

# Chapter 11 – Permanency Options

## 11.1 Overview

ASFA amended the Social Security Act, at 42 U.S.C. § 675(5)(C), requiring states to establish a hierarchy of permanency goals for children in the child welfare system, giving the highest preference to reunification. Subsequent amendments to the Juvenile Act, at 42 Pa.C.S. § 6351(f.1), governing determinations to be made at permanency review hearings, adopted the federally mandated order of preference for children in Pennsylvania dependency proceedings. The basic hierarchy is as follows:

1. Return the child to the parent, whenever this course is “best suited to the safety, protection and physical, mental and moral welfare of the child.”
2. Place the child for adoption (with the county agency being required to petition for a termination of parental rights) where reunification is not best suited to the child’s safety and welfare.
3. Place the child with a permanent legal custodian, where adoption is not best suited to the child’s safety and welfare.
4. Place the child permanently with a fit and willing relative, where legal custodianship is not best suited to the child’s safety and welfare.
5. Place the child in some other court-approved and permanent living arrangement, in instances where the agency has shown a “compelling reason” for ruling out all of the above four options.

The court’s role in reviewing the permanency goal, as well as the concurrent plan goal (discussed more fully in Chapter 9: Disposition) is to determine that they are established in a timely manner which is appropriate to the child’s circumstances. (For time requirements applicable to the agency’s permanency planning, see Chapter 9: Disposition.)

## 11.2 Reunification

Reunification of a child and parent is the preferred permanency choice under ASFA and the Juvenile Act (42 Pa.C.S. § 6301(b) and 42 Pa.C.S. § 6351(f.1)(1)). The deleterious impact on a child that is caused by the separation from his or her parents is well documented; therefore the majority of permanency hearings focus on reunifying the family whenever possible. When reasonable efforts fail to prevent the removal of the child from the parent’s home, reasonable efforts must be made to reunite child and parent.

It is important to note that the issue of whether the agency has made reasonable efforts to return a child home is distinct from the issue of whether the child *should* be

returned home. Safety is always the first consideration in all court decisions, including reunification (see Chapter 2: Roles of Judges and Hearing Masters). The agency and the court must make every reasonable effort to secure a safe environment by providing parents with the services and resources to create an environment where the child can be safe (PA Children's Roundtable Initiative, 2009, p. 9).

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

- Whether the services provided to the parents by the agency have changed their behavior and provided them with the skills to parent effectively.
  - Many case plans require parents to take parenting and/or anger management classes; however, the fact that a parent has completed the course does not mean the parent's behavior has changed. The Judge or Hearing Master should consider evidence regarding visits between the parent and child to determine whether actual behavior has changed for the better.
- Whether the child wants to return home.
  - If possible, depending on the age of the child, the Judge or Hearing Master should talk to the child directly to determine the child's wishes. (See the discussion of "Children in Court" in Chapter 19: General Issues.) In any case, the child's advocate should inform the Judge of the child's position on returning home and the child's basis for that position.
- Whether visits between the child and the parent have been successful.
  - Visitation is one of the most important tools in effectuating reunification. The Judge or Hearing Master should inquire of the agency if the parent has consistently kept the visitation appointments and if the visitations have been meaningful and effective.
- Whether the family situation has changed since the child entered the system.
  - Do additional services now make the safe return of the child possible? For example, do the parents now have access to day care or after-school care for the child that they did not have before, so that the child will no longer be left home alone?
- Whether additional concerns have arisen that prevent the child from returning home.

- Often, circumstances change and the agency needs to change the services/service plan to meet the new circumstances. The Judge or Hearing Master must assure that the child is not out of the home because the parents do not know what is required of them to get the child returned home. The Judge or Hearing Master should also ensure that what needs to be completed is specific and understandable and that it serves the best interests of the child.

### **11.3 Adoption**

When a child cannot safely return home, adoption is the preferred legal permanency option under ASFA and the Juvenile Act (42 Pa.C.S. § 6351(f.1)(2)). Adoption is the legal and permanent transfer of all parental rights and responsibilities to the adoptive parents. Adoption requires the termination of each natural parent's rights. This provides the child with a new permanent legal family in which the child has the same legal standing and protection as if he/she had been born into the family. More importantly, adoption provides a sense of belonging to a stable family with emotional and physical security for a lifetime. Another advantage of adoption over less preferred placements is the fact that it ends the court's oversight, so that the family has the opportunity to continue without further state interference. If, however, an adopting family needs additional support from the agency, the state can offer further assistance through financial subsidies and post adoption services.

ASFA and the Juvenile Act require that the agency demonstrate reasonable efforts to secure the child's adoption in an appropriate home and to ensure the adoption process is thorough so that the placement is not challenged later. The Judge or Hearing Master should inquire at the permanency hearings as to efforts the agency is making to find a permanent adoptive home for the child. Once the permanency plan has been changed to adoption, the agency is required to make reasonable efforts to identify, recruit, and process prospective adoptive homes for the child. Reasonable efforts include determining the child's wishes, looking at current caregivers and relatives as possible adoptive families or identifying other possible prospective adoptive parents.

In Pennsylvania, a child over the age of twelve must consent to the adoption; however, it is good practice to find out how a child of any age feels about an adoption. A child who objects to adoption may just need more time to develop a trusting relationship with the prospective adoptive parents. In any case, the Judge needs to determine the reasons for the child's opposition—whether the child is opposed to adoption itself, to specific prospective adoptive parents, to the prospect of losing contact with siblings, etc.

In looking for adoptive parents the agency should first consider the current caregivers and relatives. The agency must determine the willingness of current caregivers and relatives to adopt and address any concerns they may have about adopting the child. Although caregivers and relatives should never be pressured into adopting, their initial reluctance may often be overcome if their underlying concerns are

addressed. Relatives often hesitate because they believe that the child may return to the parent, for example. The agency needs to make clear that any adoption will be preceded by a termination of the biological parent's rights, and that this termination will be final and permanent.

If current caregivers or relatives are unwilling or unable to adopt, the agency must develop a child-specific recruitment plan. This may entail looking for other relatives or placing the child on adoption exchanges and local or national adoption lists. The agency should be aware of and utilize all available public and private adoption agencies to secure a home for the child. This includes possible out-of-state placements. The Interstate Compact on the Placement of Children (ICPC) makes it possible to place a child in another state as it ensures that a proper home study and evaluation of prospective parents meets the legal requirements of both states (For further details on the ICPC, see Chapter 20: Summary of Major Federal and State Child Welfare Legislation).

Some children are hard to place for a variety of reasons, including age, disability, membership in a sibling group, ethnic background and/or special medical needs. The agency still needs to work diligently to find homes for these children. Under the Multi-ethnic Placement Act (MEPA) and the Inter-ethnic Adoption Provision Act of 1996 (IEPA), a child cannot be denied an adoptive placement because of the ethnicity of either the child or the prospective adoptive parent. If the court finds that a placement is being delayed because the agency is restricting its search efforts in violation of these laws, the court should order the agency to broaden its search to include prospective parents of all ethnicities and national backgrounds (Further details on MEPA are contained in Chapter 20: Summary of Major Federal and State Child Welfare Legislation).

Regardless of whom the prospective adoptive parents are or where they reside, the agency should make certain that the prospective adoptive parents are well informed about the adoption process and the fact that adoption is a lifelong commitment. They should also be informed of any subsidies or other benefits they may be entitled to if the child has special needs. Current caregivers may be concerned about losing the agency's support if they adopt the child, so it is particularly important they be informed that they may qualify for subsidies and post-adoption services. Subsidies may include such things as:

- Regular monthly payments
- Medical coverage
- Respite care
- Reimbursement for "special costs" (wheelchairs, medical equipment, etc.)
- Special services such as tutoring or physical therapy
- Counseling – family and individual
- Reimbursement for legal expenses incurred in the adoption process

## 11.4 Permanent Legal Custodianship (PLC)

Legal custodianship in Pennsylvania, as defined in the Juvenile Act (42 Pa.C.S. § 6357), is the equivalent of legal guardianship under the Social Security Act (42 U.S.C. § 675 (7)) as amended by ASFA, and is a formal legal arrangement that transfers custody of a minor child from the natural parent to a relative or other caregiver. A legal custodian is given the primary rights and duties associated with parenthood, including physical custody of the child, the right to make care and treatment decisions, and “the right and duty to provide for the care, protection, training, and education, and the physical, mental, and moral welfare of the child” (42 Pa.C.S. § 6357). In the hierarchical scheme of permanency options, permanent legal custodianship is less desirable than reunification or adoption, but preferable to permanent relative placement and another planned permanent living arrangements (42 Pa.C.S. § 6351(f.1)(3)). It has a higher preference because it provides permanency and stability without ongoing state oversight, while often maintaining ties with siblings, extended family members and the biological parents.

“I am very lucky to have formed a bond with my foster parents who eventually became my legal guardians. I finally found the home I always wanted.”

-M.M., 18, Former Pennsylvania Foster Youth

The two hallmarks of legal custodianship are permanency and self-sustainability. The legal custodianship order remains in place until a court terminates it, or until the child is adopted, turns 18 or marries. When legal custodianship is set as the permanency plan goal the court should make every effort to ensure the parties understand that the relationship is to be permanent and that a change in custody will not be made lightly. Parental rights are not permanently terminated as they would be in an adoption case, and the parents may play a role in the child’s life. Therefore, the parent may later seek a change in the custodianship arrangement. The court should inform the parents that although they may have a continuing role in the child’s life, decision-making capacity and legal custody belong to the legal custodian. The legal custodians should know the responsibility they are assuming is permanent and cannot be abdicated to the parents just because the parents continue to have a role in the child’s life.

The biological parents need not consent to a permanent legal custodianship in order for the court to establish it. However, since the court will no longer have an oversight role following a permanent transfer of legal custody, it is imperative the custodian and the parent be able to maintain a cooperative relationship, with both parties having a clear understanding of the duties and responsibilities of custodianship.

The Department of Public Welfare’s Office of Children, Youth and Families (OCYF) has published bulletins delineating the rights and duties of the legal custodian and the parents. The legal custodian’s rights and duties include, in addition to those already enumerated:

- The right and duty to make decisions on behalf of the child, including decisions regarding the child's travel, driver's license, marriage, and enlistment in the armed forces
- The right to petition for child support from the child's parent
- The obligation to pay legal expenses related to a parent's request to change custody or visitation

The parental rights and duties include:

- The right to visitation when it does not affect the health and safety of the child
- The right to petition for custody of the child
- The right to pass on property to the child
- The duty to pay child support

Although the legal custodianship is considered permanent, it may be terminated with judicial approval, following the filing of a petition by the agency. (Because the grant of permanent legal custody closes the dependency case, however, this is technically a new proceeding.) The biological parent or the legal custodian may also file motions to have the legal custodianship terminated. Whether the petition is filed by the agency following a determination that the child is in danger, by a parent seeking the return of the child, or by a legal custodian wishing to be relieved of custodial responsibilities, the court must decide whether to continue or revoke the legal custodianship on the basis of the best interests of the child.

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

Pros:

- Legal guardianship is sometimes better for relative caregivers when termination of parental rights is inconsistent with cultural or family traditions.
- The child may not want parental rights to be terminated; legal guardianship provides permanence while maintaining ties to the biological family.
- It is sometimes easier to find a relative to care for sibling groups, special needs children, or older children who may be difficult to place.
- There is no ongoing state supervision.

Cons:

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

## 11.5 Permanent Placement with a Fit and Willing Relative

The Pennsylvania Kinship Care Program Bulletin outlines that when a child is initially removed from the home, the agency should give first consideration to placing the child with a relative; therefore a child's initial placement will likely be with a relative if one is available. Ideally, that relative will choose to adopt or become the legal custodian of the child if reunification is not possible. If the relative is unwilling, the court is obligated to determine if there is another appropriate person willing to adopt or become a permanent legal custodian. Otherwise, under ASFA and the Juvenile Act, "permanent placement with a fit and willing relative" is considered the next best alternative – after reunification, adoption and permanent legal custodianship (42 Pa.C.S. § 6351(f.1)(4)).

Placement with a relative offers many potential advantages, including dampening the traumatic impact of removal, allowing for the continued maintenance of family bonds, and preserving the child's cultural identity. ASFA, Pennsylvania's Kinship Care Program Bulletin and the Juvenile Act all strongly support relative placements in lieu of placements with strangers whenever possible. Moreover, periods of placement with relatives are not counted for purposes of the requirement that a petition for termination of parental rights be filed whenever a child has been out of the home for 15 of the most recent 22 months (42 Pa.C.S. § 6351(f)(9)(i)).

On the other hand, relative placement as a permanency option is subject to drawbacks that should not be overlooked. For example, the relative may not be able to protect the child from the neglectful or abusive parent. Moreover, there is a possibility that the relative does not really feel capable of caring for the child but feels compelled to do so. The authors of *Making it Permanent* suggest the following pros and cons be considered when a permanency goal of relative placement is proposed (Fiermonte and Renne, 2002, p. 69):

### Pros

- Relatives often have a sense of familial responsibility and may be more committed to keeping the child on a long-term basis.
- It is easier to preserve the bond the child has to his biological family, including siblings.
- Relatives may reduce the trauma of being removed from the home.
- Relatives preserve the child's cultural identity and heritage.
- The child is often able to adjust to living with kin more easily than living with strangers.

### Cons

- Relatives often receive fewer services than non-relatives.
- The most appropriate relative is often a grandparent who may have limitations due to age.
- Relatives may protect the parent or deny the maltreatment occurred, thus engaging in behavior that could put the child at risk.

- Relatives may be loyal to the parent and unwilling to adopt because it would sever the parent's rights.
- Relatives and parents may be hostile toward one another, making it harder for the agency to work with the parent.

Permanent placement with a fit and willing relative is one of the least defined options provided in the statute. Neither ASFA nor the Juvenile Act define "relative" or "fit and willing" nor do they create new legal authority for the relative. However, some guidance is provided by the Kinship Care Program established in Act 25 of 2003, which defines a relative as someone related "within the third degree of consanguinity or affinity to the parent or stepparent of the child and who is at least 21 years of age" (Act 25 of 2003).

In general, "fit and willing" can be defined as the ability to ensure the child's safety and meet the child's needs (Child Welfare Information Gateway, 2008, p. 2). In Pennsylvania, a kinship caretaker must become a licensed foster parent, once licensed as a foster parent the kinship caretaker is entitled to the same payments and services as non-relative foster parents, while at the same time ensuring they are able to safely meet the child's needs (Act 25 of 2003). In an emergency situation a child can be placed with a kinship caretaker, but that caretaker must become a fully licensed foster parent within 60 days.

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

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

Following placement with a relative, the agency continues to be involved in the case and provide supervision. The level of supervision required may vary depending on the resources of the relative placement. The court should ensure the agency has done a thorough home evaluation and determined what services the family needs and whether the agency can provide the necessary services. The dependency case remains open and the court continues to conduct permanency hearings until court supervision is terminated. A relative who wants relief from agency and court oversight may pursue the adoption or permanent legal custodianship options.

Since placement with a fit and willing relative has a lower priority than adoption or legal custodianship, the Judge or Hearing Master should make sure that the agency has made reasonable efforts to ensure the placement is suitable for the child and the relative is not taking the child unwillingly, or solely in order to prevent the termination of

parental rights. The Judge or Hearing Master should inquire as to the following issues (Fiermonte and Renne, 2002, p. 67-70):

- Whether the relative should adopt or enter into a guardianship
- Whether the child has a bond with the family
- Whether non-relatives are willing to adopt or accept guardianship
- Whether the placement will help preserve the child's family identity
- Whether the placement will help preserve sibling bonds
- The child's wishes with respect to the placement with the relative caregiver
- Whether this is the right family for the child
- Whether family dynamics compromise the relative's ability to safeguard the child from abusive parents
- Whether the agency has observed the interaction between the child and relative
- Whether the relative is committed and able to provide a stable, long-term home for the child
- Whether the relative received counseling when appropriate
- Whether the relative is committed to the child
- Whether the placement is stable and long-term
- Whether the agency has collected and reported to the court sufficient information about the relative's home
- Whether the agency has complied with the ICPC when the relative lives out of state
- Whether all the necessary services have been provided

In any case, both the agency and the court should do their best to make placement with a fit and willing relative truly permanent through adoption or legal custodianship. Placement with a relative as the selected permanency plan should not be used as a stopgap measure just to satisfy the permanency guidelines; it should be the best available choice. Even if a relative is available, a better alternative may still be a non-relative who is committed to the child and willing to adopt or accept guardianship.

## **11.6 Another Planned Permanent Living Arrangement**

Another Planned Permanent Living Arrangement (APPLA) is the least preferred option for ensuring permanency for a child. ASFA and the Juvenile Act (42 Pa.C.S. § 6351(f.1)(5)) require the agency provide the court with a "compelling reason" why one of the other permanency options is not available to the child. While the least preferred of all options, APPLA should not be viewed as a catchall or as long-term foster care. It must be both planned and permanent. The preamble to the ASFA regulations specifically states that long-term foster care is not a permanency option, noting that "far too many children are given the permanency goal of long-term foster care, which is not a permanent living situation for a child. The [compelling reason] requirement is in place to encourage States to move children from foster care into the most appropriate permanent situation available" (65 Fed. Reg. 4036).

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

In some situations, the permanent plan may be APPLA with group care and independent living services being provided to the child. Group care suggests the child is unable to function in a family setting and requires additional attention that can only be provided in a group setting. The court should periodically review the placement and inquire as to whether any other placement options have become available. Perhaps the child has developed a relationship with a mentor that could lead to a legal guardianship or perhaps a relative is now available who was not previously available for relative placement.

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

It is imperative that the court ensure all children, especially those with a goal of APPLA, have meaningful and significant connections with responsible, caring adults. While Act 55 mandates family finding for all dependent youth, unless discontinued by the court, one strategy being used throughout Pennsylvania is known as Family Finding as developed by Kevin Campbell. Much more than a web-based search, Family Finding offers methods and strategies to locate and engage the relatives of children living in out-of-home care. Family Finding is used to provide each child with lifelong, supportive adult connections. (Form more information see the Family Finding section of Chapter 19.)

Independent Living (IL) is the provision of services to help an adolescent live independently. It is important to note that IL is a service not a permanency option. IL services are typically provided at age 16 up to age 21. The Judge or Hearing Master should ensure that the agency is providing all the services necessary to meet the adolescent's physical, emotional, psychological and educational needs. Stability is key and the Judge or Hearing Master should make sure that services are sufficient and will continue until the adolescent reaches the age of majority.

(More information on IL services is available in the "Transitioning Youth" section of the Benchbook. See Chapter 19: General Issues.)

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