dispute resolution processes: "private family time." 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 worker for review and acceptance. If any safety issues are not adequately addressed, the caseworker points them out to the family group and requests they continue private planning time until they are resolved. Once all safety concerns are adequately addressed, the caseworker can accept the family's proposed plan.

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 Family Service 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 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 masters 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 can be repeated prior to any required permanency review hearing, whenever the family service plan is updated.

### 15.3.3 The Court's Role

#### **\*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 Review Hearing occurring within 72 hours of child 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 or a couple of days from 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 Plan) but can be incredibly valuable for the family, the court and the child welfare agency.

Where possible, judges are encouraged to work with their child welfare agency to develop the use of "Expedited or Emergency FGDM."

Judges and masters should encourage families to take advantage of this planning process whenever an initial Family Service Plan or Family Service Plan Update is required and ensure agencies are prepared to provide the process. In keeping with the concepts of FGDM; however, judges and masters should take great care not to order FGDM but rather ensure families fully understand and are offered the opportunity to engage in the FGDM process.

As with any dependency system practice, court/agency collaboration is a key to success. All parties need to be educated on the basic premises of the practice including judges, attorneys, advocates, and agency staff (administration and line staff). The court should gain a true understanding of the practice, which can occur through meetings with agency staff, Children's Roundtable Meetings, local FGDM Implementation Team Meetings and by observing a conference. These steps facilitate comprehensive understanding of how the family has come to an agreement and how the plan was 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 masters 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 master may wish to communicate with the agency to clarify expectations and enhance the likelihood of future plans being approved.

When this occurs, the judge or master should 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 and other legal professionals can ensure fidelity to the practice. This practice fidelity 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 FGDM Implementation Toolkit accessed at the following cite:

[http://www.pacwcbt.pitt.edu/FGDM\\_Resources.htm](http://www.pacwcbt.pitt.edu/FGDM_Resources.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**



## **15.4 Common Pleas Case Management System (CPCMS)**

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 Court 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, uniformed, and consistent dependency court orders, as well as a means for collecting both county specific and statewide dependency data. The system provides these (for judges and hearing masters) for all major hearings including shelter care, adjudication, disposition, permanency reviews, and termination of court supervision. The orders have been reviewed and approved by the Juvenile Court Procedural Rules CPCMS Forms Subcommittee and the Department of Public Welfare'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 officer, as needed.

In addition to the 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 master'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 notes that are private, 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 data/statistical report.

#### **15.4.1 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 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 initiation types of cases in the system can also be found in this report.

**Termination of Court Supervision Report (AOPC 3901).** This report provides a detailed list of all children who have had court supervision closed during the selected date range. Information about the final disposition can be found on this report.

**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 master.

**Inventory Report (AOPC 3904).** This report tracks counsel and Guardian *Ad Litem* appointments.

**Dependency Daily List (AOPC 3905).** This report provides a list of dependency cases scheduled for the court on any requested day.

**Unscheduled Active Cases (AOPC 3910)** – This report displays all open dependency cases where there is no future event scheduled.



### 15.4.2 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. The following statistical reports are available:

**Active and Adjudicated Case Inventory (AOPC 3920)** - This report provides a list of active and adjudicated dependency cases and identifies their classification of Abuse/Neglect or Status Offense. A summary version of this report is also available.

**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, totals are 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 summaries, based on the child’s age, of pending cases pre and post adjudication and by the average age of cases within other key demographics.

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 (often done during Children’s Roundtable meetings) to identify challenges and strategize solutions.

#### \*Best Practice – Management and Statistical Reports\*

The court is encouraged to take full advantage of the CPCMS system. Management and statistical reports can be an invaluable tool for the 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 (Children’s Roundtable Initiative, 2009, p. 15).



## 15.5 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). 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 (PA Children's Roundtable Initiative, p. 8).

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 master after careful consideration of all the circumstances of the case. The GAL or social worker may provide insight into whether the child should be present, but the judge or master should not waive the child's appearance just because the parent, GAL, or social worker prefers the child not 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.

"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

Although a child need not appear at every hearing, the judge or master should see the child in person at least every six months. It is critical that the judge or master 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.

Factors to be considered when determining whether or not to waive the child's attendance include:

- The child's wishes.
- The child's age and/or developmental level.
- The likelihood that the child will be severely traumatized by attending.
- Whether the child's testimony is needed.
- Whether the child might be afraid to see the parents in court.
- Whether the child has a delinquency or pending delinquency and needs to be at the hearing.
- Whether there are any significant life events for the child on the hearing date (i.e. school field trips, special dance, sporting event, last/first day of school).

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 is against attendance.

Some reasons that are NOT good enough to justify waiver of attendance include:

- The judge 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.

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 portions of the hearing.

### **15.5.1 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 master should be prepared for the child's appearance, learning as much as possible about the child from the reports provided by the GAL, CASA, and the social worker, and 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.

Pennsylvania law specifically requires judges or masters to consult with children in the permanency planning phase of the proceeding (42 Pa.C.S. § 6351(e)). This is extremely important because how a child feels about a placement will likely impact its success. If the child has negative feelings toward a placement, then it may not be suitable to place the child there, even if it meets all other standards and requirements of a good placement. If given the opportunity, the child will usually tell the judge or master where he would like to live. The judge or master should ask a series of questions about people the child spends time with, relatives that are close, whether the family has close friends, etc. Responses to these questions may reveal a potential placement that was previously unknown to the agency but may prove to be a good alternative.

"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

Often a new placement involves a change of school, so the judge or master should also question the child about how the child's school 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 master 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?

### 15.5.2 Children as Witnesses

There is no minimum age below which a child is automatically disqualified as a witness (42 Pa.C.S. § 5911). However, that does not mean every child is a competent witness or that judges and masters should not conduct competency examinations when legitimate questions arise about testimonial competence.

The capacity to testify requires the ability to observe sufficient intelligence, adequate memory, the ability to communicate, awareness of the difference between truth and falsehood, and an appreciation of the obligation to tell the truth in court (Ventrell and Duquette, 2005, p.329).

The authors of Child Welfare Law and Practice elaborate on each of these characteristics as they apply to children (Ventrell and Duquette, 2005, p.330-332):

**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 for 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 normal intelligence. Children below average intelligence may testify if they possess the ability to observe, recollect, and relate in a manner that assists the trier 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 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 is concerned about a child's understanding of the obligation to testify truthfully, the judge may instruct the child.

While children are able to be good witnesses in dependency hearings, the judge or master should bear in mind that testifying may be a very emotional and traumatic experience for a child. The judge or master 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 judge or master has the latitude to ask leading questions or allow all counsel to ask

leading questions. The judge, however, must balance the need to protect the child from a traumatic experience against the parents' right to cross-examine.

It may also be appropriate for the judge or master to take the child into chambers or clear the courtroom before conducting the examination, as long as the interrogation is conducted in the presence of counsel and on the record (Pa.R.C.P.No. 1915.11(b)).





## 15.6 Transitioning Youth

Every year nearly 20,000 youth age out of the foster care system nationally—about 1,000 of them in Pennsylvania. 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: foster youth transitioning to adulthood* (Courtney et al., 2004, p. 32-51):

- Are less likely to have completed high school and be enrolled in secondary education;
- Are less likely to be employed;
- Have a substantially higher prevalence of serious physical health, mental health, and substance abuse problems that interfere with their daily functioning;
- By age 19, are more likely to have been pregnant or have fathered children; and
- Have considerably higher rates of homelessness, criminal involvement, and incarceration.

Avoiding these kinds of outcomes calls for effective services designed to facilitate 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 a youth in making a successful transition to adulthood.

### **\*Best Practice – Lasting Lifelong Connections\***

In addition to “hard skills”, such as employment services and housing needs, the court and agency should provide for a youth’s need to be connected to responsible, safe adults. 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.

In 1999 the Social Security Act was amended by the Foster Care Independence Act (FCIA) to create the Chafee Foster Care Independence Program (CFCIP), which provides 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 16: Overview of Federal and State Child Welfare Legislation).

### 15.6.1 Independent Living Services for Transitioning Youth

FCIA and the Juvenile Act require that all youth in care who are age 16 or older, no matter what placement they are in and regardless of their permanency plan, receive independent living (IL) services (42 Pa.C.S. § 6351(f)(8)). Likewise, youth who are adjudicated dependent and living in their own home are also eligible for IL services. Youth who were discharged from placement on or after their 16<sup>th</sup> birthday are eligible for Aftercare IL services (discussed more fully at the end of this chapter in section 15.6.4).

IL is not a permanency goal, of course, and providing IL services does not necessarily change the child's permanency plan. Having every child grow up in a family setting is still the ideal. But every youth in care age 16 or above should receive IL services designed to provide them with skills they will need in adulthood. The judge or master should ensure these youth are given a written description of the programs and services which will help them prepare for the transition from foster care to independent living (42 Pa.C.S. § 6351(f)(8)). These services may include:

- educational training and counseling
- career counseling
- budget management skills
- home management skills
- sex education and family planning services
- self-advocacy skills
- individual and family counseling
- daily living skills

"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 private 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. More information on the IL services in your county can be provided by the county agency.

The court, 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 and masters, as well as attorneys have substantive knowledge of what youth in care need, what they are legally entitled to, and what services are available to them.

### 15.6.2 Transition Planning for Older Youth

For those youth who are expected to leave the foster care system at the age of majority, transition planning should begin as early as possible, but not less than 90 days prior to the youth aging out of the system. 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 work force and employment services (42 U.S.C. § 675 (5)(H)).

#### **\*Best Practices – 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 the transition plan 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 90 days before a youth ages-out of the system, the judge or master should require plans be presented to the court for early review whenever possible. This will ensure that the judge or master, 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.

As the *Pennsylvania Judicial Deskbook* points out: "If the youth is requesting discharge or agreeing to a discharge, the juvenile court should conduct a colloquy to inquire as to the reasons for the request, and explore whether alternatives to discharge have been explored. It is important to keep in

mind that youth may ask for discharge for reasons that have nothing to do with their readiness to live on their own. Some youth ask to be discharged because multiple placements have not met their needs and they feel that there is no more that the system can do for them. Other youth seek discharge because they feel their placement is not appropriate for them. Thus, the court should inquire of youth what they will need to succeed. The court should give the youth's counsel wide latitude in making a record of his or her client's needs, of the youth's experience in care, and of the youth's reason for agreeing to discharge" (Field, 2004, p. 212).

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 master);
- a sense of security that may have been provided by their child welfare system involvement, even if youth may have resisted or disliked that environment;
- medical coverage; and
- housing (NCWRCYD, 2004, p. 2).

#### **\*Best Practice – Trial Discharge\***

In the event that a youth chooses to leave care against the recommendations of the court, GAL or the agency, a "trial discharge" may be beneficial. In a trial discharge, the court may terminate physical custody of the youth from the agency, while maintaining the order of dependency. This puts the case on a footing equivalent to that of an in-home dependency case. During the trial discharge period, the youth may continue to receive agency support or reenter care with the court's authorization since the adjudication of dependency was never terminated.

### **15.6.3 Youth Opting to Remain in Care Past Age 18**

Many youth are not aware of their right to remain in care past the age of majority. The Juvenile Act defines a dependent child as an individual who:

"was adjudicated dependent before reaching the age of 18 years and who, while engaged in a course of instruction or treatment requests the court to retain jurisdiction until the course has been completed, but in no event shall a child remain in a course of instruction or treatment past the age of 21 years" (42 Pa.C.S. § 6302).

The term “course of instruction or treatment” has widely been accepted to include a youth who is still completing high school or who is receiving behavioral health services and requires that this treatment continue. A recent Pennsylvania Superior Court case has expanded the definition of course of instruction to include post-secondary education (*In Re S.J.*, 906 A2d 547 (Pa. Super. 2006)).

When a youth chooses to remain in care past age 18 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 a campus can return to the foster home over holidays and between semesters. Financial supports 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). SIL and IL are sometimes used interchangeably, but they are two dramatically different types of services. SIL is a specific placement type. In an 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 Another Planned Permanency Living Arrangement which 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 child 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 18, a youth must “request the court to 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 and the GAL.

#### **15.6.4 IL Aftercare Services**

Aftercare services are available to youth ages 16 up to age 21 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.

## 15.7 Court Appointed Special Advocates (CASA)

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 (Standards)* adopted by the Juvenile Court Judges’ Commission in 1999 (29 Pa.B. 3633).

### 15.7.1 CASA Appointments

The judge may appoint or discharge a CASA at any time during the proceeding or investigation regarding dependency. Issues judges 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 uncooperative parents?

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 (Youngclarke, Ramos, & Granger-Merkle, 2004, p. 121). However, judges should be aware that CASA volunteers are a limited resource and should appoint based upon their availability and the needs of the child in a particular case.

### 15.7.2 CASA Duties and Responsibilities

Generally, CASAs review records, research information, and interview the child and everyone else 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. 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 CASAs listed below are delineated in 42 Pa.C.S § 6342:

- have full access 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 may help reduce potential conflict or confusion. As the *Resource Guidelines* (NCJFCJ, 1995, p. 24) point out, role conflict or confusion may sometimes arise between CASAs and GALs. The *Guidelines* recommend joint efforts to clarify and define mutual responsibilities. 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.



### 15.7.3 CASA Resources

The National CASA Association maintains a website [[www.nationalcasa.org](http://www.nationalcasa.org)], which 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 a link to the Association's monthly e-newsletter, *The Judges' Page*, and maintains a *Judges' Corner Resource Center*.

The Pennsylvania CASA Association [[www.pacasa.org](http://www.pacasa.org)] 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. The website provides links to the *National CASA Program Standards* and a *Judges' Guide to CASA/GAL Program Development*.



## **15.8 Planning and Funding Services – The Needs Based Plan and Budget (NBPB)**

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.

### **15.8.1 “Best Interests” and “Reasonable Efforts” Findings**

Several findings and orders made (or not made) by the court have 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 “fit and appropriate to the end in view” while Webster's definition is “not expecting or demanding more than is possible or achievable; fairly good but not excellent; large enough but not excessive; acceptable and according to common sense or normal practices”. Either of these would logically apply to the “reasonable efforts” standard found in dependency proceedings.

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, adjudication, and disposition hearings, “reasonable efforts” findings focus on steps taken to prevent or eliminate the need for child removal. 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)

During the shelter, adjudication, and disposition hearings, sufficient information should be presented to enable the court to make a reasonable efforts finding. Options include:

- Reasonable efforts were made to prevent or eliminate the need for removal of the children from the home.
- Prevention 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 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.
- Reasonable efforts not applicable.
- No reasonable efforts were made to prevent or eliminate the need for removal of the child from the home.

If the Court finds that reasonable efforts were not made, federal funding for the care/support of the child is prohibited.

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 goal. Here again, a finding of no reasonable efforts results in lost federal funding for the child. 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 Agency\***

Because reasonable effort findings have such a significant impact on the 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 changes needed.

**15.8.2 County Planning and Budgeting Process**

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 Public Welfare’s 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. Costs include but are not limited to Juvenile Act Proceedings costs (including reimbursement for GAL in dependency cases, assessments, etc.), county staff (excluding county court personnel and benefits), in-home services, foster family services, community-based and institutional services, detention, and secure residential services. 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 mental retardation 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 judicial president/administrative judge.

In March/April of each year, 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.

**\*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, courts 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.

Additionally, courts should be given ample time to review the NBPB prior to submission and provide feedback to the agency. The reviewing judge should be satisfied that the best programs from the court's experience are identified before executing the document.

Once OCYF receives each county's submission, OCYF regional and headquarter 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.

# Chapter 16 - Overview of Federal and State Child Welfare Legislation

## 16.1 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.

## 16.2 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. However, ASFA makes clear that the intention is to put children first; it 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)). Reasonable efforts are excused where necessary to assure the child's safety. If a parent has been convicted for prior acts of child abuse or has had parental rights involuntarily terminated with respect to a sibling of the child, the child welfare agency must initiate termination of parental rights or otherwise provide a permanent out-of-home placement for the child. In addition to these two elements, ASFA allows each state to define a set of "aggravated circumstances" which would excuse reasonable efforts and immediately move for termination of parental rights or permanent placement of the child outside the home.

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 (42 U.S.C. § 675(1)):

- A description of the type of home or institution in which a child is to be placed.

- A plan for assuring that the child receives safe and proper care and that services are provided to the parents, child, and foster parents.
- The health and education records of the child.
- Where appropriate, for a child age 16 or over, a written description of the programs and services which will help such child prepare for the transition to independent living.
- 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.

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 12 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)). 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 15 months to terminate parental rights.

In addition, ASFA allows the agency to pursue concurrent planning without financial penalties (42 U.S.C. § 671(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.

### **16.3 Child Abuse Prevention and Treatment Act**

The Child Abuse Prevention and Treatment Act (CAPTA) was enacted in 1974 and was most recently amended in 2003 as part of the Keeping Children and Families Safe Act. 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 submit a specific plan requesting funds (42 U.S.C. § 5106(a)). 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 (42 U.S.C. § 5106(a)(1)). CAPTA requires that a GAL be appointed to every child involved in a judicial proceeding involving child abuse and neglect allegations (42 U.S.C. § 5106a(b)).

CAPTA not only provides money for training GAL but also for the training of professional and paraprofessional personnel in the fields of medicine, law enforcement, judiciary, social work and child protection, education, and other relevant fields, who are engaged in, or intend to work in, the field of prevention, identification, and treatment of child abuse and neglect (42 U.S.C. § 5106(a)(1)(A)).

CAPTA also establishes a National Clearinghouse for Information Relating to Child Abuse (42 U.S.C. § 5104). The function of the Clearinghouse is to maintain, coordinate, and disseminate information on all effective programs, including private and community-based programs, that show promise of 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.

## **16.4 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 18 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 (42 U.S.C. § 677).
- (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) Requires states to train foster parents.
- (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. § 673b).
- (5) Allows youth who are in foster care on their eighteenth birthday to be covered by Medicaid between the ages of 18 and 21 (42 U.S.C. § 396(a)).

## **16.5 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 30 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)).
- **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 18, but in certain circumstances children may continue to receive guardianship assistance to age 21. The Act also clarifies that children who leave

foster care after age 16 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)).
- **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).
- **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. 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)).

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(b)).
- **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 18 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. The act also provides more federal support for school-related transportation costs (42 U.S.C. § 675).

- **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 § 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)).

## **16.6 Interstate Compact on the Placement of Children (ICPC)**

The 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 from the Association of Administrators of the Interstate Compact on the Placement of Children at <http://icpc.aphsa.org/>.

## **16.7 Indian Child Welfare Act**

The Indian Child Welfare Act (ICWA) 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. 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, preadoptive placement, and adoptive placement proceedings. ICWA also applies when an Indian parent wants to voluntarily place the child in foster care or adoption. ICWA defines an “Indian child” as a child who is a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe. Each tribe has the exclusive right to set its own requirements for membership in the tribe.

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). The tribe then has the right to request that the case be transferred from the state court to the tribal court. The state court must grant the transfer 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. 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. No foster care placement or termination of parental rights proceeding can be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary of Interior. It should be noted that notice to the parents 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 (25 U.S.C. § 1912(a)).

ICWA requires a higher standard of evidence for 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. 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(e)-(f)).

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 an authorized non-Indian licensing authority; or
- (iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

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.

The Native American Rights Fund has prepared *A Practical Guide to the ICWA* which is available at <http://www.narf.org/icwa/index.htm>.

## **16.8 The Multi-Ethnic Placement Act**

The Multi-Ethnic Placement Act of 1994, as amended by the Interethnic Provisions of 1996 (MEPA), 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)(8)).

MEPA does not apply to placements involving Indian children subject to the 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 (Hollingeri, 2007, p. 1).

The American Bar Association's Center on Children and the Law has prepared *A Guide to the Multiethnic Placement Act of 1994 as Amended by the Interethnic Adoption Provisions of 1996* which is available at

<http://www.acf.hhs.gov/programs/cb/pubs/mepa94/index.htm>

## **16.9 The Pennsylvania Adoption Act**

The Pennsylvania Adoption Act, 23 Pa.C.S. § 2301 *et seq.*, 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). 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 natural 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).

### **16.9.1 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 natural parents' consent is not necessary, nor is it necessary for the natural 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. 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. The court must schedule a hearing for a date not less than 10 days after the petition is filed. At least 10 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 18 years of age (23 Pa.C.S. § 2503).

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. A referral may not delay the completion of the hearing on the petition for more than 15 days.

### **16.9.2 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 12: Termination of Parental Rights.

Section 2511 of the Adoption Act applies to situations in which a parent or parents refuses 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. 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 by clear and convincing evidence, and then, 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 12: Termination of Parental Rights. However, even if grounds to terminate exist under Section 2511(a), the court cannot terminate parental rights unless it is in the child's best interest. Part (b) of Section 2511 requires the court to "give primary consideration to the developmental, physical and emotional needs and welfare of the child." Part (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.

### **16.9.3 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 12: Termination of Parental Rights.

## **16.10 The Child Protective Services Law**

The Child Protective Services Law (CPSL), 23 Pa.C.S. § 6301 *et seq.*, 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 to broaden its scope by imposing mandatory reporting requirements on more individuals and broadening the definition of a perpetrator of child abuse. The purposes of the statute are enumerated in Section 6302:

- 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). 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 as 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 child may also be taken into custody under the provisions of Section 6324 of the Juvenile Act. Within 24 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. Additionally, within 72 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 48 hours of the hearing. 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 30 days (See discussion at section 15.1 in Chapter 15: General Issues). 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. 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 and is a parent of a child, a person responsible for the welfare of a child, an individual residing in the same home as a child or a paramour of a child’s parent” (23 Pa.C.S. § 6303). 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. The definition of “serious bodily injury” is the same in the Juvenile Act and the CPSL. Thus, any case involving “serious bodily injury” that would constitute abuse under the CPSL would also constitute aggravated circumstances under the Juvenile Act. However, “serious bodily injury” is only a subset of the physical abuse cases

reported under the CPSL; therefore not every abuse case under the CPSL is an aggravated circumstance.

Aggravated circumstances include incidents of “sexual violence” by the parent to the child or the child’s sibling. 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, molestation, 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. 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” (42 Pa.C.S. § 6302). The CPSL states that serious physical neglect requires the “prolonged or repeated lack of supervision or the failure to provide essentials of life, including adequate medical care, which endangers a child’s life or development or impairs the child’s functioning” (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. However, the failure to thrive diagnosis 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 (Shah and Darcus, 2007, p.10).

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 three situations (23 Pa.C.S. § 6381):

- 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 may by itself support an adjudication based on abuse.

- Privileged communications (except those between a lawyer and client or 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.

## **16.11 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 terminations 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 (42 Pa.C.S. § 6301):

- 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.

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 3: Jurisdiction). 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" (42 Pa.C.S. § 6302).

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 72 hours before commencing a shelter care hearing. 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. The shelter care hearing is *not* a substitute for the adjudicatory hearing (for more information, see Chapter 5: 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 6: 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 10 days of the child's removal.

In many jurisdictions in Pennsylvania a disposition hearing is held immediately following the adjudication hearing. However, the court has 20 days from the date of the adjudication hearing to commence the disposition hearing (see Chapter 8: Disposition). Although the adjudication hearing and the disposition hearing may be held on the same day, it is a best practice to ensure that 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)) (also see Chapter 10: Permanency Hearing). Note 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.



# Resources and References

## I. 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. Selected materials from the various web sites are also referenced in the Topics section of this chapter.

### A. American Bar Association's Center on Children and the Law

[\[www.abanet.org/child\]](http://www.abanet.org/child)

The Center on Children and the Law is a program of the Young Lawyers Division and aims to improve the lives of children through advances in law, justice, knowledge, practice and policy. Specific projects include:

- ABA Permanency Project
- Adolescent Health
- Bar-Youth/Aging Out of Foster Care
- Court Improvement Program (CIP)
- Commission on Youth at Risk

The Center has established a **Legal Center for Foster Care and Education** [<http://www.abanet.org/child/education/home.shtml>] which is a collaboration between Casey Family Programs and the Center in conjunction with the Education Law Center-PA and the Juvenile Law Center. The site includes publications, such as the *Blueprint*, and a series of guidelines on special education issues and the role of the court.

The Center is also part of a collaborative partnership with the Casey Family Programs, Annie E. Casey Foundation, the Child Welfare Foundation, and the Steering Committee for the National Parents' Counsel Organization in establishing the **National Project to Improve Representation for Parents Involved in the Child Welfare System** [[www.abanet.org/child/parentrepresentation/home.html](http://www.abanet.org/child/parentrepresentation/home.html)]. This project provides training and technical assistance to jurisdictions seeking to improve the organization and quality of legal representation for parents.

## B. American Humane

[\[www.americanhumane.org\]](http://www.americanhumane.org)

The Children's Division of American Humane develops programs, policies, training, performs evaluation and other research, and conducts initiatives designed to prevent and respond to child abuse and neglect. A quarterly journal, *Protecting Children*, covers a variety of child welfare topics, such as research and evaluation projects, immigration and child welfare, fatherhood, culture, and family group decision making. In 1999, American Humane established the **National Center on Family Group Decision Making (FGDM)** to promote and support family and community involvement and leadership on 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. Numerous articles and issue briefs on FGDM are available at

<http://www.americanhumane.org/protecting-children/programs/family-group-decision-making/free-resources/issue-briefs.html>, including:

*Family Group Conferencing: A Message from the Bench*

*The Critical Role of Leadership in Family Group Decisionmaking*

*The Intersection between Family Group Decisionmaking and Systems of Care*

*Strategies to Respond to the Research Needs of Family Group Decisionmaking*

*Using Family Group Conferencing in the Children's Mental Health Context*

The Children's Bureau funded a partnership of American Humane, the American Bar Association's Center on Children and the Law, and the National Fatherhood Initiative to create the *National Quality Improvement Center on Non-Resident Fathers and the Child Welfare System*. The purpose of the Center was to determine through research the impact of non-resident father involvement in child welfare outcomes related to safety, permanence, and well-being. Resources on fatherhood available on the website include:

*Fathers and Families: the Untapped Resource for Children Involved in the Child Welfare System*

[\[http://www.americanhumane.org/protecting-children/programs/fatherhood/\]](http://www.americanhumane.org/protecting-children/programs/fatherhood/)

*Dads and Paternal Relatives: Using Family Group Decisionmaking to Refocus the Child Welfare System on the Entire Family Constellation* [\[http://www.americanhumane.org/protecting-](http://www.americanhumane.org/protecting-)



[children/programs/family-group-decision-making/free-resources/issue-briefs.html](#)]

*Bringing Back the Dads: Engaging Non-Resident Fathers in the Child Welfare System*, an issue of the journal *Protecting Children* (Vol. 24, No. 2, 2009) dedicated to involving fathers, one free copy per customer available for order at [www.americanhumane.org/protecting-children/resources/protecting-children-journal/volumes-and-sample-articles.html](#)]

### C. Casey Family Programs

[www.casey.org](#)]

Casey Family Programs 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 [www.casey.org/Resources/Publications](#)] which is an excellent resource for research and commentary on educational issues, kinship care, racial disproportionality, and youth aging out of the foster care system, among other topics.

*How are the Children? Inspiring Hope. Renewing Vision. Influencing Action.* (2010)

[http://www.casey.org/Resources/Publications/children/images/2010\\_Casey\\_Report.pdf](http://www.casey.org/Resources/Publications/children/images/2010_Casey_Report.pdf)]

### D. Child Welfare Information Gateway

[www.childwelfare.gov/index.cfm](#)]

This 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

**E. Courts Catalyzing Change: Achieving Equity and Fairness in Foster Care Initiative**

[\[www.ncjfcj.org/content/blogcategory/447/580\]](http://www.ncjfcj.org/content/blogcategory/447/580)

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.

**F. Juvenile Law Center**

[\[www.jlc.org\]](http://www.jlc.org)

The Juvenile Law Center is a public interest law firm for children in the United States which was founded in 1975 and based in Philadelphia. The Center authored the *Pennsylvania Judicial Deskbook: A Guide to Statutes, Judicial Decisions and Recommended Practices for Cases Involving Dependent Children in Pennsylvania* and published the fourth edition in 2004. Other publications of interest are available at [www.jlc.org/publications](http://www.jlc.org/publications) and include:

*Promises Kept, Promises Broken: An Analysis of Children's' Right to Counsel in Dependency Hearings in Pennsylvania* (2001)

*Dependent Youth Aging Out of Foster Care: A Judicial Guide* (2003)

*Solving the Data Puzzle: A How-to Guide on Collecting and Sharing Information to Improve Educational Outcomes for Children in Out-of-Home Care* (2008)

*Child Abuse and the Law* (2007)

**G. Kempe Center for the Prevention and Treatment of Child Abuse and Neglect**

[\[www.kempe.org\]](http://www.kempe.org)

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 in the fight against child abuse. The Kempe Center provides direct services to children and adult caregivers, as well as training, education, and consultation to professionals throughout the United States who are involved in prevention and treatment programs.

#### H. National Association of Counsel for Children

[\[www.naccchildlaw.org\]](http://www.naccchildlaw.org)

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* (2005)  
(purchase only)

*Recommendations for Representation of Children in Abuse and Neglect Cases* (2001)

#### I. National Court Appointed Special Advocates (CASA) Association

[\[www.casaforchildren.org\]](http://www.casaforchildren.org)

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 the Association's monthly e-newsletter, *The Judges' Page*, <http://www.casaforchildren.org/site/c.mtJSJ7MPlsE/b.5301323/k.C971/Judges.htm> and maintains a *Judges' Corner Resource Center*.

The **Pennsylvania CASA Association** [\[www.pacasa.org\]](http://www.pacasa.org) 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. The website provides links to the *National CASA Program Standards* and a *Judges' Guide to CASA/GAL Program Development*.

#### J. National Center for Juvenile Justice

[\[http://www.ncjj.org\]](http://www.ncjj.org)

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.

#### **K. National Center for State Courts**

[\[www.ncsc.org\]](http://www.ncsc.org)

Through its *Information and Resources* division, the National Center provides an overview, FAQs, and links to articles and reports on dependency court issues. Specific categories include:

- Dependency court reform
- Dependency mediation
- Family drug treatment courts
- Infants and toddlers
- Involving children in court
- Performance measurement
- Data exchange and IT systems
- Racial and ethnic disproportionality

The Center also publishes a quarterly e-newsletter, *Continuing Upward from the Summit*, which highlights innovations, accomplishments, and events throughout the country related to family courts and child welfare.

#### **L. National Child Welfare Resource Center on Legal and Judicial Issues**

[\[http://www.abanet.org/child/rciji/home.html\]](http://www.abanet.org/child/rciji/home.html)

This website is funded by the Children's Bureau and is supported through the collaborative efforts of the American Bar Association, National Center for State Courts, and the National Council of Juvenile and Family Court Judges. The site contains information on state Court Improvement Programs and includes a catalog of progress reports and examples of initiatives by state. The site also provides a link [\[www.abanet.org/child/courtworks.shtml\]](http://www.abanet.org/child/courtworks.shtml) to the current and past issues of a bimonthly newsletter, *Child CourtWorks*, which addresses new developments and innovations across state court improvement programs.

#### **M. National Council of Juvenile and Family Court Judges**

[\[www.ncjfcj.org\]](http://www.ncjfcj.org)

The website contains links to the National Council of Juvenile and Family Court Judges' widely referenced works on court practices in child abuse and neglect cases:

*Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* (1995)

*Adoption and Permanency Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* (2000)

*Back to Basics: Fundamental Application of the Resource and Adoption Guidelines in Child Abuse and Neglect Cases* (2006)

*The Resource Guidelines: Supporting Best Practices and Building Foundations for Innovation in Child Abuse and Neglect Cases* (2009)

There is also information and links to publications on NCJFCJ's Child Victims Act Model Courts Project, which provides technical assistance and training to more than 30 selected local and state jurisdictions in order to improve court practice and improve outcomes for children. This program is based on the best practices outlined in the Resource Guidelines and Adoption and Permanency Guidelines. Recent publications on the Model Courts program include:

*Model Court Status Report 2006/2007: A Snapshot of the Child Victims Act Model Courts Project* (2008)

*The Model Court Effect: Proven Strategies in Systems' Change* (2009)

NCJFCJ publishes *The Juvenile and Family Court Journal*, a quarterly compilation of articles on topics related to the field of juvenile justice and family law. NCJFCJ has also conducted research and published reports and technical assistance briefs on other specific child welfare issues and programs which are referenced in the Topics section below.

#### **N. National Evaluation of the Court Improvement Program**

[www.pal-tech.com/cip/index.cfm](http://www.pal-tech.com/cip/index.cfm)

The National CIP Evaluation is a five year study that is funded by the Children's Bureau and conducted by a partnership of three organizations: Planning and Learning Technologies (Pal-Tech), the Urban Institute, and the Center for Policy Research. The project is describing the many paths followed by state courts to improve the oversight of foster care and adoption cases and analyze the outcomes achieved. The results will provide information on effective models for juvenile and family court reform. The first in a planned series of reports, *Synthesis of 2005 Court Improvement Program Reform and Activities: Final Report* (2007), as well as other information on the project is available on the website.

#### **O. Office of Children and Families in the Court**

<http://www.ocfcpacourts.us/>

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 [<https://ocfcpacourts.us/judges-and-legal-professionals/>] which includes information regarding the Children's Roundtable Initiative, Permanency Practice Initiative (including FGDM), three-month court reviews, and expedited appeals. Additionally, the website provides specific information for children/youth, parents, family and community members, and human service professionals. Downloads of relevant federal and state laws are available, as well as information on training opportunities.

**P. Pennsylvania Permanency Practice Initiative (PPI)**

[<http://www.ocfcpacourts.us/permanency-practice-initiatives/overview/>]

To accomplish activities set forth by the membership of the State Roundtable the OCFC, in partnership with Department of Public Welfare's Office of Children, Youth and Families (DPW/OCYF), developed the Pennsylvania Permanency Practice Initiative (PPI).

The PPI is a collaborative effort between a variety of agencies including the OCFC, DPW/OCYF, FGDM Statewide Implementation Leadership Team, Family Development Credential Program through the Community Action Association of Pennsylvania, Pennsylvania Child Welfare Training Program, and the Statewide Adoption and Permanency Network, along with local child welfare agency directors and local judges.

The focus of the PPI is to provide enhanced judicial oversight with social work best practice in each county to increase the number of children safely maintained in their own homes and expedite the safe return home of children already in the foster care system. Accordingly, focus is on saturation of front end services which empower families to safely and effectively maintain the child or youth in the home; identify kin or other permanent resources; while at the same time providing the family with the necessary services to alleviate the circumstances which caused the referral for services.

To accomplish this focus, the PPI seeks to implement or enhance a variety of services prior to the child/youth coming into out-of-home care or immediately following the need for such placement. These services include:

1. Three (3) Month Court Review Hearings (minimum)
2. Family Finding
3. Active Local Children's Roundtable
4. Family Group Decision Making
5. Family Development Credentialing
6. Training regarding grief and loss for children in the child welfare system

## Q. The Pew Charitable Trusts – Foster Care Reform

[\[http://www.pewtrusts.org/our\\_work\\_detail.aspx?id=8\]](http://www.pewtrusts.org/our_work_detail.aspx?id=8)

From 2003 to 2009, the Pew Commission on Foster Care worked with partners at the local, state and national level to ensure that more children were living in safe and permanent homes. In 2004, the Commission released a comprehensive report, *Fostering the Future: Safety, Permanency, and Well-Being for Children in Foster Care*, with a set of recommendations designed to reform the way the federal government supports children who are abused or neglected and to encourage greater judicial accountability through the implementation of better case tracking systems. Other reports available for download from the Pew website include:

*Strengthening Families through Guardianship* (2008)

*Time for Reform: Aging Out and On Their Own* (2007)

*Improving Outcomes Together: Court and Child Welfare Collaboration* (2005)

## II. Judicial Guides, Checklists, and Tools

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# Glossary and Acronyms

**Adjudication Hearing** – The trial stage of child dependency proceedings during which the court determines 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 6: 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 9: Permanency Options).

**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.

**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 14: 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 15: General Issues).

**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 identification of needed services preferably prior to court intervention. Some ADR approaches include, but are not limited to: FGDM, 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. 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 9: Permanency Options).

**Child Abuse Prevention and Treatment Act (CAPTA)** - The Child Abuse Prevention and Treatment Act (1974) was most recently reauthorized by the Keeping Children and Families Safe Act of 2003. 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 16: Overview of Federal and State Child Welfare Legislation).

**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 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 Court Management System (CPCMS) Dependency Module** – 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 <http://www.pacourts.us/Forms/dependency.htm> (see Chapter 15: General Issues).

**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, develops 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.

**Court Appointed Special Advocate (CASA)** – A specially screened and trained volunteer, appointed by the court, who conducts an independent investigation of child 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 15: General Issues).

**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 8: Disposition).

**Facilitation** – A method of Alternative Dispute resolution. 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 master.

**Family Development Credentialing (FDC)** – One of the primary elements of the Permanency Practice Initiative, FDC is a professional development course and credentialing program for frontline family workers to learn and practice skills of strength-based family support with families. FDC courses are offered to frontline family workers from a wide range of government, private and not-for-profit agencies, as well as faith-based organizations, businesses and large corporations. Family development trainees work with families across the life span including families with young children, teen parents, retired people, people with disabilities, and many other groups. More information on FDC can be found at <http://www.fdc-pa.org/index.html>.

**Family Finding** – A process used to identify family members (including extended family). Far more than a web-based search, this process provides the skills to engage disconnected family members in an effort to provide permanent placements, supports and safe, adult connections for youth. This process is particularly effective when used in conjunction with Family Group Decision Making. More information on Family Finding can be found at <http://www.cpyy.org/>.

**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 15: General Issues).

**Family Service Plan (FSP)** - A plan developed for the family by the child welfare agency which includes, but is not limited to, items such as: identifying information on the family members, the circumstances which 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.

**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.

**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 16 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.

**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 law designed to provide the legal framework for placements, including adoptive placements, in which more than one state is involved (see Chapter 16 - Overview of Federal and State Child Welfare Legislation and Chapter 3: Jurisdiction).

**Indian Child Welfare Act (ICWA)** – An Act which addresses the removal of Indian children from their home and their placement with non-Indian families (see Chapter 3: Jurisdiction).

**Kinship Care** – Care of a child by a relative. The relative must become a licensed foster parent and may become the adopting parent if parental rights are terminated. Pennsylvania defines a relative as 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 25 of 2003).

**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)** – An Act intended to remove barriers to interethnic adoption.

**Out-of-Home Care** – Childcare, foster 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. 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 9: 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 10: 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 master 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 court must consider changing the goal

from reunification to another permanency goal (see Chapter 11: Permanency Hearing to Consider Change of Goal (“Goal Change Hearing”)).

**Permanency Practice Initiative (PPI)** – An initiative developed by the 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 Family Group Decision Making, Family Finding, Family Development Credentialing, 3 month judicial reviews, CPCMS Dependency Module and local Children’s Roundtables.

**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 which 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 9: 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 9: Permanency Options).

**Putative Father** – The alleged or supposed male parent; the person alleged to have biologically fathered a child whose parentage is at issue.

**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.

**Reunification** – The return of children to the custody of their biological parents when they have been involved in a period of foster care after out-of-home placement.

**Review Hearing** - Proceedings which follow disposition at which the court reviews the status of the case, examines progress made by the parties, provides for correction and revision of the case plan, and generally ensures that the case is progressing (see Chapter 10: Permanency Hearing).

**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 5: Entering the Child Welfare System – Shelter Hearing).

**Subsidized Permanent Legal Custodianship (SPLC)** – A permanent legal custodianship arrangement, which 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 family is not willing to provide support to the child after the child turns 18.

**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.

**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 12: Termination of Parental Rights).

**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.

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.





## ACRONYMS

<b>AACWA</b>	<b>ADOPTION ASSISTANCE AND CHILD WELFARE ACT</b>
<b>AC</b>	<b>AGGRAVATED CIRCUMSTANCES</b>
<b>AFSA</b>	<b>ADOPTION AND SAFE FAMILIES ACT, PUBLIC LAW 105-89</b>
<b>ABA</b>	<b>AMERICAN BAR ASSOCIATION</b>
<b>ADR</b>	<b>ALTERNATIVE DISPUTE RESOLUTION</b>
<b>AOPC</b>	<b>ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS</b>
<b>APPLA</b>	<b>ANOTHER PLANNED PERMANENCY LIVING ARRANGEMENT</b>
<b>CAPTA</b>	<b>CHILD ABUSE AND PREVENTION AND TREATMENT ACT</b>
<b>CASA</b>	<b>COURT APPOINTED SPECIAL ADVOCATES</b>
<b>CFCIP</b>	<b>CHAFEE FOSTER CARE INDEPENDENCE PROGRAM</b>
<b>CIP</b>	<b>COURT IMPROVEMENT PROGRAM</b>
<b>CPCMS</b>	<b>COMMON PLEAS CASE MANAGEMENT SYSTEM</b>
<b>CPP</b>	<b>CHILD PERMANENCY PLAN</b>
<b>CRT</b>	<b>CHILDREN'S ROUNDTABLE</b>
<b>CYS</b>	<b>CHILDREN AND YOUTH SERVICES (COUNTY-LEVEL AGENCIES)</b>
<b>DPW</b>	<b>DEPARTMENT OF PUBLIC WELFARE</b>
<b>ESC</b>	<b>EMERGENCY SHELTER CARE</b>
<b>FCIA</b>	<b>FOSTER CARE INDEPENDENCE ACT</b>
<b>FGDM</b>	<b>FAMILY GROUP DECISION MAKING</b>
<b>FSP</b>	<b>FAMILY SERVICE PLAN</b>
<b>GAL</b>	<b>GUARDIAN <i>AD LITEM</i></b>
<b>ICPC</b>	<b>INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN</b>
<b>ICWA</b>	<b>INDIAN CHILD WELFARE ACT</b>

<b>IEP</b>	<b>INDIVIDUAL EDUCATION PLAN</b>
<b>IL</b>	<b>INDEPENDENT LIVING</b>
<b>JCJC</b>	<b>JUVENILE COURT JUDGES COMMISSION</b>
<b>JLC</b>	<b>JUVENILE LAW CENTER</b>
<b>MA</b>	<b>MEDICAL ASSISTANCE</b>
<b>MEPA</b>	<b>MULTIETHNIC PLACEMENT ACT</b>
<b>NACC</b>	<b>NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN</b>
<b>NBPB</b>	<b>NEEDS BASED PLAN AND BUDGET</b>
<b>NCSC</b>	<b>NATIONAL CENTER FOR STATE COURTS</b>
<b>NCJFCJ</b>	<b>NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES</b>
<b>OCFC</b>	<b>OFFICE OF CHILDREN AND FAMILIES IN THE COURT</b>
<b>OCYF</b>	<b>OFFICE OF CHILDREN, YOUTH, AND FAMILIES</b>
<b>PLC</b>	<b>PERMANENT LEGAL CUSTODIANSHIP</b>
<b>PPI</b>	<b>PERMANENCY PRACTICE INITIATIVE</b>
<b>RTF</b>	<b>RESIDENTIAL TREATMENT FACILITY</b>
<b>SIL</b>	<b>SUPERVISED INDEPENDENT LIVING</b>
<b>SPLC</b>	<b>SUBSIDIZED PERMANENT LEGAL CUSTODIANSHIP</b>
<b>TPR</b>	<b>TERMINATION OF PARENTAL RIGHTS</b>

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