

Chapter 8 – Visitation

8.1 Overview

One of the most important ongoing issues in a dependency matter is that of parent-child visitation. In cases where the goal is family reunification, parents enjoy a qualified right to visit their children regularly. Moreover, in such cases, frequent visitation is essential to preserving vital parent-child bonds that cannot easily be restored once broken. Visitation may also serve to reduce the child's separation trauma during the time of out-of-home placement. It may help the parent stay motivated and focused on achieving reunification. Even when another permanency goal has replaced reunification, regular visitation may nevertheless be in the child's best interest. It is known from research that the long-term emotional well-being of the child improves when biological roots are integrated and honored in some manner, even after adoption. Children's long-term emotional well-being improves when visitation is thought of in the broader sense of "maintaining connections" with their biological family roots. Visitation planning works best when approached primarily from the child's needs and secondarily from the parent's needs.

For these reasons, it is essential that courts exercise oversight of visitation arrangements and not leave this responsibility solely to the agency. The court should determine whether visitation can be done safely and, if so, ensure that it begins promptly and occurs as frequently as possible. Visitation progress should always be assessed at court reviews, and reports and testimony regarding visitation should be presented at **every hearing** to inform the court's orders regarding continued visitation. (See Chapter 13: Permanency Hearing, Section 13.6.12 and Best Practice Box: Benefits of Frequent Family Time.) The Guardian *Ad Litem* and any Court Appointed Special Advocate (CASA) may be able to provide additional insight regarding how the visitation is impacting the child. Also, when reviewing a parent's performance during visitation, it is important to focus on the progress being made by the parent and the safety of the child. The purpose of visitation is to maintain the parent-child bond and to provide assistance to the family. All parties need to be careful not to allow the review of the visitation to become an overly critical assessment of parenting styles. If a well-intentioned supervisor is unintentionally overly critical of non-safety issues to the Court, the relationship between the parent and agency can become adversarial. For example, a report that a parent chooses to bring an unhealthy snack to a visit over a more wholesome snack is irrelevant to the child's safety unless the child has dietary restrictions. Such a report can create tension between the parent and the agency.

8.2 Visitation in Reunification Cases in General

In order to proceed effectively toward successful reunification in a case involving out-of-home placement, frequent and meaningful family visitation is essential. Visitation

is also a key component of the agency's reasonable efforts toward the goal of reunification, which the court must review on an ongoing basis. Thus, specific visitation conditions should be incorporated into the court's orders at the end of each hearing. Included at the end of this chapter is a Visitation Frequency and Duration chart that can help in the critical analysis of these important factors.

Research has shown that children are not only more likely to be reunified with their parents if they have early and frequent visitation but will suffer less trauma in the meantime. Frequent visitation yields the following benefits:

- Reduces the pain of separation;
- Promotes attachment;
- Increases parents' motivation to change;
- Helps parents practice skills learned;
- Increases the likelihood of timely permanency.

Visitation orders need to be tailored differently for the youngest children. Children between the ages of six months and three years are most vulnerable to separation anxieties or attachment issues and thus need more frequent contact with their parents. Generally, however, these visits may be shorter in duration. Though still vulnerable, older children typically have language skills to better cope with change. They are also expanding their social involvement with peers and usually need less frequent visits to maintain their connections. Generally, the visits for older children may need to be longer.

The court should ensure that the quantity and quality of visits are appropriate for the family on a case-by-case basis. It is not recommended that visitation be left to the agency's discretion. A visit should include daily living activities, if practical. Interactions should be sensitive to the parent's and child's emotions. It is natural for children to become agitated following visits, and this does not mean the parent erred during the visit. It is better to monitor the child's reaction over time. For parents with addictions, random drug testing may be critical. While sobriety during visits is essential, a positive drug screen at any point in the life of the case should not be the sole basis for suspending or canceling a visit. The visitation plan should be modified over time with strategic planning of the initial arrangements, the middle phase, and the transition plan. Progression in the visitation can be utilized to recognize and commend parents for their progress during the case.

Visitation also calls for the court to oversee the appropriate level of supervision. A careful analysis of safety for visitation and the protective capacities of the parent should be done to determine the level of oversight needed. It should be noted that safety for removal may be different from safety for visitation. It should be presumed that visitation is unsupervised unless there is a safety reason that requires supervision. Once supervised, it is also important that visitation moves to unsupervised visits as quickly as safety allows, including overnight visits and the children being placed in the home on a

"Every time I was sent to a new placement I wasn't allowed to talk to my dad or my sister for a month and that made me so angry. How do you expect kids to be put in a new home with strangers and not be allowed to talk to the people they love and trust?"

- A.K., 21, Former Pennsylvania Foster Youth

trial basis. The court's directives should inform all as to the expectations of visitation. Both the court and the agency may have to be creative with visitation, such as using technology for video conferencing and virtual visits using webcams, as well as using family resources for visit locations and oversight.

Parents should also be encouraged to attend medical appointments, school functions, and other activities of the child. Also, consider the involvement of foster parents, who are invaluable in programs where special training allows them to role model and assist with parenting techniques at visits. Consider arranged visits with foster parents to nurture relationships. When safety is not an issue, making sure the parents meet the foster parents within a short time after the child's removal will help to facilitate the interaction between foster and biological parents, which can greatly improve outcomes and emotional well-being of children who can see the coordinated parenting efforts of important people in their lives.

Best Practice — Visitation Practices

In any prehearing report, the judge should require the agency to include a specific section discussing the visitation history while in care as to each parent and the siblings and any specific recommendations as to the immediate future. A judge should also facilitate collaborated agency and community efforts to improve visitation practices and encourage strategies for quality visits.

8.3 Legal Requirements Governing Visitation

When reunification is the permanency goal, a parent may not be denied visitation "except where a **grave** threat to the child can be shown." *In the Interest of M.B.*, 674 A.2d 702, 705 (Pa. Super. 1996). Furthermore, courts and child welfare agencies may not suspend parents' visitation with a child unless the party seeking to suspend the visitation proves by **clear and convincing evidence** that visitation poses a grave threat to the child. *In the Interest of Rhine*, 456 A.2d 608 (1983). *Rhine* states that visitation constitutes a grave threat if the court finds that "there are no practicable visitation options that permit visitation AND protect the child." *Id.* at 614. This standard reflects the parents' constitutionally protected liberty interest in visitation and the significant consideration of allowing a parent to maintain a meaningful and sustaining relationship with his or her child. See also *In re: B.G.*, 774 A.2d 757 (Pa. Super. 2001) and *In re: C.J.*, 729 A.2d 89 (Pa. Super. 1999).

The term grave threat is not specifically defined in case law. However, case law has limited or denied visitation only where a parent suffers from "severe mental or moral deficiencies that constitute a grave threat to the child." *Rhine*, 456 A.2d at 613. Poor parental judgment during visits is not enough to limit a parent's visitation nor is a contention that the parents are undercutting the authority of foster parents or that the caregivers complain of acting out by the child after the visit. (See *B.G.*, 774 A.2d 757.)

For the most part, the Juvenile Act does not contain any guidelines for parent-child visitation in dependency cases. By administrative regulation, the county agency is generally required to provide opportunities for visits between the child and parents “as frequently as possible, but no less frequently than once every two weeks.” 55 Pa.Code § 3130.68¹. Note that the regulation specifies only a minimum required frequency. However, courts should be reluctant to approve cookie-cutter minimum visitation plans as the minimum frequency does not allow sufficient time to maintain and establish a parental bond, especially with younger children. Relying solely on the administrative regulation provides parents 52 hours or 2¼ days of visitation per year. Clearly, this level of visitation is minimal at best.

There are three exceptions where the agency does not have to provide opportunities for visitation at least every two weeks. First, when visits are clearly not in keeping with the placement goal, for instance, in adoption cases, visitation may be discontinued by court order. The same is true when the parents freely refuse visitation in writing. Finally, regulations authorize the agency to petition the court for approval to reduce or eliminate visits whenever they are not in the child’s best interests. However, it has been held that the best interest standard specified in the regulations serves only as an internal guide for the agency and does not set a standard for the court order. Accordingly, the court must apply the grave threat standard if reunification is the goal. (See *C.J.*, 729 A.2d 89.)

8.4 Sibling Visitation

The preferred method for ensuring sibling contact is to place siblings together. The agency must explain what reasonable efforts have been taken to ensure children are placed together. Courts should be hesitant to approve the separation of siblings and only do so when such joint placement is not in the child’s best interests. Frequent, ongoing sibling contact and visitation are critical when joint placement is not possible. Visitation with siblings can be of great value in serving the child’s best interests. Children’s Roundtable Initiative, Office of Children and Families in the Courts, *The Mission and Guiding Principles for Pennsylvania’s Child Dependency System* 11-12 (2009).

“I was happy that my youngest brother and I were always placed together so I could keep an eye on him. To be honest, I always felt like his mother. I thought it was important that, as siblings, we could maintain a relationship. Fortunately my other siblings were placed in foster homes nearby.”

- C.S., 18, Former Pennsylvania Foster Youth

Federal law (see the summary of “Fostering Connections to Success and Increasing Adoptions Act of 2008” in Chapter 21) recognizes the special relationship siblings may have with one another and requires states to make “reasonable efforts” in dependency cases to place

¹ This regulation section also covers the county agency’s obligations to notify a parent with the details of the child’s placement and to provide assistance to a parent in attending visitation.

siblings together and to provide “for frequent visitation or other ongoing interaction between the siblings when not placed together.” An exception exists if visits or contact is contrary to a sibling’s safety or well-being. Under the Act, the case plan should reflect efforts to keep siblings as near to each other as possible with regular sibling face-to-face visitation once a month at a minimum and regular phone contact. Clearly, this is a minimum standard, with ongoing sibling visitation needing to be much more frequent in many cases.

It should be noted, however, that a sibling does not have standing to seek court-ordered visitation with a minor sibling under Pennsylvania law. *Ken R. on behalf of C.R. v. Arthur Z.*, 682 A.2d 1267 (Pa. 1996).

Parents may also refuse visits as to a child remaining in their home after a sibling has been adjudicated dependent. (See *In the Interest of C.F.*, 647 A.2d 253 (Pa. Super. 1994).)

8.5 Visitation Arrangements

After carefully considering visitation oversight through the legal safety analysis framework (See Chapter 3: Role of Judges and Hearing Officers), there is a wide array of approaches to visitation across Pennsylvania to determine the least restrictive and most natural setting. For example, in one county, visits take place on weekends at the courthouse, where organized play therapy is available. In another county, almost all visitation occurs in the birth families’ homes. Some counties use a visitation house that

“When my visits were at a family member’s house and my parents missed a visit, I still got to visit with my family.”

-Former Pennsylvania Foster Youth

allows families to perform natural parenting duties such as bathing an infant, making dinner, and/or sharing a meal at the kitchen table. Many other counties have separate, specially designed Family Centers to accommodate supervised visitation, with rooms that mimic living rooms and kitchens but are equipped with observation mirrors. Some counties strongly encourage the use of community settings for visits, such as parks and public restaurants. In others, visitation arrangements are made by private providers pursuant to their own standards and methods.

Regardless of the location and setting, visitation should support the development of healthy family relationships and take place in as neutral and least restrictive setting as possible. Family and kin homes should be explored and considered as a visitation resource to allow the child an extended connection to biological roots during visits. Finally, when considering visitation locations, it is important to remember the child’s age and distance from their placement.

In some instances, supervision may be required to ensure the child’s safety and well-being during visits. Observation during visits may also be necessary to help the agency gauge parenting skills and identify training or other needs. Over time, observation of interactions between a parent and child during visitation will indicate the presence or

absence of a true, healthy bond between them. Additionally, over time, visits should progress from supervised to unsupervised settings.

8.6 Visitation and Contact with Incarcerated Parents

Some people feel that children should not visit their parents in jail or prison. However, the truth is that, in most cases, children benefit from visitation and contact with a parent who is incarcerated. Children feel enormous grief and loss when they are unable to maintain contact with a parent. It is almost the same as when a parent has died. Children also worry about a parent that they cannot see or talk to on a regular basis. They wonder whether their mommy is happy or whether daddy is safe. Visitation and contact can reduce some of their worries and sad feelings.

Children have a right to visit with their incarcerated parent, children want to maintain the bond during their parent's incarceration, and child well-being is enhanced by frequent visitation. Common barriers to visitation include distance to the institution, transportation, inadequate, "non-child-friendly" spaces in the correctional facilities, concerns about the emotional impact of visits, a lack of written protocols for working with incarcerated parents with dependent children, and a lack of collaboration amongst stakeholders.

Many institutions will only permit contact visits if they are court-ordered. It is important for the judge or hearing officer to take an active role in ensuring that, when appropriate, a child maintains contact with an incarcerated parent.

In deciding whether to order visitation, including contact visitation, the judge or hearing officer should consider the following:

- The type of contact the child had with the parent prior to the incarceration and adjudication of dependency;
- The child's needs and wishes;
- The age and special needs of the child;
- The distance the child will have to travel to attend the visit;
- The visitation schedule in the facility; and
- The wishes of the incarcerated parent.

The court order should set forth in clear and concise language whether contact visits should take place and whether the visits need supervision other than the security in the institution. If the court requires some other type of supervision, observation, or coaching, then the order should reflect this and who will be responsible for such.

Remember, the job of the correction officer is to keep the institution secure and not to supervise a court-ordered visit.

In addition:

- The judge or hearing officer should **order the same person to transport the child to and from the visitation**. This will enable observations and consistent assessments of the child's mood and behaviors. This will also allow for debriefing by a person with whom the child is familiar.
- The judge or hearing officer should **order additional visitation by videoconference** (if available) and should **order an incarcerated parent to also maintain contact with the child through letters, cards, telephone calls, etc.**
- Sometimes, having siblings visit together in a jail or prison is not in their best interests. Accordingly, **when appropriate, the court should order separate visitation for siblings.**
- The judge or hearing officer should **order that the visitation occur outside the institution** if a parent is permitted to leave the jail or prison on work release.

In most cases, visitation with an incarcerated parent is important to the well-being of the child. However, there are circumstances when visitation with an incarcerated parent may not promote the well-being of the child.

Below are examples of situations that may result in visits NOT occurring with an incarcerated parent. It should be noted that the list is not exhaustive and that the Court must make a corresponding finding that the situation would pose a grave threat to the child. Without a grave threat finding, visitation must continue.

1. The child is the victim of the crime for which the parent is incarcerated, AND there is a grave threat of harm to the child;
2. The child is scheduled to testify as a witness at trial against the incarcerated parent;
3. A qualified mental health professional trained in grief and loss has stated that it would be emotionally harmful for the child to visit with the incarcerated parent, and the court agrees that this is an appropriate recommendation;
4. The child is medically fragile, and a qualified physician indicates visits to a prison should not occur due to the child's health condition.

Note: These are the same factors that a judge or hearing officer should consider in ANY case regarding whether or not visitation is appropriate between a child and a parent.



Any of these factors may be temporary in nature, so the judge or hearing officer should consider whether additional services and support would eliminate these factors.

At every review hearing, the judge or hearing officer should review and reconsider the issue of visitation and inquire as to whether the issues are resolved or whether the factors have changed. (See Chapter 9: Incarcerated Parents.)

8.7 Visitation and Contact for Youth in Congregate Care Facilities

Courts must be conscious of the fact that youth placed in congregate care facilities are the neediest and most traumatized youth in the dependency system. Further isolation from family and kin and its resulting trauma should be avoided and prevented whenever possible. (See Chapter 2: Family Finding.) The court should dictate the terms of visitation and telephone/video contact for any child placed in a congregate care facility. Orders should include, but not be limited to, the following specifics regarding contact:

- Frequency and duration;
- On-facility grounds or off-grounds;
- Who may visit or contact (grandparents, extended family, siblings, kin, friends);
- Home passes;
- Age and developmentally-appropriate activities.

Physical and emotional safety should be the primary consideration for home passes, off-ground visits, visitation, and telephone/video contact.

Most, if not all, facilities have policies for visitation and telephone calls. These policies are generally not tailored for the unique circumstances of each youth and their families. The policies are usually designed for the convenience and operation of the facility rather than for what is best for the youth placed there. Many facilities have blackout periods where the youth cannot contact anyone, including parents and caregivers, for up to several weeks following the initial placement. In addition, there are restrictions on telephone calls (i.e., one call per week) even though a youth's parents may be separated or he/she has a strong bond with other family members (grandparents, siblings, aunts, uncles).

Facilities also frequently use a tier or level system to determine visitation terms or telephone/video contact privileges. These facilities may also utilize visitation and telephone/video contact as a reward or punishment. This should **never** be permitted.

A facility's policies do not bind courts and agencies. The order placing a youth in a facility should be specific regarding the court's expectations for visitation and contact with family, kin, and friends.

"If you want something beyond our policy just put it in the court order. We will do it."

-Congregate Care Provider

While safety is often a reason for placement in congregate care facilities, courts should be aware of the many reported physical and sexual assaults on youth while placed at facilities that are supposed to be ensuring a youth's safety. Isolation increases a youth's risk of these types of events.

Best Practice — Caseworker Visits after Critical Incident Reports

Following a report of any critical incident at a congregate care facility (or a foster care agency), judges and hearing officers should order the agency caseworker (and the juvenile probation officer if applicable) to make a visit to the facility. At the facility, the caseworker should privately interview all agency children placed at that facility to ensure they are safe. No facility staff should be present for the interview.

A critical incident is a “substantiated report of child abuse occurring within a facility, formal licensing actions, certain criminal incidents or delinquent acts, all suspicious deaths, and certain other events” as defined by the Department of Human Services Office of Children, Youth and Families notification procedure for placement decision makers.

8.8 “Best Interests” Visitation in Non-Reunification Cases

Once the goal shifts away from reunification, the grave threat standard is no longer to be applied. The traditional best interests of the child is the sole guiding basis for continuing visitation. This is a discretionary determination by a judge or hearing officer to use his or her experience and wisdom. It is a judgment call that is more intuitive than scientific and for which there are no formulas or bright-line tests. Some guidance was offered in the case of *In the Interest of M.B.*, 674 A.2d 702 (Pa.Super. 1996).

To determine whether visitation is in the child's interest the court may consider all evidence relating to the child's best interest, including but not limited to the following factors: (1) length of separation from natural parents; (2) effect of visitation on the child; (3) the age, sex and health of the child; (4) the emotional relationship between child and parents; (5) the special needs of the child; and (6) the effect on the child's relationship with the current caregiver, usually the foster parents. *Id.* at 706.

Another important consideration is the wishes of the child, particularly in cases in which the child has been subject to physical, sexual, or emotional abuse. Certainly, visits in such cases must be appropriately supervised. When applicable, consideration should also be given to any visitation recommendations by the child's mental health professional affecting the child's best interests. An older child's preference should also carry great weight, particularly where the child is of high school age.

Some believe that if a child is in a pre-adoptive home, maintaining parental visits serves no purpose. Moreover, visits will likely prolong or delay emotional transitions and create confusion and anxiety for the child. However, with the development of healthy practices and trusting non-judgmental attitudes, alliances between foster parents and biological parents can provide opportunities for children to have permanency in an adoptive home and yet have visits or periodic contact with their biological roots, which will better serve their long-term emotional well-being. Act 101 of 2010 makes a provision for adoptive parents and birth parents to enter into an enforceable voluntary adoption agreement that specifies the terms of continued contact with the birth parents. (See 23 Pa.C.S. §§ 2731-2742.)



VISITATION BENCHCARD Oversight vs. Support Matrix

	Supervised	Unsupervised
With Support	<p>Child's safety and well-being are at risk and require supervision. Parent needs support to understand and meet child's needs or develop/maintain attachment and connection to the child.</p> <p><i>Example: Children recently removed due to neglect or abuse. Goal may be reunification or adoption; support is appropriate for either.</i></p>	<p>Child's safety and well-being are assured and visits may occur without any need for supervision. Parent needs support to refine their ability to understand and meet child's needs or develop/maintain attachment and connection to the child.</p> <p><i>Example: Parent and child transitioning to child's return home; reunification goal.</i></p>
Without Support	<p>Child's safety and well-being are at risk and require supervision. Parent does not demonstrate capability to have insight into child's needs and/or parent's own need to change their behavior.</p> <p><i>Example: Visitation solely for the purpose of providing the child with contact with the parent; closely supervised. Reunification is not likely or is not a goal or parent is pursuing prerequisite treatment goals before parenting can become a priority.</i></p>	<p>Child's safety and well-being are assured, parent is attuned to and responsive to child's needs, parent-child bond is strong. Placement not due to lack of parenting ability or protective capacity.</p> <p><i>Example: Homelessness due to job loss; reunification goal.</i></p>

VISITATION BENCHCARD

APPENDIX I

Frequency and Duration Guide for Visitation



Infants and Toddlers 0-3	Preschool 3-5	Children 6-9	Children 10-12	Children 13-17
<p>The first visit occurs within 72 hours of the removal of a child from the parents/guardians</p> <p>Infants and toddlers have a minimum visitation of 3 times per week. More frequent visitation is considered for infants and toddlers, due to their developmental need to secure attachment and bonding with caretakers in the early months and years of life. (Smariga, 2007, Dependency Resource Companion).</p> <p>Visitation frequency addresses, through the development of a visitation plan, beginning at the shelter hearing and included in the shelter order</p>	<p>The first visit occurs within 72 hours of the removal of a child from the parents/guardians</p> <p>Children have a minimum of weekly visitation. More frequent visitation is considered when possible</p> <p>Visitation frequency addresses, through the development of a visitation plan, beginning at the shelter hearing and included in the shelter order</p> <p>The frequency of the visitation is progressive and reviewed at every hearing</p>	<p>The first visit occurs within 72 hours of the removal of a child from the parents/guardians</p> <p>Children have a minimum of weekly visitation. More frequent visitation is considered when possible</p> <p>Visitation frequency addresses, through the development of a visitation plan, beginning at the shelter hearing and included in the shelter order</p> <p>The frequency of the visitation is progressive and reviewed at every hearing</p>	<p>The first visit occurs within 72 hours of the removal of a child from the parents/guardians</p> <p>Children have a minimum of weekly visitation. More frequent visitation is considered when possible</p> <p>Visitation frequency addresses, through the development of a visitation plan, beginning at the shelter hearing and included in the shelter order</p> <p>The frequency of the visitation is progressive and reviewed at every hearing</p>	<p>The first visit occurs within 72 hours of the removal of a child from the parents/guardians</p> <p>Children have a minimum of weekly visitation. More frequent visitation is considered when possible</p> <p>Visitation frequency addresses, through the development of a visitation plan, beginning at the shelter hearing and included in the shelter order</p> <p>The frequency of the visitation is progressive and reviewed at every hearing</p>
<p>The frequency of the visitation is progressive and reviewed at every hearing</p> <p>When possibly to safely do so, parents are encouraged to attend collateral contact activities, in addition to their traditional visits (i.e. medical appointments)</p>	<p>Consideration is given to preschool schedules</p> <p>When possible to safely do so, parents are encouraged to attend collateral contact activities, in addition to their traditional visit (i.e. preschool meetings, programs)</p>	<p>At this age, consideration is given to children becoming involved in school activities and sports. As such, it may be necessary to consider an increase in duration when an increase in frequency will disrupt those activities enjoyed by the child.</p> <p>When possible to safely do so, parents are encouraged to attend collateral contact activities, in addition to their traditional visit (i.e., sports, educational planning meetings)</p>	<p>Duration, over frequency, is more strongly considered at this stage as children become more independent and collateral activities become more socially important.</p> <p>When possible to safely do so, parents are encouraged to attend collateral contact activities, in addition to their traditional visit (i.e., school programs, sports)</p>	<p>Duration, over frequency, is more strongly considered at this stage as children become more independent, collateral activities become more socially important and the older teenagers may obtain employment.</p> <p>When possible to safely do so, parents are encouraged to attend collateral contact activities, in addition to their traditional visit (i.e., school activities, community activities, job searches)</p>

*All bolded information highlights individualized needs for that age group

Transitioning Youth ages 18 – 21 Years:

- Visitation during this stage should be at the discretion of the transitioning youth.
- Consideration should be given to the cognitive and developmental needs of the youth that would require additional planning and oversight.