

Chapter 12 – Permanency Options

12.1 Overview

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

1. Return the child to the parent whenever this course is “best suited to the safety, protection and physical, mental and moral welfare of the child.”
2. Place the child for adoption (with the county agency being required to petition for a termination of parental rights) where reunification is not best suited to the child’s safety, protection, and physical, mental, and moral welfare.
3. Place the child with a permanent legal custodian where return to the child’s parent, guardian, or custodian or being placed for adoption is not best suited to the child’s safety, protection, and physical, mental, and moral welfare.
4. Place the child permanently with a fit and willing relative where return to the child’s parent, guardian, or custodian, being placed for adoption, or being placed with a legal custodianship is not best suited to the child’s safety, protection, and physical, mental, and moral welfare.
5. Place the child in some other court-approved and permanent living arrangement in instances where the agency has shown a “compelling reason” that it would not be best suited to the safety, protection, and physical, mental, and moral welfare of the child to be returned to the child’s parent, guardian or custodian, to be placed for adoption, to be placed with a legal custodian or to be placed with a fit and willing relative. Importantly, this cannot be utilized for any child under the age of eighteen.

The court’s role in reviewing the permanency goal as well as the concurrent plan goal is to determine that they are established in a timely manner, which is appropriate to the child’s circumstances. (For time requirements applicable to the agency’s permanency planning, see Chapter 10: Disposition.)

While the agency makes a recommendation regarding the primary permanency goal and the concurrent plan, it is an analysis and determination ultimately made by the court. The initial determination must be made early in the case and reviewed at each subsequent hearing. The court is responsible for ensuring sufficient activities occur simultaneously to implement both the primary permanency goal and the concurrent plan. This simultaneous implementation requirement underscores the need for comprehensive and meaningful family finding as life connections and permanency resources are often discovered within the child's supportive network.

Finally, the court is required to make findings at each permanency review hearing regarding the reasonable efforts made by the agency to finalize the court-ordered permanency plan. This necessitates the court receiving evidence regarding efforts made by the agency to assist the parents in completing required services. For example, it is not sufficient for the agency to develop a plan that includes visitation, parenting skills development, and substance abuse treatment. The agency must present information to the court regarding steps taken by the agency to support the parent in completing the services. The court's findings regarding the parent's compliance with services and a parent's progress are not the same as the court's findings regarding the agency's reasonable efforts to finalize the court-ordered permanency plan. The court is required to make findings related to each.



12.2 Reunification

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

It is important to note that the issue of whether the agency has made reasonable efforts to return a child home is distinct from the issue of whether the child *should* be returned home. Safety is always the first consideration in all court decisions, including reunification. (See Chapter 3: Roles of Judges and Hearing Officers.) The agency and the court must make every reasonable effort to secure a safe environment by providing parents with the services and resources to create an environment where the child can be safe. (See Children's Roundtable Initiative, Office of Children and Families in the Courts, *The Mission and Guiding Principles for Pennsylvania's Child Dependency System* (2009).)

Although two distinct assessments, examining the agency's reasonable efforts to reunify the family provides insight into whether the child can be safely reunified with his or her parents. Factors the court should consider when determining reasonable efforts to

finalize a permanency plan for reunification have been enumerated in *Making it Permanent: Reasonable Efforts to Finalize Permanency Plans for Foster Children*:

- Whether the services provided by the agency to the parents have changed their behavior and provided them with the skills to parent effectively.
 - Many case plans require parents to take parenting and/or anger management classes; however, the fact that a parent has completed the course does not mean the parent's behavior has changed. The judge or hearing officer should consider evidence regarding visits between the parent and child to determine whether actual behavior has changed for the better.
- Whether the child wants to return home.
 - Depending on the age of the child, the judge or hearing officer should talk to the child directly to determine the child's wishes. (See Section 20.6: Children in the Courtroom in Chapter 19: General Issues.) In any case, the child's advocate should inform the judge or hearing officer of the child's position on returning home and the child's basis for that position.
- Whether visits between the child and the parent have been successful.
 - Visitation is one of the most important tools in effectuating reunification. The judge or hearing officer should inquire of the agency if the parent has consistently kept the visitation appointments and if the visitations have been meaningful and effective. (See Chapter 8: Visitation and Benchcard on Visitation.)
- Whether the family situation has changed since the child entered the system.
 - Do additional services now make the safe return of the child possible? For example, do the parents now have access to daycare or after-school care for the child that they did not have before so that the child will no longer be left home alone?
- Whether additional safety threats have arisen that prevent the child from returning home.
 - Often, circumstances change and the agency needs to change the services/service plan to meet the new circumstances. The judge or hearing officer must ensure that the child is not out of the home because the parents do not know what is required of them to have the child returned home. The judge or hearing officer should also ensure that what needs to be completed is specific and understandable and that it serves the best interests of the child.

Cecilia Fiermonte & Jennifer Renne, *Making it Permanent: Reasonable Efforts to Finalize Permanency Plans for Foster Children 12-17* (Claire Sandt ed., American Bar Association 2002).

12.3 Adoption

When a child cannot safely return home, adoption is the preferred legal permanency option under ASFA and the Juvenile Act. 42 Pa.C.S. § 6351(f.1)(2). Only a judge can designate the goal of adoption. While hearing officers are not permitted to make the designation of adoption as a child's permanency goal, hearing officers are permitted to review the case once the judge has made the designation.

Adoption is the legal and permanent transfer of all parental rights and responsibilities to the adoptive parents. Adoption requires the termination of each natural parent's rights. This provides the child with a new permanent legal family in which the child has the same legal standing and protection as if he/she had been born into the family. More importantly, adoption provides a sense of belonging to a stable family with emotional and physical security for a lifetime. Another advantage of adoption over less preferred placements is that it ends the court's oversight so that the family can continue without further state interference. If, however, an adopting family needs additional support from the agency, the state can offer further assistance through financial subsidies and post-adoption services.

ASFA and the Juvenile Act require that the agency demonstrate reasonable efforts to secure the child's adoption in an appropriate home and ensure the adoption process is thorough, so the placement is not challenged later. The judge or hearing officer should inquire at the permanency hearings as to the efforts the agency is making to find a permanent adoptive home for the child. Once the permanency plan has been changed to adoption by the judge, the agency is required to make reasonable efforts to finalize the permanency plan of adoption. Examples of activities to finalize a plan of adoption include but are not limited to identifying, recruiting, and evaluating prospective adoptive homes for the child, child-specific recruitment, and child preparation adoption services. Reasonable efforts may also include determining the child's wishes, looking at current caregivers, relatives, and kin as possible adoptive families, and exploring the use of Act 101 Post-Adoption Voluntary Contact Agreements. (See 23 Pa.C.S §§ 2731-2742; see also Chapter 17: Termination of Parental Rights, Section 17.9.3: Post-Adoption Voluntary Contact Agreements.)

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

Best Practice — Kinship Caretaker

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

The agency should first consider current caregivers, relatives, and kin when looking for adoptive parents. The agency must determine the willingness of current caregivers, relatives, and kin to adopt and address any concerns they may have about adopting the child. Although caregivers and relatives should never be pressured into adopting, their initial reluctance may often be overcome if their underlying concerns are addressed. For example, relatives often hesitate because they believe the child may return to the parent. The agency needs to make clear that any adoption will be preceded by a termination of the biological parent's rights and that this termination will be final and permanent.

If current caregivers or relatives are unwilling or unable to adopt, the agency must develop a child-specific recruitment plan. This may entail looking for other relatives or kin or placing the child on adoption exchanges and local or national adoption lists. The agency should be aware of and utilize all available public and private adoption agencies to secure a home for the child. This includes possible out-of-state placements. The Interstate Compact on the Placement of Children (ICPC) makes it possible to place a child in another state as it ensures that a proper home study and evaluation of prospective parents meets the legal requirements of both states. (For further details on the ICPC, see Chapter 21: Summary of Major Federal and State Child Welfare Legislation.)

Some children require very specific caregivers with specialized skills for a variety of reasons, including age, disability, membership in a sibling group, ethnic background, and/or special medical needs. The agency still needs to work diligently to find homes for these children. Under the Multi-ethnic Placement Act (MEPA) and the Inter-ethnic Adoption Provision Act of 1996 (IEPA), a child cannot be denied an adoptive placement because of the ethnicity of either the child or the prospective adoptive parent. 42 U.S.C. § 671a(18). If the court finds that a placement is being delayed because the agency is restricting its search efforts in violation of these laws, the court should order the agency to broaden its search to include prospective parents of all ethnicities and national backgrounds. (Further details on MEPA/IEPA are contained in Chapter 21: Summary of Major Federal and State Child Welfare Legislation.)

Regardless of who the prospective adoptive parents are or where they reside, the agency should ensure that the prospective adoptive parents are well-informed about the adoption process and that adoption is a lifelong commitment. They should also be informed of any subsidies or other benefits they may be entitled to if the child has special

needs. Current caregivers may be concerned about losing the agency’s support if they adopt the child, so it is essential that they be informed that they may qualify for subsidies and post-adoption services. Subsidies may include such things as:

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

12.4 Permanent Legal Custodianship (PLC)

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

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

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

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

The biological parents need not consent to permanent legal custodianship for the court to establish it. However, since the court will no longer have an oversight role following a permanent transfer of legal custody, the legal custodian and the parent must maintain a clear understanding of the duties and responsibilities of legal custodianship.

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

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

The parental rights and duties include:

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

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

In considering whether legal custodianship serves the best interest of the child, the court must be acutely aware of the pros and cons of the arrangement:

Pros:

- It is sometimes better for relative caregivers when the termination of parental rights is inconsistent with cultural or family traditions.

- The child may not want parental rights to be terminated; legal custodianship provides permanence while maintaining ties to the biological family.
- It is sometimes easier to find a relative to care for sibling groups, special needs children, or older children who may be difficult to place.
- There is no ongoing state supervision.

Cons:

- Because the legal custodian is not the child's legal parent, the legal custodian's ability to make permanent, binding decisions on behalf of the child is limited.
- Lack of permanency may cause some concern to the child.
- The biological parent's rights are not necessarily terminated. Therefore, the parent can return to court to attempt to undo the arrangement.
- Legal custodianships are inherently less stable and less permanent than adoption.

Fiermonte & Renne, *supra*, at 52.

12.5 Permanent Placement with a Fit and Willing Relative

Pennsylvania law and Pennsylvania Rules of Juvenile Court Procedure require that when a child is initially removed from the home, the first consideration for the child's placement should be with a relative or kin. Only when this is not possible should other placement alternatives be considered. Therefore, a child's initial placement will likely be with a relative if one is available. Ideally, relatives or kin will choose to adopt or become the child's legal custodian if reunification is not possible. If the relative or kin is unwilling, the court must determine if another appropriate person is willing to adopt or become a permanent legal custodian. Otherwise, under ASFA and the Juvenile Act, permanent placement with a fit and willing relative is considered the next best alternative – after reunification, adoption, and permanent legal custodianship. 42 Pa.C.S. § 6351(f.1)(4).

Placement with a fit and willing relative offers many potential advantages, including dampening the traumatic impact of removal, allowing for the continued maintenance of family bonds, and preserving the child's cultural identity. ASFA, Pennsylvania's Kinship Care Program Bulletin, the Juvenile Act, and Act 118: Family Finding all strongly support relative and kinship placements in lieu of placements with strangers whenever possible.

On the other hand, a fit and willing relative permanency option is subject to drawbacks that should not be overlooked. For example, the relative may not be able to protect the child from the neglectful or abusive parent. Moreover, there is a possibility that the relative does not feel capable of caring for the child but feels compelled to do so. The authors of *Making it Permanent: Reasonable Efforts to Finalize Permanency Plans for Foster Children* suggest the following pros and cons when a permanency goal of fit and willing relative is proposed:

Pros

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

Cons

- Relatives often receive fewer services than non-relatives.
- The most appropriate relative is often a grandparent who may have limitations due to age.
- Relatives may protect the parent or deny the maltreatment occurred, thus engaging in behavior that could put the child at risk.
- Relatives may be loyal to the parent and unwilling to adopt because it would sever the parent's rights.
- Relatives and parents may be hostile toward one another, making it harder for the agency to work with the parents.

Fiermonte & Renne, *supra*, at 69.

Permanent placement with a fit and willing relative is one of the least defined options provided in the statute. Neither ASFA nor the Juvenile Act define relative or fit and willing nor do they create new legal authority for the relative. However, some guidance is provided by the Kinship Care Act, which defines a relative as someone "related within the fifth degree of consanguinity or affinity to the parent or stepparent of the child" and who is at least 21 years of age. 67 Pa.C.S. § 7502.

In general, a relative is fit and willing if they can provide a suitable placement for the child, ensure the child's safety, and meet the child's needs. *Placement of Children with Relatives* 4 (Child Welfare Information Gateway Sept. 2022). In Pennsylvania, a kinship caretaker must become a licensed foster parent. Once licensed as a foster parent, the kinship caretaker is entitled to the same payments and services as non-relative foster parents while at the same time ensuring they are able to safely meet the child's needs. 67 Pa.C.S. § 7507. In an emergency situation, a child can be placed with a kinship caretaker, but that caretaker must become a fully licensed foster parent within 60 days.

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

relative who wants relief from agency and court oversight may pursue the adoption or permanent legal custodianship options.

Since placement with a fit and willing relative has a lower priority than adoption or legal custodianship, the judge or hearing officer should make sure that the agency has made reasonable efforts to ensure the placement is suitable for the child and that the relative is not taking the child unwillingly or solely in order to prevent the termination of parental rights. The judge or hearing officer should inquire as to the following issues:

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

Fiermonte & Renne, *supra*, at 65-70.

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

12.6 Another Planned Permanent Living Arrangement

Another Planned Permanent Living Arrangement (APPLA) is the least preferred option for ensuring permanency for a child. ASFA and the Juvenile Act require the agency to provide the court with a compelling reason why one of the other permanency options is not available to the child. (See 42 U.S.C.A. § 675(5)(C) and 42 Pa.C.S.A. § 6351(f.1)(5)(iii)(A).) While the least preferred of all options, APPLA should not be viewed as a catchall or long-term foster care. It must be both planned and permanent. The preamble to the ASFA regulations specifically states that long-term foster care is not a permanency option, noting that “far too many children are given the permanency goal of long-term foster care, which is not a permanent living situation for a child. The compelling reason requirement is in place to encourage States to move children from foster care into the most appropriate permanent situation available.” 65 Fed. Reg. 4036.

Importantly, APPLA cannot be utilized for any child under the age of eighteen. Pa.R.J.C.P. 1608(d)(2); 42 Pa.C.S.A. § 6351(f.1)(5)(i). For the purposes of this section, it is important to remember the definition of child is an individual ages 18 to 21 years who meets certain criteria. 42 Pa.C.S. § 6302. Before assigning the permanency goal of APPLA, the court must consider all of the evidence relevant to the considerations listed in Pa.R.J.C.P. 1608 (d)(2)(i)&(ii). If the court assigns the permanency goal of APPLA, the court must make very specific findings at each subsequent permanency hearing on the record pursuant to Pa.R.J.C.P. 1608(d)(2)(iii). The court is also required to speak directly to the youth regarding the child’s desired permanency goal. Pa.R.J.C.P. 1608(d)(2)(ii). It is not sufficient to receive this information from the caseworker, the GAL, the child’s caretaker, or any person other than the child. The court must also ensure that updated evidence regarding the agency’s effort to comply with Pa.R.J.C.P. 1608(d) is provided to assist in the court’s determination.

After the presentation of updated evidence, if the court determines APPLA should be the continuing permanency goal for the 18-21 year old child, the judicial officer must state in open court on the record the following:

1. the reasons why APPLA continues to be the best permanency plan; and
2. the compelling reasons why it is not in the best interests of the child to return home, be placed for adoption, be placed with a legal guardian, or be placed with a fit and willing relative; and
3. the full name of at least two supportive adults with whom the child has significant connections; and
4. the identify of the specific APPLA approved by the court.

Pa.R.J.C.P. 1608(d)(2)(iii).

The additional rule requirements listed above are intended to reduce the number of youth receiving the goal of APPLA and, in turn, exiting the dependency system with few or no supportive, life-long connections.

Best Practice — Family Finding Revised

It is imperative that the court ensure all children, especially those 18 years and over with a goal of APPLA, have meaningful and significant connections with responsible, caring adults. While Act 118 of 2022 modified some of the family finding provisions of Act 55 of 2013, it continued the mandates of family finding for all dependent youth unless discontinued by the Court. One specific strategy being used throughout Pennsylvania is known as Family Finding, developed by Kevin Campbell.

Another, more advanced practice being used in Pennsylvania's twenty Family Engagement Initiative counties is known as Family Finding Revised. Family Finding Revised offers innovative methods and strategies to locate and involve the relatives and kin of children. Family Finding Revised is used to provide each child with lifelong, supportive adult connections, enhance the child's network of support, promote healing, and reduce trauma. To learn more about Family Finding Revised see <https://ocfcpacourts.us/childrens-roundtable-initiative/family-engagement-initiative/>

The court should ensure comprehensive family finding occurs wherein the child's support network is strong and involved in his care. Very often, realistic permanency options come from a strong and involved network. For example, the child may have developed a relationship with a mentor that could lead to legal custodianship, or perhaps a relative who was not previously available for relative placement is now available. See Chapter 2: Act 118 of 2022: Family Finding for additional information. The court should also inquire as to the services being provided in the group home which cannot be provided in the community. Identifying that there are no additional benefits to group care can provide for ease of transition into newly realized placement options.

Finally, Independent Living (IL) is not a permanency option. It is the provision of services to help an adolescent live independently. IL services are typically provided at age 14 up to age 21. The judge or hearing officer should ensure that the agency is providing all the services necessary to meet the adolescent's physical, emotional, psychological, and educational needs. Stability is key, and the judge or hearing officer should ensure that services are sufficient and will continue until the adolescent reaches the age of majority. (For more information about IL services, see Chapter 20: General Issues, Section 20.9: Transitioning Youth.)