

Chapter 16 – Resumption of Jurisdiction

16.1 Overview

Resumption of jurisdiction, an option for children previously involved in the child dependency system, was established through Act 91 of 2012. The Act was implemented as an option for certain children previously under the supervision of the court to provide additional support as they transition to adult living.

Pursuant to Act 91, a child is defined as an individual who: (3) 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 postsecondary 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.

Prior to Act 91, dependent youth who left the jurisdiction of the court had no recourse for help through the dependency court system once their case was terminated. As such, many children who left care did so without the assurance of ongoing support, something routinely afforded to most children through family, kin, and community connections.

“So many of the children who age-out of America’s foster care system are isolated and struggle to make it as adults...I can attest to the fact that the streets are not where we want our foster youth to end up...We deserve the right to have a voice in the matters that affect our lives...And we deserve the right to be prepared to be successful as adults.”

- Raif Walter, 21, whose experiences were chronicled in the documentary *From Place to Place*. <https://www.youtube.com/watch?v=eV4hq326Onw>

The intent of Act 91 was to provide a safety net for youth previously under the court's supervision. For most children, there is nothing magic about age eighteen. Young people turning eighteen years of age are often not ready for the numerous responsibilities of independent living and often need a fallback option to total independence. In addition, the legislation was fueled by research that demonstrated the dismal outcomes experienced by many former foster youth, including high school dropout rates, joblessness, homelessness, health problems, mental illness, substance abuse, early parenthood, and involvement with the criminal justice system.

Despite these poor outcomes, many dependent youth are determined to leave agency custody and court supervision upon their eighteenth birthday. In the past, these youth, upon choosing this course of action, had minimal opportunity for assistance from the agency and none from the court. However, with the passage of Act 91, eligible children can now request the resumption of court jurisdiction.

Act 91 provides an avenue for the court and the county agency to help these youth become productive and successful members of society. It opens the door to additional court oversight and agency support in a manner that is appropriate to a child's maturing needs and capacity.

Finally, while Act 91 provides additional opportunities and support for children, it simultaneously requires their agreement. **As such, only the child can request a resumption of jurisdiction.** Others can bring forth the concept of resumption, but the child must agree. See 42 Pa.C.S. § 6351(j).

16.2 Method of Request and Review

Resumption of jurisdiction must be initiated at the request of a child. While the county agency, an attorney, or another entity may file the motion, the child must be in agreement. Because the child is over the age of eighteen and resumption of jurisdiction is a voluntary process, no one can force the process. In addition, no entity or person should attempt to pre-qualify a child for this option. Only the court can determine the child's eligibility and need.

Requests are initiated through the filing of a motion for resumption of jurisdiction. Pa.R.J.C.P 1634 provides the averments which must be contained within the motion. A model Motion for Resumption of Jurisdiction can be found on the Unified Judicial System of Pennsylvania website under Dependency Forms.

Best Practice — Access to the Court

Because the intent of Act 91 was to provide a safety net for youth aging out of the foster care system, courts are encouraged to make access as easy as possible. To this end, many courts have appointed counsel to represent the child beyond the termination of dependency, for the sole purpose of resumption requests. Unless a conflict of interest exists, the child's GAL during dependency proceedings may be appointed as counsel for him/her to maintain their pre-established attorney-client relationship. This limited representation status should be included in any order that terminates court supervision. This practice provides the child a legal professional who can answer questions, provide advocacy, and file a motion for resumption of jurisdiction upon the child's request.

Regardless of the form by which the request for resumption comes to the court, whether through a written motion, a letter from the child, or an oral motion, courts should schedule a hearing promptly.

16.3 Timing of Hearing

Pa.R.J.C.P. 1635 (A) requires that a hearing be held within thirty days of a motion for resumption of jurisdiction being filed. Courts are encouraged to schedule hearings for resumption of jurisdiction based upon the urgency of the request. For children in immediate need of court supervision, the hearing should be scheduled within hours or days. For others, this type of immediacy may not be needed.

16.4 Jurisdiction

A Pennsylvania court may resume jurisdiction of an eligible Pennsylvania child until age twenty-one. Jurisdiction cannot be obtained for a previously dependent child of another state nor can resumption of jurisdiction last beyond age twenty-one.

Pa.R.J.C.P. 1634(A) requires that a Motion for Resumption of Jurisdiction be filed in the county that terminated court supervision of the child. While the case may ultimately be transferred to a different jurisdiction, especially in situations where the child has changed residency and requests the transfer, the initial hearing on the motion for resumption should be held in the original court of jurisdiction. This original court of jurisdiction and county agency are likely to be most familiar with the child. Additionally, the child may have an ongoing assignment of an attorney for purposes of resumption only.

It should be noted that resumption of jurisdiction is not a new dependency case, nor is it predicated upon the child's living arrangement when previously under court jurisdiction. Instead, it is the resumption of a previous adjudication and may include children who were residing at home upon termination of court supervision.

When a child meets the eligibility criteria under the law, the court can resume (or re-open) the dependency case. In other words, the case picks up where it left off as if the child decided to continue under the court's supervision beyond age eighteen. This means that the court is not required to find new grounds for dependency, nor is it required to determine if the child is currently being abused or neglected. If the child meets the eligibility criteria, jurisdiction can be resumed.

16.5 Counsel and Guardian *Ad Litem* (GAL) Appointments

The court must assign counsel to the child upon the filing of a motion for resumption of jurisdiction. Unlike dependency proceedings, the court is only required to appoint counsel to represent the child's wishes rather than the typical best interest representation of the GAL. (See Pa.R.J.C.P. 1151 and comments to Pa.R.J.C.P. 1634.)

16.6 Service

Upon the filing of a motion to resume jurisdiction, service must be provided to the county agency, the attorney for the county agency, the child, the child's attorney, and the guardian or other interested adult if the child requesting resumption of jurisdiction would like the guardian or other interested adult involved in the case. Pa.R.J.C.P. 1634 (C).

16.7 Standing

Clearly, the child and the county agency have standing in resumption of jurisdiction matters. Because the child is an adult, parents and/or former guardians do not have standing in these matters. Standing does not determine who attends the hearing. Standing gives a person the right to counsel and the right to participate in all proceedings.

16.8 Conduct of the Hearing

Best Practice — Who Attends/Is Excluded From the Hearing for Resumption Cases

If the child wants parents, former caregivers, friends, or others, they should be permitted to attend the hearing. The agency, counsel, and the court often identify these individuals through ongoing family finding efforts.

Parents have no right to attend, and the child's wishes on whether they attend or are excluded should be given serious consideration by the court.

Pa. Rule of Juvenile Court Procedure 1635(C) sets forth the findings the court must make at a hearing for Resumption of Jurisdiction. At the hearing, the court shall state its findings and conclusions of law on the record in open court as to whether:

- (1) dependency jurisdiction was previously terminated:
 - (a) within ninety days prior to the child's eighteenth birthday; or
 - (b) on or after the child's eighteenth birthday but before the child turns twenty-one years of age; and
- (2) the child continues to meet the definition of child pursuant to 42 Pa.C.S. § 6302 because the child:
 - (a) is under twenty-one years of age;
 - (b) was adjudicated dependent prior to turning eighteen years of age;
 - (c) has requested the court to resume jurisdiction; and
 - (d) is:
 - (i) completing secondary education or an equivalent credential;
 - (ii) enrolled in an institution which provides postsecondary or vocational education;
 - (iii) participating in a program actively designed to promote or prevent barriers to employment;
 - (iv) employed for at least eighty hours per month; or
 - (v) incapable of doing any of the activities as prescribed in paragraphs (C)(2)(d)(i)-(iv) due to a medical or behavioral health condition, which is supported by regularly updated information in the permanency plan for the child;
- (3) reasonable efforts were made by the county agency to prevent the return of the child to juvenile court jurisdiction unless, due to the child's immediate need for assistance, such lack of efforts was reasonable;
- (4) it will exercise jurisdiction pursuant to 42 Pa.C.S. § 6351(j) because it is best suited to the protection and physical, mental, and moral welfare of the child;
- (5) a guardian or other interested adult should be involved in the child's case;
- (6) there are any health or educational needs of the child; and
- (7) the county agency has developed an appropriate transition plan.

After the hearing, the court shall enter an order granting or denying the Motion to Resume Jurisdiction. Pa.R.C.P. 1635(D)(1).

Best Practice — Transition Plan

Transition Plans for child should focus on the specific needs and help the child be successful. The development of these plans should be led by the child and include supportive persons identified by the child. The plans should include not only the specific services to be provided but also specific actions which will be taken to identify and/or strengthen life-long, supportive connections for the child.

Time is of the essence in resumption of jurisdiction cases. This is likely to be the court's and agency's last opportunity to assist the child. Transition Plans should be focused, meaningful, age-appropriate and individualized.

If the Court resumes jurisdiction, the judge or hearing officer should determine what the agency must provide the child as well as any actions for which the child will be responsible. Resumption of jurisdiction is not a blank check wherein the child has all of their needs met with no expectations placed upon them. Indeed, while the expectations of the court should be appropriate to the age of the child, the court order should clearly identify these expectations. Specific orders should be written with enough detail as to leave no doubt regarding the responsibilities of the county agency, the child, and any other involved entity.

The court should pay particular attention to the agency's responsibility to conduct family finding with the child. The family finding requirement set forth in Pa.R.J.C.P. 1149 applies to all resumption cases. Efforts of the agency may focus more on friends and other contacts as opposed to biological family. Family finding is ongoing unless it is determined by the court that it is no longer necessary. In cases of children with terminated parental rights, the court should consider ordering the agency to reach out to the biological family. It is incumbent upon the court to ascertain the child's wishes in this matter prior to doing so. It is not unusual for children, especially those who have been in care for some time, to desire a relationship with their biological family. If considerable time has passed, it's possible the circumstances necessitating placement have been remedied. In addition to parents, there are often siblings or extended family and kin that may have lost contact with the child and could become a supportive connection in their life.

Finally, because resumption of jurisdiction can only occur or remain in place at the request of the child, it is critical that the court hear directly from him or her. In most instances, this should be an in-person appearance by the child. In those rare circumstances where the child is unable to be physically present in court, the child should participate via technology (phone, video conferencing, etc.). If the child is unable to attend or participate in the hearing to resume jurisdiction, the court should not proceed with the hearing.

16.9 Burden of Proof/Evidentiary Standard

Resumption of jurisdiction is not considered a new adjudication of dependency. Instead, it is a re-opening of a previously closed dependency case. As such, unlike the original adjudication which has a clear and convincing standard, resumption of jurisdiction requires a preponderance of evidence, a much lower standard. The burden of proof is carried by the child and his/her legal counsel.

16.10 Placement and Service Options

Children requesting resumption of jurisdiction often have very unique and individualized needs. These needs may or may not include placement. If placement is needed, the options may include kinship care, family foster home, group home, institution, transitional living, and supervised independent living placements. In addition, options such as a dormitory, apartment, other more independent setting, or a combination of these may be appropriate. Similar to other cases, the law requires that the child be placed in the least restrictive and most family-like placement that meets their needs.

Additionally, the scope and type of services needed by these youth may be very different than those needed by teenagers who have not yet reached the age of eighteen. While typical independent living skills and/or services may be helpful, other services may be needed by this population. These services may be generated by the county child welfare agency or other human service and/or community service entities.

Best Practice — Youth Service Array

Many counties offer independent living services long after court supervision is terminated. As such, youth are able to access a wide range of services without needing to officially request the court resume jurisdiction. This may include adult housing, employment, training, and supportive services. While these services may exist in a county, long wait lists may create access barriers. As such, courts are encouraged to participate in the identification and development of service options which meet the needs of former foster youth.

In addition to general services available to all adults, some Local Children's Roundtables have established a sub-committee to identify the specific needs of former foster youth, potential resources, and effective strategies that promote a balanced approach to safety, accountability, and successful adult living. Additionally, these groups have discussed the flexibility and creativity needed in serving this population.

16.11 Review Hearings

The court is required to conduct a permanency hearing for all resumption of jurisdiction cases. See Pa.R.J.C.P. 1635(D)(2)(c) and Pa.R.J.C.P. 1608. All findings and orders required in permanency review hearings apply to resumption of jurisdiction cases. These reviews must occur at least every six months. However, in some instances, the court may want to review the matter more frequently.

During these periodic reviews, the court should inquire about any element of the transition plan that the child may not be following. Sometimes simple remedies or changes may be made that will result in the child's compliance. However, even after being offered an appropriate transition plan, the child may be unwilling to follow it. Pa.R.J.C.P. 1635(E)(1) allows a party to move for termination of court supervision once the goals of the transition plan have been accomplished or the child refuses to cooperate with the plan.

16.12 Findings and Orders

The Order for Resumption of Jurisdiction is contained within the Common Pleas Case Management System (CPCMS), Dependency Module. The order includes the required findings pursuant to Pa.R.J.C.P. 1635 and provides an opportunity to fully articulate specific orders the court deems appropriate. Of special note is the requirement to make a reasonable efforts finding. Unlike the reasonable efforts finding required in other dependency hearings, this finding focuses on whether the county agency provided reasonable efforts to prevent the return of the child to juvenile court jurisdiction unless, due to the child's immediate need for assistance, such lack of efforts was reasonable. Pa.R.J.C.P. 1635(C)(3).

After the hearing, the court must enter an order granting or denying the motion to resume juvenile court jurisdiction. In addition, the court must schedule a permanency hearing at least every six months until such time that court supervision is terminated. The Common Pleas Case Management System (CPCMS) Permanency Review Order and CPCMS Termination of Court Supervision Order should be used for ongoing resumption of jurisdiction cases.