

# Chapter 19 – General Issues

## 19.1 Overview

On a daily basis in dependency court a judge or hearing master must address a variety of issues, perhaps more so than in any other court. Many of these issues occur during the course of the 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 master that have no set start and end point and can, in fact, occur at any point in the life of a dependency case.

It is important to note the areas discussed in this chapter, while as important as any information discussed in this Benchbook, do not fit into the carefully constructed sequence of events of a dependency case, but may occur at any point in the process.

Some areas covered in this section are required by rule or statute, such as family finding, 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; and 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 master.

The following sections are included in this chapter:

- 19.2 – Aggravated Circumstances
- 19.3 – Family Finding
- 19.4 – Family Group Decision Making
- 19.5 – Common Pleas Case Management System (CPCMS)
- 19.6 – Children in the Courtroom
- 19.7 – Transitioning Youth
- 19.8 – Court Appointed Special Advocates (CASA)
- 19.9 – Planning & Funding Services: The Needs-Based Plan and Budget

## 19.2 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. 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.

### 19.2.1 “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.

### **19.2.2 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 21 days of determining that such circumstances exist, but no such time requirement applies to the child's attorney.

A judge or hearing master 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 Master 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 Master 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) and 6351(e)(2)).

### **19.2.3 Timing of Hearing**

Ordinarily, permanency hearings are required to be held 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 30 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 30 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 30 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 30 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 30 days.

#### **19.2.4 Effect of Determination**

After finding aggravated circumstances, the Judge or Hearing Master must determine whether further agency efforts to preserve or reunify the family are necessary. If not, the Judge or Hearing Master 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 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; 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.

## 19.3 Family Finding

Family finding became law in July 2013 with the passage of Act 55. Act 55 mandates county child welfare agencies to initiate family finding when a case is “accepted for service”. Act 55 also mandates the county agency to make ongoing diligent efforts to involve extended family and kin in the development of the service plan and delivery of services. In many situations, this “acceptance for service” will never result in a dependency petition. In others, a dependency petition may result.

Family finding identifies relatives and other supportive adults, including those estranged from or unknown to the child, who are willing to become permanent connections or supports for the child or the parent(s) receiving services from the children and youth agency. Family finding is intended to provide children and their parents a range of commitments from adults who are able to provide permanency, sustainable relationships within a kinship system, and an array of supportive activities.

### **\*Best Practice — Finding Connections\***

At its core, family finding is about ensuring meaningful, life-long supportive relationships for children and youth. Family finding helps identify caring adults who support children and youth in a variety of ways including writing letters, sending birthday cards, including the child or youth in holiday events, mentoring the youth, attending sporting events, and other activities that demonstrate unconditional love and acceptance of the child or youth.

The intent of Act 55 is, “...to ensure that family finding occurs on an ongoing basis for all children entering the child welfare system. This article is also intended to promote the use of kinship care when it is necessary to remove a child from the child's home in an effort to:

- (1) Identify and build positive connections between the child and the child's relatives and kin.
- (2) Support the engagement of relatives and kin in children and youth social service planning and delivery.
- (3) Create a network of extended family support to assist in remedying the concerns that led the child to be involved with the county agency.”  
(Act 55: Article XIII, Section 19-21)

In those situations where a petition for dependency is filed, the Judge or Hearing Master is ultimately responsible for ensuring adequate family finding

activities occur. To meet this responsibility, a general understanding of family finding is needed.

Understanding the urgency and the steps of family finding are critical as they link to specific findings required by the court. These findings, made at various stages of a dependency case, address reasonable efforts, least restrictive placement and a variety of issues related to permanency. Evidence of meaningful and ongoing family finding efforts should be presented at Shelter, Disposition and all subsequent Permanency Review Hearings until court supervision is terminated.

In Pennsylvania, family finding is often used as a foundational step towards a successful family conference (see Chapter 19.4). Ultimately the combination of family finding and family conferencing should produce the Family Service Plan and the Child Permanency Plan required of all county child welfare agencies. These plans should form the basis for county child welfare recommendations to the Juvenile Court.

While Act 55 does not specifically identify one model of family finding, in Pennsylvania the model taught and implemented by the majority of counties is known as “Family Finding” which originates from Kevin Campbell, founder of the National Institute for Permanent Family Connectedness. Irrespective of the model used or name given, family finding is a collection of very specific and effective methods and strategies to locate and engage relatives of dependent children. The goal is to connect each child with family and other supportive adults, so that every child may benefit from lifelong connections.

**Core beliefs inherent in the Family Finding model are:**

- 1) Every child has a family, and they can be found if we try,
- 2) Loneliness can be devastating, even dangerous, and is experienced by most children in out of home care,
- 3) A meaningful connection to family helps a child develop a sense of belonging, and
- 4) The single factor most closely associated with positive outcomes for children is meaningful, lifelong connections to family.

**Essential Components of the Family Finding model include:**

**1. Urgency:** Family Finding views meaningful, supportive, permanent relationships with loving adults to be an essential need that is closely tied to youth safety. Family Finding asks practitioners to urgently pursue these relationships for lonely youth by assertively engaging family and strongly

challenging the structural barriers to developing or strengthening these relationships.

**2. Expanded definition of permanency:** Although physical legal permanence is an explicit outcome for most cases, Family Finding defines permanency as a state of permanent belonging, which includes knowledge of personal history and identity, as well as a range of involved and supportive adults rather than just one legal resource.

**3. Effective relative search:** Family Finding employs a variety of effective and immediate techniques to first identify no fewer than 40 relatives or other meaningful connections for each youth. The number 40 serves to create a large group of people from which to form a smaller tight-knit, unconditionally committed permanency team.

**4. Family-driven processes:** Family Finding recognizes that families are disempowered by the placement of relative children outside of the family system, and it seeks to remediate that harm through identifying the strengths and assets of each family member and facilitating processes through which families are able to effectively support their relative children.

**5. Development of multiple plans:** The Family Finding process results in not just one plan for legal permanency, but multiple plans that are each able to meet the needs of disconnected youth. No fewer than three plans are developed and evaluated by family members to ensure that they are realistic, sustainable, and safe.

**6. Well-defined and tactical procedures:** Family Finding begins first with careful preparation and alignment of current team members in order to pursue the six steps of the Family Finding model. While it is a strongly values-based model, it also has clear and definable goals and activities that are easily tracked with a fidelity tool. The six steps include:

- Discovery
- Engagement
- Planning
- Decision Making
- Evaluation
- Follow-up on Supports

(Family Finding Website, last visited June 2, 2014 <http://www.familyfinding.org/>)

The Judge or Hearing Master should ask open ended questions regarding the application of family finding for each child at every hearing.

**\*Best Practice — Ask the Parties\***

Judges and Hearing Masters should ask parents about the important people in their life and their child's life. Children should also be asked about adults they have known with whom they've had a connection. If a child is unable to identify anyone, the Judge or Hearing Master should ask the child to consider the question, list any persons who come to mind and provide that list to their GAL and Caseworker.

Finally, Judges and Hearing Masters should order the agency explore the persons identified and how they might support the child or youth, providing a report to the Court of actions taken by the agency.

Because family finding is primarily aimed at ensuring meaningful connections for children rather than simply a placement, Judges and Hearing Masters should know the number and strength of relationships each child has with caring adults. The Family Finding/Family Group Decision Making Benchcard offers Judges and Hearing Master specific inquiries for county agencies, parents, and youth (See Benchcard section).

**\*Best Practice — Eco Maps\***

Many Pennsylvania Judges and Hearing Master are now requiring the submission of an Eco Map for each dependent child. An Eco Map is a structural diagram of a child's most important relationships with people, groups, and organizations. This simple visual depiction of each child's connections helps all parties understand the positive relationships in a child's life and clearly identifies when such relationships are non-existent.



For more information about eco maps, see the following site:

<http://www.routledgesw.com//sanchez/assess/genogram>

When such relationships are non-existent, Judges and Hearing Masters can order specific steps aimed at creating healthy, life-long connections for children and youth (see next best practice box).



It is not sufficient for the court to simply inquire as to whether family finding was done. Instead judges and hearing masters should inquire as to the specific family finding actions taken by the county agency to ensure meaningful life-long connections for all dependent youth. When sufficient family finding actions have yet to be made, the Judge or Hearing Master should specify the court's expectations in the Court Order.

**\*Best Practice — Family Finding Court Order\***

Family finding orders should be specific. One such order routinely being used by a Court reads as follows:

“OCYF shall initiate family finding for the above-captioned child including, but not limited to: Accurant search; interviewing the child and all known family members; interviewing prior caregivers and placement providers; interviewing any previous caseworkers and probation officers; interviewing past and present service providers and therapists, checking social media sites; completing a genogram, family tree or mapping; and all other sources that would lead to the identification of family members, kin and fictive kin. OCYF shall prepare a written report of its findings and shall present the report at the next court hearing scheduled for this child.”

**Discontinuance of family finding.**

Act 55 allows for the discontinuance of family finding under very specific circumstances. These include the following:

- (1) The child has been adjudicated dependent pursuant to 42 Pa.C.S. Ch. 63 (relating to juvenile matters) and a court has made a specific determination that continued family finding no longer serves the best interests of the child or is a threat to the child's safety.
  
- (2) The child is not under the jurisdiction of a court and the county agency has determined that continued family finding is a threat to the child's safety. A determination that continued family finding is a threat to the child's safety must be based on credible information about a specific safety threat, and the county agency shall document the reasons for its determination.

- (3) The child is in a preadoptive placement, and court proceedings to adopt the child have been commenced pursuant to 23 Pa.C.S. Part III (relating to adoption).

### **Resumption of Family Finding**

Finally Act 55 requires the resumption of family finding if either of the follow circumstances exists:

- (1) the child is under the jurisdiction of a court, and the court determines that resuming family finding is best suited to the safety, protection and physical, mental and moral welfare of the child and does not pose a threat to the child's safety; or

- (2) the child is not under the jurisdiction of a court, and the county agency determines that resuming family finding serves the best interest of the child and does not pose a threat to the child's safety.

Ultimately, for children under the jurisdiction of the court it is the Judge or Hearing Master who manages the provisions of family finding, sets the tone as to what level of family finding is sufficient and the expectation that comprehensive family finding efforts are provided to both children and parents.

### **19.4 Family Group Decision-Making**

Family Group Decision-Making (FGDM) is a collaborative dispute resolution process that engages family groups 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 (NCJFCJ, 2000, p. 13).

In June 2007, at its inaugural meeting, the Pennsylvania State Roundtable unanimously selected

“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, is encourages and supports the use of kinship resources thereby reducing any potential emotional trauma associated with placement.”

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

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.

#### 19.4.1 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 open the door for relative or third-party adoption. Because FGDM usually results in an agreed plan, it helps to avoid lengthy trials and appeals of termination of parental rights cases (NCJFCJ, 2000, p. 14).

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.

“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. Brining these “common sense” plans into the courtroom – plain and simple – works!” -Pennsylvania Dependency Court Judge

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).

### 19.4.2 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 masters should not order a FGDM meeting. Instead judges and hearing masters 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 (PA Children's Roundtable Initiative, p.9; See FGDM Benchcard in the Benchcard section).

Judges and hearing masters 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 Family Service Plan ordered by the Judge or Hearing Master 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 distinguishes it from other alternative dispute resolution processes: “private family time.” 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.

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.

“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

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 Family Service 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 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 masters 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 Family Service Plan is updated.

### 19.4.3 The Court's Role

Judges and hearing masters 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 masters 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.

#### **\*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 Review Hearing occurring within 72 hours of child 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 or 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 Plan) but 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 success. All parties need to be educated on the basic premises of the practice including judges, hearing masters, 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, 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 masters 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 Master may wish to communicate with the agency to clarify expectations and enhance the likelihood of future plans being approved.

By fully understanding the process, judges, hearing masters 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.

“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**

Additional information regarding FGDM can be found in the Pennsylvania FGDM Implementation Toolkit accessed at the following site:  
[http://www.pacwcbt.pitt.edu/FGDM\\_Resources.htm](http://www.pacwcbt.pitt.edu/FGDM_Resources.htm)

## **19.5 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 masters) 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 CPCMS Forms Subcommittee and the Department of Public Welfare'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.

In addition to the 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 master'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 data/statistical report.

### **19.5.1 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 initiation types of cases in the system can also be found in this report.

**Termination of Court Supervision Report (AOPC 3901).** This report provides a detailed list of all children who have had court supervision closed during the selected date range. Information about the final disposition can be found on this report.

**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 master.

**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.

**Unscheduled Active Cases (AOPC 3910)** – This report displays all open dependency cases where there is no future event scheduled.

### 19.5.2 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. The following statistical reports are available:

**Active and Adjudicated Case Inventory (AOPC 3920)** - This report provides a list of active and adjudicated dependency cases and identifies their classification of Abuse/Neglect or Status Offense. A summary version of this report is also available.

**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, totals are 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 summaries, based on the child’s age, of pending cases pre and post adjudication and by the average age of cases within other key demographics.

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

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 (often done during Children’s Roundtable meetings) to identify challenges and strategize solutions.

**\*Best Practice – Management and Statistical Reports\***

The court is encouraged to take full advantage of the CPCMS system. Management and statistical reports can be an invaluable tool for the 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 (Children's Roundtable Initiative, 2009, p. 15).

## **19.6 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 Rule 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 (PA Children's Roundtable Initiative, 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.

“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

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 Master 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 Master 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 Master should see the child in person at least every six months. It is critical that the Judge or Hearing Master 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.

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

“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

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 Master 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 portions of the hearing.

### 19.6.1 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 Master should be prepared for the child's appearance, learning as much as possible about the child from the reports provided by the GAL, CASA, and the social worker, and 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.

Pennsylvania law specifically requires judges and hearing masters to consult with children in the permanency planning phase of the proceeding (42 Pa.C.S. § 6351(e)). This is extremely important because how a child feels about a placement will likely impact its success. If the child has negative feelings toward a placement, then it may not be suitable to place the child there, even if it meets all other standards and requirements of a good placement. If given the opportunity, the child will usually tell the Judge or Hearing Master where he would like to live. The Judge or Hearing Master should ask a series of questions about people the child spends time with, relatives that are close,

"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

whether the family has close friends, etc. Responses to these questions may reveal a potential connection or placement that was previously unknown to the agency but may prove to be positive for the child.

If the child is newly placed, the Judge or Hearing Master 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 Master 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?

### **19.6.2 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 masters 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 authors of Child Welfare Law and Practice 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 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 masters 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 Master is concerned about a child's understanding of the obligation to testify truthfully, the Judge or Hearing Master may instruct the child.

While children are able to be good witnesses in dependency hearings, the Judge or Hearing Master should bear in mind that testifying may be a very emotional and traumatic experience for a child. The Judge or Hearing Master 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 Judge or Hearing Master has the latitude to ask leading questions or allow all counsel to ask leading questions. The Judge or Hearing Master, however, must balance the need to protect the child from a traumatic experience against the parents' right to cross-examine.

It may also be appropriate for the Judge or Hearing Master to take the child into chambers or clear the courtroom before conducting the examination, as long as the interrogation is conducted in the presence of counsel and on the record (Pa.R.C.P.No. 1915.11(b) & 1134).

## 19.7 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* (Courtney et al., 2004, p. 32-51) foster youth transitioning to adulthood:

- Are less likely to have completed high school and be enrolled in secondary education;
- Are less likely to be employed;
- Have a substantially higher prevalence of serious physical health, mental health, and substance abuse problems that interfere with their daily functioning;
- By age 19, are more likely to have been pregnant or have fathered children; and
- Have considerably higher rates of homelessness, criminal involvement, and incarceration.

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 20: Overview of Federal and State Child Welfare Legislation).

### 19.7.1 Independent Living Services for Transitioning Youth

FCIA and the Juvenile Act require that all youth in care who are age 16 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 in their own home are also eligible for IL services. Youth who were discharged from placement on or after their 16<sup>th</sup> birthday are eligible for Aftercare IL services (discussed more fully at the end of this chapter in section 19.7.4).

IL is not a permanency goal, of course, and providing IL services does not necessarily 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 16 or above should receive IL services designed to provide them with skills they will need in adulthood. The Judge or Hearing Master should ensure these youth are given a written description of the programs and services which will help them prepare for the transition from foster care to independent living (42 Pa.C.S. § 6351(f)(8)). These services may include:

- educational training and counseling
- career counseling
- budget management skills
- home management skills
- sex education and family planning services
- self-advocacy skills
- individual and family counseling
- daily living skills

"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 private 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. 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 and hearing masters, as well as attorneys, have

substantive knowledge of what youth in care need, what they are legally entitled to, 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 which are underway, an inquiry as to whether they need to be continued, and identification of which ones have been completed.

### 19.7.2 Transition Planning for Older Youth

As dependent youth approach adulthood, there are many challenges they must face that are daunting. 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 90 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 plan 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 90 days before a youth ages-out of the system, the Judge or Hearing Master should require plans be presented to the court for early review whenever possible. This

will ensure that the Judge or Hearing Master, 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 master);
- 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 (NCWRCYD, 2004, p. 2).

Finally, judges and hearing masters 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 14: Termination of Supervision.

### **19.7.3 Educational Issues for Transitioning Youth (18 & older)**

As discussed in Section 12.6.9 (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 16, 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 1613 (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 and 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 and 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 vocational programs, 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 like hurricanes. Older youth can be afraid that if they reveal a problem they will 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 14, 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.

#### **19.7.4 Youth Opting to Remain in Care Past Age 18**

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 21 years and was adjudicated dependent before reaching the age of 18 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 80 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 18 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). SIL and IL 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 Another Planned Permanent Living Arrangement which 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 18, 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.

### **19.7.5 IL Aftercare Services**

Aftercare services are available to youth ages 16 to age 21 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.

## **19.8 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).

### **19.8.1 CASA Appointments**

The Judge or Hearing Master may appoint or discharge a CASA at any time during the proceeding or investigation regarding dependency. Issues judges or hearing masters 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 masters should be aware that CASA volunteers are a limited resource and should appoint based upon their availability and the needs of the child in a particular case.

### **19.8.2 CASA Duties and Responsibilities**

Generally, CASAs review records, research information, and interview the child and everyone else 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. 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 CASAs 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 may help reduce potential conflict or confusion. As the *Resource Guidelines* (NCJFCJ, 1995, p. 24) point out, role conflict or confusion may sometimes arise between CASAs and GALs. The *Guidelines* recommend joint efforts to clarify and define mutual responsibilities. 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.

### **19.8.3 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 a link to the Association's monthly e-newsletter, *The Judges' Page*, and maintains a *Judges' Corner Resource Center*.

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. The website provides links to the *National CASA Program Standards* and a *Judges' Guide to CASA/GAL Program Development*.

## **19.9 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.



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

Several findings and orders made (or not 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.

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 children from the home.
- Prevention 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.

If the Court finds that reasonable efforts were not made, federal funding for the care/support of the child is prohibited.

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. 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 changes needed.

### **19.9.2 County Planning and Budgeting Process**

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 Public Welfare’s 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. Costs include but are not limited to Juvenile Act Proceedings costs (including reimbursement for eligible GAL services in dependency cases, assessments, etc.), county staff (excluding county court personnel and benefits), in-home services, foster family services, community-based and institutional services, detention, and secure residential services. 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 mental retardation

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.

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.

**\*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, courts 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.