

Chapter 6 – Entering the Child Welfare System/Shelter Care Hearing

6.1 Overview

The child welfare system is a large, complex system with many stakeholders that work to improve the lives of children and families. The focus of the county child welfare agency is to protect children and strengthen families. Numerous families receive voluntary services from the agency, and as a result, the majority of cases served by the agency will never be seen by the court system. Only a small percentage of cases require court oversight and supervision. This court oversight and supervision may apply to children within their homes or children who have been removed from their homes.

As such, there are several ways in which children may enter the dependency system. The primary means of entry pursuant to Pa.R.J.C.P. 1200 include:

- 1) the filing of a dependency petition;
- 2) the submission of an emergency custody application;
- 3) the taking of the child into protective custody pursuant to a court order or statutory authority;
- 4) the court accepting jurisdiction of a resident child from another state;
- 5) the court accepting supervision of a child pursuant to another state's order or;
- 6) the filing of a motion for resumption of jurisdiction pursuant to Pa.R.J.C.P. 1634.

A Standard Dependency Petition is typically filed by the agency but may be filed by others through application. Pa.R.J.C.P. 1320. A Standard Dependency Petition is typically handled on a non-emergency basis and will proceed directly to adjudication and disposition.

The removal of a child from a home may be accomplished on a voluntary, cooperative basis or may be met with great resistance by the family. Although ideally, a contested removal should occur after a court hearing as to the need for such action, the circumstances usually require immediate action by the agency before a preliminary protective hearing can be arranged. Therefore, a case may come into the system through an application for a court order of protective custody. Typically, this happens in emergency situations via an oral request of the agency, in which the child is taken into protective custody when the court determines that removal is necessary for the welfare and best interests of the child. The order may be oral but must be reduced to writing within 24 hours or the next court business day. Pa.R.J.C.P. 1210(A).

While Pa.R.J.C.P. 1201 allows specified medical professionals to take a child into temporary protective custody, no child may be held longer than twenty-four hours unless the appropriate county agency is immediately notified and obtains an order permitting the child to be held in custody for a longer period. A police officer, juvenile probation officer, or the county agency may also take a child into protective custody if there are reasonable grounds to believe that removal is necessary. Pa.R.J.C.P. 1202. The agency must ensure the necessity of the child remaining in care through a shelter care application. This application may be oral but must be reduced to writing within 24 hours and submitted to the court. Pa.R.J.C.P. 1240(A). A hearing shall then be held no later than 72 hours after the child is placed. 42 Pa.C.S. § 6332.

A case may come into the system as a result of the court accepting jurisdiction of a resident child from another state or accepting supervision of a child pursuant to another state's order. (Chapter 4: Jurisdiction, Section 4.4.2: Interstate Transfers.) Lastly, a child who has been adjudicated prior to turning eighteen years of age, has had dependency jurisdiction terminated, and is under the age of twenty-one may request the court to resume jurisdiction. (See Pa.R.J.C.P 1634 and Chapter 16: Resumption of Jurisdiction.)

Best Practice — Pre-Trial Voluntary Services

Entry into the court system may be avoided, especially in situations involving truancy or medical issues, through the practice of front-loading of pre-trial services. Early intervention and the provision of services can be of great benefit in assuring children's welfare while avoiding needless court involvement. Services in such situations are voluntary, and parents are free to refuse to participate until the court has taken jurisdiction of the matter. Family cooperation and identification of needed services may be accomplished through Alternative Dispute Resolution (ADR), including mediation, facilitation, and various types of family conferencing. (See Children's Roundtable Initiative, Office of Children and Families in the Courts, *The Mission and Guiding Principles for Pennsylvania's Dependency System* 13 (2009).)

Family Group Decision Making (FGDM), the preferred practice in Pennsylvania, allows the family to participate in the decision-making process along with the child welfare agency, service providers and other interested persons. Involving the family in decision-making helps to build communication, cooperation and collaboration between the family and child welfare professionals. 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). Of course, these practices can also be used after the filing of a petition and at all stages of the case. A more detailed discussion of the use of FGDM and similar innovative practices may be found in Chapter 20: General Issues, Section 20.4: FGDM.

Some counties use expedited FGDM or other expedited family meetings prior to a Shelter Care hearing. These expedited meetings play a crucial role before shelter hearings and aim to enhance the child's safety within their own homes or, if a placement is necessary, significantly boost the likelihood of locating appropriate kinship placement. The meetings should involve more family members and other support persons than service providers, taking into consideration safety and other factors. The use of these meetings, along with appropriate implementation of any plan developed and follow-up, has significantly decreased placements, increased kinship placements, reduced trauma, and reduced or eliminated agency and/or court involvement.

6.1.1 Reasonable Efforts Determination

However a child enters out-of-home placement, the judge is required to make findings regarding the reasonable efforts made by the child welfare agency to prevent placement. Pa.R.J.C.P. 1242(C)(3)(b). This determination is directly linked to the safety threat which led to the child's placement and should be based upon the unique circumstances of each child and family.

The court has several options when making the initial reasonable efforts finding including:

- The agency provided reasonable efforts to prevent placement;
- The agency did not provide reasonable efforts to prevent placement; or
- Due to the emergency nature, it was not possible for the agency to provide reasonable efforts to prevent placement.

This initial reasonable efforts determination is distinct from future findings related to the parents' compliance and progress. The parents' efforts are not included in this initial finding. In addition, each finding carries specific meaning and consequences as described below:

The agency provided reasonable efforts to prevent placement. This finding indicates that the evidence and testimony provided to the court supports a conclusion that what reasonably could have been done by the agency to allow a child not to enter care was done. Examples might include family finding, respite services, the provision of tangible needs and in-home services, to mention a few. Important in this determination is the assurance that what was done by the agency matched the child and families' needs.

The agency did not provide reasonable efforts to prevent placement. This finding indicates that the evidence and testimony provided to the court supports a conclusion that there were things the agency could have reasonably done to prevent placement; however, for whatever reason those things were not done.

Due to the emergency nature, it was not possible for the agency to provide reasonable efforts to prevent removal. This finding indicates that the evidence and testimony provided to the court supports a conclusion that preventative services could not have been provided given the specific emergency that brought the child into care. In these instances, it is likely that the family was unknown to the agency and the safety threat was significant.

A judicial finding that the agency provided reasonable efforts to prevent placement is needed to claim Federal IV-E child welfare funding to support the cost of placement services. Congress attached this requirement to federal funding in an effort to discourage unnecessary placements and encourage the provision of reasonable services that allow children to safely remain in their own homes.

If there is a request for a no reasonable efforts to prevent placement finding, the agency may request time to bring forth additional testimony to explain what was done to prevent this initial placement and make a subsequent request for a reasonable efforts finding. The agency has 60 days from the date of initial removal from the home to obtain a reasonable efforts finding. If a reasonable efforts finding does not occur within 60 days of initial removal, federal funds cannot be claimed for the duration of the child's placement and funding of such becomes solely a county responsibility.

*** Best Practice — Reasonable Efforts ***

In instances where the court feels they do not have enough information to make a finding on reasonable efforts to prevent placement, courts should clearly identify what additional information is needed from the agency and allow the agency access to a hearing date before the 60-day deadline. This clear identification helps the agency know what additional information is needed. It also provides an opportunity to present evidence and testimony which may result in a reasonable efforts finding. The court's concerns surrounding reasonable efforts determinations can be discussed through the use of status conferences and pre-trial hearings, which will provide opportunities to allow the agency to address any issues or concerns before the next scheduled hearing.

6.2 Commencement of Proceedings

As delineated above, Pa.R.J.C.P. 1200 sets forth the different ways a case can arise on the judicial docket. These include the filing of a dependency petition, the submission of an application for emergency custody, the actual taking of the child into protective custody pursuant to a court order or statutory authority, the acceptance of jurisdiction or supervision over a case originating in another state, or resumption of jurisdiction at the child's request.

6.2.1 Voluntary Placement with the Agency

Dependency cases may also begin with the child being placed in agency custody under a time-limited voluntary agreement. As the comment to Rule 1200 explains, if custody of a child with the agency is by virtue of a voluntary placement agreement and custody will exceed thirty days, dependency proceedings must be initiated through a petition filed by the thirtieth day. If a guardian requests the return of the child and the agency refuses, then a dependency petition must be immediately filed at the time of such refusal.

While the actual agreements in a voluntary placement scenario are rarely the subject of review by the court, the required provisions to be included in such agreements are set forth in 55 Pa. Code § 3130.65. One of those provisions is that the agency is required to inform the parents or legal guardian of their right to be represented by legal counsel during conferences with the agency about voluntary placement.

6.2.2 Order for Protective Custody

Pa.R.J.C.P. 1210 outlines requirements for emergency protective custody orders. Both the application for the order and the order itself may be verbal. However, the request for an order must be reduced to writing within 24 hours. Likewise, the court's oral order must be reduced to writing within 24 hours or by the next court business day. Pa.R.J.C.P. 1210(B)(3). The court's order must specify, among other things, (1) the reasons for taking the child into protective custody, (2) whether reasonable efforts were made to prevent placement, (3) whether remaining in the home is contrary to the welfare and best interests of the child, and (4) findings and orders related to the requirements of Pa.R.J.C.P. 1149 regarding family finding. Pa.R.J.C.P. 1210(D).

Although the rule authorizing an order for immediate removal does not reference its *ex parte* nature, it is clear that the court is required to act promptly on an agency request, whether orally or by written application, to decide whether to authorize protective custody of the child. Before a court authorizes an emergency placement, it is imperative that the court make an inquiry into the efforts made to prevent placement. Reasonable efforts require the agency to continue to engage with the family to determine if the services provided are being appropriately implemented to address the primary concerns surrounding a child's safety. Continuing to engage in the same level of conduct without adequate follow-up to determine if the services are actually implemented or appropriately address the primary concerns for the safety of the child should call into question the agency's compliance with the reasonable efforts requirement. (See *In the Interest of K.M.*, 305 A.3d 116 (Pa. Super. 2023).)

6.3 Shelter Care Hearing

Once the child is removed from the home in an emergency situation, a shelter care hearing must be conducted by a judge or a hearing officer within 72 hours of taking custody. 42 Pa.C.S. § 6332; 23 Pa.C.S. § 6315(d). This is a statutory informal hearing.

Best Practice — Presiding over Shelter Care Hearings

Although judges and hearing officers are both able to hear shelter care hearings, whenever possible the judge should receive preference. The shelter care hearing is the most important hearing in the case. Having the hearing in a formal location in front of a judge can set the tone for the entire case. The judge should use this opportunity to attempt to provide the parties with an outline of the proceedings and set the tone as to what the parties can expect at this hearing and other proceedings.

Upon application or the filing of a dependency petition, a shelter care hearing must be conducted in those cases where removal of a child is planned but has not yet occurred or where a voluntary agreement is revoked by the parent and the agency intends to seek to keep the child in care.

Although in some courts the shelter care hearing has been transformed into an adjudicatory hearing, this procedure does not represent best practice. It is contrary to the carefully developed sequence of proceedings that assures adequate representation and time to reflect on the options available to parents. This sequence allows for appropriate safeguards to ensure that the well-being of the child is considered and the due process rights of the parent or guardian, as reflected in the Juvenile Act and the Juvenile Court Procedural Rules, are protected. (See *In re: A.S.*, 594 A.2d 714 (Pa. Super. 1991).)

The primary purpose of the shelter care hearing is to evaluate the agency's contention that allowing the child to remain in the home would be detrimental to the child's welfare and best interests. Under Pennsylvania law, as amended to conform to Adoption and Safe Families Act (ASFA), parental rights are secondary to the basic interests of the child in these proceedings, and "the health and safety of the child supersede all other considerations." *In the Interest of C.B.*, 861 A.2d 287, 295 (Pa. Super. 2004). If it is necessary for a child to be removed from the home, the placement of the child is expected to be the least restrictive environment available to meet the needs of the child.

Best Practice — Least Restrictive Placement Setting

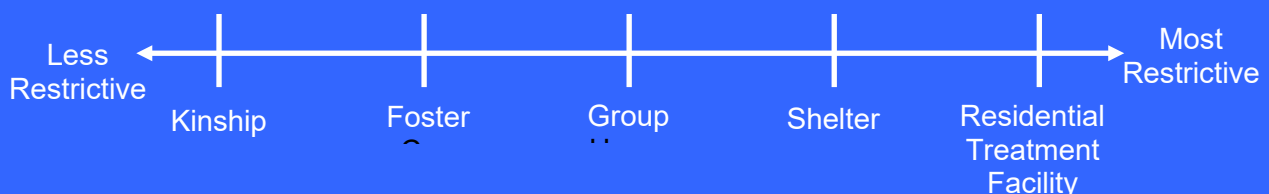
If it is necessary for a child to be removed from the home, the placement of the child is expected to be the least restrictive placement available. The placement should be the most family-like setting available for the child, consistent with the best interests and special needs of each child. 55 Pa. Code § 3130.67(b)(7)(i).

A primary consideration for placement should be with a fit and willing relative of the child or someone who has a close connection to the child. These kinship caretakers are typically the least restrictive placement options and can preserve the child's connections to family. In Pennsylvania, except where otherwise ordered by the court, kinship caretakers are required to become licensed foster parents and should be encouraged by the judge or hearing officer to fully cooperate with the agency in completing the necessary requirements of foster care licensing. In an emergency situation, a child can be placed with a kinship caretaker, but that caretaker must become a fully licensed foster parent at the end of 60 days. In instances where caregivers do not or cannot become licensed foster parents, any payment becomes the sole responsibility of the county as neither federal nor state funds can be claimed.

Other placement considerations should include geographical proximity to the family and community affiliations, educational stability, and cultural relevance of the placement to assure timely permanence and well-being.

Every effort should be made to place siblings together.

In general, the continuum of placement restrictiveness is as follows:



Holding a substantive shelter care hearing is key to the court process and ensuring that all parties are engaged and understand what is required of them. During this initial hearing, the court is becoming familiar with the child's and the family's needs and, in so doing, must consider a multitude of issues. As such, courts should strive for comprehensive hearings. The *Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* recognizes that this may "require a substantial initial investment of time and resources, but this investment can lead to better decisions for children and families while decreasing the substantial court and agency costs accrued during an unnecessary out-of-home placement." Gatowski, S., et al., 108 (National Council of Juvenile and Family Court Judges 2016).

Best Practice — Finding and Engaging Absent and Putative Fathers

The child welfare system has long been criticized for being maternally focused and for failing to involve fathers (particularly absent fathers) and their relatives. Every effort should be made as early in the process as possible to identify and engage the biological father of the child. Fathers and paternal relatives may prove invaluable to dependent children as placement resources, additional support, sources of health history information, and permanent connections. Additionally, early engagement of fathers and their relatives allows the agency to work with the family as a whole at the front end of the process, which can save valuable time later on, thus expediting services to families and timely permanency for children. Cases may occur where no father has ever been conclusively identified, and multiple potential fathers exist. In such circumstances, the court may proceed with the current father of record, but if any doubt exists as to paternity, the court should make every effort to determine paternity.

Too often, the mother is relied on as the sole source of information regarding the father. Unfortunately, especially if the father has not been involved in the child's care and support, the mother may not always provide complete and accurate information. This should not be taken to mean that no father exists or that the father or paternal family members are not interested in or capable of helping the child. Accordingly, other sources of information on the father and his whereabouts, including members of the mother's family, should be called upon as well. The court must provide strong leadership to ensure that the agency and other parties make locating and identifying the father a priority at each hearing in every case.

A number of issues should be considered at this first hearing: interim placement options, development of an interim (but specific) visitation schedule, identification of any medical/psychological/educational needs of the child, provision of interim services for the child and the parents, a determination of whether the child should be found to be an Indian Child. (see Chapter 21: Overview of Federal-State Child Welfare Legislation, Section 21.9: Indian Child Welfare Act), and the determination of additional court orders that may be required (i.e. court-ordered evaluations, paternity determinations, restraining orders, child support, notice to additional parties, etc.). If, given all the facts of a particular case, it appears to be in the child's best interest to remain in the same school until the adjudication/disposition hearing, then the court should address the logistical challenges of making that happen. With the Every Student Succeeds Act (ESSA) (20 U.S.C. § 6301 *et seq.*), there is a presumption that the child remains in their school of origin unless the court determines otherwise. The McKinney-Vento Act (42 U.S.C. § 11431, *et seq.*) provides for homeless youth, including those in temporary foster care placements. The Act makes it possible for continuation in the same school and the provision of transportation to that school. It also expedites the enrollment of students despite missing pieces from the educational record.

Because removal from home is traumatic, it is important for the child to have some sense of normalcy and be connected with familiar things. This can be accomplished in several ways, including keeping the children in their home, school, and community or placing the children with a person known to them. If the child was involved in sports, music, or other activities prior to entering foster care, then those things should continue. The court and the agency should make every effort to ensure that a child's personal belongings accompany the child into foster care.

In dependency proceedings, a child in placement is to remain in their school of origin unless the court finds remaining in the school of origin is not in the child's best interest, in which case the court may order the child to be enrolled in another school that best meets the child's needs. Pa.R.J.C.P. 1148(B). If a court orders the child to be enrolled in another school, then the child is to attend a public school unless the court finds that a public school is not in the best interest of the child. Pa.R.J.C.P. 1148(C). Often, the child's home school district is unaware that a child placed outside the home is still entitled to transportation. 42 U.S.C. § 11432(g)(1)(J)(iii). The inclusion of school principals and superintendents on the local roundtable is a good way to remind schools of such obligations.

In addition to ensuring that the child's basic needs are being met, the judge or hearing officer should ensure that the child has opportunities to develop prosocial skills and self-esteem and have fun. Therefore, it is certainly appropriate for the judge or hearing officer to engage the child in conversation regarding the child's interests and to make orders providing opportunities to engage in extracurricular activities.

A substantive shelter care hearing requires a significant initial investment of time and resources. This investment, often referred to as front-loading the court process, is viewed as key to establishing the basis for expedited case processing, ensuring that the family remains involved, and minimizing the time that the child remains in care. Important components of front-loading the court process include:

- timely appointment of counsel for the child and parents/guardians;
- establishment of the schedule/terms of visitation where appropriate;
- examination of options for placement with relatives/kin;
- identification of any domestic violence issues and, if appropriate, issuance of protective orders;
- assessment of the need for expert examinations or evaluations of the child or parent's physical and/or mental health and issuance of the appropriate orders;
- early inquiry into paternity issues and location of, notice to, and engagement of absent parents; and
- review of family finding efforts.

Since the hearing must take place on short notice to everyone involved (even the judge or hearing officer has little time to prepare as it is often an add-on to the schedule), witnesses and evidence may be unavailable. However, only a preliminary determination is expected until the more comprehensive adjudication hearing can occur within 10 days.

Best Practice — Obtaining Parents' Medical History

The court should require the agency to collect the medical/psychological history of both the biological parents and the child as early in the process as possible. This information can be helpful in a variety of ways, including assisting the court in decision-making, assuring appropriate services are identified, and creating a documented history for the child. This information may be beneficial to all parties in the short term but may also prove beneficial in the long term if the case advances to termination of parental rights and adoption. If the medical history of a parent or child reveals that a party is diagnosed with autism or self-reports as having autism, that information should be added to the Common Pleas Case Management System Dependency Module data for that case.

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

6.4.1 Parent Counsel

Although the timeframe is short, legal counsel for the parent or guardian should be assigned after the child's removal from the home and prior to the shelter care hearing. Children's Roundtable Initiative, Office of Children and Families in the Courts, *The Mission and Guiding Principles for Pennsylvania's Child Dependency System* 14 (2009). This assignment will facilitate the orderly conduct of the shelter care hearing.

If the parent or guardian appears at the hearing unrepresented, the judge or hearing officer should take a direct approach at the outset of the hearing in advising them of the availability of court-appointed counsel, their right to counsel, and the benefit of legal representation. The parent or guardian is under stress and great anxiety and is in obvious need of impartial advice and advocacy. If the parent waives counsel, the judge or hearing officer must be satisfied, after a thorough colloquy, that a waiver of counsel is knowingly, intelligently, and voluntarily made. Pa.R.J.C.P.1152(B). (See Chapter 5: Right to Legal Representation, section 5.5 Waiver of Counsel for suggested waiver colloquy.)

Best Practice — Assignment of Counsel

Both children and parents should have legal representation available to them upon entering the shelter care hearing. At the time of the shelter care hearing the parents have the right to enter their own counsel, accept the counsel provided, or waive rights to any counsel.

The court should work to establish a county process that provides parents or guardians with the means to apply for counsel at or near the time that an emergency order is obtained or when the petition is filed. Some counties appoint counsel at the outset of an action and give notice to the parties and counsel of this assignment.

Ideally, all counsel, including the child's GAL and/or legal counsel, the parent attorney, and the agency solicitor, should remain with the case throughout its life span with the court. Counsel can thus work collaboratively while still allowing each to provide vigorous representation. In combination with a One-Judge, One-Family model, this approach can provide for more collaboration in the courtroom, a less adversarial tone in hearings, and better outcomes for children and families.

6.4.2 Assignment of Guardian *Ad Litem* (GAL) and Child Counsel

The court must assign a Guardian *ad Litem* (GAL) for the child, and the child may not waive the right to a GAL. Pa.R.J.C.P. 1151(A) and 1152(A). In certain situations, legal counsel for the child must be appointed as well. Pa.R.J.C.P. 1151(B). A child may waive legal counsel if the waiver is knowingly, intelligently, and voluntarily made and the court conducts a colloquy with the child. Pa.R.J.C.P. 1152(A)(2). (See Chapter 5: Right to Legal Representation, Section 5.2.2 Guardian *Ad Litem* and Section 5.2.3 Legal Counsel for the Child for further details.)

6.5 Conducting the Hearing

The judge or hearing officer should assure that all persons present are identified for the record. If parents or guardians are not in attendance, the agency representative must indicate the steps taken to provide each person with notice of the proceeding. The hearing may go forward if a parent or guardian is not present. If there has not been notice, and a parent or guardian later submits an affidavit to that effect, a rehearing must be held within 72 hours. Comment to Pa.R.J.C.P. 1241 and Pa.R.J.C.P. 1243.

In addition to advising the parties of their right to counsel, the judge or hearing officer is to ensure that each party has a copy of the shelter care application. Pa.R.J.C.P. 1242 (A). If the matter is being heard before a hearing officer, the right to have the matter heard by a judge shall also be explained. Pa.R.J.C.P. 1187(B).

The hearing may be preceded by an informal conference to narrow or discuss issues, especially where all parties have counsel present. In addition, related issues, not necessarily part of the hearing itself, can be addressed. For example, the parties may discuss whether a caretaker should file a Protection from Abuse action and seek an immediate temporary order that requires an abusive person to leave the house so the child can remain. Informal meetings at this stage may also be used to lay the groundwork for a Family Group Decision Making (FGDM) conference or for the utilization of family finding to provide support to the child and family or to locate a kinship caregiver.

Although the hearing is designated informal, it should be formal enough to convey the authority of the law. Security personnel should be present and, if possible, a court reporter Pa.R.J.C.P. 1242(B)(2). All witnesses, including agency caseworkers, shall be sworn and subject to cross-examination.

The parents or guardians are to be provided a full opportunity to present their testimony (including calling witnesses), so they may convey their version of events. If the child's non-custodial parent is ready, willing and able to provide adequate care for the child, the child cannot be determined to be dependent. *In re M.L.*, 757 A.2d 849, 851 (Pa. 2000). However, the court has the authority to transfer custody to the non-custodial parent if evidence for dependency would have existed, but for the existence of the non-custodial parent. *In the Interest of Justin S.*, 543 A.2d 1192 (Pa.Super. 1988). (See also comments to Pa.R.J.C.P. 1409.)

Written reports must be made available for examination by all counsel, and the parent or guardian if unrepresented. Any reports may be controverted by the other party. Pa.R.J.C.P. 1242(B)(3). All parties shall be treated with proper respect and fairness.

6.5.1 Evidentiary Standard

All evidence helpful in determining the issues raised, including oral or written reports, may be received and relied upon to the extent of its probative value. *Id.* Thus, hearsay may be admissible.

6.6 Findings and Orders

The court shall determine whether:

- 1) there are sufficient facts in support of the shelter care application;
- 2) the county agency has reasonably engaged in family finding;
- 3) custody of the child is warranted after consideration of the following factors:
 - a) remaining in the home would be contrary to the welfare and best interest of the child;
 - b) reasonable efforts were made by the county agency to prevent the child's placement;
 - c) the child's placement is the least restrictive placement that meets the needs of the child, supported by reasons why there are no less restrictive alternatives available; and
 - d) the lack of efforts was reasonable in the case of an emergency placement where services were not offered;
- 4) a person, other than the county agency, submitting a shelter care application, is a party to the proceedings; and
- 5) there are any special needs of the child that have been identified and that the court deems necessary to address while the child is in care.

Pa.R.J.C.P. 1242(C).

The above language in section 3 of the Rule must be included in the initial order removing the child from the home in order for the agency to claim federal reimbursement of placement expenses for the child for the duration of this placement episode.

At the conclusion of the shelter care hearing, the court shall enter a written order setting forth:

- 1) its findings pursuant to paragraph (C);
- 2) any conditions placed upon any party;
- 3) any orders regarding family finding pursuant to Rule 1149;
- 4) any orders for placement or temporary care of the child;
- 5) any findings or orders necessary to ensure the stability and appropriateness of the child's education, and when appropriate, the court shall appoint an educational decision maker pursuant to Rule 1147;

- 6) any findings or orders necessary to identify, monitor, and address the child's needs concerning health care and disability, if any, and if parental consent cannot be obtained, authorize evaluations and treatment needed; and
- 7) any orders of visitation.

Pa.R.J.C.P. 1242(E). (See also Gatowski, S. et al., *Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* (National Council of Juvenile and Family Court Judges 2016), Section III: The Preliminary Protective Hearing for additional important findings.)

Best Practice — Reasonable Efforts

The determination of reasonable efforts must not only be made at the shelter care hearing stage but must be revisited at each subsequent hearing. (Common Pleas Case Management System forms for these hearings require the judicial officer to address the reasonable efforts determination.) The requirement ensures that every reasonable opportunity is provided to the family and child to prevent unnecessary separation. In addition, the reasonable efforts finding is federally mandated to ensure only those children who cannot safely be cared for in their own homes come into care and that once in care, children proceed to permanency in a timely manner. This finding also affects the agency's ability to qualify for federal funding for the placement of the child and services to the family.

Because the focus of the Juvenile Act is on the dependent child, as opposed to the parents, any services for parents must directly promote the best interest of the child.

Although a judge cannot require services at this stage, the court can ask the agency to offer services pending the adjudicatory hearing. Early intervention through agency services or family examinations/assessments (i.e. medical, psychological, drug/alcohol, etc.) may aid in expediting permanency.

A copy of the order should be distributed immediately to all parties in order to facilitate understanding and compliance.

6.7 Motions and Answers

A motion, orally on the record or in writing, may be made at any stage of the proceeding. The judge should review the motion to ascertain whether a directed response would be beneficial to the court or the parties. In no event is a failure to answer deemed an admission of the well-pleaded facts of any motion. Pa.R.J.C.P. 1344.

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SHELTER CARE HEARING CHECKLIST

1. TIMELY HEARING:

___ **Date** child removed: _____
___ **Date** of shelter care hearing: _____

(Note: The shelter care hearing must be held within 72 hours of child’s removal.)

2. NOTICE OF HEARING:

___ Determine if written notice of time, place, and purpose of the shelter care was issued to:

- ___ Child’s mother and attorney
- ___ Child’s father and attorney
- ___ Child’s guardians/custodians and attorney
- ___ Child and GAL and/or attorney
- ___ Forster Parent
- ___ Pre-Adoptive Parent
- ___ Relative providing care for child
- ___ County Agency
- ___ CASA

___ Ask county attorney and agency to detail efforts made to notify/locate absent parents.

___ If inadequate notice given, reset hearing. **Date** of rescheduled hearing: ___

___ Order county attorney and/or agency to locate and notify absent parents of next hearing.

3. WHO SHOULD ALWAYS BE PRESENT:

WHO MAY BE NEEDED:

- ___ Judge/Hearing Officer
- ___ Mother
- ___ Father
- ___ Guardians/Custodians
- ___ Child(ren)
- ___ Spouse of Child, if any
- ___ Parents’ Attorneys
- ___ Guardian *ad Litem*
- ___ Child’s Attorney
- ___ Agency Solicitor
- ___ Caseworker
- ___ CASA
- ___ Court Reporter
- ___ Security Personnel

- ___ Extended Family Members
- ___ Friends of the Family
- ___ Foster/Pre-Adoptive Parent
- ___ Other Witnesses
- ___ Service Providers
- ___ Law Enforcement
- ___ Probation Officer

4. PROCEDURE:

- Explain the purpose of the proceeding and give advisements of rights.
- Receive all relevant and material evidence to determine need for shelter care.
- Receive all relevant and material evidence helpful to determine questions of placement, reasonable efforts, visitation and education.
- Allow parties/counsel to examine and contest written reports received as evidence and cross-examine persons making the reports.
- Make contrary to the welfare and reasonable efforts findings.
- Make findings as to whether shelter care was necessary or still is necessary to keep the child safe.
- If the father is unknown, begin process of establishing paternity.
- Make findings as to whether the agency has reasonably engaged in family finding.
- Make findings regarding the determination whether the child is an Indian Child as defined by the Indian Child Welfare Act (25 U.S.C. § 1901 *et seq.*) and the Bureau of Indian Affairs regulations (25 C.F.R. § 23.2).

5. ADVISEMENT OF RIGHTS AND PURPOSE OF PROCEEDINGS:

- Advise of contents of petition and nature of allegations.
- Right to legal counsel.
- Right to confront and cross-examine witnesses.
- Right to present witnesses and introduce evidence.
- Right to issue subpoenas by the court.
- Receive factual basis under oath and on the record.

6. PLACEMENT OPTIONS:

- Ask county agency to provide details of child's proposed placement.
- Determine whether the placement proposed by county agency is the least disruptive and least restrictive and most family-like setting that meets the needs of the child.
- Specify the child's placement in the least restrictive setting.
- Return child to the home.
- Leave child in the home without county agency supervision and without services.
- Leave child in the home with county agency supervision and services.
- Remove/continue removal of the child and place/continue to place with someone other than county agency.
- Remove/continue removal of the child and place/continue to place child with county agency.

7. VISITATION:

- Ask county agency to provide details regarding visitation between child and
Mother
- Father
- Sibling(s)

(*Note:* Visitation should be frequent and meaningful so as to reduce the trauma of placement. See Chapter 8: Visitation for more information.)

8. EDUCATIONAL NEEDS:

- Did the county agency consider proximity to the child's current school when placing the child?
- Is it in the best interest of the child to not remain in his school of origin?
- Does the child have any educational needs that should be addressed at this time?
- If the child is being moved into a new school, is there a plan to immediately move the school records and get the child enrolled?
- What is the plan?

9. SCHEDULE NEXT HEARING:

Adjudication Hearing, **Date:** _____

(*Note:* The Adjudicatory Hearing must be held within 10 days of the filing of the petition if the child is in custody and 45 days if a child is not in custody.)

A court should distribute the orders at the conclusion of the hearing, and explain the significance to the parties, if necessary.

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SHELTER CARE HEARING BENCHCARD

Relevant Statutes	42 Pa.C.S. §§ 6325, 6332, 6334 Pa.R.J.C.P. 1240, 1242 (B) (3), 1243
Purpose of Hearing	An informal hearing to determine (a) whether shelter care is necessary; (b) whether allowing the child to remain in the home would be contrary to the welfare of the child; (c) whether reasonable efforts were made to prevent such placement; or (d) if, in case of emergency where services were not offered, whether lack of efforts were reasonable. Shelter care hearing is <u>not</u> a substitute for the adjudicatory hearing.
Time Frame	Hearing within 72 hours of removal (42 Pa.C.S. § 6332). If the child is not released and a parent or guardian or other custodian has not been notified of the hearing, did not appear or waive appearance at the hearing, and files his affidavit showing these facts, the court shall rehear the matter without unnecessary delay and order release of the child, unless it appears from the hearing that shelter care is required under 42 Pa.C.S. § 6325. Upon application or the filing of a dependency petition, a shelter care hearing will also be conducted in those cases where removal of a child has not yet occurred, but is planned or a voluntary agreement is revoked by the parent and the agency intends to keep the child in care.
Rules of Evidence	All evidence helpful in determining the questions presented, including oral or written reports, may be relied upon to the extent of its probative value. Thus hearsay may be admissible.
Next Hearing	<u>Child in Custody:</u> Adjudicatory hearing within 10 days of the filing of the petition. <u>Child Not in Custody:</u> Adjudicatory hearing as soon as practical but within 45 days of the filing of the petition.



SHELTER CARE HEARING SUMMARY OF KEY QUESTIONS/DETERMINATIONS

- Are there sufficient facts to support the shelter care application?
- Is custody with the agency warranted? Where will the child be placed (kinship care, foster care or other)?
- If a shelter care application was submitted by a person other than the agency, is that person a party to the proceedings?
- Would remaining in the home be contrary to the welfare and best interests of the child?
- Is the placement proposed by the agency the least disruptive and most family-like placement to meet the needs of the child?
- If the father is absent, is the father known? What is his relationship with the child? Can the father safely care for the child?
- Has family finding been done to identify all possible family and caregivers, on both the maternal and paternal side?
- Has the agency reasonably engaged in family finding?
- Has the family been offered a Family Group Decision Making Conference?
- Were reasonable efforts made by the agency to prevent the child's placement?
- Were the services offered by the agency relevant to the family's problems? Were they adequate, accessible and well-coordinated? Were there other cost-effective services that should have been offered?
- If services were not offered in the case of an emergency placement, whether the lack of efforts was reasonable?
- Are any additional orders needed concerning the conduct of the parents, such as restraining orders or orders expelling an allegedly abusive parent from the home?
- Are any additional orders needed concerning the agency's efforts to provide services?
- Are additional orders needed to address the immediate needs of the child, such as immediate medical treatment, evaluation or other examinations?
- What steps have been taken to ensure the educational needs of the child are being met? Does the child have an Individual Education Plan (IEP)?
- Has visitation been provided within 72 hours of the child's removal from their home? What are the terms and conditions for parental visitation or sibling visitation?
- What consideration has been given to financial support of the child?
- Has the court made a determination as to whether the child is an Indian Child as defined by the Indian Child Welfare Act (25 U.S.C. § 1901 *et seq.*) and the Bureau of Indian Affairs regulations (25 C.F.R. § 23.2)?

These questions are adapted from the text of this chapter, the *Mission and Guiding Principles for Pennsylvania's Dependency System* and the Preliminary Protective Hearing Checklist provided in the *Enhanced Resource Guidelines* (NCJFCJ, 2016, pp.161-175)



LOCATING FATHERS & ESTABLISHING PATERNITY BENCHCARD

*Identifying and locating fathers early in dependency matters
helps children establish or maintain important connections.
Doing so also expedites permanency.*

Judges and hearing officers should ask whether the county agency caseworker has:

1. Utilized family finding to locate father and paternal relatives. What specifically was done?
2. Complied with the requirement of the Fostering Connections Act? If so, how?
3. Asked the mother, child or relatives about the father's whereabouts?
4. Utilized the federal, state or other parent locator systems?
5. Sent letters to the last known address of the father?
6. Visited the last known address of the father, talked to neighbors and family members in the community where father previously resided?
7. Checked local jails, prisons, correctional facilities, probation and parole agencies, and immigration authorities?
8. Checked public benefits information (e.g., social security or public assistance)?
9. Checked with the child support enforcement agency?
10. Checked driving and vehicle registration records?
11. Used technology and social media to locate the father?

Judges and hearing officers should also:

1. Ask the mother and other relatives about the father's identity and location at the first and all subsequent hearings, until the issue is resolved.
2. Obtain information under oath or via an affidavit establishing parentage.
3. Ask the child about the father's identity, location and names of paternal kin (if appropriate).
4. Require the agency to promptly obtain information through any action noted above.
5. Order the agency to follow up on information gained from court hearings.
6. At every hearing, require information about progress in identifying and locating the father.
7. Impose deadlines for searches or for filing affidavits detailing search efforts.
8. Ensure court orders and records reflect effort to identify and locate fathers.
9. Consider a finding of "No Reasonable Efforts" if the agency has not made attempts to locate father.



LOCATING FATHERS & ESTABLISHING PATERNITY

BENCHCARD



Establishing paternity after a putative father is located is critical. The father can then assert and protect his constitutional rights to the care and custody of his child.

Judges and hearing officers should:

1. Arrange for the paternity case to be expedited so the father can be engaged and supported in the dependency case, if the cases are being handled separately.
2. Question the putative father directly about his:
 - a. Relationship to the mother.
 - b. Desire to be a father.
 - c. Efforts to have or maintain a relationship with his child, such as:
 - How often he sees the child;
 - How often he speaks with the child;
 - Whether he provides formal or informal financial or other support to the child;
 - Whether his name is on the birth certificate;
 - If he has filed a claim or acknowledgement of paternity;
 - If he was living with or married to the mother when she was pregnant or when the child was born; and
 - Whether he has been prevented from contact with the child.
3. Require paternity testing, when appropriate.
4. Request at every hearing information about progress being made to establish paternity.
5. Be clear in the court order once paternity and “legal” fatherhood are established.
6. Inform the father of his right to counsel and availability of court-appointed counsel.
7. Expect the same level of service delivery provided to father as is provided to mother.

These questions are adapted from the text of this chapter, the *Mission and Guiding Principles for Pennsylvania's Dependency System* and the State Roundtable Workgroup on Fatherhood.