Chapter 20 – General Issues

20.1 Overview

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

Some areas covered in this chapter are required by rules or statutes, such as aggravated circumstances, documenting judicial findings and orders, and Court Appointed Special Advocates. Others are administrative in nature, such as Common Pleas Case Management System (CPCMS) data and statistical reports or Needs-Based Plan and Budget. Yet others are considered best practice and informational, such as Family Group Decision Making (FGDM), 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 officer.

The following sections are included in this chapter:

- 20.2 Aggravated Circumstances
- 20.3 "Best Interests" and "Reasonable Efforts" Findings
- 20.4 Family Group Decision Making (FGDM)
- 20.5 Common Pleas Case Management System (CPCMS)
- 20.6 Children in the Courtroom
- 20.7 Educational Success and Truancy
- 20.8 Congregate Care
- 20.9 Transitional Youth
- 20.10 Court Appointed Special Advocates (CASA)
- 20.11 Planning & Funding Services: The Needs-Based Plan & Budget (NBPB)
- 20.12 Trauma

20.2 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 by the court. 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.

20.2.1 "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. § 3126 (relating to indecent assault).
(iv) an equivalent crime in another jurisdiction.

(4) The 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.

(6) The parent of the child is required to register as a sexual offender under Subchapter H of Chapter 97 (relating to registration of sexual offenders) or to register with a sexual offender registry in another jurisdiction or foreign country.

20.2.2 Procedures in Aggravated Circumstances Cases

An allegation of aggravated circumstances may be made by the agency or by the child's attorney. 42 Pa.C.S. § 6334(b)(2). It may be included as a motion in the original dependency petition or in a separate and subsequent written motion. Pa.R.J.C.P. 1701. Under Pa.R.J.C.P. 1702, the agency is required to file an aggravated circumstances motion as soon as possible but no later than twenty-one days from the determination aggravated circumstances exist. No such time requirement applies to the child's attorney.

If the agency or child's attorney alleges aggravated circumstances and the court determines by clear and convincing evidence that the child is dependent, the court shall also determine by clear and convincing evidence whether aggravated circumstances exist. 42 Pa.C.S. § 6341(c.1). If the court finds that aggravated circumstances exist, the court shall 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 schedule a hearing as required in 42 Pa.C.S. § 6351(e)(3). 42 Pa.C.S. § 6341(c.1).

20.2.3 Timing of Hearing

Permanency hearings are required to be held within six months of the date of the child's removal from the child's parents, guardian, or custodian for placement or pursuant to a transfer of temporary legal custody or other disposition, whichever is earliest; or within six months of each previous permanency hearing until the child is returned to the parent, guardian or custodian or removed from the custody of the court. 42 Pa.C.S. § 6351(e)(3)(i). The court must conduct a permanency hearing within thirty days in the following four situations:

Aggravated circumstances finding at time of adjudication. At the time of 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.

Aggravated circumstances finding at permanency hearing. 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.

An allegation that aggravated circumstances exist regarding a dependent child. The court receives an aggravated circumstances allegation regarding a child who has been adjudicated dependent.

Submission of other motions regarding the safety or welfare of a dependent child. 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.

42 Pa.C.S. § 6351(e)(3)(ii).

20.2.4 Effect of Determination

After finding aggravated circumstances, the judge or hearing officer must determine whether further agency efforts to preserve or reunify the family are necessary. If not, the judge or hearing officer 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 file a petition to terminate parental rights and pursue adoption except where:

(i) the child is being cared for by a 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.

42 Pa.C.S. § 6351(f)(9).

20.3 "Best Interests" and "Reasonable Efforts" Findings

Several findings and orders made by the court have a 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 "fair, proper, or moderate under the circumstances." *Reasonable*, Black's Law Dictionary (7th ed. 2000). Webster's defines "reasonable" as "not beyond what is usual or expected; not extreme or excessive; moderate, fair." *Reasonable*, Merriam-Webster, https://www.merriam-webster.com/dictionary/reasonable (last visited Dec. 13, 2024). Either of these would logically apply to the reasonable efforts standard found in dependency proceedings.

These findings are also tied to the concept of procedural justice. Procedural justice is the idea of fairness in the processes that resolve disputes and allocate resources. In dependency proceedings, this concept is in part exercised through the reasonable efforts findings in which the court decides whether sufficient efforts have been made by the agency at various stages in the proceedings to help the child and parents. This is a very serious finding with very serious consequences. In the absence of the finding, the agency stands to lose federal funding resources, and funding becomes a county responsibility. By contrast, the presence of a reasonable efforts finding signifies the judge or hearing officer's belief that the agency has presented sufficient evidence regarding reasonable efforts.

Every hearing that requires a reasonable efforts finding requires evidence about the reasonable actions of the agency to assist the child and parents. It is not sufficient to simply hear evidence as to the compliance and progress level of the parent or child. Nor should the court include in its analysis agency staffing shortages, caseload sizes, or other systemic issues. **To make this finding, evidence as to the agency's affirmative actions to make reasonable efforts is the sole issue.**

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 care hearing, reasonable efforts findings must be made on reasonable efforts to prevent removal from the home and reasonable efforts to comply with family finding requirements. At the adjudication and disposition hearings, reasonable efforts findings must be made regarding reasonable efforts to prevent removal from home, reasonable efforts to comply with family finding requirements, and reasonable efforts to place with sibling if the child has a sibling who is also subject to removal from the home. 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), reasonable efforts to comply with family finding requirements, and reasonable efforts to place with sibling.

During the shelter, adjudication, and disposition hearings, sufficient information should be presented to enable the court to make a finding regarding

reasonable efforts to prevent placement. The court must find that to allow the child to remain in the home would be contrary to the child's welfare and:

- Reasonable efforts were made to prevent or eliminate the need for removal of the child from the home.
- Preventive 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 the 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.
- No reasonable efforts were made to prevent or eliminate the need for removal of the child from the home.

Pa.R.J.C.P. 1514.

Finally, the court may find that reasonable efforts are not applicable in instances where the child has not been removed from the home.

The Child Welfare Agency has sixty days from the initial removal of the child in which to receive a reasonable efforts determination. This determination is based on actions that occurred or did not occur prior to the child's removal. If no reasonable efforts are found after sixty days from initial placement, federal IV-E funding for the care/support of the child is prohibited for the life of the case and all funding becomes a county responsibility.

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 plan. **Unlike the initial reasonable efforts finding, a no reasonable efforts finding at this point in a case restricts federal funds from being accessed until sufficient evidence is presented that allows the court to make an affirmative reasonable efforts finding.** An affirmative finding signifies the judge's or hearing officer's belief that the agency has provided a reasonable amount and type of service needed to finalize the permanency plan. 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 federal 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 systemic changes needed.

20.4 Family Group Decision Making

Family Group Decision Making (FGDM) is a collaborative dispute resolution process that engages family and kin 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 resisting the intrusion if the system simply tells them what to do to fix the problem. Gatowski, S. et al., *Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* 70 (National Council of Juvenile and Family Court Judges 2016).

"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, it encourages and supports the use of kinship resources thereby reducing any potential emotional trauma associated with placement."

\- Honorable Max Baer, Chief Justice of the Pennsylvania Supreme Court

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

20.4.1 Benefits of FGDM

"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. Bringing these "common sense" plans into the courtroom – plain and simple – works!"

-Pennsylvania Dependency Court Judge

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-upon plan, it helps to avoid lengthy trials and appeals of termination of parental rights (TPR) cases. Gatowski, *supra*, at 71.

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 the 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.

20.4.2 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 is the utilization of the family itself to identify concerns and potential solutions aimed at ensuring child safety, well-being, and permanence.

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 address these comprehensively in their planning.

The next step in FGDM, private family time, distinguishes it from other alternative dispute resolution processes. 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 caseworker 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

> "The family conference helped me because I got to hear how my children feel and learn about their concerns. We were able to address the concerns and apply a solution."
>
> - Pennsylvania Parent

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 permanency 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 agency's 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 officers 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 agency's Family Service Plan or Child Permanency plan is updated, which is typically every six months.

20.4.3 The Court's Role

FGDM is a voluntary process for families. In keeping with this core value of the practice, judges and hearing officers should not order a FGDM meeting. Instead, judges and hearing officers 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. (See FGDM Benchcard in the Benchcard section.) If a family desires an FGDM meeting and the agency is reluctant to make the referral or provide the meeting, this is the one instance in which the court may order the FGDM to occur.

Judges and hearing officers should ask questions regarding the time frame in which an 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 permanency plan ordered by the judge or hearing officer and incorporated into the agency's state-mandated Family Service Plan or Child Permanency Plan document.

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 hearing occurring within 72 hours of a child's 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 to a couple of days from the 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 Plans, and can be incredibly valuable for the family, the court, and the child welfare agency.

Counties involved in the Family Engagement Initiative (FEI) utilize Crisis/Rapid Response Family Meetings. These meetings occur immediately upon the agency determining that a child is at risk of being placed. These meetings frequently eliminate the need for court intervention. In the event a petition must be filed to protect child safety, the family's written plan is presented to the court at the Shelter Hearing.

As with any dependency system practice, court-agency collaboration is a key to FGDM success. All parties need to be educated on the basic premises of the practice including judges, hearing officers, attorneys, advocates and agency staff, which includes administration and line staff. The court should gain a true understanding of the practice, which can occur through meetings with agency staff, local Children's Roundtable Meetings, local FGDM Implementation Team Meetings, and by observing a conference. These steps facilitate a 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 officers 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 officer may wish to communicate with the agency to clarify expectations and enhance the likelihood of future plans being approved.

The judge or hearing officer should also inquire as to the timeframe in which a reconvening of the family can occur and schedule a prompt follow-up court hearing at which the revised plan can be presented and approved.

By fully understanding the process, judges, hearing officers, and other legal professionals can ensure fidelity to the practice. This fidelity to the practice 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.

Additional information regarding FGDM can be found in the *Pennsylvania Family Group Decision Making Toolkit: A Resource to Guide and Support Best Practice Implementation*, PA FGDM Leadership Team (Fall 2008), https://www.pacwrc.pitt.edu/FGDM.htm.

"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

20.5 Common Pleas Case Management System

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 Case 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, uniform, and consistent dependency court orders, as well as a means for collecting both county-specific and statewide dependency data. The system provides this information for judges and hearing officers 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 Committee and the Department of Human Service'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 officers, as needed. **It is extremely important the court appoint someone to run reports on a regular basis to ensure the accuracy of the data.** Several of the reports (especially the statistical reports) have indicators of data errors. For example, on the 3920 Dependency Case Inventory Report, data in sections "Returned to Active from Adjudicated" and "Case Reopened without a Petition" are likely to be erroneous data due to data entry errors. Efforts made to ensure accurate data will enable the court to confidently use the reports in its analysis of the dependency system. Accurate data can then be used to plan or strategize changes that are data-informed and not a best guess or assumption.

In addition to the statistical and 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 the hearing officer'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 private notes, 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 management/statistical report.

20.5.1 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 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. This report also provides information on the type of case initiation in the system.

Dependency Disposition Report (AOPC 3901). This report provides a detailed list of all cases that have had a disposition recorded during the selected date range. This report can be used to generate a list of cases that were terminated, grouped by disposition type, to evaluate the final case result.

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 officer.

Inventory Report (AOPC 3904). This report tracks counsel and Guardian A*d Litem* appointments.

Dependency Daily List (AOPC 3905). This report provides a list of dependency cases scheduled for the court on any requested day. Under the case participant, this report will also note those individuals who have voluntarily shared that they are self-reported or diagnosed with Autism. This feature can be used for planning any needed accommodations.

Juvenile Summary of Cases by Attorney (AOPC 3919). This report displays all assigned dependency cases for a specific attorney as of a selected date.

Unscheduled Active Juvenile Cases by Event Date (AOPC 3932). This report lists all cases by selected calendar entry type and date range that do not have a future scheduled event.

Continued Dependency Cases by Date (AOPC 3934). This report lists all cases by selected date range in which a continuance was issued. This report can be sorted by individual judicial officer or all judicial officers.

Hearing Officer Recommendations (AOPC 3938). This report identifies cases in which a recommendation by a hearing officer has been recorded but there is no corresponding judge's order recorded.

Scheduled Events Without an Outcome Event (AOPC 3941). This report identifies cases that were scheduled during a select date range that have no outcome event recorded.

20.5.2 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. All statistical reports include the option to run the report with case detail. This option provides a list of individual cases under each category to assist users with deeper data analysis or data correction. The following statistical reports are available:

Dependency Case Inventory (AOPC 3920). This report provides summaries of cases that were initiated, adjudicated, and closed during a select time period. It is divided into two sections: Active Dependency Case Inventory (cases that have entered and left active status) and Adjudicated Dependency Case Inventory (cases that have entered and left active/adjudicated status).

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, data is 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 case data based on age range, gender, race, and ethnicity of active and active/adjudicated cases. Data is segregated by foster care involvement.

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

Best Practice — Management and Statistical Reports

The court is encouraged to take full advantage of the Common Pleas Case Management System (CPCMS) Dependency Module. Management and statistical reports can be invaluable tools for 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.

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 (as is often done during local Children's Roundtable meetings) to identify challenges and strategize solutions. There is a Benchcard with all the CPCMS reports to use as a quick reference.

20.6 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 Pa.R.J.C.P. 1128. Pa.R.J.C.P. 1129 (a). 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. **It is critical that the judge or hearing officer 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.**

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 officer after careful consideration of all the circumstances of the case. The GAL or caseworker may provide insight into whether the child should be present, but the judge or hearing officer should not waive the child's appearance just because the parent, GAL, or caseworker prefers the child not to 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.

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 officer 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.
- Regular school day unless there is a special event scheduled.

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 sensitive portions of the hearing. In cases involving medically fragile children, a physician might need to be consulted about the ability of the child to attend court. If the physician deems it inappropriate, the court still has an obligation to see the child once every six months. This may require the judge, with permission of all parties and with a court reporter, to go to the child. It is very important that the judge see the child personally.

20.6.1 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 officer should be prepared for the child's appearance, learning as much as possible about the child from the reports provided by participants such as the GAL, CASA, foster parents, and the case worker, 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.

"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

It is important for the court to consider the voice of the child at all stages of dependency proceedings. The Juvenile Act requires judges and hearing officers to consult with the child regarding the child's permanency plan, including the child's desired permanency goal, in a manner appropriate to the child's age and maturity. 42 Pa.C.S. § 6351(e)(1). If the judicial officer does not consult personally with the child, the court shall ensure that the views of the child regarding the permanency plan have been ascertained to the fullest extent possible and communicated to the court by the guardian *ad litem*, the child's counsel, the court-appointed special advocate or other person designated by the court. *Id*. If the youth is 18 years or older and the permanency goal is Another Planned Permanent Living Arrangement (APPLA), the judicial officer is required to speak directly to the youth. 42 Pa.C.S. § 6351(f.1)(5)(iv)(A).

"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

When interviewing a child, the judge or hearing officer should ensure that the interview is conducted in a way that minimizes trauma, anxiety, and fear. The judicial officer should consider who is in the courtroom when the child is speaking and where the child is seated. It may be appropriate, in some cases, to conduct an *in-camera* interview of a child. Some judges and hearing officers do so when sensitive information might be disclosed. However, under Pa.R.J.C.P. 1134, *in-camera* proceedings are to be recorded, and each party's attorney shall be present, including the child's Guardian *Ad Litem* and/or the child's legal counsel. (See Pa.R.J.C.P. 1128 and *In the Interest of J.F.*, 308 A.3d 1252 (Pa.Super. 2024).)

The judicial officer should be aware of both verbal and non-verbal communication by the child, especially with younger children. Often, children may not be able to verbally express their thoughts and emotions, but their actions clearly demonstrate these things. If a factor in the court's decision, the court's observations should be read into the record.

If the child is interviewed and a party or counsel is not present, this constitutes an ex-parte communication with the court, which is generally prohibited. Pa.R.J.C.P. 1136. Although the practice of ex-parte communication with a child is ***strongly*** discouraged, there are varying opinions regarding whether to do so and under what conditions. Based on the intent of the aforementioned rules, if a judge or hearing officer chooses to move forward with ex parte communication, at a minimum, the following should occur:

1. Prior to the interview a waiver/consent to the interview should be given by each party, and if a party is represented, by their counsel. The waiver/consent must be placed on the record, and

    - In the case of an unrepresented parent, the court should consider whether the *in-camera* interview would violate the parent's due process rights. (See comment to Pa.R.J.C.P. 1134.) If an unrepresented parent agrees to the waiver, a colloquy should be placed on the record.

2. The interview of the child shall be conducted on the record. If, for any reason, the communication or interview is held in a place other than the courtroom and has not been recorded, the judge or hearing officer shall place the contents or a summary of the communication or interview on the record immediately after the interview and

3. The Guardian *Ad Litem* and/or counsel for the child must be present. *In the Interest of J.F.*, 308 A.3d 1252 (Pa.Super. 2024).

A child should never be interviewed alone by the court. This exposes the judicial officer to allegations of impropriety and raises questions of due process and fairness for the parties and counsel.

To help make the child feel comfortable in the courtroom setting, the judge or hearing officer should take the time to speak to or greet the child before the hearing begins. If the child has been in court before, the judge or hearing officer should ask the child about events that have transpired since the last court hearing (sports, music lessons, vacations, etc.).

When interviewing the child, the judge or hearing officer should consider seating the child near or with someone who makes the child feel safe and secure. The child should be seated where the judge or hearing officer can see and observe whether the child appears to be anxious or afraid, whether anyone is attempting to coach the child, and the normal body language that one would consider in making determinations of truthfulness.

A good way to begin the interview is by asking the child some general questions about school and activities to help put the child at ease. All questions should be in age-appropriate language, taking care not to use legal or words that a child might not understand. For example, use the word *befor*e instead of the word *prior.* Ask the child simple questions about the home in which he is living, what he likes, what he needs, and most importantly, what he wants.

If the child is newly placed, the judge or hearing officer 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 officer 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?

It is important to communicate with the child (and with all parties) in a way that encourages and builds upon strengths. One technique that is proven to be useful is Motivational Interviewing (MI). **To effectively utilize MI, judges and hearing officers should talk less and use open-ended questions and reflective listening.** Judicial officers should also be patient and allow the child the time needed to answer difficult questions. Remember that silence is okay. Strengths and accomplishments should be highlighted. For more information on motivational interviewing, see Sylvie Naar-King & Mariann Suarez, *Motivational Interviewing with Adolescents and Young Adults* (2011) and William R. Miller & Stephen Rollnick, *Motivational Interviewing: Helping People Change* (3rd ed. 2013).

Best Practice — Motivational Interviewing (MI)

MI is a technique or style of interviewing that is evidence-based and results in more complete information. It is very effective with older youth. MI contains the following elements or principles:

- Expressing empathy through reflective listening. This means understanding the child's perspective without judging, criticizing, or blaming. This is extremely important for older youth.
- Developing discrepancy between child's goals or values and their current behavior. Also important for older youth.
- Avoiding argument and direct confrontation.
- Adjusting to resistance rather than opposing it directly. Don't argue with the child or confront the child head-on. Arguing is counterproductive.
- Support self-efficacy and optimism. The judicial officer should be the cheerleader to encourage and motivate the child to desire and choose positive change and outcomes. Belief in oneself and hope are what many dependent children are lacking.

For more information on motivational interviewing, see Sylvie Naar-King & Mariann Suarez, *Motivational Interviewing with Adolescents and Young Adults* (2011) and William R. Miller & Stephen Rollnick, *Motivational Interviewing: Helping People Change* (3rd ed. 2013).

Judges and hearing officers should avoid using general statements to highlight accomplishments and instead highlight strengths and accomplishments in a specific way. Instead of saying, "You did a great job," say, "You only missed one day of school; you made the honor roll and kept your room clean." Helping youth recognize the specific things they do well or positive changes they've made increases the likelihood that the actions will be repeated and helps youth develop an internalized sense of self-esteem.

In addition to *what* is said, the judge or hearing officer should pay careful attention to *how* it is said. All of the right questions can be asked, but if the judge appears distracted, disinterested, or uncaring, the child will shut down.

Because the child is required to be present in court at least every six months, the judge or hearing officer has the opportunity to develop a positive and trusting relationship

with the child over the time that the case is court-active. The judge or hearing officer should take time to review notes or findings from prior hearings so that interaction with the child is a continuous process. The judge's or hearing officer's demeanor should reflect genuine care and concern for the well-being and the wishes of the child.

> **"Sometimes it's not that we don't have anything to say but that we are too intimidated."**
>
> -Former Foster Youth

At the end of the hearing, the judge or hearing officer should carefully explain the reasons for the decisions made and ask the child if he/she has any questions about what was ordered. Many times, what a child wants and what is in the best interest of the child are in conflict. When a judge or hearing officer has to make a decision that is necessary to keep a child safe but will upset the child or make the child unhappy, it is important to tell the child that you understand what he wants, but why you have to make a different decision. Don't make promises to a child that you may not be able to keep.

Finally, everyone in the courtroom should be treated with dignity and respect and know their positions have to be considered by the court. This is especially important for children who have been abused and neglected. Repeat what the child told you and tell the child that you will consider or have considered it. If the child is testifying at the adjudicatory hearing or about some traumatic event, if you believe the child has been truthful, tell the child that you believed her. Thank the child for her testimony, and wish them success.

20.6.2 Children as Witnesses

Every person is competent to be a witness unless excluded by statute or rule. Pa.R.E. 601(a). Children fourteen (14) years of age and older are presumed to be competent. For children under fourteen (14) years of age, the court **shall** conduct a competency examination. *Commonwealth vs Moore,* 980 A2d 647, 650 (Pa.Super. 2009).

Any person is incompetent to testify if the court finds that because of a mental condition **or immaturity** the person:

1. is, or was, at any relevant time, incapable of perceiving accurately;
2. is unable to express himself or herself so as to be understood either directly or through an interpreter;
3. has an impaired memory; or
4. does not sufficiently understand the duty to tell the truth.

Pa.R.E. 601(b).

The editors of *Child Welfare Law and Practice: Representing Children, Parents, and State Agencies in Abuse, Neglect, and Dependency Cases* elaborate on each of these characteristics as they apply to children:

> **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 of 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 of 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 officers, 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 officer is concerned about a child's understanding of the obligation to testify truthfully, the judge or hearing officer may instruct the child.

Child Welfare Law and Practice: Representing Children, Parents, and State Agencies in Abuse, Neglect, and Dependency Cases 330-332 (Marvin Ventrell & Donald N. Duquette eds., 2009).

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

20.7 Educational Success and Truancy

20.7.1 Educational Success and Truancy

Truancy is an issue that is not new to the dependency system. In fact, truancy is a status offense under the Pennsylvania Juvenile Act (*See* 42 P.S. § 6302(5)) and is a ground for an adjudication of dependency. All too often, truancy is but a symptom of other issues or challenges within a household. For example, a child may become a habitually truant student as a byproduct of untreated mental illness or addiction. Mental health and substance abuse issues may be present in the lives of a parent or the student herself. Perhaps the child's family is struggling with chronic medical issues or a lack of supervision due to the employment obligations of a parent. Perhaps a student suffers from the crippling effects of social anxiety that, left untreated, prevents the child from school attendance. Transportation issues or an unidentified learning disability are additional triggers for truant behavior.

Over a decade ago, the Office of Children and Families in the Courts (OCFC) identified truancy as a Commonwealth-wide area of concern. As a result, OCFC sponsored an Educational Success and Truancy Prevention Workgroup from 2010 through 2017. The workgroup generated reports to the State Roundtable, which is the decision making entity of the OCFC Children's Roundtable Initiative. These reports are available on the OCFC website utilizing the State Roundtable Workgroups/Committees content found under the Children's Roundtable Initiative tab.

The most recent federal data show that in the 2020-21 school year, at least 14.7 million students nationwide were chronically absent. *Chronic Absence*, Attendance Works, https://www.attendanceworks.org/chronic-absence/the-problem/ (last visited Dec. 13, 2024). According to the Pennsylvania Department of Education, high rates of truancy start as early as kindergarten. *Resources and* Toolkits, Commonwealth of Pennsylvania, https://www.pa.gov/agencies/education/programs-and-services/schools/safe-schools/resources-and-toolkits.html (last visited Dec. 13, 2024). Unfortunately, the prevalence of truancy continues to increase due in part to the psychological effects of the 2020 COVID-19 pandemic upon children and families. Thankfully, the collaborative research, investigation, and recommendations of the Educational Success and Truancy Prevention Workgroup provide insight and assistance to judges seeking to understand this complex topic affecting the populations that we serve. As mentioned, this research and guidance is available to judges and hearing officers at the Office of Children & Families in the Courts website.

20.7.2 Pennsylvania's Public School Code and Act 138

Pennsylvania's compulsory school attendance law is found within the public school code of 1949, Article XIII Pupils and Attendance, Subarticle (b) Enforcing Attendance. 24 P.S. §§ 13-1325 to 13-1339. A student must comply with compulsory attendance requirements from age 6 to age 18, regardless of the school setting in which they are enrolled or the instructional delivery model they are receiving. 24 P.S. § 13-1326. Compulsory attendance applies to children enrolled in all public schools, including charter and cyber charter schools, as well as privately tutored and homeschooled children.

In 2016, Act 138 substantially reformed the truancy provisions of Pennsylvania's Public School Code in an effort to "improve school attendance and deter truancy through a comprehensive approach to consistently identify and address attendance issues as early as possible with credible intervention techniques…" Education Law Center, Fact Sheet, *A Judge's Guide to Attendance Barriers ('Truancy') and Act 138* (August 2024).

According to Act 138, the first intervention to address truancy shall occur at the school district level. After a student has accrued three (3) unexcused absences, the school must provide written notice to the person in parental relation as to a child's violation of compulsory school attendance within ten (10) days of the child's third unexcused absence. 24 P.S. § 13-1333(a). A school must convene a school attendance improvement conference (SAIC) when a child is habitually truant, i.e. he or she has accrued six (6) unexcused absences from school. 24 P.S. § 13-1333(b). The outcome of the conference shall be documented in a written school attendance improvement plan (SAIP). 24 P.S. § 13-1333(b)(2). A child is "truant" if he or she has incurred three (3) or more school days of unexcused absences during an academic year. 24 P.S. § 13-1326. A child is "habitually truant" if he or she incurs six (6) or more school days of unexcused absences during an academic year. *Id.* When referring a habitually turant child to the county children and youth agency or filing a citation with the court because a child has been habitually truant, the school must provide written verification that it held a school attendance improvement conference. 24 P.S. § 13-1331.1(d).

When a child is habitually truant and the time for the SAIC has passed, a school may file a citation in the office of the appropriate magisterial district judge against the person in parental relation if the child is under the age of fifteen (15) or against the child if the child is over the age of fifteen (15). NOTE: The statute also provides that a referral to the county children and youth agency for services or possible disposition as a dependent child. 24 P.S. § 13-1333.1 (a)(1)(2). On occasion, due to the geographic configuration of school districts, the applicable county welfare agency may be different from the county in which the applicable magisterial district judge presides. The address of the child controls as it relates to the selection of the applicable county welfare agency. Pa. R.J.C.P 1300(A). The address of the school applies as it relates to the applicable magisterial district judge. If a child attends cyber school, the venue is based upon the residence of the child. 24 P.S. § 1327.2(b).

If a school files a citation before a magisterial district judge, those proceedings are governed by Act 138. Magisterial District Judges may impose penalties for truant behavior

in the form of fines, community service, or an appropriate course or program designed to improve school attendance which has been approved by the president judge of the judicial district. 24 P.S. § 13-1333.3(a)(1)-(3). Procedures for further involvement at the Court of Common Pleas differ across the Commonwealth and are further addressed in this chapter relating to diversionary court programs. In some counties, diversionary programs attempt to avoid dependency court intervention if a school district or magisterial district judge makes a referral to a county welfare agency. In other counties, dependency court may be the next step in the judicial process.

KEY DEFINITIONS – Act 138 (24 P.S. § 13-1326)

"Compulsory school age" shall mean the period of a child's life from the time the child's parents elect to have the child enter school and which shall be no later than six (6) years of age until the child reaches eighteen (18) years of age. The term does not include a child who holds a certificate of graduation from a regularly accredited, licensed, registered or approved high school.

"Educational entity" shall mean a public school district, charter school, regional charter school, cyber charter school or area career and technical school.

"Excused absence" shall mean an absence from school which is permitted under section 1329.

“Habitually truant" shall mean six (6) or more school days of unexcused absences during the current school year by a child subject to compulsory school attendance under this article.

"Person in parental relation" shall mean a:

(1) custodial biological or adoptive parent. **(2)** noncustodial biological or adoptive parent. **(3)** guardian of the person of a child. **(4)** person with whom a child lives and who is acting in a parental role of a child. This definition shall not include any county agency or person acting as an agent of the county agency in the jurisdiction of a dependent child defined under 42 Pa.C.S. § 6302 (relating to definitions). This definition shall not expand the right of a child under any other section of this act.

20.7.3 The Impacts of Truancy

So why should Pennsylvania judges care about truancy? Truancy can impact a child’s learning and skill proficiency. Below are 10 ways truancy can impact a child’s education. This is particularly important for our children in the dependency system.

1) According to a report published by the National Center for Children in Poverty, **it is critically important that chronic absenteeism is addressed in the early grades.** While truancy is prevalent in all grades, one can predict that (absent a new traumatic

occurrence within a family's life) a student in high school displaying truant behavior has displayed that behavior throughout his or her academic career.

The aforementioned study notes that "[c]hildren chronically absent in kindergarten show lower levels of achievement in math, reading and general knowledge during first grade. Going to school regularly in the early years is especially critical for children from families living in poverty, who are less likely to have the resources to help children make up for lost time in the classroom. Among poor children, chronic absence in kindergarten predicts the lowest levels of educational achievement at the end of fifth grade." (*See* Hedy N. Chang & Mariajose Romero, *Present, Engaged and Accounted For: The Critical Importance of Addressing Chronic Absence in the Early Grades* 3 (National Center for Children in Poverty Sept. 2008);

2) **Absenteeism in the first month of school can predict poor attendance throughout the school year.** Half of the students who miss 2-4 days in September go on to miss nearly a month of school. (See Linda S. Olson, *Why September Matters: Improving Student Attendance* (Baltimore Education Research Consortium July 2014));

3) **Chronic absence appears to have doubled by the end of the 2021-22 school year.** It is now estimated to affect nearly one out of three students (16 million) nationwide. Hedy Chang, et al., *Pandemic Causes Alarming Increase in Chronic Absence and Reveals Need for Better Data*, Chronic Absence Blog, Attendance Works (Sept. 27, 2022), https://www.attendanceworks.org/our-blog/ (last visited Dec. 16, 2024).

4) **Poor attendance can influence whether children read proficiently by the end of third grade or be retained**. (See *Attendance in the Early Grades: Why it Matters for Reading – A Research Brief* (Attendance Works Feb. 2014).)

5) **By 6th grade, chronic absence becomes a leading indicator that a student will drop out of high school**. *Destination Graduation: Sixth Grade Early Warning Indicators for Baltimore City Schools - Their Prevalence and Impact*, i (Baltimore Education Research Consortium Feb. 2011);

6) **Research shows that missing 10 percent of the school year, about 18 days in most school districts, negatively affects a student's academic performance**. (See *10 Facts About School Attendance*, Chronic Absence, Attendance Works, https://www.attendanceworks.org/chronic-absence/the-problem/10-facts-about-school-attendance/ (last visited Dec. 16, 2024));

7) **Students who live in communities with high levels of poverty are four times more likely to be chronically absent than others often for reasons beyond their control**, such as unstable housing, unreliable transportation and a lack of access to health care. Hedy N. Chang & Mariajose Romero, *Present, Engaged and Accounted For: The Critical Importance of Addressing Chronic Absence in the Early Grades* 13 (National Center for Children in Poverty Sept. 2008);

8) **When students improve their attendance rates, they improve their academic prospects and chances for graduating**. (See Melissa Roderick, et al., *Preventable Failure: Improvements in Long-Term Outcomes when High Schools Focused on the Ninth Grade Year* (The University of Chicago Consortium on Chicago School Research April 2014);

9) **Attendance improves when schools engage students and parents in positive ways and when schools provide mentors for chronically absent students**. (See Stacy B. Ehrich, et al., *Preschool Attendance in Chicago Public Schools: Relationships with Learning Outcomes and Reasons for Absences* 38-39 (The University of Chicago Consortium on Chicago School Research May 2014);

10) **Most school districts and states don't look at all the right data to improve school attendance.** They track how many students show up every day and how many are skipping school without an excuse, but not how many are missing so many days in excused and unexcused absence that they are headed off track academically. (See Charles Bruner, et al., *Chronic Elementary Absenteeism: A Problem Hidden In Plain Sight*, (AttendanceWorks, Child & Family Policy Center November 2011).

20.7.4 Educational Terminology Helpful to the Court

The intersection of the education system and the legal system requires judges and hearing officers to be familiar with terminology often utilized in the educational setting. In dependency cases involving truancy, the following terms and acronyms are often utilized:

1) **Individualized Education Plan (IEP):** These plans are learning or emotionally based and are provided to a child who is disabled or gifted. A school district has a responsibility under "Child Find" for children thought to be eligible for special education services and/or accommodations. 22 Pa.Code § 14.121. A student can have one or both types of IEPs and each IEP must be re-evaluated on a yearly basis by the school district. An interesting challenge with habitually truant children is that classroom observation is needed and a lack of classroom time is the root of the truancy problem;

2) **504 Plan or Accommodation**: The Section 504 regulations require a school district to provide a free appropriate public education (FAPE) to each qualified student with a disability who is in the school district's jurisdiction, regardless of the nature or severity of the disability. 29 U.S.C. § 794. Under Section 504, FAPE consists of the provision of regular or special education and related aids and services designed to meet the student's individual educational needs as adequately as the needs of nondisabled students are met. (See Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794);

3) **School Based Behavioral Health (SBBH) Services**: SBBH services bring together schools, county mental health programs and community resources to develop a continuum of services that enable children to have their educational and mental health needs met within their school districts. *School-Based Behavioral Health (SBBH),*

Commonwealth of Pennsylvania, https://www.pa.gov/agencies/dhs/resources/mental-health-substance-use-disorder/school-based-behavioral-health.html (last visited Dec. 16, 2024);

4) **Homebound Instruction**: A school district, area vocational technical school, charter school, independent school, private school, or non-public school may temporarily excuse a student from compulsory attendance on account of illness or other urgent reasons and provide that student homebound instruction while he or she is excused from school. Regulations require that the term "urgent reasons" be strictly construed not to permit irregular attendance at school. 22 Pa Code § 11.25. Homebound Instruction is NOT cyber school at home or homeschooling by a parent. Both of these modes of instruction are governed by different rules and regulations promulgated by the Pennsylvania Department of Education. Homebound instruction requires a physician to complete specific documentation and submit it to the school district.

5) **Cyber Charter School**: There are many alternatives to in-person instruction via Cyber School. However, some cyber charter schools are operated by a public school district and some cyber charter schools are operated by private entities. Some cyber schools offer **synchronous learning** or remote learning that happens in real time with the interaction between the teacher and students that occurs in a face-to-face environment or in a virtual classroom setting. **Asynchronous learning** refers to courses where students access course materials on their own time. There is no set class time and a student is adjudged to be truant based upon individualized attendance policies of the charter cyber school. For instance, a cyber charter school may require a student to access learning for a minimum number of hours per week to achieve attendance requirements. Another cyber school may require all course work to be submitted before a certain time each day in order to avoid an unexcused absence.

6) **Student Attendance Improvement Plan (SAIP) and Student Attendance Improvement Conference (SAIC)**: A school must convene a school attendance improvement conference (SAIC) when a child is habitually truant, i.e. he or she has accrued six (6) unexcused absences from school. The outcome of the conference shall be documented in a written school attendance improvement plan (SAIP). 24 P.S. § 13-1333(b)(2).

20.7.5 Truancy Diversionary Court Programs

Many judicial districts in Pennsylvania have created diversionary court programs in an effort to avoid an adjudication of dependency. As stated, quite often, truancy is a byproduct of a larger issue or set of issues at work within a child's home. In establishing either "in-house" truancy prevention programs or by contracting with independent providers to address truancy prevention and remediation, child welfare agencies have successfully aided families in remedying not only truancy concerns but the mental health, substance use, or transportation issues, e.g., that were the root of the truancy problem. This effort to front load services and address the problem through the creation of an action plan can significantly reduce the number of dependency adjudications.

Each truancy court model is unique to the needs and available resources within a given judicial district. Some judicial districts have created programs that solely involve the magisterial district judge system. Other judicial districts employ a multi-tiered approach where the magisterial district judge makes a referral to the child welfare agency after truancy prevention methods have failed, and the matter is then addressed at the Court of Common Pleas level. In this model, a diversionary court case is initiated by the solicitor of the child welfare agency. Other county-based models involve informal school-based presentations from the courts and child welfare agency personnel to increase awareness of the importance of school attendance. However, if a judge chooses to address the issue of truancy amid myriad examples of intervention techniques, the impact remains the same – children return to school to receive the education that they deserve after diversionary programs have removed or lessened specific barriers to education.

20.8 Congregate Care

Courts are required to make a finding at each hearing that the youth is placed in the least restrictive setting. Congregate care, a placement setting whereby multiple unrelated children reside with 24-hour supervision, is the most restrictive type of placement for dependent children and includes:

- Shelter (a setting that provides temporary care for a child);
- Group Home (a setting that provides 24-hour care for 7-12 children);
- Residential Facility (a setting that provides 24-hour care to 12 or more children);
- Residential Treatment Facility (a medically necessary setting that provides 24-hour care and therapeutic intervention to children with mental or behavioral health issues or special needs upon recommendation of a doctor).

It should only be used when all other placement options have been considered and ruled out, with supporting reasons why there are no less restrictive alternatives available. Pa.R.J.C.P. 1242(C)(3)(c). Statistics show that outcomes for youth placed in congregate care facilities are poor.

20.8.1 Factors to Consider Prior to Placement

There are several factors a court should consider before ordering placement in a congregate care facility. These should be explored fully in a hearing:

- Have all kin and contacts identified through family finding been contacted and considered as placement options?
- Have all potential foster care options been contacted?
- What services will be provided to the child at the facility that cannot be provided in a community placement? What are the qualifications of the individuals providing the services?
- What is the distance between the facility and the child's family and support?

- What are the academic options? Children in placement must remain in their home school unless the court finds that it is not in the best interest of the child. Pa.R.J.C.P. 1148(B). If the court finds that the child shall not remain in their home school, next, the judge should consider other educational options. A foster child, including children in congregate care, must be schooled in a public school unless the court finds a public school not to be in the child's best interest. Pa.R.J.C.P. 1148(C). These reasons should be placed on the record. If public school is not in the child's best interest and the child will attend an on-grounds school, will the child receive academic credits that transfer to the child's home school upon discharge, and will the child be able to advance to the next grade level? Will the child's instruction come from teachers or a computer?

20.8.2 Visitation

Visitation with family and kin should be ordered and not left to the discretion of a facility. If the facility is a distance from the youth's family and supportive kin, the facility or agency should be ordered to assist the family with visitation by providing gas cards, hotel vouchers, or transportation. The caseworker is required to visit the child at the facility at least once per month and may be able to transport the family.

Visitation is part of all permanency plans. The court is required to make findings in each order that the agency has made reasonable efforts to finalize the permanency plan, so visitation should be addressed in all orders.

Several facilities place conditions on visits with family, especially home passes, via some tier or level system. Unless the facility/agency can articulate safety reasons why off grounds visits and home passes are not appropriate, visits should be ordered. Home pass safety factors may include drug/alcohol relapse, violence, or elopement.

KEY POINT REGARDING VISITATION

Visitation with family and kin should NEVER be used by a facility, the courts, or an agency as a sanction or reward in response to a youth's behavior. For safety reasons, there may be limitations on visits such as supervised or on-grounds visitation but contact with family/kin should not be denied.

Some facilities have black-out periods. When a child is placed, a facility will require a period of time (from a week to a month typically) when the child can have no contact with their family, friends or kin. The facility will argue that this gives the child time to adjust to the facility. **Courts should seriously question this practice.** A child who is placed

in congregate care usually has a high Adverse Childhood Experience (ACE) score and has experienced significant trauma in his/her life. It is difficult to imagine how further isolation from everything with which a child is familiar will benefit the child.

20.8.3 Telephone Calls

Children should be permitted frequent telephone contact with family/kin. Some facilities limit a youth's phone calls. However, a court should consider the number of supporting family/kin in a child's life and order weekly contact with these people regardless of the facility policy. **Telephone calls, as with visitation, should not be used as a reward or sanction for the child's behavior.**

Youth should **ALWAYS** have unlimited telephone access to their attorney, Guardian *Ad Litem,* and caseworker. These calls should **NOT** be monitored in any way by the facility.

20.8.4 Age and Developmentally Appropriate Activities

Most agencies have funding sources or contacts to assist children with things such as tickets, dresses, and tuxedos for prom, music instrument rental, and transportation. Facilities like the YMCA often have scholarships for children in placement. Art lessons, dance lessons, and martial arts lessons may be great ways for children to develop skills and practice social skills at the same time. Payment for them should not preclude a child from placement from these typical activities. Overnight stays with friends, dates, and spending time with friends are all typically appropriate activities for youth. Judicial officers should ensure that the agency is supporting child involvement in some kind of safe activity that promotes positive social skills and develops interests, regardless of placement. (See Pa.R.J.C.P. 1608(d)(1)(xvi) and comment to the rule.)

Although psychiatric institutions are exempt from the statutory requirement to provide age and developmentally-appropriate opportunities/activities, the court should still consider ordering the agency and facility to provide them unless safety factors indicate they are not appropriate.

20.8.5 Transition Back to the Community

If a child is ordered into congregate care, a plan to return the child to the community should be developed at the initial placement. This should include the involvement of:

1) Family if the goal is reunification;

2) Kin if the child is expected to be returned to kin other than the parents; or

3) Foster family if the child is not likely to be returned to family or kin.

The facility and agency should be ordered to include family in the child's treatment at the facility from the beginning of placement. Services should be identified and initiated

in the home before the child's discharge so that there is no lapse in services between the facility and the community. The services should address the factors that led up to the need for congregate care placement and should be designed to prepare the family for the child's return and prevent the child from returning to congregate care after he/she is discharged. Hopefully, the issues necessitating placement will be eliminated upon the child's return to the community.

Pre-placement visits of increasing duration can help facilitate a successful transition for a child from congregate care into a family with whom the child has never lived. Pre-placement visits offer an opportunity for the child to learn about his/her potential placement family and the family to learn about the child. The child should be able to contribute an opinion about the possible placement. Pre-placement visitation is a trauma-informed strategy that allows the child to slowly become acclimated to the new family and community, decreasing the stress and anxiety that accompanies the unknown.

Best Practice — Congregate Care Placement with Delinquent Youth

Courts should keep in mind that most often dependent youth placed in congregate care facilities will also be placed with medium and high-risk delinquent youth. Since dependent youth have not been adjudicated of committing any crime, they should not be treated in the same manner as delinquent youth. Courts should inquire as to how the facility differentiates between the delinquent youth and dependent youth especially as it relates to visitation, telephone calls and off-grounds activities.

20.8.6. Transition to Successful Adulthood

Courts should ensure that facilities/agencies are providing the child with skills necessary for transition into adulthood and independent living. Children in congregate care should be able to seek and maintain employment. They should be provided with the experience of making their own decisions in safe and appropriate ways. They should be able to study the driver's safety manual and learn to drive. Opportunities should be provided for them to explore the possibility of attending college, including college visits and preparation classes for SAT and ACT exams. (For more information, see Chapter 13: Permanency Hearing, Section 13.6.10: Services Needed to Help Older Youth Transition to Independence.)

20.9 Transitioning Youth

Approximately 23,000 youth age out of the foster care system in the United States every year. *51 Aging Out of Foster Care* Statistics, National Foster Youth Institute, https://nyfi.org/51-useful-aging-out-of-foster-care-statistics-social-race-media (last visited

Dec. 13, 2024). On average, about 1,100 of foster children age out of the foster care system every year in Pennsylvania. *Facts*, Pennsylvania State Resource Family Association, https://www.psrfa.org/being-a-foster-parent/the-facts/ (last visited Dec. 13, 2024). 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: Outcomes at Age 26,* 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 and when employed they earn significantly less money;
- Are three times as likely to have economic hardships, including eviction and food insecurity;
- Have a substantially higher prevalence of serious physical health, mental health, and substance abuse problems that interfere with their daily functioning;
- Are more likely to have been pregnant or have fathered children, less likely to receive prenatal care, and more likely to report unwanted pregnancies; and
- Have considerably higher rates of criminal involvement and incarceration.

Mark E. Courtney, et al., (Chapin Hall at the University of Chicago 2011).

Avoiding these kinds of outcomes calls for effective services designed to facilitate the 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 youth in making a successful transition to adulthood.

In 1999, the Foster Care Independence Act (FCIA) amended the Chafee Foster Care Independence Program (CFCIP) to provide 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 21: Overview of Federal and State Child Welfare Legislation.) The CFCIP was amended in 2002 to include the Educational and Training Vouchers Program (ETV). The ETV was designed specifically to provide resources to meet the education needs of transitioning youth.

In addition to hard skills, such as employment services and housing needs, the court and agency must provide for a youth to develop and maintain connections to supportive adults regardless of placement type. 67 Pa.C.S. § 7504(b)(4), Pa.R.J.C.P. 1608(d)(1)(xi)(F). 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.

20.9.1 Independent Living Services for Transitioning Youth

Foster Care Independence Act (FICA) and the Juvenile Act require all youth in care who are age fourteen or older and subject to an order transferring legal custody to receive age and developmentally appropriate services to help the child plan and prepare for adulthood. 67 Pa.C.S. § 7505. Likewise, youth who are adjudicated dependent and living at home are also eligible for independent living (IL) services. Youth who were discharged from placement on or after their fourteenth birthday are eligible for IL aftercare services (discussed more fully at the end of this section at 20.8.5).

IL is not a permanency goal, of course, and providing IL services does not change the child's permanency plan. Having every child grow up in a family setting is still the ideal. However, every youth in care age fourteen or above should receive IL services designed to provide them with skills they will need in adulthood. The judge or hearing officer should ensure these youth are given a written description of the programs and services that will help them prepare for the transition to living independently. These services may include:

- educational training and counseling;
- career counseling;
- job readiness and job search;
- budget/financial management skills;
- home management skills;
- sex education and family planning services;
- housing search and assistance;
- self-advocacy skills;
- individual and family counseling;
- daily living skills; and
- mentoring.

"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 service 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. IL Plans allow for the customization of services to meet the needs of the youth. More information on the IL services in your county can be provided by the county child welfare agency.

The court and 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, hearing officers, and attorneys have substantive knowledge of what children 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 that are underway, an inquiry as to whether they need to be continued, and identification of which IL goals have been completed.

20.9.2 Transition Planning for Older Youth

As dependent youth approach adulthood, there are many daunting challenges they must face. Transitional planning and the identification and engagement of family and other supportive adults can make the challenges seem achievable. Beginning no less than six months before the child will become 18 years of age, the county shall develop a transition plan in collaboration with the child and, at the child's election, other supportive adults. 67 C.S. § 7505(a)(2). Before the court can terminate its supervision of a child who is 18 years of age or older, a hearing shall be held at least 90 prior to the child turning 18 years of age. Pa.R.J.C.P. 1631(e). 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 workforce and employment services. 42 U.S.C. § 675(5)(H). Pursuant to 67 Pa.C.S. 7505(b), a transition plan shall include: (1) Identification of or detailed options for a suitable place of intended residence. (2) A list, with contact information, of supportive adults and family members. (3) Identification of local opportunities for mentorships and continuing social support. (4) A plan or detailed options for employment, job training or continuing education. (5) Documentation of the child's possession or relevant documents or, if the child does not have possession of the documents, an explanation of the reasons why the child does not have the documents and detailed instructions on how the child may obtain the documents. If the child has a goal of APPLA, see Chapter 13.6.15 Special Findings When the Permanency Goal is APPLA.

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 transition planning 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 ninety days before a youth ages out of the system, the judge or hearing officer should require plans to be presented to the court for early review whenever possible. This will ensure that the judge or hearing officer, 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 officer);
- A sense of security that may have been provided by their child welfare system involvement. Even though youth may have resisted or disliked their environment while in foster care, many experience a loss of some security when they are left alone in an adult world with no support;
- Medical Coverage: in most states, medical coverage will end between the ages of 18 and 19;
- Housing: While in care the state must guarantee a youth's housing needs are addressed, but after leaving, a youth is left to find housing on their own or through a supportive housing program.

Kathleen McNaught & Lauren Onkeles, *Improving Outcomes for Older Youth: What Judges and Attorneys Need to Know* 2 (National Resource Center for Youth Development 2004).

Finally, judges and hearing officers should take the opportunity to explore the youth's backup 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 15: Termination of Court Supervision).

20.9.3 Educational Issues for Transitioning Youth (Eighteen & older)

As discussed in Chapter 13: Permanency Hearing, Section 13.6.10: Services Needed to Help Older Youth Transition to Independence and consistent with Pa.R.J.C.P. 1608(xi), the court should determine beginning at age fourteen, 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 1631(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 on 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 or 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 or 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 vocation, 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 for occurrences such as severe weather, natural disasters, accidents, or crimes. Older youth can be afraid that if they reveal a problem, they 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 fourteen, 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.

20.9.4 Youth Opting to Remain in Care Past Age Eighteen

Many youth are not aware of their right to remain in care past the age of majority. The Juvenile Act defines a child as an individual who is under the age of twenty-one years and was adjudicated dependent before reaching the age of eighteen 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 eighty 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 “**Child**”(3). See also 42 Pa.C.S. § 6351(j).

When a youth chooses to remain in care past age eighteen, 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 campus can return to the foster home over the holidays and between semesters. Financial support 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)**. Supervised Independent Living and Independent Living are sometimes used interchangeably, but they are two dramatically different types of services. SIL is a specific placement type. In a 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 their placement when the goal is Another Planned Permanent Living Arrangement. This 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 eighteen, 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.

20.9.5 IL Aftercare Services

Aftercare services are available to youth ages sixteen to age twenty-one 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.

20.10 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* adopted by the Juvenile Court Judges' Commission in 1999. (See 29 Pa.B. 3633.)

20.10.1 CASA Appointments

The judge or hearing officer may appoint or discharge a CASA at any time during the proceeding or investigation regarding dependency. Issues judges or hearing officers 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 parents uncooperative?

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. David Youngclarke, et al., *A Systemic Review of the Impact of Court Appointed Special Advocates,* 5 Journal of the Center for Families, Children & the Courts 109, 121 (2004). However, judges and hearing officers should be aware that CASA volunteers are a limited resource and should appoint them based on the complexity and needs in a particular case or for a particular child.

20.10.2 CASA Duties and Responsibilities

Generally, CASAs review records, research information and interview everyone 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. Perhaps one of their most important roles is developing a relationship with the child to better understand their needs and desires. This enables the CASA volunteer to make recommendations to the court that are truly in the child's best interest. 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 CASA, as listed below, are delineated in 42 Pa.C.S § 6342:

- have full access to 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 as friend of the court may help reduce potential conflict or confusion. As the *Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* point out, conflict or confusion may sometimes arise between CASAs and GALs, presenting the court with opposing points of view. Gatowski, *supra*, at 47. 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.

20.10.3 CASA Resources

The National CASA/GAL Association for Children 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 resources for judges. These can be found under the tab Advocating for Children by selecting Resources for Judges.

The Pennsylvania Court Appointed Special Advocates Association 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.

20.11 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. In fact, regular meetings between the judge and child welfare administration are useful for identifying gaps in services and ensuring the quality of services already in place.

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 Human Services' 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. These costs may include, but are not limited to, Juvenile Act Proceedings costs (including reimbursement for eligible GAL services in dependency cases, assessments, etc.), prevention services, in-home services, foster family services, community-based and institutional services, detention, and secure residential services.

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, court 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.

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 intellectual disability 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.

While courts obviously do not directly oversee the child welfare agency, courts do order needed services in dependency matters and oversee these cases. Judges can provide a unique perspective regarding service needs and gaps. A review of the NBPB is intended to provide the agency insight into the court's perspective and expectations, allowing the agency an opportunity to plan and budget accordingly. In addition, a portion of county legal service costs (i.e., solicitor, Guardian *Ad Litem*, and CASA) can be included in the NBPB. Finally, new statutes, procedures, and legal requirements often have associated legal costs of which the court may be aware. Sharing this information with the county agency can greatly assist in the NBPB development.

In March/April of each year, the Office of Children, Youth and Families (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 headquarters 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.

20.12 Trauma

20.12.1 Trauma Overview

> ***"If we save the body, but in so doing, destroy the mind and soul, what good have we really done?"***
>
> \- Honorable Max Baer, Chief Justice of Pennsylvania Supreme Court

Trauma-informed judicial practice is paramount in dependency cases. Based on the life experiences and events bringing families into dependency court, one can easily conclude that most of the individuals who come before the judge or hearing officer experienced some form of trauma or traumatic stress. According to the *Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases,* trauma-informed judicial practice recognizes the impact that trauma has on the lives of children and their families, trauma triggers that may evoke a trauma reaction, and the vulnerabilities of trauma survivors. Gatowski, *supra*, at 144. This requires all those working within a system to possess the knowledge of both trauma and people's reactions to trauma. Beyond this understanding, trauma-informed practice requires courts, from judges to maintenance staff, to know how to effectively interact with traumatized individuals. Simple changes to the way one approaches people and the manner in which one speaks to them can make a huge difference in the responses people have. Just as trauma can pervade every area of a person's life, so too can trauma-informed practice.

Such a commitment begins with an understanding of trauma. The definition of trauma, in its simplest form, is an "event that threatens someone's life, safety or well-being." Kristine Buffington, et al., *Ten Things Every Juvenile Court Judge Should Know About Trauma and Delinquency* (National Council of Juvenile and Family Court Judges

2010). Depending on the circumstances, context, connectedness, and psychological makeup, trauma can affect individuals in many ways. For the judicial officer, it is important to note that trauma can cause neurobiological changes leading to an easily triggered fight, flight, or freeze response. The behaviors seen in the courtroom need to be considered in light of the trauma histories of the participants. Using a trauma-informed approach means considering whether trauma played a role in the behavior of the individual. It also means that all parties are treated in a trauma-informed way, presuming trauma of some sort has happened until it is known otherwise.

The federal Substance Abuse and Mental Health Services Administration (SAMHSA) has developed a set of core principles that make up trauma-informed systems. A court's culture, reflecting these six values, recognizes the importance of people, both those being served and those serving. The more ingrained these principles, the more attuned the system is to the precept, "first, do no harm."

The six core principles are:

- **Safety:** participants and staff feel physically and psychologically safe.
- **Peer support**: peer support and mutual self-help are vehicles for establishing safety and hope, building trust, enhancing collaboration, and utilizing lived experience.
- **Trustworthiness and transparency**: decisions are conducted with the goal of building and maintaining trust.
- **Collaboration and mutuality:** importance is placed on partnering and leveling power differences.
- **Cultural, historical, and gender issues:** cultural and gender-responsive services are offered while moving beyond stereotypes/biases.
- **Empowerment, voice, and choice:** organizations foster a belief in the primacy of the people who are served to heal and promote recovery from trauma.

Strategic Plan: Fiscal Year 2023-2026, National Mental Health and Substance Abuse Library, Substance Abuse and Mental Health Services Administration 7 (2023).

These core principles are consistent with the *Mission and Guiding Principles for Pennsylvania's Child Dependency System* (2009). They reflect the mission of Pennsylvania's dependency system: protecting children, promoting strong families, and promoting child well-being, leading to timely permanency. The principles also underscore Pennsylvania's strengths-based and family-engagement approach to children and families in the dependency system.

20.12.2 Trauma-Informed Courtroom

The National Council of Juvenile and Family Court Judges (NCJFCJ) developed a working definition of trauma-informed courts: "a system that ensures physical and social environments are sensitive to reducing stress, practices reflect an understanding of trauma triggers, and policies are designed to help promote healing. Inherent in this approach is that all system professionals, children, and families benefit from the focus on safety and well-being that is instilled in trauma-responsive environments." Gatowski, *supra*, at 78.

Judges and hearing officers should be keenly aware that traumatic experiences may impact a child's or parent's responsiveness to services and their ability to communicate effectively with their attorney, caseworker or the court. To counter these effects, dependency courts across the Commonwealth are striving to be trauma-informed and trauma-responsive.

Trauma-informed and responsive courts integrate the following elements which can reduce the trauma and stress associated with the court process:

- ***Safety****.* Everyone has a right to feel safe in courthouses and court-operated facilities. Judges and hearing officers, with the assistance of the deputy sheriff and court staff, should create an environment of safety, including not sitting a victim of domestic violence or sexual assault next to the alleged perpetrator, using video or teleconferencing when appropriate, taking testimony *in camera* and ensuring that the deputy sheriff or courthouse security is visible, but not intimidating, at all times.

Best Practice — Trauma-Informed Courtroom Procedures

Courtroom Experience	Reaction of Trauma Survivor	Trauma-Informed Approach
Individuals who are frightened and agitated are required to wait before appearing before the judge.	Increased agitation, anxiety, acting out.	Clearly provide scheduling information in the morning so participants know what will be expected of them and when. To the greatest extent possible, prioritize who appears before you and when.
A judge conducts a sidebar conversation with attorneys.	Suspicion, betrayal, shame, fear.	Tell the participants what is happening and why.

Essential Components of Trauma-Informed Judicial Practice, SAMHSA's National Center on Trauma-Informed Care and SAMHSA's National GAINS Center for Behavioral Health and Justice: Essential Components of Trauma-Informed Judicial Practice 6 (Substance Abuse and Mental Health Administration 2013). (See this resource for additional trauma-informed courtroom procedures.)

- ***Physical Environment.*** Ideally, a dependency courtroom should be stress reducing. Courtrooms that are more child and family-friendly can go a long way to decreasing trauma. Consider providing pens and notebooks for parents and older children to enable them to take notes. Crayons and coloring books can reduce stress for younger children during court hearings. Also, consider providing simple conveniences like boxes of tissues and snacks within reach. People, including attorneys, court staff, and sheriff's deputies, walking in and out of the courtroom during a hearing can cause stress to the parties. Develop a policy on entering the courtroom during court hearings. Finally, minimize the space between the judicial officer and the participants. Consider coming off of the bench and holding the hearing at a table. If that isn't practical, come off of the bench at the beginning of the hearing to greet the parties and thank them for coming.

Best Practice — Trauma-Informed Courtroom Environment

PHYSICAL ENVIRONMENT	REACTION OF TRAUMA SURVIVOR	TRAUMA-INFORMED APPROACH
The judge sits behind a bench, and participants sit at the table some distance from the bench.	Feeling separate, isolated, unworthy, and afraid.	The judge comes out from behind the bench and sits at a table in front.
Multiple signs instruct participants about what they are not allowed to do.	Feeling intimidated, lacking respect, untrustworthy, treated like a child.	Eliminate all but the most necessary signs; word those that remain to indicate respect for everyone who reads them.
A court officer jingles handcuffs while standing behind a participant.	Anxiety; inability to pay attention to what the judge is saying; fear	Eliminate this type of nonverbal intimidation. Tell court officers not to stand so close. Respect an individual's personal space.

Essential Components of Trauma-Informed Judicial Practice, SAMHSA's National Center on Trauma-Informed Care and SAMHSA's National GAINS Center for Behavioral Health and Justice: Essential Components of Trauma-Informed Judicial Practice 8 (Substance Abuse and Mental Health Administration 2013). (See this resource for additional trauma-informed courtroom environment.)

- ***Timely Hearings.*** Long periods of waiting in the courthouse can increase or cause trauma and anxiety. Starting hearings on time can reduce much of the trauma and anxiety associated with waiting. During wait times, ensure that victims and

perpetrators can wait in separate areas. Have a staff person visible to increase the feeling of safety. Provide distractions to waiting, such as magazines, books, and toys for children to play with. Have a children's waiting room that is filled with things for children to do and introduce therapy/facility dogs into waiting areas. Strive for time-specific scheduling of hearings.

• ***Trauma-Informed Hearings****.* A trauma-informed court hearing includes the right to be heard, emphasizing strengths, explaining decisions on the record, and making timely decisions. At the onset of a hearing, the judicial officer should ensure that there are no language barriers. The judge or hearing officer should explain the purpose of the hearing. Utilizing Motivational Interviewing techniques helps the judicial officer receive the best information from the parties. Judicial officers should understand that what may appear to be hostility or non-cooperation may just be a symptom of the underlying trauma. Judicial officers should set the tone for everyone in the courtroom. Require and model respectful, positive, and encouraging interactions. Link concerns to concrete examples and, rather than asking "why?" move to planning for a different action/outcome next time. Hold all parties accountable when needed. Doing so creates an atmosphere of procedural fairness. Make sure that everyone leaves the courtroom knowing what they need to do prior to the next hearing. Help prioritize multiple tasks and orders. Set clear expectations and let parties ask questions about those expectations so they understand.

Best Practice — Managing Anxiety in the Courtroom

Having a highly anxious person in the courtroom can be difficult, both from the standpoint of getting reliable information and clear understanding of expectations. A continued escalation in anxiety could lead to defensive behavior. Judicial officers have an opportunity to calm things down. Take a brief recess, offer water to sip (through a straw can be especially soothing to children), reposition the facility/therapy dog next to the anxious person. Judges and hearing officers can even lead the courtroom through a calm breathing exercise. For more information on how to do that, see the Trauma Benchcard.

- ***Trauma-Responsive Services***. Judges and hearing officers should set the expectation that families be treated in a trauma-responsive manner. Judges and hearing officers should order services that recognize the impact that trauma has on the lives of children and families and the potential triggers and vulnerable nature of children and families who have been exposed to trauma. Judicial officers should consider ordering services that are specific to gender, sexual orientation, or identity.

When there are multiple services available, allow children and families to have a choice with whom they work. When necessary, trauma treatment should occur by professionals trained in one of the evidence-based models for trauma treatment.

Best Practice — Court Facility Dogs

Therapy dogs provide comfort and security during dependency proceedings. Their presence is a calming influence and helps many individuals relax, leading to a reduction in stress symptoms. Benefits include better information from participants, a sense of connectedness, and soothing through touch.

In 2024, 22 jurisdictions had facility dogs. Many different therapy dog programs exist. Some examples are **Courthouse Companionship — Roxy Therapy Dogs** (Bucks County), **Therapy Dogs United** (Erie County), **and 4 Paws 4 A Cause** (Venango County). For more information about the benefits of facility dogs, see **Comfort Dogs for Courts- OCFC.**

20.12.3 Trauma-Informed Communication

Judges and hearing officers should consider trauma when directing comments and questions to parties. Using a trauma lens approach to interacting with people means moving away from blaming or shaming communication and instead using language that conveys understanding and hopefulness, motivating people towards change. Be careful in addressing traumatic experiences, and use a soothing and gentle voice. Watch for signs of people becoming triggered by hearing about past traumatic events. Examples of some helpful statements are:

- "What has happened to you?"
- "What do you think?"
- "What can we do to support you in solving the problem?"
- "Please."
- "Thank you."
- "Your commitment really shows."
- "It's clear you are trying."
- "I read in the court report that you followed last month's visit schedule without any problems. This helps your child."
- "I'd like to refer you to a doctor who can help us better understand how to support you."
- "I can see you are confused."
- "I can hear you are frustrated."

- See *Essential Components of Trauma-Informed Judicial Practice*, SAMHSA's National Center on Trauma-Informed Care and SAMHSA's National GAINS Center for Behavioral Health and Justice: Essential Components of Trauma-Informed Judicial Practice (Substance Abuse and Mental Health Administration 2013).

Best Practice — Trauma-Informed Courtroom Communication

JUDGE'S COMMENT	PERCEPTION OF TRAUMA SURVIVOR	TRAUMA-INFORMED APPROACH
"Your drug screen is dirty."	*"I'm dirty.* There is something wrong with me."	"Your drug screen shows the presence of drugs."
"I'm sending you for a mental health evaluation."	"*I must be crazy*. There is something wrong with me that can't be fixed."	"I'd like to refer you to a doctor who can help us better understand how to support you."

Essential Components of Trauma-Informed Judicial Practice, SAMHSA's National Center on Trauma-Informed Care and SAMHSA's National GAINS Center for Behavioral Health and Justice: Essential Components of Trauma-Informed Judicial Practice 4 (Substance Abuse and Mental Health Administration 2013). (See this resource for additional information on courtroom communication.)

Non-verbal communication is equally important. Look at people when they are talking and listen without judgment or bias. Consider body language. Does body language convey attentiveness? Make eye contact frequently, but don't stare. Don't read or look at the computer screen while people are talking. Actively listening shows respect and concern.

20.12.4 Services for Trauma

- Screening and Assessment:

  Many screening tools have been developed to help professionals quickly decide which people have been exposed to traumatic events. Some tools can be administered without training, while others require some form of training. Examples of screening tools and other useful information can be found at the The National Child Traumatic Stress Network |(NCTSN) website.

  One quick measure of traumatic/stressful events children have been exposed to is the Adverse Childhood Experiences (ACEs) scale. The ACE score is a number from one to ten that helps judges and hearing officers understand the urgency of further assessment for trauma. The higher the number, the more adverse experiences in the life of a child. Research using the ACE score shows that high ACE scores are associated with poorer life outcomes, physical problems in later

life, and an increased likelihood of mental health issues. For more information on ACEs, see Chapter 2: Act 118 of 2022: Family Finding, Section 2.2: The Importance of Meaningful, Life-long Connections. Assessments are formal evaluations done by professionals to provide information about a person's trauma history, its effect on their life, current functioning, and recommendations about treatment needs. If judicial officers have specific questions that they would like answered, make sure the clinician doing the assessment knows what information is needed. For example, judicial officers may want to know how trauma is affecting a child's current behavior and what can be done to address those behaviors.

- Evidence-Based Treatments for Trauma:

  There are specific treatment modalities that address trauma issues and those that are trauma-informed treatment. These are not the same. Trauma therapy addresses the direct issues of a traumatic experience and includes core elements such as educating clients about trauma, increasing their sense of safety, identifying their trauma triggers, developing emotional regulation skills, developing trauma-informed parenting skills, addressing grief and loss, and processing traumatic memories. National Child Traumatic Stress Network, Justice Consortium Attorney Workgroup Subcommittee, *Trauma: What Child Welfare Attorneys Should Know* 13 (2017). Trauma-informed treatment generally means that clinicians and other professional staff have been trained in aspects of trauma and how to approach/respond to people from a trauma perspective but are not necessarily trained in treating Post-Traumatic Stress Disorder or other problems related directly to the trauma.

  Trauma-informed courts should order therapeutic services that are specifically geared to address the issues of children and parents who have been victims or exposed to traumatic events when needed. Traditional therapy and interventions may not be sufficient. If such resources do not exist within the community, the court should collaborate with the agency and other system partners to develop these needed services. More information about trauma treatment and interventions can be found on the NCTSN website at Interventions | The National Child Traumatic Stress Network.

20.12.5 Secondary Traumatic Stress and Vicarious Trauma

Judges and hearing officers face many challenges during the course of a work week. Many are handled with skill and knowledge. Some are handled with finesse and professionalism. Dependency judges and hearing officers face the challenge of helping children and families, and the rewards are innumerable. All too often, dependency judges and hearing officers carry thoughts or mental images with them of the abuse and neglect children have endured or the violence the children may have been witness to in their homes. While it is easy to presume that children and parents who come into the courtroom have experienced trauma, little thought is given to how the repeated exposure to these

accounts affects judges, hearing officers, and others who are regularly in the courtroom and what can be done to mitigate its impact.

This repeated exposure can cause secondary traumatic stress (STS). STS is behavioral and emotional responses resulting from indirect exposure to trauma. These responses can mimic the symptoms of Post-Traumatic Stress Disorder. Vicarious trauma (VT) is often used interchangeably with STS, but it has been described as the result of many incidents of STS. *Self-Care Toolkit,* Trauma-Responsive Courts Curriculum, Office of the State Courts Administrator Office of Court Improvement (www.flcourts.org Aug. 2016). Symptoms that may present themselves when individuals are suffering from either STS or VT include:

- Avoidance,
- Hypervigilance,
- All-or-nothing thinking,
- Argumentativeness or irritability,
- Numbing (often with the help of drugs or alcohol),
- Negative thinking,
- Strained personal relationships.

Christina Rainville, *Understanding Secondary Trauma: A Guide for Lawyers Working with Child Victims* 34.9 ABA Child Law Practice 129, 133 (Sept. 2015).

These symptoms may be labeled as workplace problems or poor performance but, in many cases, are the result of STS/VT. *Id.* Other symptoms are physical in nature and can include exhaustion, headaches, insomnia, and chronic illness. *Id.* It is important to attend to the issue of STS when symptomology is present.

One way to attend to issues of STS is to increase protective factors, such as resiliency, that mitigate the effects of STS. Resiliency is a term used to describe an individual's ability to withstand or bounce back from adversity. Some resiliency is inherent to a person's personality and psychological makeup. Building resiliency takes attentiveness to things that enhance a person's sense of self and those that bring peace and happiness to an individual. The process of attending to these things is known as self-care. Self-care is extremely important and will vary from person to person. When judges and hearing officers are faced with red flag symptoms indicating STS/VT, carefully examining self-care might prompt actions that can be helpful. Self-care items to consider include:

- Regular exercise,
- Good nutrition,
- Activities and hobbies,
- Connections with family, friends and community,
- Clear work boundaries,
- Taking breaks and vacation time from work.

The task is to gauge how well you are taking care of yourself and meeting your own needs for positive interactions and activities that bring pleasure, joy, and peacefulness. Make time to add in any of these things that are missing. Strategies that may be useful on an individual level include:

- Practice mindfulness or relaxation,
- Consider yoga,
- Laugh. When was the last time you watched a funny movie or read a funny book?
- Make a list of all the enjoyable and meaningful things about work,
- Recognize what you can't control and take control of what you can,
- Get a massage,
- Look at possibilities, not barriers,
- Get up a little earlier in the morning; it takes the pressure off,
- Talk to a friend or colleague,
- Get professional help when needed.

On an organizational level, judges and hearing officers can work to create a trauma-informed work culture that is supportive of individuals and fosters a sense of collaboration and shared responsibility. Isolation compounds stress so collaboration can be an effective tool in combatting STS/VT. Use your local Children's Roundtable to generate ideas about creating a positive work environment focused on wellness. Recognize successes, even the small ones. Have regular discussions about STS/VT and attend trainings on trauma and its impact on professionals working with traumatized individuals. Check-in with colleagues and offer support.

For more information on STS/VT, see the American Bar Association's resources on trauma and legal practice, The National Child Traumatic Stress Network or books like *Trauma Stewardship: An Everyday Guide to Caring for Self while Caring for Others* by Laura van Dernoot Lipsky and Connie Burk. For confidential support, judges can reach out to the Pennsylvania Chapter of Judges Concerned for Judges at 888-999-9706 or find resources on their website at Judges Concerned for Judges | PENNSYLVANIA.

20.12.6 Complex Cases

Courts are occasionally presented with issues for which there is often little or no statutory, rule, or case law guidance. Examples of some of these are religious choices, international travel, LGBTQIA, elective medical procedures, vaccinations, tattoos and body piercings, and birth control. This is obviously not an exhaustive list, but it includes many issues presented to dependency court judges and hearing officers

Many of these issues are emotionally charged, and individuals before the court often have strong, personal opinions. In some cases, the judge/hearing officer may have a strong personal opinion on the issue. If the judge or hearing officer is unable to set aside personal beliefs to the point that impartiality, bias, or prejudging are issues, the judge or hearing officer should determine if recusal is appropriate.

Before any decision is made to grant relief, the court should insist on medical, psychological, and other relevant evidence on the issue. Ultimately the decision must be made on what is in the best interests of the child.

If the permanency plan goal is reunification, the court should give significant weight to the opinions and wishes of the parents. However, if the goal is a permanent legal custodian or adoption, the opinions and wishes of whoever is ultimately going to have legal responsibility for decisions affecting the child should be given significant weight. The court should be wary of the motives and reasons for the positions of parents and caregivers as they may reflect the desires of the person holding the position and not what is best for the child at the time the decision must be made.

The same considerations apply to evidence and testimony presented by medical or psychological experts. The court should determine whether the expert's testimony is focused on the particular child or whether the expert's personal viewpoints on an issue are influencing their opinion.

The court should consider the views of the child the same as it would any other opinion of the child. The child's age, maturity, stability, development, and intelligence should all be taken into consideration. Whether the child is being influenced by peers, parents, guardians, or others such as a caseworker or GAL should be explored. A caseworker, attorney, CASA, or other professional working with the child may be intentionally or unintentionally projecting their personal beliefs on the child.

Some factors the court should consider are:

- Will the decision place the child in unnecessary danger?
- Will the decision enhance age and developmentally appropriate activities for the child?
- Will the decision permanently impact some aspect of the child's life?
- Are there other options to the proposed/requested activity/event and have they been investigated or explored?
- Can the activity/event be delayed until the child reaches adulthood and is able to make the decision on their own?
- Will the activity/event prevent future problems or issues?

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BEING TRAUMA-INFORMED

In the Courtroom:

Create a calm environment

Begin in a timely manner

Welcome people and thank them for coming

Insist on starting with strengths

Assume trauma

Be respectful and courteous

Use plain language

Check for understanding

Be aware of possible trauma triggers

Don't allow badgering, aggressive language or intimidation

Use therapy or comfort dogs

Allow comfort objects and support people to be present

Have distractions such as snacks, coloring pages, small toys or puzzles available for the children.

Reframe a situation as an opportunity for personal growth

Use supportive and hopeful language

Outside the Courtroom:

Create safe waiting areas

Know your biases

Assess how trauma-informed the court & county systems currently are

Bring issues related to becoming trauma-informed to the local children's roundtable

Encourage development of trauma informed resources as needed

Look for the strengths in people

Take care of yourself

Foundations of Trauma-Informed Systems

Safety

~ physical and emotional ~

Choice

~ opportunities to make decisions and experience a sense of control ~

Empowerment

~ prioritizing competency, validation, and skill-building ~

Collaboration

~ working together and sharing power ~

Trustworthiness

~ built on respect and transparency ~

"The system shall recognize and address the trauma a child experiences as a result of abuse & neglect and as a result of placement."

PA Mission and Guiding Principles

USING SUPPORTIVE AND HOPEFUL LANGUAGE

- What has happened to you?
- What do you think?
- What can we do to help you solve the problem?
- Your commitment really shows.
- It's clear you're trying to change.
- Sounds like you are saying…
- What do you need to help you get to (the goal)?
- Tell me something good.
- Thank you for coming today.

CALM BREATHING EXERCISE

- Sit comfortably
- Take a slow breath in through your nose to the count of 3
- Hold breath to the count of 2
- Exhale slowly through your mouth to the count of 5
- Wait 2 seconds
- Repeat as many times as needed, typically 5 to 10 times

TRAUMA

- ⇒ An event *or*
- ⇒ A series of events *or*
- ⇒ Set of circumstances

Experienced by a person as

- ⇒ Physically harmful *or*
- ⇒ Emotionally harmful *or*
- ⇒ Life threatening

And has lasting adverse effects on a person's

- ⇒ Functioning and
- ⇒ Mental well-being *or*
- ⇒ Physical well-being *or*
- ⇒ Social well-being *or*
- ⇒ Emotional well-being *or*
- ⇒ Spiritual well-being

(SAMHSA)

Parents often have their own trauma history. Unresolved issues may lead to:

- Failure to engage in needed services
- Increase in symptoms
- Retraumatization
- Relapse
- Withdraw from service relationships
- Poor treatment outcomes
- Avoidance or withdraw from supportive individuals including family

Building Connections: (to the child)

1. Tell me about something good that's happened recently.
2. What have you learned at school this week?
3. What is your favorite (song, sport, television show, etc.)?

To the caseworker or other professional:

1. How was the child screened for trauma?
2. Is there a need for an assessment?
3. Has there been an assessment?
4. What was the result of the assessment?
5. Have the recommendations been implemented?

If treatment for trauma was indicated:

1. Is the child currently in treatment?
2. Is the clinician skilled in providing trauma treatment?
3. Is the treatment specifically addressing the trauma?
4. How is the child responding?
5. Is the child being prescribed psychotropic medication?

   If so, ask the Blue Box Questions

WHEN A CHILD IS ON PSYCHOTROPIC MEDICATIONS

What is the child's diagnosis? Is it the correct diagnosis?

What is the medication's intended effect? Is it effective?

Are we monitoring for adverse effects?

If doing well, have we thought about tapering the medication?

What is the opinion of the treating physician?

6. Are the professionals on the case communicating and working as a team?