

# Chapter 20 – General Issues

## 20.1 Overview

On a daily basis in dependency court a judge or hearing officer must address a variety of issues, perhaps more so than in any other court. Many of these issues occur during the course of a hearing and some occur as administrative functions. While most topical areas in this Benchbook address issues that occur as a result of a carefully considered continuum of events dictated by rule or legislation, some areas occur outside that order of events. This chapter is dedicated to those particular events or functions of a judge or hearing officer that have no set start and end point and can, in fact, occur at any point in the life of a dependency case.

Some areas covered in this chapter are required by 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. 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 hearing officer.

The following sections are included in this chapter:

- 20.2 Aggravated Circumstances
- 20.3 “Best Interests” and “Reasonable Efforts” Findings
- 20.4 Family Group Decision Making
- 20.5 Common Pleas Case Management System (CPCMS)
- 20.6 Children in the Courtroom
- 20.7 Congregate Care
- 20.8 Transitioning Youth
- 20.9 Court Appointed Special Advocates (CASA)
- 20.10 Planning & Funding Services: The Needs-Based Plan and Budget
- 20.11 Trauma

## 20.2 Aggravated Circumstances

Ordinarily, the child welfare agency is required to make “reasonable efforts” to prevent a child’s removal from the family home and, if removal is nevertheless necessary, to reunify the family. However, where “aggravated circumstances” endangering the safety of the child are present, the agency may be excused from making these efforts by the court. A finding of aggravated circumstances also greatly speeds up the timetable of a dependency case and serves to shift the focus away from efforts to strengthen the child’s family toward terminating parental rights and finding some other permanent home for the child.

### 20.2.1 “Aggravated Circumstances” Defined

Under 42 Pa.C.S. § 6302, any of the following situations qualify as aggravated circumstances:

- (1) The child is in the custody of a county agency and either:
  - (i) the identity or whereabouts of the parents is unknown and cannot be ascertained and the parent does not claim the child within three months of the date the child was taken into custody; or
  - (ii) the identity or whereabouts of the parents is known and the parents have failed to maintain substantial and continuing contact with the child for a period of six months.
  
- (2) The child or another child of the parent has been the victim of physical abuse resulting in serious bodily injury, sexual violence or aggravated physical neglect by the parent.
  
- (3) The parent of the child has been convicted of any of the following offenses where the victim was a child:
  - (i) criminal homicide under 18 Pa.C.S. Ch. 25 (relating to criminal homicide);
  - (ii) a felony under 18 Pa.C.S. § 2702 (relating to aggravated assault), § 3121 (relating to rape), § 3122.1 (relating to statutory sexual assault), § 3123 (relating to involuntary deviate sexual intercourse), § 3124.1 (relating to sexual assault) or § 3125 (relating to aggravated indecent assault).
  - (iii) a misdemeanor under 18 Pa.C.S. § 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.

(6) The parent of the child is required to register as a sexual offender under Subchapter H of Chapter 97 (relating to registration of sexual offenders) (42 Pa. C. S. A. 9799.10 *et seq.*) or to register with a sexual offender registry in another jurisdiction or foreign country.

### **20.2.2 Procedures in Aggravated Circumstances Cases**

An allegation of aggravated circumstances may be made by the agency or by the child's attorney. 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 twenty-one days of determining that such circumstances exist, but no such time requirement applies to the child's attorney.

A judge or hearing officer 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 or hearing officer determines (or has already determined) that the child is dependent, the court 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 or hearing officer 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); 6351(e)(2)).

### **20.2.3 Timing of Hearing**

Ordinarily, permanency hearings are required to be held at least 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 thirty 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 thirty 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 thirty 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 thirty 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 thirty days.

#### **20.2.4 Effect of Determination**

After finding aggravated circumstances, the judge or hearing officer must determine whether further agency efforts to preserve or reunify the family are necessary. If not, the judge or hearing officer must inquire as to whether the county agency has filed or sought to join a petition to terminate parental rights and to identify, recruit, process and approve a qualified family to adopt the child. (42 Pa.C.S. § 6351(f)(9)). In these circumstances, the agency is required to file a petition to terminate parental rights and pursue adoption except where:

- (i) the child is being cared for by a 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 and the court agrees; 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.

## 20.3 “Best Interests” and “Reasonable Efforts” Findings

Several findings and orders 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.

These findings are also tied to the concept of procedural justice. Procedural justice is the idea of fairness in the processes that resolve disputes and allocate resources. In dependency proceedings, this concept is in part exercised through the “reasonable efforts” findings in which the court decides whether sufficient efforts have been made by the agency at various stages in the proceedings to help the child and parents. This is a very serious finding with very serious consequences. In the absence of the finding the agency stands to lose federal funding resources. By contrast, the presence of a reasonable efforts finding signifies the judge or hearing officer’s belief that the agency has presented sufficient evidence regarding reasonable efforts.

Every hearing that requires a reasonable efforts finding requires evidence about the “reasonable” actions of the agency to assist the child and parents. It is not sufficient to simply hear evidence as to the compliance and progress level of the parent or child. Nor should the court include in its analysis agency staffing shortages, caseload sizes or other systemic issues. **To make this finding, evidence as to the agency’s affirmative actions to make reasonable efforts is the sole issue.**



Findings related to reasonable efforts must be addressed at every dependency proceeding, although the particular efforts being reviewed are different at different stages of the process. At the shelter, 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 child from the home.
- Preventive services were not offered due to the necessity for emergency placement and the lack of services was reasonable under the circumstances. This level of effort was reasonable due to the emergency nature of the situation, safety considerations, and 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.

The Child Welfare Agency has sixty days from the initial removal of the child in which to receive reasonable efforts determination. This determination is based upon actions which occurred or did not occur prior to the child's removal. If no reasonable efforts is found after sixty days from initial placement, federal IV-E funding for the care/support of the child is prohibited for the life of the case.

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. **Unlike the initial reasonable efforts finding, such a finding at this point in a case restricts federal funds being accessed until sufficient evidence is presented that allows the court to make an affirmative reasonable efforts finding.** An affirmative finding signifies the judge's or hearing officer's belief that the agency has provided a reasonable amount and type of service needed to finalize the permanency goal. Reasonable efforts options at permanency proceedings include:



- Reasonable efforts have been made to finalize the child's permanency plan.
- Reasonable efforts have NOT been made to finalize the child's permanency plan.
- Reasonable efforts to finalize the child's permanency plan are not applicable.

**\*Best Practice — Communication with the Agency\***

Because reasonable effort findings have such a significant impact on the financial resources available to assist children and their families, courts are encouraged to communicate clear expectations to the agency. When possible, courts should ask questions to elicit the information needed to satisfy its belief that reasonable efforts have been provided.

Courts are further encouraged to articulate their rationale when a finding of no reasonable efforts is made so as to inform the agency of the systemic changes needed.

## 20.4 Family Group Decision Making

Family Group Decision Making (FGDM) is a collaborative dispute resolution process that engages family and kin in crafting and implementing plans that support the safety, permanence and well-being of their children. The purpose of FDGM is to build alliances among the family, the child welfare agency and the court and to enhance cooperation in the process of making decisions about children who need protection or care. At a fundamental level, FGDM is based on the recognition that families have the most information about their family, have the ability to make well-informed decisions and may end up only resisting the intrusion if the “system” simply tells them what to do to fix the problem (*Enhanced Resource Guidelines*, NCJFCJ, 2016, p. 70).

“Family Group Decision Making brings the collective voice of children, families, and communities into the dependency courtroom in an unprecedented manner. It encourages and supports children safely remaining in their own homes/communities and, when placement is needed to protect a child's safety, it encourages and supports the use of kinship resources thereby reducing any potential emotional trauma associated with placement.”

**- Honorable Max Baer, Pennsylvania Supreme Court Justice**

In June 2007, at its inaugural meeting, the Pennsylvania State Roundtable unanimously selected FGDM as a practice to support throughout Pennsylvania, encouraging courts to take full advantage of the practice. Since then, the practice shift to FGDM has been supported by the Pennsylvania Supreme Court as an important element of Pennsylvania's dependency system reform.

### 20.4.1 Benefits of FGDM

Child welfare service plans developed without family involvement are too often indistinguishable from one another, despite the fact that each family is unique. By contrast, the FGDM process is capable of resulting in a highly individualized, family-developed service plan that is not only more likely to target the unique and individualized needs of each child and family but will be perceived by family members as their own plan. A core assumption underlying FGDM is that families know themselves best and that involving those needing to change in the development of a plan for change will produce better results. FGDM can assist with timely reunification, but it can also help the family understand when reunification is not possible, overcome resistance to severance of parental ties and

“Listening to FGDM participants discuss the worries they have for children, family strengths, and community assets, and then tapping their collective wisdom to develop and implement a plan makes sense. Bringing these “common sense” plans into the courtroom – plain and simple – works!” -Pennsylvania Dependency Court Judge

open the door for relative or third-party adoption. Because FGDM usually results in an agreed upon plan, it helps to avoid lengthy trials and appeals of termination of parental rights (TPR) cases (NCJFCJ, 2016, p. 71).

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).



### 20.4.2 The FGDM Process

Similar to legal dispute resolution practices like mediation and facilitation, FGDM encourages the resolution of issues prior to entering the courtroom. Unique to FGDM, however, is the utilization of the family itself to identify concerns and potential solutions aimed at ensuring child safety, well-being and permanence.

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

FGDM is a voluntary process for families. In keeping with this core value of the practice, judges and hearing officers should not order a FGDM meeting. Instead, judges and hearing officers are encouraged to ask questions regarding the family's reluctance to participate, further explain the benefits of participation and order the agency to either make a referral for the family or provide the family with additional information to support their utilization of the process (*Mission and Guiding Principles for Pennsylvania's Dependency System*, 2009, p. 9; Also see FGDM Benchcard in the Benchcard section). One exception to not ordering FGDM is when the family decides they want a conference but the agency is reluctant to do one. In that instance, it is appropriate to order the agency to provide the family with a FGDM conference.

Judges and hearing officers 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 permanency plan ordered by the judge or hearing officer and incorporated into the agency's state-mandated Family Service Plan document.

The FGDM process begins with a referral for the meeting. This referral most often comes from the caseworker; however, courts are encouraged to either make the referral or order the agency to make the referral.

The process proceeds with the identification of relatives and other persons who care about the child. Participants in family meetings may include not only family members but people from the community, foster parents, faith representatives, service providers, legal professionals and others committed to the well-being of the child and the family. The caseworker or other child welfare agency representative must also be present to review and accept the family's plan.

The FGDM meeting begins with introductions, a discussion of strengths and concerns and an explanation of community services the family may wish to use as they create their family plan. Safety concerns are clearly identified through this process and the family is asked to comprehensively address these in their planning.



**The next step in FGDM, “private family time,” distinguishes it from other alternative dispute resolution processes. During this phase of the meeting, family members are left alone (without agency or other professionals) to discuss concerns, develop solutions to those concerns and create an individualized family plan to address the concerns.**

“I recommend having this kind of meeting with any family having difficulties. It helped us get some things out in the open that we normally didn’t share and helped start healing some wounds. I truly believe it takes a village to raise a child.”

- FGDM Family Member Participant

Once the family has developed the plan, it is presented to the agency worker for review and acceptance. If any safety issues are not adequately addressed, the caseworker points them out to the family group and requests that they continue private planning time until they are resolved. Once all safety concerns are adequately addressed, the caseworker accepts the family’s proposed plan.

"The family conference helped me because I got to hear how my children feel and learn about their concerns: we were able to address the concerns and apply a solution."

- Pennsylvania Parent

A good plan should:

- Be tailored to the family and meet their individual needs.
- Be comprehensive and cover all areas of concern.
- Address all issues of safety.
- Clearly state goals.
- Include timelines for completion of goals.
- Specify consequences if the plan is not followed.

Upon acceptance, the plan is presented to the court for review and final approval as the court-ordered permanency plan. The resulting plan, in effect, is a stipulation by all parties. The plan can take the format of a newly designed document attached to the agency’s state-mandated Family Service Plan document or can be embedded directly into the state-mandated Family Service Plan document.

FGDM can be utilized at any phase of the dependency process. Judges and hearing officers are encouraged to begin suggesting FGDM in connection with the shelter hearing and then throughout the life of a dependency case. The process outlined above should be repeated prior to any required permanency

review hearing, whenever the agency's Family Service Plan is updated (typically every six months).

### **20.4.3 The Court's Role**

Judges and hearing officers 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 hearing officers 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. On exception to this would be when the family is requesting a conference and the agency is reluctant to do one or is delayed in arranging the conference. In this instance, it would be appropriate to order the agency to provide the family with a FGDM conference.

#### **\*Best Practice — Expedited or Emergency FGDM\***

For many reasons, the dependency process has strict timelines related to the scheduling of hearings. This is particularly evident in the initial stages of a dependency matter with the shelter hearing occurring within 72 hours of a child's placement.

This timeframe has led to the creation of "Expedited or Emergency Family Group Decision Making" meetings in many counties. These meetings follow a format very similar to a regular FGDM meeting; however, they can occur within hours to a couple of days from time of referral. Most often, these meetings focus on issues of placement resources and the creation of safety plans (rather than the more comprehensive Family Service Plans) and can be incredibly valuable for the family, the court and the child welfare agency.

As with any dependency system practice, court-agency collaboration is a key to FGDM success. All parties need to be educated on the basic premises of the practice including judges, hearing officers, attorneys, advocates and agency staff (administration and line staff). The court should gain a true understanding of the practice, which can occur through meetings with agency staff, local Children's Roundtable Meetings, local FGDM Implementation Team Meetings and by observing a conference. These steps facilitate comprehensive understanding of how families come to an agreement and how plans are developed.

**\*Best Practice — Seeking Revisions in FGDM Plans\***

Occasionally the court may not believe the proposed plan developed by the family and accepted by the agency completely addresses issues of child safety, well-being or permanence. When this occurs, judges and hearing officers are encouraged to ask the family to reconvene in a timely manner to address the identified concerns, rather than simply denying the overall plan. In addition, the judge or hearing officer may wish to communicate with the agency to clarify expectations and enhance the likelihood of future plans being approved.

When this occurs, the judge or hearing officer 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, hearing officers 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 site:

<http://www.pacwrc.pitt.edu/FGDM.htm>

“Ultimately FGDM is a philosophy of hope and trust in the capacity, commitment and strengths of children, families and communities, as well as a belief in the value of collaborative efforts to provide for the safety, well-being and permanence of children.”

**-Pennsylvania Dependency Court Judge**

## 20.5 Common Pleas Case Management System (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 officers) for all major hearings including shelter care, adjudication, disposition, permanency reviews and termination of court supervision as well as orders for modification of placement and resumption of jurisdiction proceedings. The orders have been reviewed and approved by the Juvenile Court Procedural Rules committee and the Department of Human Service's Office of Children, Youth and Families (as to funding and federal program requirements). Accurate use of the CPCMS orders ensures that all necessary court-related language impacting federal funding has been included and provides consistency between judicial districts.

The system has two general purposes. First, it allows courts to track the flow of individual child cases. Second, it provides a broader picture and analysis of the overall effectiveness of the court case flow processes in a particular county and on a statewide basis. These reports can be customized to provide information regarding specific ages and types of cases or by judicial officer, as needed. **It is extremely important the court appoint someone to run reports on a regular basis to assure the accuracy of the data.** Several of the reports (especially the statistical reports) have indicators of data errors. For example, on the 3920 Dependency Case Inventory Report, data in sections "Returned to Active from Adjudicated" and "Case Reopened without a Petition" are likely to be erroneous data due to data entry errors. Efforts made to ensure accurate data will enable the court to confidently use the reports in its analysis of the dependency system. Accurate data can then be used to plan or strategize changes that are data-informed and not a best guess or assumption.



In addition to the statistical and management reports compiled by the system, judges can access individual case information from within the system. This function can be particularly beneficial if a judge needs to review the case history. From the individual case screen, information can be found regarding the child's current and past placements, the names of the parents and other party participants and notations of the case event outcomes that include hearing officer's recommendations and prior orders of the court. Associated case information is also available for any sibling within the judicial district.

A final feature is the chambers function. In this secure section, judges can keep 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 management/statistical report.

### **20.5.1 Management Reports**

To assist courts by providing a "snapshot" of cases that are currently in the dependency system and the status of those cases, the following case management reports are available:

**Dependency Case Report (AOPC 3900).** This report provides a detailed list of all cases that are or have been recorded in CPCMS. It shows the percentage of cases where the child is receiving services but has not yet achieved permanence, the percentage of cases where the goal is not a permanent option and the number of children in foster care. Information on the type of case initiation in the system can also be found in this report.

**Dependency Disposition Report (AOPC 3901).** This report provides a detailed list of all cases that have had a disposition recorded during the selected date range. This report can be used to generate a list of cases that were terminated, grouped by disposition type, to evaluate the final case result.

**Dependency Case Processing Summary Report (AOPC 3902).** This report provides a list of all cases filed during a selected date range and grouped by case category, status, event track or processing status. It documents the number of days a case took to reach adjudication and the number of days until the first permanency hearing.

**Assignment Inventory Report (AOPC 3903).** This report provides a case list by assigned judge or juvenile hearing officer.

**Inventory Report (AOPC 3904).** This report tracks counsel and guardian *ad litem* appointments.

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

**Juvenile Summary of Cases by Attorney (AOPC 3919).** This report displays all assigned dependency cases for a specific attorney as of a selected date.

**Unscheduled Active Juvenile Cases by Event Date (AOPC 3932).** This report lists all cases by selected Calendar Entry Type and date range that do not have a future scheduled event.

**Continued Dependency Cases by Date (AOPC 3934).** This report lists all cases by selected date range in which a continuance was issued. This report can be sorted by individual judicial officer or all judicial officers.

**Hearing Officer Recommendations (AOPC 3938).** This report identifies cases in which a recommendation by a hearing officer has been recorded but there is no corresponding judge's order recorded.

**Scheduled Events Without an Outcome Event (AOPC 3941).** This report identifies cases which were scheduled during a select date range that have no outcome event recorded.

### **20.5.2 Statistical Reports**

In addition to management reports, CPCMS provides various statistical reports. These reports can be a useful tool for courts to gain a better understanding of their caseload. The statistical reports provide information about how efficiently courts are processing dependency cases, as well as detailed demographic information. All statistical reports include the option to run the report with case detail. This option provides a list of individual cases under each category to assist users with deeper data analysis or data correction. The following statistical reports are available:

**Dependency Case Inventory (AOPC 3920).** This report provides summaries of cases that were initiated, adjudicated and closed during a select time period. It is divided into two sections: Active Dependency Case Inventory (cases that have entered and left Active status) and Adjudicated Dependency Case Inventory (cases that have entered and left Active/Adjudicated status).

**End of Period Terminated Cases (AOPC 3921).** This report provides summaries of terminated cases categorized by the age of the child and the age of the case. Within these categories, data is divided by foster care status and details are provided regarding the average number of days to adjudication, first placement hearing, permanent placement and other key events.

**Pending Case Metrics (AOPC 3922).** This report provides statistical case data based on age range, gender, race and ethnicity, of Active and Active/Adjudicated cases. Data is segregated by foster care involvement.

**Demographic Detail Report (AOPC 3943).** This report provides a breakdown of the number of cases using various demographic data points (age, race, sex, length of supervision, placement of the child and permanency plan goal). It can be grouped by judge or hearing officer.

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

The court is encouraged to take full advantage of the CPCMS system. Management and statistical reports can be invaluable tools for local courts. These reports used in conjunction with the Local Children's Roundtable can aid a county by:

- Providing data to inform system change through the Children's Roundtable Initiative;
- Informing the court on outcomes of dependency cases;
- Creating unified methods to measure practices and outcomes;
- Evaluating current practices and planning for future needs; and
- Establishing monitoring and accountability for all system participants including the courts (*Mission and Guiding Principles for Pennsylvania's Dependency System*, 2009, p. 15).

A general familiarity with the system and its capacity for providing case management and statistical reports is important. These documents can assist in the overall evaluation of dependency court processes and help identify any court-related barriers to achieving safe and timely permanence for dependent youth. These reports can be used internally or shared with other dependency partners (as is often done during local Children's Roundtable meetings) to identify challenges and strategize solutions.

## 20.6 Children in the Courtroom

In Pennsylvania, it is required that children be present for all dependency proceedings unless excused for good cause by the court; in no case shall a hearing occur in the absence of a child's attorney (Pa.R.J.C.P. 1128). Children may be present by utilizing advanced communication technology but at minimum, the child shall appear in person at least every six months unless otherwise provided by Pa.R.J.C.P. 1128 (Pa.R.J.C.P. 1129 (a) (2)). 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 (*Mission and Guiding Principles for Pennsylvania's Dependency System*, 2009, 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.

On the other hand, there may be circumstances that make it inappropriate or unnecessary for the child to participate in hearings. This decision can only be made by the judge or hearing officer after careful consideration of all the circumstances of the case. The GAL or social worker may provide insight into whether the child should be present, but the judge or hearing officer should not waive the child's appearance just because the parent, GAL or 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.

Although a child need not appear at every hearing, the judge or hearing officer shall see the child in person at least every six months. It is critical that the judge or hearing officer see the child to assess the child's well-being. The court is the last defense for the child and must make every effort to ensure safety and well-being.

"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

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 (i.e. school field trip, special dance, sporting event, last/first day of school) for the child on the hearing date.

Some reasons that a court may find ARE good enough to waive a child's appearance include:

- Child has a good reason for not wanting to attend a permanency hearing where there are no changes to the child's plan and the case is showing progress towards permanency.
- The hearing is an aggravated circumstances hearing.
- The child is medically fragile and attending the hearing might have a health impact.
- A therapist's credible recommendation against attendance.

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

- The judge/hearing officer or other participant (parent, GAL, agency) prefers not to have the child in court.
- Children and families are difficult to manage.
- The GAL recommendation differs from the child's wishes.
- The sibling group is too big to accommodate at the table easily.
- Transportation will be difficult.

In making the decision regarding the presence of a child in court, some accommodations may need to be considered to meet the child's needs. These may include scheduling the hearing at a special time (such as the first or last hearing of the day); arranging for the child to attend the hearing by phone or videoconference; or having the child excluded from sensitive portions of the hearing. In cases involving medically fragile children, a physician might need to be consulted about the ability of the child to attend court. If the physician deems it inappropriate, the court still has an obligation to see the child once every six months. This may require the judge, with permission of all parties and with a court reporter, to go to the child. It is very important that the judge see the child personally.

### 20.6.1 Talking to Children in Court

Having the child present during hearings is most valuable when the court is able to elicit useful information while making it a positive experience for the child. The judge or hearing officer should be prepared for the child's appearance, learning as much as possible about the child from the reports provided by participants such as the GAL, CASA, foster parents and the case worker, noting what information the child may be able to provide that is not otherwise available. This preparation helps convey that the case is being taken seriously and that the court cares about the child as an individual.

"I wanted to be in the courtroom letting the judge know that I am a person and that I am trying."

- J.J., 21, Former Pennsylvania Foster Youth

It is important for the court to consider the “voice” of the child at all stages of dependency proceedings. The Juvenile Act requires judges and hearing officers to consult with the child regarding the child's permanency plan, including the child's desired permanency goal, in a manner appropriate to the child's age and maturity; if the judicial officer does not consult personally with the child, the court shall ensure that the views of the child regarding the permanency plan have been ascertained to the fullest extent possible and communicated to the court by the guardian *ad litem*, the child's counsel, the court-appointed special advocate or other person designated by the court. (42 Pa. C.S. § 6351 (e) (1)). If the youth is sixteen or older and the permanency goal is Another Planned Permanent Living Arrangement (APPLA), the judicial officer is required to speak directly to the youth.

“Speaking in court gave me my chance to stand up and say something for myself. It made me feel important, knowing my voice was heard.”

- D.R., 21, Former Pennsylvania Foster Youth

When interviewing a child, the judge or hearing officer should ensure that the interview is conducted in a way that minimizes trauma, anxiety and fear. The judicial officer should consider who is in the courtroom when the child is speaking and where the child is seated. It may be appropriate, in some cases, to conduct an *in camera* interview of a child. Some judges and hearing officers do so when sensitive information might be disclosed. However, under Pa.R.J.C.P. 1134, *in camera* proceedings are to be recorded and each party's attorney shall be present.

If the child is interviewed and a party or counsel are not present, this constitutes an *ex parte* communication with the court which is generally prohibited. (Pa.R.J.C.P. 1134; Pa. R.C.P. 1915.11(b)). Although the practice of *ex parte* communication with a child is **strongly** discouraged, there are varying opinions regarding whether to do so and under what conditions. Based on the intent of the aforementioned rules, if a judge or hearing officer chooses to move forward with *ex parte* communication, at a minimum, the following should occur:

1. Prior to the interview a waiver/consent to the interview should be given by each party, and if a party is represented, by their counsel. The waiver/consent must be placed on the record; and
  - \*In the case of an unrepresented parent, the court should consider whether the *in camera* interview would violate the parent's due process rights (see comment to Pa.R.J.C.P. 1134). If an unrepresented parent agrees to the waiver a colloquy should be placed on the record.
2. The interview of the child shall be conducted on the record. If for any reason, the communication or interview is held in a place other than the courtroom and has not been recorded, the judge or hearing officer shall

- place the contents or a summary of the communication or interview on the record immediately after the interview; and
3. The guardian *ad litem* and/or counsel for the child must present.

**A child should never be interviewed alone by the court. This exposes the judicial officer to allegations of impropriety and raises questions of due process and fairness for the parties and counsel.**



To help make the child feel comfortable in the courtroom setting, the judge or hearing officer should take the time to speak to or greet the child before the hearing begins. If the child has been in court before, the judge or hearing officer should ask the child about events that have transpired since the last court hearing (sports, music lessons, vacations, etc.).

When interviewing the child, the judge or hearing officer should consider seating the child near or with someone who makes the child feel safe and secure. The child should be seated where the judge or hearing officer can see and observe whether the child appears to be anxious or afraid, whether anyone is attempting to coach the child and the normal body language that one would consider in making determinations of truthfulness.

A good way to begin the interview is by asking the child some general questions about school and activities to help put the child at ease. All questions should be in age-appropriate language, taking care to not use legalese or words that a child might not understand. For example, use the word *before* instead of the word *prior*. Ask the child simple questions about the home in which he is living, what he likes, what he needs and most importantly, what he wants.

If the child is newly placed, the judge or hearing officer should question the child about how the child's life is going — from a social, as well as an academic standpoint. Is the child making friends and adjusting to the new environment? Is there anything the court or the agency can do to smooth the transition?

The judge or hearing officer should also ask the child about the services the agency is providing. Are they appropriate? Are they provided at a convenient time and location? Does the child find the services helpful, and if not, what would be helpful?

It is important to communicate with the child (and with all parties) in a way that encourages and builds upon strengths. One technique that is proven to be useful is Motivational Interviewing (MI). **To effectively utilize MI, judges and hearing officers should talk less, use open-ended questions and reflective listening.** Judicial officers should also be patient and allow the child the time needed to answer difficult questions. Remember that silence is okay. Strengths and accomplishments should be highlighted.

**\*Best Practice — Motivational Interviewing (MI)\***

MI is a technique or style of interviewing that is evidence-based and results in more complete information. It is very effective with older youth. MI contains the following elements or principles:

- Expressing empathy through reflective listening. This means understanding the child's perspective without judging, criticizing or blaming. This is extremely important for older youth.
- Developing discrepancy between child's goals or values and their current behavior. Also important for older youth.
- Avoiding argument and direct confrontation.
- Adjusting to resistance rather than opposing it directly. Don't argue with the child or confront the child head-on. Arguing is counterproductive.
- Support self-efficacy and optimism. The judicial officer should be the cheerleader to encourage and motivate the child to desire and choose positive change and outcomes. Belief in oneself and hope are what many dependent children are lacking.

Judges and hearing officers should avoid using general statements to highlight accomplishments and instead highlight strengths and accomplishments in a specific way. Instead of saying, "You did a great job" say, "You only missed one day of school, you made the honor roll and kept your room clean." Helping youth recognize the specific things they do well or positive changes they've made increases the likelihood that the actions will be repeated and helps youth to develop an internalized sense of self-esteem.

In addition to *what* is said, the judge or hearing officer should pay careful attention to *how* it is said. All of the "right questions" can be asked, but if the judge appears distracted, disinterested or uncaring, the child will shut down.

Because the child is required to be present in court at least every six months, the judge or hearing officer has the opportunity to develop a positive and trusting relationship with the child over the time that the case is court active. The judge or hearing officer should take time to review notes or findings from prior hearings so that interaction with the child is a continuous process. The judge's or hearing officer's demeanor should reflect genuine care and concern for the well-being and the wishes of the child.

"Sometimes it's not that we don't have anything to say but that we are too intimidated."

-Former Foster Youth

At the end of the hearing the judge or hearing officer should carefully explain the reasons for the decisions made and ask the child if he/she has any questions about what was ordered. Many times what a child wants and what is in the best interest of the child are in conflict. When a judge or hearing officer has to make a decision that is necessary to keep a child safe but will upset the child or make the child unhappy, it is important to tell the child that you understand what he wants, but why you have to make a different decision. Don't make promises to a child that you may not be able to keep.

Finally, everyone in the courtroom should be treated with dignity and respect and know their positions have be considered by the court. This is especially important for children who have been abused and neglected. Repeat what the child told you and tell the child that you will consider or have considered it. If the child is testifying at the adjudicatory hearing or about some traumatic event, if you believe the child has been truthful, tell the child that you believed her. Thank the child for her testimony and wish them success.

### **20.6.2 Children as Witnesses**

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 hearing officers 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 editors of *Child Welfare Law and Practice: Representing Children, Parents, and State Agencies in Abuse, Neglect, and Dependency Cases*, elaborate on each of these characteristics as they apply to children (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 of normal intelligence. Children below average intelligence may testify if they possess the ability to observe, recollect and relate in a manner that assists the finder of fact.

**Understanding the Difference between Truth and Falsehood:** The child need not comprehend the finer points of truth and falsity, nor must he understand the concept of perjury. The child may articulate the necessary understanding in childlike terms. The fact that a child makes mistakes or is to some degree inconsistent does not render the child incompetent. When judges, hearing officers and attorneys use developmentally appropriate methods to question children, most youngsters demonstrate the necessary understanding.

**Duty to Testify Truthfully:** Children as young as three and four comprehend the duty to tell the truth in court (although children this young are not typically interviewed). For young children, telling the truth means reporting what they saw. If the judge or hearing officer is concerned about a child's understanding of the obligation to testify truthfully, the judge or hearing officer may instruct the child.

While children are able to be good witnesses in dependency hearings, the judge or hearing officer should bear in mind that testifying may be a very emotional and traumatic experience for a child. The judge or hearing officer should be vigilant in guiding the examination of the child, particularly when it comes to examination by opposing counsel or by *Pro Se* parents. In these circumstances the judicial officer has the latitude to ask leading questions or allow all counsel to ask leading questions. The judge or hearing officer must balance the need to protect the child from a traumatic experience against the parents' right to cross-examine.

## 20.7 Congregate Care

Courts are required to make a finding at each hearing that the youth is placed in the least restrictive setting. Congregate care, a placement setting whereby multiple unrelated children reside with 24 hour supervision, is the most restrictive type of placement for dependent children and includes:

- Shelter (a setting that provides temporary care for a child)
- Group Home (a setting that provides 24 hour care for 7-12 children)
- Residential Facility (a setting that provides 24 hour care to 12 or more children)
- Residential Treatment Facility (a medically-necessary setting that provides 24 hour care and therapeutic intervention to children with mental or behavioral health issues or special needs upon recommendation of a doctor)

It should only be used when all other placement options have been considered and ruled out with supporting reasons why each was ruled out. (Pa.R.J.C.P. 1242C (3)(c)). Statistics show that outcomes for youth placed in congregate care facilities are poor.

### 20.7.1 Factors to Consider Prior to Placement

There are several factors a court should consider before ordering placement in a congregate care facility. These should be explored fully in a hearing:

- Have all kin and contacts identified through family finding been contacted and considered as placement options?
- Have all potential foster care options been contacted?
- What services will be provided to the youth at the facility that cannot be provided in a community placement?
- The distance between the facility and the youth's family and supports?
- What are the academic options? Youth in placement must remain in their home school unless the court finds that it is not in the best interest of the youth. (Pa.R.J.C.P. 1148 (B)). If the court finds that the child shall not remain in their home school, next the judge should consider the educational options at the congregate care facility. A foster youth, including youth in congregate care, must be schooled in a public school unless the court finds a public school not to be in the youth's best interest. (Pa.R.J.C.P. 1148 (C)). These reasons should be placed on the record. If public school is not in the youth's best interest and will attend an on-grounds school, will the youth receive academic credits that transfer to the youth's home school upon discharge and will the youth be able to advance to the next grade level? Will the youth's instruction come from teachers or a computer?



### 20.7.2 Visitation

Visitation with family and kin should be ordered and not left to the discretion of a facility. If the facility is a distance from the youth's family and supportive kin, the facility or agency should be ordered to assist the family with visitation by providing gas cards, hotel vouchers or transportation. The caseworker is required to visit the child at the facility at least once per month and may be able to transport the family.

Visitation is part of all permanency plans. The court is required to make findings in each order that the agency has made reasonable efforts to finalize the permanency plan so visitation should be addressed in all orders.

Several facilities place conditions on visits with family, especially home passes, via some tier or level system. Unless the facility/agency can articulate safety reasons why off grounds visits and home passes are not appropriate, visits should be ordered. Home pass safety factors may include drug/alcohol relapse, violence or elopement.

#### KEY POINT REGARDING VISITATION



**Visitation with family and kin should NEVER be used by a facility, the courts or an agency as a sanction or reward in response to a youth's behavior. For safety reasons, there may be limitations on visits such as supervised or on-grounds visitation but contact with family/kin should not be denied.**

Some facilities have "black-out periods". When a youth is placed, a facility will require a period of time (from a week to a month typically) when the youth can have no contact with their family, friends or kin. The facility will argue that this gives the youth time to adjust to the facility. **Courts should seriously question this practice.** A youth that is placed in congregate care usually has a high ACE (Adverse Childhood Experience) score and has experienced significant trauma in his/her life. It is difficult to imagine how further isolation from everything with which a youth is familiar will benefit the youth.

### 20.7.3 Telephone Calls

Youth should be permitted frequent telephone contact with family/kin. Some facilities limit a youth's phone calls, however a court should consider the number of supporting family/kin in a youth's life and order weekly contact with these people

regardless of the facility policy. **Telephone calls, as with visitation, should not be used as a reward or sanction for the youth's behavior.**

Youth should **ALWAYS** have unlimited telephone access to their attorney, guardian *ad litem* and caseworker. These calls should **NOT** be monitored in any way by the facility.

#### **20.7.4 Age and Developmentally Appropriate Activities**

Most agencies have funding sources or contacts to assist youth with things such as tickets, dresses and tuxedos for prom, music instrument rental, and transportation. Facilities like the YMCA often have scholarships for youth in placement. Art lessons, dance lessons and martial arts lessons may be great ways for youth to develop skills and practice social skills at the same time; payment for them should not preclude a youth in placement from these typical activities. Overnight stays with friends, dates and spending time with friends are all typically appropriate activities for youth. Judicial officers should ensure that the agency is supporting youth involvement in some kind of safe activity that promotes positive social skills and develops interests, regardless of placement. (See Pa.R.J.C.P. 1608(D)(1)(o) and comment to the rule.)

Although psychiatric institutions are exempt from the statutory requirement to provide age and developmentally appropriate opportunities/activities, the court should still consider ordering the agency and facility to provide them unless safety factors indicate they are not appropriate.

#### **20.7.5 Transition Back to the Community**

If a youth is ordered into congregate care, a plan to return the youth to the community should be developed at the initial placement. This should include the involvement of:

- 1) Family if the goal is reunification;
- 2) Kin if the youth is expected to be returned to kin other than the parents; or
- 3) Foster family if the youth is not likely to be returned to family or kin.

The facility and agency should be ordered to include family in the youth's treatment at the facility from the beginning of placement. Services should be identified and initiated in the home before the youth's discharge so that there is not a lapse in services between the facility and the community. The services should address the factors which led up to the need for congregate care placement and should be designed to prepare the family for the youth's return and prevent the child from returning to congregate care after he/she is discharged. Hopefully, the issues necessitating placement will be eliminated upon the youth's return to the community.

Pre-placement visits of increasing duration can help facilitate a successful transition for a youth from congregate care into a family with whom the youth has never lived. Pre-placement visits offer an opportunity for the youth to learn about his/her potential placement family and the family to learn about the youth. The youth should be able to contribute an opinion about the possible placement. Pre-placement visitation is a trauma-informed strategy that allows the youth to slowly become acclimated to the new family and community, decreasing the stress and anxiety that accompanies the unknown.

**\*Best Practice — Congregate Care Placement with Delinquent Youth\***

Courts should keep in mind that most often dependent youth placed in congregate care facilities will also be placed with medium and high-risk delinquent youth. Since dependent youth have not been adjudicated of committing any crime, they should not be treated in the same manner as delinquent youth. Courts should inquire as to how the facility differentiates between the delinquent youth and dependent youth especially as it relates to visitation, telephone calls and off-grounds activities.

### **20.7.6. Transition to Successful Adulthood**

Courts should ensure that facilities/agencies are providing the youth with skills necessary for transition into adulthood and independent living. Youth in congregate care should be able to seek and maintain employment. They should be provided with the experience of making their own decisions in safe and appropriate ways. They should be able to study the driver's safety manual and learn to drive. Opportunities should be provided for them to explore the possibility of attending college, including college visits and preparation classes for SAT and ACT exams. For more information, see Chapter 13: Permanency Hearing, Section 13.6.10: Services Needed to Help Older Youth Transition to Independence.

## **20.8 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 at Age 26* (Courtney et al., 2011) foster youth transitioning to adulthood:

- Are less likely to have completed high school and be enrolled in secondary education (p. 21);

- Are less likely to be employed; when employed, they earn significantly less money (p. 28, p. 36);
- Are three times as likely to have economic hardships including eviction and food insecurity (p. 39);
- Have a substantially higher prevalence of serious physical health, mental health, and substance abuse problems that interfere with their daily functioning (p. 46, p. 60);
- Are more likely to have been pregnant or have fathered children, less likely to receive pre-natal care and more likely to report unwanted pregnancies (p. 74-75); and
- Have considerably higher rates of criminal involvement and incarceration (p. 92).

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 21: Overview of Federal and State Child Welfare Legislation). The CFCIP was amended in 2002 to include the Educational and Training Vouchers Program (ETV). The ETV was designed specifically to provide resources to meet the education needs of transitioning youth.

### 20.8.1 Independent Living Services for Transitioning Youth

FCIA and the Juvenile Act require all youth in care who are age fourteen 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 at home are also eligible for IL services. Youth who were discharged from placement on or after their fourteenth birthday are eligible for IL aftercare services (discussed more fully at the end of this section at 20.8.5).

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

- educational training and counseling
- career counseling
- job readiness and job search
- budget/financial management skills
- home management skills
- sex education and family planning services
- housing search and assistance
- self-advocacy skills
- individual and family counseling
- daily living skills
- mentoring

"I don't think the needs of older youth in foster care have been addressed. Older youth have needs just like the younger kids do. We all want help."

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

As is the case with most child welfare services in Pennsylvania, IL services may vary from county to county, however all counties are required to provide IL services to youth. These services can come from the county agency or a contracted service provider. The most common IL service includes a strengths and needs assessment of life skills and an associated curriculum for the provision of life skills. This curriculum typically includes services such as money management, employment services and education assistance. IL Plans allow for the customization of services to meet the needs of the youth. More information on the IL services in your county can be provided by the county child welfare agency.

The court, the agency, as well as the youth's counsel or GAL all have a role in securing the necessary resources throughout the youth's time in the system. Therefore, it is important that judges, hearing officers and attorneys have substantive knowledge of what youth in care need, to what they are legally entitled and what services are available to them.

In light of the importance of these services for youth, and the need for strong oversight as the youth moves toward independence, the court should ensure that a referral for *specific* independent living services, tailored to the needs of the youth, has been made. At each court review there should be confirmation of the independent living services that are underway, an inquiry as to whether they need to be continued and identification of which IL goals have been completed.

### **20.8.2 Transition Planning for Older Youth**

As dependent youth approach adulthood, there are many daunting challenges they must face. Transitional planning and the identification and engagement of family and other supportive adults can make the challenges seem achievable. 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 ninety 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 Practice — FGDM as Transition Planning\***

Courts should encourage the use of Family Group Decision Making (FGDM) as a means to develop the youth's transition plan. FGDM provides the opportunity for the youth to identify those people most important in their lives to become resources after their discharge from court supervision. These people can include family, friends and potential permanent connections for the child.

Using FGDM as the transition planning allows the youth and their supports to develop their own plan for transition with agency and court approval. As with any FGDM plan, a youth is more likely to engage and "buy-in" to a plan of their own design rather than one that is dictated.

The court should encourage the agency to offer FGDM far in advance of the youth's discharge date to allow for plan implementation prior to termination of court supervision.

Effective judicial oversight will ensure that comprehensive transition plans are developed for youth aging out of care. While federal law does not require a transition plan until ninety days before a youth ages-out of the system, the judge or hearing officer should require plans be presented to the court for early review whenever possible. This will ensure that the judge or hearing officer, the agency and the youth's GAL have had time to clearly explain to a youth what will occur upon leaving the child welfare system and coordinate any services a youth may need in advance of leaving care.

Among the institutional and personal supports youth generally lose when they exit the child welfare system are:

- Access to the courts for enforcement of orders and legal advocates fighting for their right to access services;
- Consistent adults who are working for their best interest (i.e. foster parent, CASA, GAL, case worker, judge or hearing officer);
- A sense of security that may have been provided by their child welfare system involvement, even if youth may have resisted or disliked that environment;
- Medical coverage; and
- Housing  
(National Resource Center for Youth Development, *Improving Outcomes for Older Youth: What Judges and Attorneys Need to Know*, 2004, p. 2).

Finally, judges and hearing officers should take the opportunity to explore the youth's "back up plan" or "Plan B". For more detailed information about termination of supervision with transitional youth, including a checklist of questions to ask the youth, see Chapter 15: Termination of Court Supervision.

### **20.8.3 Educational Issues for Transitioning Youth (Eighteen & older)**

As discussed in Chapter 13: Permanency Hearing, Section 13.6.10: Services Needed to Help Older Youth Transition to Independence and consistent with Pa.R.J.C.P. 1608, the court should determine beginning at age fourteen, or preferably earlier, that youth are receiving services to prepare them for independent living and a successful adulthood. Addressing the youth's educational needs and goals increases the likelihood that the youth will find success.

Once a youth is eighteen or older, Pa.R.J.C.P. Rule 1631 (E) provides the court and the parties with a clear roadmap for what planning should take place before dependency is terminated, including educational planning.

Below are some examples of educational areas the court may wish to explore depending upon the needs of a particular youth:

- Will the youth continue to attend school?

A child remains of school age and eligible to attend school until he or she graduates high school or until the end of the school term that he or she turns age 21. Alternatives to high school such as GED programs exist, but a youth should consult with his or her dependency team regarding the best option for him or her and make an informed choice. A youth who wishes to graduate should have a graduation plan. A youth who plans on changing schools should be aware of the setbacks that changing schools can create for his or her graduation plan.

- Will the youth apply to college?

If the youth is interested in pursuing a college education, the discharge planning should focus on developing readiness for post-secondary education and retention. This preparation should include preparing for the SATs or ACTs, making college visits and obtaining assistance to prepare and submit college applications and financial aid forms. Youth in care should have access to post-secondary preparation programs such as Upward Bound or Gear Up.

- Is the youth in a post-secondary program and making progress?

For youth who are enrolled in post-secondary programs of education or vocation, the court should continue to inquire into the youth's progress to help the youth succeed. Many youth are reluctant to ask for help and need to be encouraged to access tutoring and other services available at colleges. Housing may be an issue during college breaks, including unexpected emergency breaks for occurrences such as severe weather, natural disasters, accidents or crimes. Older youth can be afraid that if they reveal a problem they risk being discharged from care, and they benefit from being reassured that needing support is an expected part of life.

- Does the youth have special needs that should be addressed?

Children with disabilities may graduate either by meeting graduation requirements or by meeting the goals of their IEP. In addition, beginning at age fourteen, a youth with special education will have an individualized transition plan which can include an array of services to prepare the youth for employment, post-secondary education and adult living. Youth with special needs may be eligible for post-secondary education and training through the Office of Vocational Rehabilitation. If a youth with special education needs goes on to post-secondary education and training, determine if they have sufficient help and advocacy so that an appropriate accommodations plan can be designed. Such a plan can make a huge difference in a youth's adjustment to and success in post-secondary education.



#### 20.8.4 Youth Opting to Remain in Care Past Age Eighteen

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

“is under the age of twenty-one years and was adjudicated dependent before reaching the age of eighteen years, who has requested the court to retain jurisdiction and who remains under the jurisdiction of the court as a dependent child because the court has determined that the child is:

- (i) completing secondary education or an equivalent credential;
- (ii) enrolled in an institution which provides post-secondary or vocational education;
- (iii) participating in a program actively designed to promote or remove barriers to employment;
- (iv) employed for at least eighty hours per month; or
- (v) incapable of doing any of the activities described in subparagraph (i), (ii), (iii) or (iv) due to a medical or behavioral health condition, which is supported by regularly updated information in the permanency plan of the child.” (42 Pa.C.S. § 6302).

When a youth chooses to remain in care past age eighteen there are many more services available. Depending on the county, services may include:

- **Housing options while at college.** Youth who remain in the foster care system can remain in the foster home while attending college (if the school is in the same community). Additionally, youth who are residing on 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).** Supervised Independent Living and Independent Living are sometimes used interchangeably, but they are two dramatically different types of services. SIL is a specific placement type. In 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 their placement when the goal is Another Planned Permanent Living Arrangement. This is acceptable under ASFA as long as the permanency plan provides the youth with supportive and family-like relationships, as well as the skills and competencies needed to eventually live on his own. In fact, the federal regulations recognize that a dependent older youth's request that independent living be his permanency plan is a compelling reason not to pursue reunification. (45 C.F.R. 1356.21(h)(3)(i)).

- **Medical Coverage.** One of the most important benefits of remaining in care is that Medical Assistance (MA) coverage continues while the youth is in care. A youth who opts to leave the system will lose medical coverage and be forced to reapply individually to continue to receive MA. Unfortunately, many youth who leave the system do not follow through or are not eligible for continued MA.

To remain in care past age eighteen, a youth must “request the court retain jurisdiction.” The youth should make the request of the court, either directly or through the GAL. Ultimately the youth makes the decision of whether or not to remain in care, but this decision should be fully informed and aided by information from the agency, the GAL and the court.

### **20.8.5 IL Aftercare Services**

Aftercare services are available to youth ages sixteen to age twenty-one who have left the child welfare system for any reason. Aftercare services are simply IL services that are provided to the youth after their discharge from the formal child welfare system. The aftercare services available to youth are similar to IL services that a youth would receive while in the child welfare system. The process of transitioning services for a youth receiving IL services in the child welfare system to aftercare services should be seamless to the youth.

## **20.9 Court Appointed Special Advocates**

Court-Appointed Special Advocates, or CASAs, are screened and trained volunteers, who, once appointed, can be a valuable resource as the “eyes and ears” of the court, bringing forward detailed information about what is happening in the lives of children with whom they work, along with recommendations as to ways to enhance their safety, permanence and well-being.

In Pennsylvania, the appointment, qualifications, roles and duties of Court Appointed Special Advocates are governed by the provisions of 42 Pa.C.S. § 6342 and the *Standards Governing the Qualifications and Training of Court-Appointed Special*

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

### **20.9.1 CASA Appointments**

The judge or hearing officer may appoint or discharge a CASA at any time during the proceeding or investigation regarding dependency. Issues judges or hearing officers may wish to consider when making a decision to appoint a CASA as a "friend of the court" include whether there:

- Are complex issues in the case?
- Are a large number of siblings?
- Is private counsel involved who could benefit from the support of a CASA volunteer?
- Is a need to have intensive services provided in order for the child to remain in the home?
- Is a need to have services move very quickly for the family?
- Are 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 and hearing officers should be aware that CASA volunteers are a limited resource and should appoint them based on the complexity and needs in a particular case or for a particular child.

### **20.9.2 CASA Duties and Responsibilities**

Generally, CASAs review records, research information and interview everyone involved in the case. They prepare reports and recommendations for the court and monitor the case until conclusion or whatever time period is defined in the Order of Appointment. Perhaps one of their most important roles is developing a relationship with the child to better understand their needs and desires. This enables the CASA volunteer to make recommendations to the court that are truly in the child's best interest. Volunteers generally have only one or two cases at a time and their activities are monitored by a CASA case manager. Specific powers and duties of CASA as listed below are delineated in 42 Pa.C.S § 6342:

- have full access and review all records relating to the child and other information unless otherwise restricted by the court;
- interview the child and other appropriate persons as necessary to develop recommendations;

- receive reasonable prior notice of all hearings, staff meetings, investigations or other proceedings related to the child;
- receive reasonable prior notice of the movement of the child from one placement to another, the return of the child to the home, the removal of the child from the home or any action that materially affects the treatment of the child;
- submit written reports to the court to assist the court in determining the disposition best suited to the health, safety and welfare of the child; and
- submit copies of all written reports and recommendations to all parties and any attorney of the party.

Understanding the specific and unique role of CASA volunteers as “friend of the court” may help reduce potential conflict or confusion. As the *Enhanced Resource Guidelines* (NCJFCJ, 2016, p. 47) point out, conflict or confusion may sometimes arise between CASAs and GALs, presenting the court with opposing points of view. Multi-disciplinary training sessions are often effective in clarifying roles and responsibilities and identifying potential conflicts among system participants. It is important to note that while CASA volunteers should work cooperatively with others, their investigations and recommendations should be independent.

CASA volunteers, under the supervision of their agency, create a written report that details the history of the case, the work they have done and the results of their investigations, as well as specific recommendations for the children and the family to which they are assigned. CASA reports should be provided in advance to all parties, as well as to the court. The volunteer or other responsible person from the CASA agency should be available in the courtroom to testify at the request of the court or parties regarding the investigation or recommendations provided within the report. If the court has appointed CASA on a case, the court should hear from them at some point during the hearing, whether that is through testimony or the presentation of their report and recommendations.

### **20.9.3 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 resources for judges. These can be found under the tab, Advocating for Children, by selecting Resources for Judges.

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.

## 20.10 Planning and Funding Services: The Needs Based Plan and Budget

While funding issues should never directly influence judicial decisions, the court does play a role in securing federal, state and local funding for services to help dependent children and their families. This role is both case-specific and administrative in nature. At the case level, the court's orders and the timing of those orders directly impact the local child welfare agency's ability to receive funding for needed services. On an administrative level, courts are asked to review and sign the annual Needs Based Plan and Budget (NBPB) created by the local child welfare agency. In this role, judges can provide valuable insight for future service planning by identifying potential services that could help the children and families that come into their courtrooms. In fact, regular meetings between the judge and child welfare administration are useful to identifying gaps in services and ensuring the quality of services already in place.

Every year the county child welfare agency is required to submit a Needs-Based Plan and Budget (NBPB). The NBPB covers two fiscal years of funding including an implementation year and a needs-based year. Each county's NBPB is used in the determination of the Needs Based Plan and Budget allocations for all 67 counties, which is made by the Department of Human Services' Office of Children, Youth and Families (OCYF) and submitted to the Governor's Budget Office.

The NBPB process provides the county with an opportunity to state what funds it will need in the upcoming budget period to cover the cost of (1) county child welfare and juvenile detention staff and (2) all direct and purchased child welfare and juvenile delinquency services. These costs may include, but are not limited to, Juvenile Act Proceedings costs (including reimbursement for eligible GAL services in dependency cases, assessments, etc.), prevention services, in-home services, foster family services, community-based and institutional services, detention and secure residential services.

### **\*Best Practice — Court/Agency Collaboration\***

Ideally the court and agency should be identifying service gaps/needs throughout the year and communicating with each other about them. Local Children's Roundtables are an excellent venue for these discussions, helping to identify needs as well as potential solutions.

In some counties, court and non-court personnel (usually agency/county program and fiscal personnel) meet to routinely review service delivery, costs and effectiveness. This administrative process helps to identify services that show positive outcomes for children and families while clarifying court expectations and making the most of limited funding resources. This quality control partnership results in a more effective and more relevant service delivery system.

The statute provides a different reimbursement percentage amount for each service category, with the total reimbursement being a combination of state, federal and county matching funds.

The NBPB submission by each county should be a collaboration of all system and community partners involved with the child welfare system, including but not limited to the court, the juvenile probation office, the behavioral health and intellectual disability systems, school districts, advocates, providers and the public. The NBPB must be reviewed and signed by the County Children and Youth Administrator, the Chief Juvenile Probation Officer, the County Commissioners/Executive and the President/Administrative Judge.

While courts obviously do not directly oversee the child welfare agency, courts do order needed services in dependency matters and oversee these cases. Judges can provide a unique perspective regarding service needs and gaps. Review of the NBPB is intended to provide the agency insight regarding the court's perspective and expectations, allowing the agency an opportunity to plan and budget accordingly. In addition, a portion of county legal service costs (i.e. solicitor, guardian *ad litem* and CASA) can be included in the NBPB. Finally, new statutes, procedures and legal requirements often have associated legal costs of which the court may be aware. Sharing this information with the county agency can greatly assist in the NBPB development.

In March/April of each year, OCYF issues a draft bulletin containing the instructions for the NBPB. This draft is issued to all county children and youth agency directors and county juvenile probation chiefs, as well as the private provider community. On or about May 15, the final NBPB bulletin for the following fiscal year is issued. The county NBPBs must be submitted to OCYF no later than August 15.

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

## 20.11 Trauma

### 20.11.1 Trauma Overview

Trauma-informed judicial practice is paramount in dependency cases. Based on the life experiences and events bringing families into dependency court, one can easily conclude that most of the individuals that come before the judge or hearing officer experienced some form of trauma or traumatic stress. According to the *Enhanced Resource Guidelines* trauma-informed judicial practice recognizes the impact that trauma has the lives of children and their families, trauma triggers that may evoke a trauma reaction and vulnerabilities of trauma survivors (NCJFCJ, 2016, p. 144). This requires all those working within a system to possess the knowledge of both trauma and people's reactions to trauma. Beyond this understanding, trauma-informed practice requires courts, from judges to maintenance staff, knowing how to effectively interact with traumatized individuals. Simple changes to the way one approaches people and the manner in which one speaks to them can make a huge difference in the responses people have. Just as trauma can pervade every area of a person's life, so too can trauma-informed practice.

*"If we save the body,  
but in so doing,  
destroy the mind and  
soul,  
what good have we  
really done?"*

- Honorable Max Baer,  
Pennsylvania Supreme  
Court Justice

Such a commitment begins with an understanding of trauma. The definition of trauma, in its simplest form, is an "event that threatens someone's life, their safety or their well-being". (NCJFCJ, *Ten Things Every Juvenile Court Judge Should Know about Trauma and Delinquency*, 2010) Depending on the circumstances, context, connectedness and psychological make-up, trauma can affect individuals in many ways. For the judicial officer, it is important to note that trauma can cause neurological changes leading to an easily triggered fight, flight or freeze response. The behaviors seen in the courtroom need to be considered in light of the trauma histories of the participants. Using a trauma-informed approach means considering whether trauma played a role in the behavior of the individual. It also means that all parties are treated in a trauma-informed way, presuming trauma of some sort has happened until it is known otherwise.

The federal Substance Abuse and Mental Health Services Administration (SAMHSA) has developed a set of core principles that make-up trauma-informed systems. A court's culture, reflecting these six values, recognizes the importance of people, both those being served and those serving. The more ingrained these principles, the more attuned the system is to the precept, "first, do no harm."

The six core principles are:

- **SAFETY:** create safe spaces and environments that reduce stress.
- **EMPOWERMENT, VOICE & CHOICE:** notice capabilities, strengths and positive changes; prioritize competencies; provide options when possible, allowing others to make a plan for meeting their own goals.
- **COLLABORATION & MUTUALITY:** make decisions together; system partners should have a shared understanding of being trauma-informed and work together to ensure that policies, practices and interactions are consistent with that understanding.
- **TRUSTWORTHINESS & TRANSPARENCY:** provide clear and consistent information and a general sense of transparency; utilize principles of procedural justice.
- **PEER SUPPORT:** encourage mentoring and support networks with others that share same life experiences.
- **CULTURE, HISTORICAL & GENDER ISSUES:** being sensitive to cultural, developmental and gender issues creates safety and connects individuals with the most appropriate services to address their needs; implicit in this principle is the need to understand and manage your own biases.

These core principles are consistent with the *Mission and Guiding Principles for Pennsylvania's Child Dependency System* (2009). They reflect the mission of Pennsylvania's dependency system: protecting children, promoting strong families and promoting child well-being, leading to timely permanency. The principles also underscore Pennsylvania's strengths-based and family-engagement approach to children and families in the dependency system.

### 20.11.2 Trauma-Informed Courtroom

The National Council of Juvenile and Family Court Judges (NCJFCJ) developed a working definition of trauma-informed courts: "a system that ensures physical and social environments are sensitive to reducing stress, practices reflect an understanding of trauma triggers, and policies are designed to help promote healing. Inherent in this approach is that all system professionals, children and families benefit from the focus on safety and well-being that is instilled in trauma-responsive environments." (*Enhanced Resource Guidelines*, 2016, p. 78)

Judges and hearing officers should be keenly aware that traumatic experiences may impact a child's or parent's responsiveness to services and their ability to communicate effectively with their attorney, caseworker or the court. To counter these effects, dependency courts across the Commonwealth are striving to be trauma-informed and trauma-responsive.



Trauma informed and responsive courts integrate the following elements which can reduce the trauma and stress associated with the court process:

- **Safety.** Everyone has a right to feel safe in courthouses and court operated facilities. Judges and hearing officers, with the assistance of the deputy sheriff and court staff, should create an environment of safety, including: not sitting a victim of domestic violence or sexual assault next to the alleged perpetrator; using video or teleconferencing when appropriate; taking testimony *in camera* and ensuring that the deputy sheriff or courthouse security is visible, but not intimidating, at all times.

**\*Best Practice — Trauma-Informed Courtroom Procedures\***

COURTROOM EXPERIENCE	REACTION OF TRAUMA SURVIVOR	TRAUMA-INFORMED APPROACH
Individuals who are frightened and agitated are required to wait before appearing before the judge.	Increased agitation; anxiety; acting out.	Clearly provide scheduling information in the morning so participants know what will be expected of them and when. To the greatest extent possible, prioritize who appears before you and when.
A judge conducts a sidebar conversation with attorneys.	Suspicion, betrayal, shame, fear.	Tell the participants what is happening and why.

(SAMHSA, *Essential Components of Trauma-Informed Judicial Practice*, 2013, p. 6.)

- **Physical Environment.** Ideally, a dependency courtroom should be stress reducing. Courtrooms that are more “child and family friendly” can go a long way to decreasing trauma. Consider providing pens and notebooks for parents and older children to enable them to take notes. Crayons and coloring books can reduce stress for younger children during the court hearings. Also consider providing simple conveniences like boxes of tissues and snacks within reach. People, including attorneys, court staff and sheriff’s deputies, walking in and out of the courtroom during a hearing can cause stress to the parties. Develop a policy on entering the courtroom during court hearings. Finally, minimize the space

between the judicial officer and the participants. Consider coming off of the bench and holding the hearing at a table. If that isn't practical, come off of the bench at the beginning of the hearing to greet the parties and thank them for coming.

**\*Best Practice — Trauma-Informed Courtroom Environment\***

PHYSICAL ENVIRONMENT	REACTION OF TRAUMA SURVIVOR	TRAUMA-INFORMED APPROACH
The judge sits behind a bench, and participants sit at table some distance from the bench.	Feeling separate; isolated; unworthy; afraid.	The judge comes out from behind the bench and sits at a table in front.
Multiple signs instruct participants about what they are not allowed to do.	Feeling intimidated; lack of respect; untrustworthy; treated like a child.	Eliminate all but the most necessary signs; word those that remain to indicate respect for everyone who reads them.
A court officer jingles handcuffs while standing behind a participant.	Anxiety; inability to pay attention to what judge is saying; fear	Eliminate this type of nonverbal intimidation. Tell court officers not to stand so close. Respect an individual's personal space.

(SAMHSA, *Essential Components of Trauma-Informed Judicial Practice*, 2013, p. 8.)

- **Timely Hearings.** Long periods of waiting in the courthouse can increase or cause trauma and anxiety. Starting hearings on time can reduce much of the trauma and anxiety associated with waiting. During wait times, ensure that victims and perpetrators can wait in separate areas. Have a staff person visible to increase the feeling of safety. Provide distractions to waiting, such as magazine, books and toys for children to play with. Have a children's waiting room that is filled with things for children to do and introduce therapy/facility dogs into waiting areas. Strive for time-specific scheduling of hearings.
- **Trauma-Informed Hearings.** A trauma-informed court hearing includes: the right to be heard, emphasizing strengths, explaining decisions on the record and making timely decisions. At the onset of a hearing, the judicial officer should ensure that there are no language barriers. The judge or hearing officer should explain the

purpose of the hearing. Utilizing Motivational Interviewing techniques helps the judicial officer receive the best information from parties. Judicial officers should understand that what may appear to be hostility or non-cooperation may just be a symptom of the underlying trauma. Judicial officers should set the tone for everyone in the courtroom. Require and model respectful, positive and encouraging interactions. Link concerns to concrete examples and, rather than asking “why?” move to planning for a different action/outcome next time. Hold all

**\*Best Practice — Managing Anxiety in the Courtroom\***

Having a highly anxious person in the courtroom can be difficult, both from the standpoint of getting reliable information and clear understanding of expectations. A continued escalation in anxiety could lead to defensive behavior. Judicial officers have an opportunity to calm things down. Take a brief recess, offer water to sip (through a straw can be especially soothing to children), reposition the facility/therapy dog next to the anxious person. Judges and hearing officers can even lead the courtroom through a calm breathing exercise. For more information on how to do that, see the Trauma Benchcard.

parties accountable when needed. Doing so creates an atmosphere of procedural fairness. Make sure that everyone leaves the courtroom knowing what they need to do prior to the next hearing. Help prioritize multiple tasks and orders. Set clear expectations and let parties ask questions about those expectations so they understand.

- **Trauma-Responsive Services.** Judges and hearing officers should set the expectation that families be treated in a trauma-responsive manner. Judges and hearing officers should order services that recognize the impact that trauma has on lives of children and families and the potential triggers and vulnerable nature of children and families who have been exposed to trauma. Judicial officers should consider ordering services that are specific to gender, sexual orientation or identity. When there are multiple services available, allow children and families to have a choice with whom they work. When necessary, trauma treatment should occur by professionals trained in one of the evidence-based models for trauma treatment.

### **\*Best Practice — Court Facility Dogs\***

Therapy dogs provide comfort and security during dependency proceedings. Their presence is a calming influence and helps many individuals relax, leading to a reduction in stress symptoms. Benefits include better information from participants, a sense of connectedness and soothing through touch.

In 2019, 23 jurisdictions had facility dogs. Many different therapy dog programs exist. Some examples are Roxy Therapy Dogs (Bucks County), Therapy Dogs United (Erie County) and Paws 4 a Cause (Venango County). For more information about the benefits of facility dogs, see <https://www.youtube.com/watch?v=UtZRZy8VQV8>

### **20.11.3 Trauma-Informed Communication**

Judges and hearing officers should consider trauma when directing comments and questions to parties. Using a “trauma lens” approach to interacting with people means to move away from blaming or shaming communication and instead using language that conveys understanding and hopefulness, motivating people towards change. Be careful in addressing traumatic experiences, use a soothing and gentle voice. Watch for signs of people becoming “triggered” by hearing about past traumatic events. Examples of some helpful statements are:

- “What has happened to you?”
  - “What do you think?”
  - “What can we do to support you in solving the problem?”
  - “Please.”
  - “Thank you.”
  - “Your commitment really shows.”
  - “It’s clear you are trying.”
  - “I read in the court report that you followed last month’s visit schedule without any problems. This helps your child.”
  - “I’d like to refer you to a doctor who can help us better understand how to support you.”
  - “I can see you are confused.”
  - “I can hear you are frustrated.”
- (SAMHSA, *Essential Components of Trauma-Informed Judicial Practice*, 2013.)

**\*Best Practice — Trauma-Informed Courtroom Communication\***

JUDGE’S COMMENT	PERCEPTION OF TRAUMA SURVIVOR	TRAUMA-INFORMED APPROACH
“Your drug screen is dirty.”	“ <i>I’m dirty</i> . There is something wrong with me.”	“Your drug screen shows the presence of drugs.”
“I’m sending you for a mental health evaluation.”	“ <i>I must be crazy</i> . There is something wrong with me that can’t be fixed.”	“I’d like to refer you to a doctor who can help us better understand how to support you.”

(SAMHSA, *Essential Components of Trauma-Informed Judicial Practice*, 2013, p. 4.)

Non-verbal communication is equally important. Look at people when they are talking and listen without judgment or bias. Consider body language. Does body language convey attentiveness? Make eye contact frequently, but don’t stare. Don’t read or look at the computer screen while people are talking. Actively listen, it shows respect and concern.

**20.11.4 Services for Trauma**

- Screening and Assessment:

Many screening tools have been developed to help professionals quickly decide which people have been exposed to traumatic events. Some tools can be administered without training, others require some form of training. Examples of screening tools, and other useful information, can be found at the National Child Traumatic Stress Network (NCTSN): <https://www.nctsn.org/>

One quick measure of traumatic/stressful events children have been exposed to is the Adverse Childhood Experiences (ACEs) scale. The ACE score is a number from one to ten that helps judges and hearing officers understand the urgency of further assessment for trauma. The higher the number, the more adverse experiences in the life of a child. Research using the ACE score shows that high ACE scores are associated with poorer life outcomes, physical problems in later life and increased likelihood of mental health issues. For more information on ACEs, see Chapter 2: Act 55 of 2013: Family Finding, Section 2.2: The Importance of Meaningful, Life-long Connections.

Assessments are formal evaluations done by professionals to provide information about a person's trauma history, its effect on their life, current functioning and recommendations about treatment needs. If judicial officers have specific questions that they would like answered, make sure the clinician doing the assessment knows what information is needed. For example, judicial officers may want to know how trauma is affecting a child's current behavior and what can be done to address those behaviors.

- Evidence-Based Treatments for Trauma

There are specific treatment modalities that address trauma issues and those that are trauma-informed treatment. These are not the same. Trauma therapy addresses the direct issues of a traumatic experience and includes core elements such as: educating clients about trauma, increasing their sense of safety, identifying their trauma triggers, developing emotional regulation skills and processing traumatic memories (NCTSN, *Trauma: What Child Welfare Attorneys Should Know*, 2017, p. 13). Trauma-informed treatment generally means that clinicians and other professional staff have been trained in aspects of trauma and how to approach/respond to people from a trauma perspective but are not necessarily trained in treating Post-Traumatic Stress Disorder or other problems related directly to the trauma.

Trauma-informed courts should order therapeutic services that are specifically geared to address the issues of children and parents who have been victims or exposed to traumatic events when needed. Traditional therapy and interventions may not be sufficient. If such resources do not exist within the community, the court should collaborate with the agency and other system partners to develop these needed services. More information about trauma treatment and interventions can be found on the NCTSN website at: <https://www.nctsn.org/treatments-and-practices/trauma-treatments/interventions>.

### **20.11.5 Secondary Traumatic Stress and Vicarious Trauma**

Judges and hearing officers face many challenges during the course of a work week. Many are handled with skill and knowledge. Some are handled with finesse and professionalism. Dependency judges and hearing officers face the challenge of helping children and families and the rewards are innumerable. All too often, dependency judges and hearing officers carry thoughts or mental images with them of the abuse and neglect children have endured or the violence the children may have been witness to in their homes. While it is easy to presume that children and parents that come into the courtroom have experienced trauma, little thought is given to how the repeated exposure to these accounts affect judges, hearing officers and others who are regularly in the courtroom and what can be done to mitigate its impact.

This repeated exposure can cause secondary traumatic stress (STS). STS is defined as behavioral and emotional responses resulting from the indirect exposure to trauma (ABA, *Understanding Secondary Trauma*, Child Law Practice, September 2015, p. 133). These responses can mimic the symptoms of Post-Traumatic Stress Disorder. Vicarious trauma (VT) is often used interchangeably with STS but it has been described as the result of many incidents of STS (Florida State Courts, *Self-Care Tool Kit*, 2016, p. 6). Symptoms that may present themselves when individuals are suffering from either STS or VT include:

- Avoidance
- Hypervigilance
- All or nothing thinking
- Argumentativeness or irritability
- Numbing (often with the help of drugs or alcohol)
- Negative thinking
- Strained personal relationships

These symptoms may be labeled as workplace problems or poor performance but, in many cases, are the result of STS/VT (ABA, *Understanding Secondary Trauma*, Child Law Practice, September 2015, p. 134). Other symptoms are physical in nature and can include exhaustion, headaches, insomnia and chronic illness. It is important to attend to the issue of STS when symptomology is present.

One way to attend to issues of STS is to increase protective factors, such as resiliency, that mitigate the effects of STS. Resiliency is a term used to describe an individual's ability to withstand or "bounce back" from adversity. Some resiliency is inherent to a person's personality and psychological make-up. Building resiliency takes attentiveness to things that enhance a person's sense of self and those that bring peace and happiness to an individual. The process of attending to these things is known as self-care. Self-care is extremely important and will vary from person to person. When judges and hearing officers are faced with "red flag" symptoms indicating STS/VT, carefully examining self-care might prompt actions that can be helpful. Self-care items to consider include:

- Regular exercise
- Good nutrition
- Activities and hobbies
- Connections with family, friends and community
- Clear work boundaries
- Taking breaks and vacation time from work

The task is to gauge how well you are taking care of yourself and meeting your own needs for positive interactions and activities that bring pleasure, joy and peacefulness. Make time to add in any of these things that are missing. Strategies that may be useful on an individual level include:

- Practice mindfulness or relaxation (there is an app for this)
- Consider yoga
- Laugh. When is the last time you watched a funny movie or read a funny book?
- Make a list of all the enjoyable and meaningful things about work
- Recognize what you can't control and take control of what you can
- Get a massage
- Look at possibilities, not barriers
- Get up a little earlier in the morning, it takes the pressure off
- Talk to a friend or colleague
- Get professional help when needed

On an organizational level, judges and hearing officers can work to create a trauma-informed work culture that is supportive of individuals and fosters a sense of collaboration and shared responsibility. Isolation compounds stress so collaboration can be an effective tool in combatting STS/VT. Use your local Children's Roundtable to generate ideas about creating a positive work environment focused on wellness. Recognize successes, even the small ones. Have regular discussions about STS/VT and attend trainings on trauma and its impact on professionals working with traumatized individuals. Check in with colleagues and offer support.

For more information on STS/VT, see the American Bar Association's resources on trauma and legal practice, the National Child Traumatic Stress Network (<http://www.nctsn.org>) or books like *Trauma Stewardship: An everyday guide to caring for self while caring for others* by Laura van Dernoot Lipsky and Connie Burk. For confidential support, judges can reach out to the Pennsylvania Chapter of Judges Concerned for Judges at 888-999-9706 or find resources on their website at <https://www.icjpa.org/>.