



Child Welfare Information Gateway

PROTECTING CHILDREN ■ STRENGTHENING FAMILIES

STATE
STATUTES

Current Through
March 2009

Court Hearings for the Permanent Placement of Children

Court hearings are used to review the status and determine the permanent placement of children who have been placed in out-of-home care, including foster care.

The Adoption and Safe Families Act (ASFA) of 1997 (P.L. 105-89) amended title IV-E of the Social Security Act in an effort to provide added safety and permanency for children in out-of-home care. ASFA placed an emphasis on improving planning and expediting decision-making for the permanent placement of children in the child welfare system.

Electronic copies of this publication may be downloaded at

www.childwelfare.gov/systemwide/laws_policies/statutes/planning.cfm

To find statute information for a particular State, go to

www.childwelfare.gov/systemwide/laws_policies/state/index.cfm

To find information on all the States and territories, order a copy of the full-length PDF by calling 800.394.3366 or 703.385.7565, or download it at

www.childwelfare.gov/systemwide/laws_policies/statutes/planningall.pdf

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Schedule of Court Hearings

ASFA (42 U.S.C. 675(5)(B)) requires that the status of each child in out-of-home care be reviewed at least once every 6 months by either a court or an administrative review. In addition, under ASFA, a permanency planning hearing must be held within 12 months of the date the child entered care, and then every 12 months thereafter, to review and approve the permanency plan for the child.¹ If a determination is made by the court that “reasonable efforts” to reunite the child with a parent are not required, a permanency planning hearing must be held within 30 days.² This generally occurs because grounds exist for the filing of a petition to terminate parental rights.³ The statutes in most States and territories are consistent with ASFA’s requirements.

Who May Be Present at Hearings

Many States’ statutes specify the persons who are entitled to receive notice of hearings so that they may attend and offer testimony. Approximately six States, the District of Columbia, American Samoa, the Northern Mariana Islands, and the U.S. Virgin Islands limit attendance to the parties.⁴ In child welfare proceedings, the term “parties” generally includes the child, the parent or guardian of the child, and the agency or department having custody of the child.

Most States also allow other persons who have an interest in the child’s welfare, such as the foster parent, preadoptive parent, or relative currently providing care for the child, to attend hearings. However, in approximately 17 States, the law explicitly states that the opportunity to attend the hearing does not confer party status on the individual.⁵ In other words, the individual may be

¹ 42 U.S.C.A. § 675(5)(C) (LexisNexis 2006).

² 42 U.S.C.A. § 671(a)(15)(E) (LexisNexis 2006). To learn more about “reasonable efforts,” see Child Welfare Information Gateway’s Reasonable Efforts to Preserve or Reunify Families and Achieve Permanency for Children: www.childwelfare.gov/systemwide/laws_policies/statutes/reunify.cfm

³ See Child Welfare Information Gateway’s Grounds for Involuntary Termination of Parental Rights: www.childwelfare.gov/systemwide/laws_policies/statutes/groundtermin.cfm

⁴ A “party” is a person or other entity, such as an agency, that either initiates an action, such as a request for a hearing, or is asked to respond to a petition, and whose interests will be addressed by the court. Arkansas, Illinois, North Dakota, South Dakota, Tennessee, and Wyoming restrict attendance to the parties. The term approximately is used to stress the fact that the States frequently amend their laws. This information is current through March 2009.

⁵ Alabama, Georgia, Idaho, Maine, Maryland, Massachusetts, Nebraska, New Jersey, New York, North Carolina, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Vermont, Washington, and Wisconsin.

Determinations Made at Hearings

allowed to testify, but his or her interests will not be addressed by the court.

The main determination made at any hearing is whether the child's current placement is safe and appropriate for the child's needs. The hearing also serves as a forum for the court to make the following determinations:

- Whether the case plan developed by the State agency is appropriately addressing the service needs of the child and his or her family⁶
- The extent of the family's compliance with the case plan
- The progress that has been made in correcting the conditions that led to the child's placement in out-of-home care
- Whether the agency or department has made reasonable efforts to provide services that meet the child and family's needs

At the permanency hearing, a plan must be developed that includes the desired permanency goal and the timeframe for achieving that goal.

Permanency Options

Reunification of the child with his or her family is the preferred permanency option whenever that can be safely achieved. In those cases where reunification is not appropriate, adoption is viewed as providing the greatest degree of permanence. In some situations, however, adoption may not be a realistic or appropriate option. For example, some older children may object to losing legal ties to their birth parents. Or, some children have special needs that prevent placement in a home environment, so an adoptive placement is difficult to achieve. Consequently, more attention is being focused on alternative permanency options such as guardianship with relatives. Such options do not provide the same level of permanency available through adoption but frequently facilitate continuity of family ties, which may be in the child's best interests.

⁶ For further discussion of the case planning process, see Child Welfare Information Gateway's Case Planning for Families Involved With Child Welfare Agencies: www.childwelfare.gov/systemwide/laws_policies/statutes/caseplanning.cfm

In general, statutes addressing legal permanency options include the following:

- Reunification with the parent(s)
- Adoption
- Placement with a fit and willing relative (kinship care)
- Legal guardianship
- Another planned permanent living arrangement⁷

This publication is a product of the State Statutes Series prepared by Child Welfare Information Gateway. While every attempt has been made to be as complete as possible, additional information on these topics may be in other sections of a State's code as well as agency regulations, case law, and informal practices and procedures.

⁷ 42 U.S.C.A. § 675(5)(C) (LexisNexis 2006). Depending on the age and needs of the child, other permanent living arrangements can include long-term foster care, residential care, and independent living.