



THE FUNDAMENTALS OF EFFECTIVE CHILD ABUSE AND NEGLECT HEARING PRACTICE

**THE PRELIMINARY PROTECTIVE HEARING
THE PERMANENCY HEARING**




Hon. Stephen M. Rubin (ret). Wrightsville Beach, NC
June 24, 2015

THE RESOURCE GUIDELINES




Key Principles of Permanency Planning

- Keep families together
- Ensure access to justice
- Cultivate cultural responsiveness
- Engage families through alternative dispute resolutions techniques
- Ensure child safety, permanency and well-being




THE RESOURCE GUIDELINES




Key Principles (Cont'd)

- Ensure family time/visitation
- Provide judicial oversight
- Ensure competent and adequately compensated representation
- Advance the development of adequate resources
- Demonstrate judicial leadership and foster collaboration




http://www.ncjfcj.org/sites/default/files/keyprinciples.final_permp planning.pdf

THE PRELIMINARY PROTECTIVE HEARING




- **Should be as thorough and meaningful as possible**
 - In-depth inquiry concerning circumstances of the case
- **Should move litigation forward quickly**
 - Important opportunity to “frontload” case process
- **Should set the tone for a problem-solving atmosphere**
 - Problem-solving atmosphere best to address the needs of the child and family

THE PRELIMINARY PROTECTIVE HEARING



Enhanced Resource Guidelines – Preliminary Protective Hearing/Shelter Care Hearing Bench Card

- Case Management BEFORE the Hearing
- Conducting the Hearing
- Concluding the Hearing
- Case Management AFTER the Hearing




THE PRELIMINARY PROTECTIVE HEARING





- **Who should be present**
 - What can be done to ensure/facilitate attendance and participation at the Shelter Care Hearing?



THE PRELIMINARY PROTECTIVE HEARING 

- **Reviewing the Petition**
- **Related Cases**
- **ADR**
- **Due Process Considerations**
 - Identification of parents/guardians
 - Notice
 - Representation
 - Understanding and competency
 - Applicability of other laws and regulations
- **Engage parents, children or relatives present**
- **ICWA inquiry and determination**



THE PRELIMINARY PROTECTIVE HEARING 

KEY DECISIONS AND FINDINGS

Legal threshold for removal

- If probable cause found, whether remaining in the home is **contrary to the welfare of the child**; specifying the immediate safety concerns.
- Whether placement in shelter care is in the **best interests of the child** and that no reasonable options exist that allow the child to remain at home.

THE PRELIMINARY PROTECTIVE HEARING 

KEY DECISIONS AND FINDINGS THE COURT MUST MAKE

- **Reasonable Efforts to Prevent Removal**
- **Reasonable Efforts to Allow the Child to Safely Return Home**
- **Appropriateness of Placement**

THE PRELIMINARY PROTECTIVE HEARING



SUMMARY: Federally required Title IV-E Findings at the Shelter Care Hearing

ASFA requires that the court make a finding that reasonable efforts were made by the department to prevent the child's removal (42 U.S.C. 671(a)(15)(B)(i); 45 C.F.R. 1356.21(b)(1)).

The reasonable efforts to prevent removal finding must be:

- Made within 60 days of the child's removal 45 C.F.R. 1356.21(b)(1);
- Explicitly documented by reference to facts 45 C.F.R. 1356.21(d); and
- Made on a case-by-case basis. 45 C.F.R. 1356.21(d)

THE PRELIMINARY PROTECTIVE HEARING



Reasonable Efforts to Prevent Removal May NOT be:

- Made retroactively (45 C.F.R. 1356.21(d));
- Made by a mere reference to a court report without citing specific facts from the report (65 Fed. Reg. 4056 (Jan. 25, 2000)); or
- Made by mere reference to a state statute without citing facts from the case (45 C.F.R. 1356.21(d)).

THE PRELIMINARY PROTECTIVE HEARING



When a child is removed from the home, ASFA requires that the court make a finding that

- Continuance in the home of the parent or legal guardian would be **contrary to the child's welfare**

42 U.S.C. 672(a)(1-2); 45 C.F.R. 1356.21(c)

THE PRELIMINARY PROTECTIVE HEARING



The Contrary to Welfare Finding MUST be:

- Made at the first court hearing that sanctions, even temporarily, the child’s removal (45 C.F.R. 1356.21(c));
- Explicitly documented by reference to facts (45 C.F.R. 1356.21(d)); and
- Made on a case-by-case basis (45 C.F.R. 1356.21(d)).

THE PRELIMINARY PROTECTIVE HEARING



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- Made by a mere reference to a court report citing facts from the report (65 Fed. Reg. 4056 (Jan. 25, 2000)); or
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THE PRELIMINARY PROTECTIVE HEARING



The Court is required to find:

- Continuance in the home of the parent or legal guardian would be contrary to the child’s welfare;
- Reasonable efforts have been made to prevent removal or eliminate the need for removal; and
- **Placement and care are the responsibility of the state agency or any other public agency with which the responsible state agency has an agreement**

(42 U.S.C. 672(a) (1-2); 45 C.F.R. 1356.71(d)(1)(iii)).

PRELIMINARY PROTECTIVE HEARING & FOSTERING CONNECTIONS ACT (2008) P.L. 110-351



Sibling Placement

Reasonable efforts to place siblings in the same foster care placement required; If siblings can't be placed together, must make reasonable efforts to provide frequent visitation among siblings

Educational Stability

Required to coordinate with school to ensure child remains in original school if in the child's best interests; If not in child's best interests, must provide assurance child is immediately enrolled in new school and all records transferred

Notice

due diligence to identify and provide notice to all adult relatives within 30 days of removal (42 U.S.C. Section 671(29)).

THE PRELIMINARY PROTECTIVE HEARING & THE PREVENTING SEX TRAFFICKING AND STRENGTHENING FAMILIES ACT OF 2014



- Adds to the list of relatives that must be notified of a child's placement "all parents of a sibling of a child, where such parent has legal custody of such sibling" (471)(a)(29).
- Must consider if potential foster and kinship care providers have the knowledge and skill to apply a "reasonable and prudent parent standard," while allowing children to participate in normal and beneficial activities. P.L. 113-183; §111(a)(3); §471(a)(24)

P.L. 113-183

P.L. 113-183 AND THE PRELIMINARY PROTECTIVE HEARING (CONT'D)



- Court should inquire if there is any reason to believe that the child is a victim of sex trafficking or is at risk of becoming a victim of sex trafficking (P.L. 113-183).
 - If yes, the court should inquire about whether the placement is able to provide appropriate support to the child and if the child welfare agency will ensure specific services for victims or at-risk children will be provided.

SETTING THE STAGE FOR SUBSEQUENT HEARINGS AND ACHIEVING POSITIVE OUTCOMES FOR CHILDREN AND FAMILIES



- Trauma
- Child Well-Being Inquiry
 - Education
 - Physical Health Issues/Needs
 - Dental Health Needs
 - Mental/Developmental Health Needs



CONCLUDING THE PRELIMINARY PROTECTIVE HEARING




- Case Management Tasks that Help Prepare for the Next Hearing
 - Identify tasks to be accomplished by next hearing
 - Consider ADR
 - Ensure parties' understanding
 - Ensure parties have copies of orders
 - Determine who should be present at next hearing
 - Set date and time for next hearing
- Engage parents, children, family members

GETTING IT RIGHT FROM THE START




Review of best practice strategies for frontloading the case process at and before the Preliminary Protective Hearing

- Effective Caseflow Management
- Frontloading ADR Techniques
- Ensuring Focus on Child Well-Being from Onset


EFFECTIVE CASEFLOW MANAGEMENT 

To be effective, caseload management activities must align with the goals and purpose of child protection court system

Purposes	Goals
Protect Children	Safety
Provide Permanency	Permanency
Strengthen and Preserve Families	Timeliness
Provide Due Process	Due Process/Fairness
Hold Systems Accountable	Well-Being

EFFECTIVE CASEFLOW MANAGEMENT -DEFINITION 

- Coordination of court/agency processes and resources to move cases timely from filing to case closure regardless of the type of disposition.
- The entire set of actions that the system takes to monitor and control the progress of cases, from commencement through completion of all post-dispositional court/case work, in order to make sure justice is done promptly.

EFFECTIVE CASEFLOW MANAGEMENT -GOALS 

- To maximize the possibility of achieving a just result in each case as expeditiously as possible.
- To create a predictable system of case processing that sets expectations for the parties and the public and helps assure that the court system provides on-going supervision of the case process to ensure the efficient, timely, and fair disposition of each case.

**EFFECTIVE CASEFLOW
MANAGEMENT -STRATEGIES**



- Take advantage of “Golden Opportunities”
- Create an “Atmosphere of Expectation”
- Collaboration
 - Court can’t “do it alone”
 - Requires consultation with all stakeholders
- Exercise active day-to-day management of cases
 - Early & continuous court control of case progress
 - Meaningful events & realistic schedules
 - Management of court events from intake to case closure

**EFFECTIVE CASEFLOW
MANAGEMENT -STRATEGIES**



Consider Implementing Differentiated Case Management (DCM)



- DCM establishes different case processing tracks, with different events and timeframes, to reflect the case processing needs of each case
- DCM premise – cases are not alike in terms of the processing events and timeframes required for their just disposition


**EFFECTIVE CASEFLOW
MANAGEMENT -STRATEGIES**




Examples of DCM Elements:


- Assignment of cases to “tracks”
 - By speed necessary/urgency
 - By case characteristics
 - By special needs
 - By case types
- Tracks get program/intervention
 - Case management conferences, status hearings, readiness conferences, access to specialized programming based on needs (e.g., drug court)



FRONTLOADING ADR TECHNIQUES 

- Family Group Decision-Making
- Child Protection Mediation
- Pre-Hearing Case Conferencing




PRE-SHELTER CARE HEARING CONFERENCING 

Pre-Hearing Conference Facilitator

- Facilitates preliminary hearing conferences to determine agreement on issues of placement, visitation, and services.
- Prepares dependency files, including defining multiple case issues, coordinating paperwork on concurrent dependency and delinquency cases and assuring proper handling of services

PIMA COUNTY (TUCSON, AZ) MODEL

PHC @ 8:30	PPH @ 9:15
PHC @10:15	PPH @11:00
Supplemental	
PHC @1:00	PPH @1:30

PRE-SHELTER CARE HEARING CONFERENCING 

PHC AGENDA

- Introduction by Facilitator
 - Set the tone; State goals of the PHC; State ground rules
- Participant introductions and relationship to child/sign-in sheet
- Discuss procedural questions (“taking care of business”)
 - Paternity; ICWA issues; Requests for review of temporary custody; Absent parties; Confirm child status and status of financial affidavits; Family team meeting dates

ENSURING FOCUS ON CHILD WELL-BEING FROM CASE ONSET



- Ensure child well-being inquiry made at Shelter Care Hearing and every hearing
 - Refer to well-being checklists (e.g., Psychotropic Medication Protocols; Educational Outcomes)
- 0-3, Infants and Toddlers Initiatives
- Involve the Voice of Children and Youth
 - In child protection court hearings
 - In focus groups about their experience



ENSURING FOCUS ON CHILD WELL-BEING FROM CASE ONSET



"Listen to us. Find out what our style is. Talk to other people that know us, if we say it's okay. Check with us about things. Remember the motto, 'Nothing About Us Without Us!' Don't make choices for us without us ... Know that we have thoughts, feelings, and ideas just like you."



Sara Erstad-Landis (former foster care youth), "What I Would Like to Say to Lawyers and Judges," *Youth Law News*, 2013.

ENHANCING PERMANENCY HEARING BEST PRACTICES



The Permanency Hearing
5 Plan Analysis Case Scenario
Review of the Permanency Hearing Bench Card



THE PERMANENCY HEARING



The Permanency Hearing

- Dispositional hearing under 96-272
- Deadline to determine final permanency plan for child—move out of foster care into safe, permanent home
- Must be held within 12 months after child enters foster care

KEY CONSIDERATIONS AT THE PERMANENCY HEARING



- Permanent Plan Determination
- What is the agency recommended permanency plan?
- When is the plan expected to be finalized?
- Are any parties advocating for an alternate plan?
- Is the agency required to file a termination of parental rights petition? Child in care 15 out of 22?

WHY TIMELY PERMANENCY



Defining Permanency




DEFINITION OF PERMANENCY


- A safe, nurturing and stable home environment and set of relationships
- Opportunity to live in a permanent home which can be returned to for support even as an adult
- Home intended to last indefinitely
- Family with commitment to continuity for the child/youth
- Gives young person a sense of belonging and a definitive legal and social status

DEFINING PERMANENCY

- Permanence is not a philosophical process, a plan or foster care placement
- Permanence is about locating and supporting a lifetime family



DEFINING PERMANENCY



- Permanence should bring about physical, legal and emotional safety and security
- Permanence is achieved with a family relationship that offers safe, stable, and committed parenting, unconditional love and lifelong support

Monica, Age 15

DEFINING PERMANENCY



"They're always talking about this Permanency stuff. You know social workers ... lawyers ... always using these big terms to talk about simple things. One day one of them finally described what she meant by permanency. After I listened to her description, which was the first time anyone ever told me what the term meant, I said, "Oh, that's what you mean? Yeah, I want permanency in my life. I don't think I've ever had that! How soon can I get it?"

Foster Care Youth

WHAT DO WE MEAN BY PERMANENCE?



A Youth Perspective:

- Permanency is a state of mind, **not a placement**
- Permanence is having the feeling that you are **connected**
- That there is someone who will **answer** your phone call in the middle of the night
- Or **miss you** when you don't show up
- PERMANENCE is **NOT** a place

ETHICS AND PERMANENCY PRACTICE



- Professionals working in child welfare must recognize that the legal, psychological, and social needs of the family are intertwined and are best addressed through a timely, coordinated, interdisciplinary approach.
- To be effective, interdisciplinary collaboration should take place within the context of mutual respect.
 - members of different professions in child welfare should respect the expertise, responsibilities and ethical duties of other professions.

TIMELY PERMANENCY PLANNING



- Chart a course to get to the permanency goal in as short a time as possible
- Ensure the child is in an appropriate placement during the journey towards permanency



Eduardo, Age 16

Time is a precious commodity in the life of a child

Case Plans




What are the features of a good case plan?




A CLOSER LOOK AT THE CASE PLAN



- There is nothing more important in permanency planning than effective case planning
- The case plan should be driven by the identified needs of the family and not by the readily available resources of the agency and the community
- The case plan is the roadmap to permanency for the children we serve


A CLOSER LOOK AT THE CASE PLAN 

- The foundation of a good case plan is the court's determination of the reason that the child cannot be maintained at home safely.
- The Court should never, consciously or through inaction, abdicate its responsibility as gatekeeper.
- The Court should carefully scrutinize stipulations to case plans.

A CLOSER LOOK AT THE CASE PLAN 

CHILD WELL-BEING

- What is the child's well-being status? What progress has the child made?
- What services, interventions or supports are in place to promote well-being?
- How has the Agency assessed the quality of those services?
- Are those services specifically tailored to child's unique issues?
- What additional services, interventions or supports will be provided to overcome child's barriers to progress?

THE CASE PLAN: QUESTIONS TO ASK ABOUT EVERY GOAL AND EVERY STEP 

- Is it simple so as to be understood by all?
- Is it specific as to who, what, where and when?
- Does it allow for accountability?
- Does it relate directly to the reason the child cannot be maintained safely at home?
- If all of the steps are achieved, will the risk to the child be reduced to a level that will allow the children to return home?
- Is it doable?

SUMMARY: CHARACTERISTICS OF A GOOD CASE PLAN



What ARE YOUR goals?
-graduate -housing
-a good job/income
-people I can trust - friends
- know I am loved
ARE they being reached???

Lawon, Age 17

- SIMPLICITY**
- SPECIFICITY**
- ACCOUNTABILITY**
- RELATIVITY**
- DOABILITY**

THE PERMANENCY HEARING



- **Who should be present**
 - What can be done to ensure/facilitate attendance and participation at the Permanency Hearing?



THE PERMANENCY HEARING



- **Review documents required**
- **Related matters?**
- **Due process considerations**
- **Engage parents, children, relatives, foster parents present**



THE PERMANENCY HEARING



KEY INQUIRIES, ANALYSES, DECISIONS, FINDINGS

- ICWA inquiry and determination
- Determine the permanency plan
 - 42 U.S.C. 675(5) (c)
 - What plan does the agency recommend?
 - How was the plan determined and who was involved in developing the plan?
 - What is the child's position? How was the child consulted?
 - What is the concurrent plan? What efforts are being made to implement it?

THE PERMANENCY HEARING



In determining the permanency plan ...


- Review of family time (if applicable)
- Review of current placement
- Review and address the needs of the child (child well-being)
- The 5 plan analysis




REUNIFICATION




- Why is reunification in the best interests of the child?
- Can the child be safely reunified today?
- If the child cannot be returned home today, what specific steps will be taken to promote reunification within a reasonable amount of time?
- What is the child's position regarding reunification?

ADOPTION 

- How is adoption rather than reunification in the best interests of the child?
- Has the agency filed a petition for termination of parental rights? If so what is the anticipated trial date? If not, when will the petition be filed?
- Are there relatives who will adopt the child if TPR is granted?

ADOPTION 

- Is the child placed with relatives? If not, why not?
- If the child is not placed with relatives what efforts have been made to identify a willing and able relative to adopt the child?
- If there are no relatives willing and able to adopt, has the Agency identified a non relative adoptive family?
- If not, what efforts has the agency made to identify, recruit process and approve a qualified family to adopt the child?

ADOPTION 

- Are there relatives interested in permanent guardianship, but not willing or able to adopt?
- If so why is non relative adoption preferable to permanent guardianship with a relative?
- If the child is an Indian Child does the tribe support the plan? If not, why not?
- What is the child's position regarding adoption?

PERMANENT GUARDIANSHIP



- How is permanent guardianship rather than reunification or adoption in the best interests of the child?
- What is the relationship between proposed permanent guardian and child?
- Has the Agency identified, and is it able to assist in securing resources proposed guardian will need to support child through age of majority?

PLACEMENT WITH A FIT AND WILLING RELATIVE



- How is placement with a fit and willing relative rather than reunification, adoption or a permanent guardianship in the child's best interests?
- Are the relatives fully informed about the benefits of adoption and/or permanent guardianship?

PLACEMENT WITH A FIT AND WILLING RELATIVE



- Have the relatives been offered assistance in answering any questions they may have about financial resources available to them?
- What is the nature of the relationship between the relative and the child?
- What is the child's position on the placement?

APPLA



- Is there a compelling reason for this plan?
- What is the child's position on the plan?
How was he/she consulted?
- How will this plan provide stability and permanency for the child?
- What is the identified, specific, long-term placement for the child?
- Is the child already placed in this home?

APPLA



- What efforts has the Agency made to identify, locate and contact relatives or non-relatives who may be able and willing to care for the child on a permanent basis?
- If the child's placement includes a group facility or institutional setting, how is this the most home-like environment for the child based on her physical and/or mental health needs?
- What efforts have been made to provide additional services that would allow the child to reside in a more permanent family like environment?

APPLA



- **If the child is 14 years old or older, is the Agency providing services needed to assist the child to make the transition from foster care to successful adulthood (P.L. 113-183 475(5)(l))?**



**SUMMARY:
KEY FINDINGS AND ORDERS**



- IF child has been in foster care 15 of the past 22 months, has a termination of parental rights petition been filed? If not, is there a compelling reason not to file a TPR petition? 42 U.S.C. 675(5)(E)
- HAS the agency made REASONABLE EFFORTS to finalize the permanency plan? 45 C.F.R. 1356.21(b)(2).
- The Court’s determination of the permanent plan for the child and why the plan is in the child’s best interests. The order should state the steps to be taken and timelines for accomplishing the permanent goal.

**SETTING THE STAGE FOR
SUBSEQUENT HEARINGS**



- **Trauma**
- **Child Well-Being Inquiry**
 - Education
 - Physical Health Issues/Needs
 - Dental Health Needs
 - Mental/Developmental Health Needs



**CONCLUDING THE
PERMANENCY HEARING**



- **Case Management Tasks that Help Prepare for the Next Hearing**
 - Identify task s to be accomplished by next hearing
 - Consider ADR
 - Ensure parties’ understanding
 - Ensure parties have copies of orders
 - Determine who should be present at next hearing
 - Set date and time for next hearing
- **Engage parents, children, family members**

PREVENTING SEX TRAFFICKING AND STRENGTHENING FAMILIES ACT OF 2014 (PUBLIC LAW 113-183)



- Promotion of child “normalcy”
- Use of the APPLA permanency goal is prohibited for any child under age 16
- Mandates that for every Permanency Hearing the agency must document on the record “intensive, ongoing, unsuccessful efforts for family placement”
- During review of an APPLA plan, child must now be asked about their desired permanency outcome
- If APPLA remains the goal, in every case there must be a judicial determination at that hearing of compelling reasons why APPLA remains best permanency plan for that child

PREVENTING SEX TRAFFICKING AND STRENGTHENING FAMILIES ACT OF 2014 (PUBLIC LAW 113-183)



- Empowers transitioning foster youth at the earlier age of 14
 - May select up to 2 individuals to be involved in developing the case plan
 - Requires case plan includes a “rights document”
- Mandates receipt of key documents upon leaving foster care at 18 or later
- Encourages sibling placements

BEST PRACTICE RESOURCES



Enhancing Permanency Hearing Practice:
Best Practice Resources
Frontloading
Post-Permanency Reviews
Older Youth

PRIOR TO PERMANENCY HEARING



Frontloading -

- Early identification and involvement of absent parents
- Early identification and involvement of relatives
- ICPC
- ICWA
- Ensuring availability of quality reunification plans and services

PRIOR TO PERMANENCY HEARING



Frontloading -

- Concurrent Planning
- Foster-Adopt Homes
- Family Group Decision-Making
- Child Protection Mediation
- Pre-Hearing Case Conferencing



CONCURRENT PLANNING



- The permanency plan may have two goals: a permanency goal and a concurrent permanency goal.
- Concurrent planning is simultaneously working through appropriate efforts to achieve both permanency goals.
- The plans can be contradictory to each other (i.e., return home and TPR/Adoption)
- Neither goal is "primary" or "secondary;" they stand on equal footing

CONCURRENT PLANNING: WHY?



Why two plans at once?

To move things towards permanency faster

In the past, we've done one thing and only after that has failed have we moved on to an alternative goal.

That takes too long while a child languishes in impermanence!

**PERMANENCY PRACTICE RESOURCES
OLDER YOUTH**



Older Youth

- Benchmark Permanency Hearings
- Passport to Adulthood
- Voluntary Placement
- Chafee
- Cold Case Projects
- Collaborative Permanency Review
- Family Decision-Making
- Including the Voice of Youth



**ENGAGING CHILDREN AND YOUTH
AT PERMANENCY HEARING**



▪ Establish a policy that **ALL** children **MUST** appear in your court for their hearings **UNLESS EXCUSED** by the court for an exceptional reason

▪ Children want to **KNOW** what is happening in their lives and most, if not all, want to have input into your decisions that will affect their family and their lives

**ENGAGING CHILDREN AND YOUTH
AT PERMANENCY HEARING**



- Give yourself the opportunity to **SEE** the children whose lives you will impact by your decisions, including development and interaction with parents and caregivers
- Give yourself the opportunity to **HEAR** from the children whose lives your decisions will change.
- Don't rely on what others tell you the child wants. **Listen** to the kid!
- **It should be the norm, not the exception, that children of all ages attend their hearing**

**ENGAGING CHILDREN AND YOUTH
AT PERMANENCY HEARING**



Youth involvement is their own case planning and advocacy is important
"Nothing about us without us"



**POST-PERMANENCY
HEARING REVIEWS**



- Child in one of three circumstances
 1. Reunification or permanent guardianship plan but not fully implemented
 2. Parental rights terminated, child in adoptive home, but adoption not finalized
 3. Parental rights terminated and adoptive home being recruited for child
- Permanency has not been achieved, court must ensure reasonable efforts being made

POST-PERMANENCY REVIEWS



- **If goal continues to be family reunification**, the focus of post-permanency reviews should be on the appropriateness of services offered to the parents and their progress on eliminating safety risks
- **If goal is no longer reunification**, the focus of post-permanency reviews will be on the agency's efforts to finalize the concurrent plan as the new permanency plan
- **If reunification is not possible**, the child well-being inquiry must go beyond basic questions of safety and physical health as the child welfare system is responsible for meeting the child's educational, emotional and social needs, including preparing the child for transition to an adult as appropriate.

QUESTIONS/THOUGHTS