

# Permanency Hearings in Abuse and Neglect Proceedings

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Includes information contained in Children's Justice Project Publications.  
See <http://www.courts.state.wy.us/CJP.aspx>

# Learning Objectives

- \* What is a permanency hearing?
- \* When should permanency hearings occur?
- \* How is a permanency hearing different than a 12 month review hearing?
- \* What evidence should be presented at a permanency hearing?
- \* What key findings should be included in the permanency order?

# What is a Permanency Hearing

- \* A hearing in an abuse and neglect case where the judge decides the best permanency plan for the child/children.
- \* The judge may decide one or more of the following options:
  - (1) That the child/children should be returned home;
  - (2) Move toward termination of parental rights so that the child/children can be adopted;
  - (3) That legal guardianship be granted to a relative, foster parent, or other non-relative;
  - (4) That another permanency plan should be made; or
  - (5) The judge orders continued work on the case plan with no immediate change.

# What is a Permanency Hearing?

- \* Required by the Adoption and Safe Families Act (ASFA) and Wyoming Law. See Wyoming Guardian ad Litem Program website: <http://gal.wyo.gov/wyominggal/legal-resources/legal-resources-state-law>
- \* Wyoming Statutes – §14-3-431
- \* Every 12 months after the child enters foster care and every 12 months thereafter (defined in AACWA as the date the Court found the child was abused or neglected or 60 days after the child's actual removal from the home, whichever is earlier. Wyoming Statutes require these hearings every six months from the date of the actual removal. W.S. 14-3-431).

# When should permanency hearings occur?

- \* *WYOMING STAT. ANN. §14-3-431(D)* requires: The Court must conduct a permanency hearing **no later than 12 months after the child's removal from the home, and at least every twelve months thereafter.**
- \* A permanency hearing is also required within 30 days of a determination by the Court that reasonable efforts are not required.

# Permanency Hearing vs. 12 Month Review Hearing?

- \* A Permanency Hearing is different than a 12 Month Review Hearing
- \* Primary difference – requirement of certain evidence.

# What evidence should be presented at a permanency hearing?

- \* At the permanency hearing, the Court must determine whether reasonable efforts were provided to reunify the family. *Wyoming Stat. Ann. § 14-3-431(F)*
- \* The Court must also determine whether the permanency plan is in the best interest of the child and whether DFS has made reasonable efforts to finalize the permanency plan. *Wyoming Stat. Ann. § 14-3-431(K)*

# What evidence should be presented at a permanency hearing?

## **At the permanency hearing DFS must present to the Court:**

- (1) The efforts made to effectuate the permanency plan for the child;
  - (2) Address the options for permanency;
  - (3) Examine the reasons for excluding permanency options; and
  - (4) Set forth the proposed plan to carry out the placement decision, including specific times for achieving the permanency plan.
- \* If a permanency plan other than reunification, adoption, or guardianship is proposed, DFS must present a compelling reason for such plan.

# District Attorney's ROLE

- \* Were reasonable efforts were provided to reunify the family?
- \* Is the permanency plan in the best interest of the child and did DFS make reasonable efforts to finalize the permanency plan.
- \* Presentation of Evidence...
  - \* Opening/Closing
  - \* Witness Testimony (Preparation) / Subpoenas
  - \* Exhibits (Example: judicial notice of DFS file)

# GAL's ROLE

*Expedite permanency for the child!*

- \* Focus = Is permanency plan in the child's best interest?
- \* A GAL should ensure that the proper evidence is presented at a Permanency Hearing.
  - \* Opening/Closing
  - \* Witness Testimony (Preparation) / Subpoenas
  - \* Exhibits
- \* A GAL should ensure all court orders accurately reflect the purpose of the hearing. The court order should clarify if the hearing is a permanency hearing or 12 month review hearing.

# General Evidence

- \*Has DFS made reasonable efforts to finalize permanency plan?
- \*Should the permanency plan be to return home, if no, why not?
- \*Should the permanency plan be adoption, guardianship, or relative placement... why?
- \*Should the permanency plan be another planned permanent living arrangement... why?

# Discussion of Witnesses

- \* DFS Worker
- \* Parents
- \* Placement option
- \* Mental Health Providers (Special Subpoenas)
- \* PCI (Parent Child Interaction) Evaluator
- \* Substance Abuse Providers (Special Subpoenas)
- \* Child's Therapist
- \* Should the child testify?

Discussion of pros/cons of potential witnesses...

# Permanency Hearing Orders

- \* Should be titled correctly – Order on Permanency Hearing (or some variation)
- \* Should include key findings...
  1. whether reasonable efforts were provided to reunify the family;
  2. whether the permanency plan is in the best interest of the child; and
  3. whether DFS has made reasonable efforts to finalize the permanency plan.
  4. Determination of the permanency plan

# CHECKLIST

## PERMANENCY HEARING CHECKLIST

### 1. TIMELY HEARING:

\_\_\_ Date Child Removed: \_\_\_\_\_  
 \_\_\_ Date of Permanency Hearing: \_\_\_\_\_

### 2. NOTICE OF HEARING:

\_\_\_ Determine if the proper parties were notified of the time, place and purpose of the Permanency Hearing:  
 \_\_\_ Mother and attorney \_\_\_ Father and attorney  
 \_\_\_ Guardians/custodians and attorney \_\_\_ Child, GAL and/or attorney  
 \_\_\_ Tribe (If ICWA applies).  
 \_\_\_ Foster parents, preadoptive parents, or relative caretakers.

### 3. WHO SHOULD BE PRESENT:

JUDGE	CHILD(REN)
COUNTY/DISTRICT ATTORNEY	GUARDIAN AD LITEM
MOTHER	CHILD'S ATTORNEY
FATHER	CASA
GUARDIANS/CUSTODIANS	SPOUSE OF CHILD, IF ANY
PARENTS' ATTORNEYS	COURT REPORTER
CASEWORKER	SERVICE PROVIDERS
AGE APPROPRIATE CHILDREN	ADULT/JUVENILE PROBATION OFFICER
EXTENDED FAMILY MEMBERS	OTHER WITNESSES
FOSTER/PRE-ADOPTIVE PARENTS	SECURITY PERSONNEL
LAW ENFORCEMENT	FRIENDS OF THE FAMILY

### 4. PROCEDURE:

\_\_\_ Explain the purpose of the hearing.  
 \_\_\_ Advise parent(s) of possibility of termination of parental rights if child has been in foster care for 15 of 22 months.  
 \_\_\_ Receive all material and relevant evidence helpful to determine parental compliance with the case plan, reasonable efforts to finalize the permanency plan, and the best permanent plan for the child. (Note: The evidence may be relied upon for probative value.)  
 \_\_\_ Allow parties the opportunity to testify, present evidence, present arguments, and cross-examine witnesses.  
 \_\_\_ Receive evidence, recommendations and review reports from:  
 \_\_\_ DFS (i.e., Permanency plan.), County Attorney and Parent(s)  
 \_\_\_ Guardian ad Litem, CASA, and/or service providers.  
 \_\_\_ Admit written reports on the status of the family into evidence.  
 \_\_\_ Make final determination of the child's permanency plan.  
 \_\_\_ Make findings of reasonable efforts.

### 5. PERMANENCY HEARING ISSUES:

\_\_\_ Determine if the child is safe, healthy and happy.  
 \_\_\_ Determine the child's wishes concerning permanency.  
 \_\_\_ Determine the continuing necessity/appropriateness for the placement and whether it is still the least restrictive.  
 \_\_\_ Determine the appropriateness of the case plan including the permanent placement of the child.  
 \_\_\_ Determine if progress has been made toward alleviating or mitigating the causes necessitating placement outside the home and the extent of that progress.  
 \_\_\_ Determine the date the child is expected to be returned to the home or placed for adoption or legal guardianship.  
 \_\_\_ Determine the reasonableness of efforts made to reunify the family and the consistency of those efforts with the case plan.  
 \_\_\_ Finalize the permanency plan for the child after reviewing all permanency options with DFS.  
 \_\_\_ Review child's well-being.  
 \_\_\_ Review paternity and child support.

### 6. PRIORITIZED PREFERENCES/OPTIONS FOR PERMANENCY

*Make a final determination as to the permanent plan for the child:*  
 \_\_\_ The Court determines that the child's permanency plan should be (ASFA prioritizes permanency options as stated below):  
 \_\_\_ Reunification (See Section 7). \_\_\_ Date of expected return home: \_\_\_\_\_  
 \_\_\_ Placement for adoption by termination of parental rights. (See Section 8)  
 \_\_\_ Referral for permanent guardianship. (See Section 9)  
 \_\_\_ Another permanent planned living arrangement because the following compelling reasons exist making return home, adoption, and guardianship not in the child's best interests (See Section 10): \_\_\_\_\_

*(Note: Any other permanent planned living arrangement that does not fit reunification, adoption/TPR, guardianship, or placement with relative, must still have aspects that are planned and permanent for the child.)*

### 7. REUNIFICATION:

\_\_\_ Determine why reunification is the best plan.  
 \_\_\_ How have the conditions or circumstances leading to the removal of the child have been corrected?  
 \_\_\_ Determine the plan for the child's safe return home and follow-up supervision after family reunification.  
 \_\_\_ Expected Date of Reunification: \_\_\_\_\_

### 8. ADOPTION/TERMINATION OF PARENTAL RIGHTS:

\_\_\_ Determine why reunification is not appropriate and adoption/TPR is the best plan for the child.  
 \_\_\_ Determine DFS' plan to place the child for adoption.  
 \_\_\_ Schedule a hearing to review the status of whether a Petition for adoption/TPR has been filed and steps are actively being made to achieve permanency plan.

### 9. GUARDIANSHIP:

\_\_\_ Determine why reunification and adoption/termination of parental rights are not appropriate and guardianship is the best plan for the child.  
 \_\_\_ Determine if there is an appropriate guardianship resource.  
 \_\_\_ Determine when the child will be placed with the guardianship resource.

### 10. ANOTHER PERMANENT PLANNED LIVING ARRANGEMENT (APPLA):

*(Note: DFS must have a compelling reason for this option.)*  
 \_\_\_ Determine why reunification, adoption/ termination of parental rights, and guardianship is not the best plan for the child.  
 \_\_\_ Determine if DFS has a transition plan for the child.

### 11. REASONABLE EFFORTS FINDINGS:

*If family reunification is NOT the plan, choose one of the following:*  
 \_\_\_ DFS made reasonable efforts to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the child's permanent placement, including: \_\_\_\_\_  
 \_\_\_ DFS has NOT made reasonable efforts to place the child in a timely manner in accordance with the permanency plan to complete whatever steps are necessary to finalize the child's permanent placement because: \_\_\_\_\_

### 12. SCHEDULE NEXT HEARING DATE:

\_\_\_ Review Hearing Date: \_\_\_\_\_  
 \_\_\_ If Adoption/TPR is the permanency goal, Date of TPR Trial: \_\_\_\_\_  
 \_\_\_ If APPLA is permanency goal, set 12-Month Review Hearing Date: \_\_\_\_\_

# TIPS

1. Calendar permanency hearings early – once the petition is filed, set hearing in advance
2. If it becomes evident reunification is no longer an appropriate plan, you can set a permanency hearing sooner.
3. Have frequent discussions with team as to how to expedite permanency for child/children.

# QUESTIONS