

# Dependency Court Hearings

## Informal Hearing (Also referred to as Shelter Care Hearing)

- Purpose of this hearing is to obtain a judicial:
  - Review of the protective custody order.
  - Determination as to whether the child can be immediately and safely returned home, if not...
  - Determination as to whether any services would facilitate the child's immediate return home, if not ...
  - Determination as to whether a child's out-of-home placement should continue, if so..
  - Determination that continuation in the child's home would be contrary to the welfare of the child.
  - Determination as to whether the out-of-home placement is the least restrictive placement and whether placement with a relative or kin has been considered. (Act 80 of 2012)
  - Determination as to visitation that would support the child's safety, well-being and permanence.
  
- Relevant Time frames:
  - Informal Hearing must occur within 72 hours of CYS obtaining a protective custody order and the child's placement in out-of-home care.
  - If someone other than CYS took the child into custody, then within 48 hours of the informal hearing where it is determined that protective custody shall continue a dependency petition must be filed.(23 Pa. § 6315(d).
  
- Child Welfare Professional's Role/Responsibilities:
  - Present evidence to support or inform:
    - Facts and circumstances that lead to the child's removal.
    - Reasonable efforts to prevent the child's placement or
    - Existence of an emergency that precluded reasonable efforts to prevent the out-of-home placement.
    - Source of danger to the child.
    - Existence and availability of services to safeguard the child in the home, and/or
    - Parents' ability and/or willingness to protect child from harm.

## Adjudication of Dependency Petition Hearing:

- Purpose of this hearing is to obtain a judicial:
  - Determination as to whether the evidence supports state's intervention,
  - Determination that the child is dependent; OR
  - Determination as to whether the child is dependent and abused, if abuse was alleged in the petition.

# Dependency Court Hearings, continued.

- If a determination of dependency has been made, then a determination as to whether “aggravated circumstances” exist, if aggravated circumstances were alleged in the petition.

If a dependency determination is not made, then the matter is concluded as the court does not have jurisdiction to proceed or possess authority over the parties.

- Relevant Time frames:
  - Must occur within 10 days of the informal hearing, if protective custody of the child has been obtained.
  - If the hearing is not held within this time, the child is to be immediately released OR
  - A child can be detained for an additional 10 days if the court determines after a hearing that:
    - Material evidence is not available and due diligence to obtain the evidence has been employed and
    - There are reasonable grounds to believe that the evidence will be available at a later date and
    - Court finds by clear and convincing evidence that the life of the child would be in danger or the child will abscond or be removed from the jurisdiction of the court.
  - 10 day mandate may be waived (a right that is voluntarily or intentionally given up.)
  - If any party does not waive, the hearing must be held within 10 days.
  - Must occur within 45 days if protective custody of the child has not been obtained.
- Child Welfare Professional’s Role/Responsibilities:
  - Identify witnesses and/or documentary evidence to support or inform:
    - allegations in the petition;
    - reasonable effort services to prevent placement, if applicable;
    - existence of emergency precluding reasonable efforts, if applicable; and
    - recommendations as to placement and visitation, if applicable.
  - Testify regarding evidence to support or clarify the above.
- Evidentiary/Procedural Issues:
  - The standard of proof is clear and convincing. This term means that the judge finds that it is highly probable that the existence of the presented facts is true.
  - Hearsay testimony, based on child’s statements, is allowed. (42 Pa.§ 5986)
  - Parties may request court to issue subpoenas requiring attendance of witnesses and documentary evidence. (42 Pa.§ 6333)

# Dependency Court Hearings, continued.

## Disposition Hearing

A disposition hearing is held to determine the custody and control of the child and only after the court makes a finding that the child is dependent.

- Purpose of the Disposition Hearing is to obtain a disposition that is best suited to the safety, protection and physical mental, and moral welfare of the child including:
  - Permit the child to remain with the parent, guardian, or custodian subject to conditions and limitations, including supervision as directed by the court for the protection of the child.
  - Subject to the court's conditions and limitations transfer temporary legal custody to any of the following:
    - Any individual, including relative, who, after study, is found to be qualified to receive care for the child.
    - An agency or licensed private organization to receive and provide care to the child.
    - A public agency authorized by law to receive and provide care for the child.
  - Subject to the court's conditions and limitations transfer permanent legal custody (PLC) to an individual including any relative, who, after study is found by the court, to be qualified to receive and care for the child.
    - This order may include temporary visitation rights of the parents.
  - Transfer custody of the child to a juvenile court of another state. (42 Pa. §6351(a))
- Required Pre-placement Findings: Prior to entering any of the above orders of disposition that would result in the child's removal from home, the court must make the following findings on the record or in the court order.
  - Continuation of the child in his home would be contrary to the welfare, safety or health of the child; and
  - Whether reasonable efforts were made prior to the placement of the child to prevent or eliminate the need for removal of the child from his home, if the child has remained in his home pending such disposition; or
  - If preventive services were not offered due to the necessity for an emergency placement, whether such lack of services was reasonable under the circumstances; or
  - If the court has previously determined in the informal hearing that reasonable efforts were not made to prevent the initial removal of the child from his home, whether reasonable efforts are under way to make it possible for the child to return home.
- Aggravated Circumstances: If the court previously determined that aggravated circumstances existed and that no new or additional reasonable efforts to prevent or eliminate the need for removing the child from the home or to preserve and reunify the family are required then the court should not make the reasonable

# Dependency Court Hearings, continued.

efforts findings described above.

- Relevant Time Frames:
  - Immediately or within 20 days of adjudication hearing if the child is in a out-of-home placement.
  - Within 60 days, if the child is not in an out-of-home placement. (42 Pa. §6341)
  - The judicial determination of reasonable efforts must occur within 60 days of the child's removal from home, if applicable.
  - Permanency plan must be developed within 30 days of removal.
  - Appeals may be filed only after the issuance of the disposition order.
- Child Welfare Professional's Role and Responsibilities:
  - Identify witnesses and/or documentary evidence to support or inform:
    - Recommendations for the custody and care of the child and the permanency plan;
    - Required pre-placement judicial findings;
    - The child's safety, permanence and well-being including:
      - Education, medical, mental health and any special needs of the child.
      - Appropriateness of out-of-home placement and consideration of placement with family.
      - Proximity of placement to family, school, and community.
      - Visitation with parents and siblings.
  - Testify regarding evidence to support or inform the above.
- Evidentiary/Procedural Issues:
  - The standard to remove a child from the parents' care and control is a **clear necessity** (alternatives to removal are unfeasible).
  - Notice must be provided to parties and foster parents, pre-adoptive parents and relatives caring for the child.
  - All evidence helpful in determining the question presented may be heard by the court, although not admissible at the adjudication. (42 Pa. §6341(d))

## Permanency Hearings

“Permanency planning is a concept whereby children are not relegated to the limbo of spending their childhood in foster homes, but instead, dedicated effort is made by the court and the children's agency to rehabilitate and unite the family in a reasonable time, and failing in this, to free the child for adoption.” (*In the Interest of M.B.*, 1996)

- 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

# Dependency Court Hearings, continued.

- Whether the placement continues to be best suited to the safety, protection and physical, mental and moral welfare of the child.
- Required Judicial Determinations:
  - Continued necessity for and appropriateness of the placement.
  - Appropriateness, feasibility and extent of compliance with the permanency plan developed for the child.
  - Extent of progress made toward alleviating the circumstances which necessitated the original placement.
  - Appropriateness and feasibility of the current placement goal for the child.
  - Likely date by which the placement goal for the child might be achieved.
  - Whether reasonable efforts were made to finalize the permanency plan in effect.
  - Whether the child is safe.
  - If the child has been placed outside of the Commonwealth, whether the placement continues to be best suited to the safety, protection, and physical, mental and moral welfare of the child.
  - The services needed to assist a child who is 14 years of age or older to make the transition to successful adulthood.
  - If the child has been in placement for at least 15 of the last 22 months or if the court has determined that aggravated circumstances exist and that reasonable efforts are not required, the court must determine whether the county agency has:
    - filed or sought a petition to terminate parental rights and
    - to identify, recruit, process and approve a qualified family to adopt the child unless:
      - child is cared for by a relative best suited for the child or
      - a compelling reason for not terminating parental rights exist
      - family has not been provided necessary services to achieve a safe return of the child within the time frames identified in the permanent plan.
  - If the child has been placed with a caregiver, whether the child is being provided with regular, ongoing opportunities to participate in age-appropriate or developmentally appropriate activities. In order to make the determination under this paragraph, the county agency shall document the steps it has taken to ensure that:
    - the caregiver is following the reasonable and prudent parent standard; and
    - the child has regular, ongoing opportunities to engage in age-appropriate or developmentally appropriate activities. The county agency shall consult with the child regarding opportunities to engage in such activities.
- Upon the determination of the above the court must determine if and when the child will be:
  - Returned home; OR

# Dependency Court Hearings, continued.

- Placed for adoption and a termination of parental rights petition will be filed; OR
  - Placed with a legal custodian (PLC); OR
  - Placed with a fit and willing relative; OR
  - Placed in another planned permanent living arrangement (APPLA) which is approved by the court where all of the following apply:
    - The child must be 16 years of age or older.
    - The county agency shall identify at least 1 significant connection with a supportive adult willing to be involved in the child's life as the child transitions to adulthood, or document that efforts have been made to identify a supportive adult.
    - The county agency shall document:
      - A compelling reason why none of the other goals can be accomplished.
      - Its intensive, ongoing, and as of the date of the hearing, unsuccessful efforts to return the child to their parent, guardian or custodian, to be placed for adoption, to be placed with a legal custodian (PLC), or to be placed with a fit and willing relative.
      - Its efforts to utilize search technology to find biological family members for the child.
    - The court shall:
      - Ask the child about the desired permanency goal for the child.
      - Make a judicial determination explaining why, as of the date of the hearing, APPLA is the best permanency plan for the child.
      - Provide compelling reasons why all of the other goals are still not in the child's best interests.
      - Make findings that the significant connection is identified in the permanency plan or that efforts have been made to identify a supportive adult, if not one is currently identified.
- Relevant Time Frames
    - Within 6 months of:
      - The date of the child's removal pursuant to a protective custody order or temporary transfer of custody pursuant to an Informal hearing whichever is the earliest.
      - Each previous permanency hearing until the child is returned to the child's parent, guardian, or custodian or removed from the jurisdiction of the court.
    - Within 30 days of:
      - The date of 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 or preserve or reunify the family need not be made.

# Dependency Court Hearings, continued.

- The date of the permanency hearing where the above findings regarding aggravated circumstances were made and the permanency plan needs to be revised to be consistent with the court's ruling.
  - An allegation that aggravated circumstances exist regarding a child who has been adjudicated dependent.
  - A petition alleging that the hearing is necessary to protect the safety or physical, mental or moral welfare of a dependent child. The Permanency Review hearings must be held within six months after the child's placement and every 6 months thereafter. However, if the court did find that "aggravated circumstances" exist then the permanency review hearing will be held within 30 days of the adjudication of dependency and its finding of "aggravated circumstances" and reasonable efforts to prevent or eliminate the need to remove the child from the child's parent, guardian, or custodian to preserve and reunify the family need not be made or continue to be made.
- Child Welfare Professional's Role and Responsibilities:
    - Identify witnesses and/or documentary evidence to support or inform:
      - The implementation of the permanent plan;
      - Parent's cooperation and participation in the plan;
      - Required permanency judicial determinations discussed above; and
      - The child's safety, permanence and well-being.
    - Testify regarding evidence that supports or inform the above.
- Evidentiary and Procedural Issues:
    - Aggravated circumstances must be proven by clear and convincing evidence.
    - Evidence regarding the parents' conduct including use of alcohol and controlled substance that places a risk on the child's safety or welfare shall be presented to the court at the permanency hearing although it was not the basis for the dependency determination.
    - When the goal of the child is APPLA, the court shall ask the child about their desired permanency outcome; comments in the court rules clarify that the conversation is to be between the child and the court, *not* the guardian ad litem answering for the child. In all other circumstances the court shall consult with the child regarding the child's permanency plan, including the child's desired permanency goal, in a manner appropriate for the child's age and maturity or ascertain the child's views through the guardian *ad litem*, counsel, if one has been appointed, court-appointed special advocate, or other person designated by the court.
    - A judge who adjudicated the child dependent or conducted the child's permanency hearings or other dependency proceedings may be assigned to the orphans' court division for the purpose of hearing proceedings related to:

## Dependency Court Hearings, continued.

- Involuntary termination of parental rights.
- Petition to adopt the dependent child.
- When a goal is being changed from reunification to adoption and termination of parental rights, the hearing must be recorded and transcribed.
- Goal change hearings can be appealed.