



## STATE STATUTES

CURRENT THROUGH FEBRUARY 2020

# Court Hearings for the Permanent Placement of Children

To find statute information for a particular State, go to <https://www.childwelfare.gov/topics/systemwide/laws-policies/state/>.

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. Title IV-E of the Social Security Act 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.<sup>1</sup> In addition, under title IV-E, a permanency planning hearing must, at a minimum, be held within 12 months of the date the child entered care and every 12 months thereafter to review and approve the permanency plan for the child.<sup>2</sup> 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.<sup>3</sup> This generally occurs because grounds exist for the filing of a petition to terminate parental rights.<sup>4</sup>

<sup>1</sup> 42 U.S.C. § 675(5)(B) (2019)

<sup>2</sup> 42 U.S.C.A. § 675(5)(C) (2019)

<sup>3</sup> 42 U.S.C.A. § 671(a)(15)(E) (2019). To learn more about "reasonable efforts," see Child Welfare Information Gateway's [Reasonable Efforts to Preserve or Reunify Families and Achieve Permanency for Children](#).

<sup>4</sup> See Child Welfare Information Gateway's [Grounds for Involuntary Termination of Parental Rights](#).

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## SCHEDULE OF COURT HEARINGS

All States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands require case reviews for children placed in out-of-home care. In most States, the first case review hearing must be held within 6 months with subsequent hearings every 6 months until the child's case is closed by the court. Some States, however, require more frequent hearings. For example, Minnesota, North Dakota, Ohio, and West Virginia require case review hearings every 3 months. Mississippi requires an initial review hearing within 3 months after the child enters care and subsequent hearings every 6 months. Georgia requires that the initial review hearing be held within 75 days and then every 4 months thereafter. In Virginia, the first review hearing must be held within 60 days and then every 4 months as long as the child remains in the court's custody.

Permanency hearings are required in the statutes of all States, the District of Columbia, and Puerto Rico. In most States, the first permanency hearing must be held within 12 months after the child enters out-of-home care with subsequent hearings every 12 months thereafter until the child achieves permanency. If at any time during the course of the case the court finds that reasonable efforts to return the child home are not appropriate, a permanency hearing will be scheduled within 30 days.

Some States, however, maintain shorter timelines for conducting initial permanency hearings. In New York, Oklahoma, and Texas the first permanency hearing must be held within 6 months. In Connecticut, the first hearing must be held within 9 months, and in Virginia, the hearing must be held within 10 months. In Louisiana, if the child was removed from the home before the disposition hearing, the permanency hearing must occur within 9 months. Four States provide for a shorter timeframe for permanency hearings for young children.<sup>5</sup>

## WHO MAY BE PRESENT AT THE HEARINGS

All States' statutes specify the persons who are entitled to receive notice of hearings so that they may attend and offer testimony. Approximately three States, the District of Columbia, American Samoa, the Northern Mariana Islands, and the U.S. Virgin Islands limit attendance to the parties.<sup>6</sup> 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.<sup>7</sup>

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. Other persons who may be allowed to attend include the following:

<sup>5</sup> In Arizona, a permanency hearing is required within 6 months if the child is age 3 or younger. In California, the hearing is required within 120 days for a child age 3 or younger. In Georgia, the hearing is required within 9 months if the child is younger than age 7. In Vermont, the hearing is required within 3 months if the child is younger than age 3 or within 6 months if the child is age 3 to 6.

<sup>6</sup> 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, 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 February 2020.

<sup>7</sup> Current foster parents are given party status in Hawaii.

- The child's grandparent or other relative who is not currently caring for the child<sup>8</sup>
- Former foster parents<sup>9</sup>
- The child's guardian ad litem<sup>10</sup>
- The child's court-appointed special advocate<sup>11</sup>
- A representative of the Tribe when the child is an Indian child<sup>12</sup>

However, in approximately 20 States and Puerto Rico, the law explicitly states that the opportunity to attend the hearing does not confer party status on the individual.<sup>13</sup> In other words, the individual may be allowed to testify, but his or her interests will not be addressed by the court.

## DETERMINATIONS MADE AT THE HEARINGS

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 family<sup>14</sup>

- 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

Other issues that may be addressed by the court at a hearing include the following:

- Whether efforts have been made to place the child with the child's siblings or to provide frequent visitation or contact when placement with siblings has not been possible<sup>15</sup>
- For a child who is age 14 or older, whether the services needed to assist the child to make the transition from foster care to successful adulthood have been provided<sup>16</sup>
- Whether the department has taken steps to ensure that the child's foster family home is following the reasonable and prudent parent standard in providing the child with regular, ongoing opportunities to engage in age-appropriate or developmentally appropriate activities<sup>17</sup>

<sup>8</sup> Grandparents may attend in Alaska, Kansas, Minnesota, Mississippi, and Puerto Rico. Other relatives may attend in Arizona, Florida, Indiana, Kansas, Massachusetts, and Minnesota.

<sup>9</sup> Missouri, New York, and Guam

<sup>10</sup> In 19 States: Alaska, Arkansas, Florida, Georgia, Idaho, Iowa, Maine, Michigan, Mississippi, Montana, Nebraska, New Mexico, North Carolina, Ohio, Tennessee, Texas, Utah, Virginia, and Wisconsin

<sup>11</sup> In nine States: California, Kentucky, Louisiana, Mississippi, Montana, New Mexico, Oregon, Texas, and Wisconsin

<sup>12</sup> In seven States: Alaska, Michigan, Minnesota, Montana, Oregon, South Dakota, and Wisconsin

<sup>13</sup> Alabama, Georgia, Idaho, Maine, Maryland, Massachusetts, Minnesota, Nebraska, Nevada, New Jersey, New Mexico, New York, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Vermont, Washington, and Wisconsin

<sup>14</sup> For further discussion of the case planning process, see Child Welfare Information Gateway's [Case Planning for Families Involved With Child Welfare Agencies](#).

<sup>15</sup> In eight States: Arizona, Arkansas, Florida, Hawaii, Idaho, Oklahoma, Pennsylvania, and Wisconsin

<sup>16</sup> In 32 States: Alabama, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, South Carolina (age 16), South Dakota (age 16), Tennessee, Texas, West Virginia (age 16), and Wisconsin

<sup>17</sup> In 14 States: Connecticut, Idaho, Indiana, Kentucky, Michigan, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, Wisconsin, and Wyoming

- With regard to a child placed in a qualified residential treatment program (QRTP), determine the following:<sup>18</sup>
  - Whether the assessment of the child's strengths and needs supports the determination that the child's needs cannot be met through placement in a foster family home
  - Whether the child's placement in the QRTP provides the most effective and appropriate level of care in the least restrictive environment
  - Whether the placement in the QRTP is consistent with the child's permanency plan
  - What specific treatment or service needs will be met in the QRTP placement and how long the child is expected to need the treatment or services
  - What efforts the department has made to prepare the child to return home or be placed with a fit and willing relative, a legal guardian, an adoptive parent, or in a foster family home
  - Whether to approve or deny the continued placement of the child in the QRTP
- In the case of an Indian child, whether active efforts have been made to prevent the breakup of the Indian family and to make a placement according to the placement preferences of the Federal Indian Child Welfare Act<sup>19</sup>

At the permanency hearing, the agency must present for the court's approval a permanency plan that includes the desired permanency goal, including a concurrent permanency goal, if appropriate, and the timeframe for achieving that goal. In 26 States, the court is required to consult with the child about his or her preferred permanency outcome.<sup>20</sup>

## 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, in those cases, attention may be 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.

While permanency preferences vary somewhat from State to State, in general, statutes addressing legal permanency options include the following:

- Reunification with the parent(s)

<sup>18</sup> In seven States: Georgia, Kansas, Maryland, Michigan, Utah, Virginia, and Washington

<sup>19</sup> In five States: Minnesota, New Mexico, Oklahoma, Oregon, and Wisconsin

<sup>20</sup> Alabama, Arkansas, Connecticut, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Montana, Nebraska, Nevada, New Jersey, New York, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, West Virginia, Wisconsin, and Wyoming

- Adoption, with placement preference to a relative or current foster parent
- Permanent placement and legal guardianship with a fit and willing relative (kinship care)
- Legal guardianship or custody with another adult
- Another planned permanent living arrangement (APPLA)<sup>21</sup>

In approximately 38 States, when APPLA is the permanency goal, the department or agency must document the compelling reasons why another permanent placement was not in the child's best interests.<sup>22</sup> In 24 States, the child must be at least age 16 before APPLA can be selected as the permanency goal.<sup>23</sup>

<sup>21</sup> 42 U.S.C.A. § 675(5)(C) (2015). Depending on the age and needs of the child, other permanent living arrangements can include long-term foster care, residential care, and independent living.

<sup>22</sup> Alabama, Alaska, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, West Virginia, Wisconsin, and Wyoming

<sup>23</sup> Connecticut, Delaware, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Montana, Nebraska, Nevada, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Utah, West Virginia, and Wisconsin

This publication is a product of the State Statutes Series prepared by Child Welfare Information Gateway. While every attempt has been made to be complete, 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.

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