

PERMANENCY HEARINGS: What to know and how to make them matter!

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Waukesha County Circuit Court
Waukesha

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Milwaukee County Circuit Court
Milwaukee

Learning Objectives

- Understand the importance of timely permanency for children
- Know the timing and purpose of permanency hearings
- Effectively prepare for and conduct permanency hearings
- Make findings and orders in permanency hearings
- Understand and apply best practices for effective permanency hearings

Defining Permanency

Our Purpose: According to § 48.01(1)(a)

- ...The courts and agencies responsible for child welfare, while assuring that a child's health and safety are the paramount concerns, should assist parents ... in changing any circumstances in the home which might harm the child ... , which may require the child to be placed outside the home...
- The courts should recognize that they have the authority, in appropriate cases, not to reunite a child with his or her family. The courts and agencies responsible for child welfare should also recognize *that instability and impermanence in family relationships are contrary to the welfare of children and should therefore recognize the importance of eliminating the need for children to wait unreasonable periods of time for their parents to correct the conditions that prevent their safe return to the family.*

Defining Permanency



Monica , Age 15

- Permanence should bring about physical, legal and emotional safety and security
- Permanence is achieved with a family relationship that offers safe, stable, and committed parenting, unconditional love and lifelong support

What do we mean by PERMANENCE?

A Youth Perspective:

- Permanency is a state of mind, ***not a placement***
- Permanence is having the feeling that you are **connected**
- That there is someone who will **answer** your phone call in the middle of the night
- Or **miss you** when you don't show up
- PERMANENCE is **NOT** a place



Permanency Plan: What Is It?

- Plan designed to assure that children in out of home care quickly achieve permanency [§ 48.38]
- Plan establishes:
 - ▶ what the permanency goal(s) is/are, and
 - ▶ how it will be timely achieved [§ 48.38 (1) (b)]
- Plan is required for children in court ordered or authorized out of home care—yes, including delinquents
 - ▶ Except for kids in detention who will be going to DOC or in detention on sanctions and will return home on completion of sanctions [§ 938.38 (3) (a)]
- Plan must be filed with the court **within 60 days of *removal from home***

Permanency Goals

Statutory Permanency Goals: What Are They?

- Safe reunification [§ 48.38 (4)(fg)]
 - ▶ If the goal is not safe reunification, the plan must explain the rationale for the alternative plan, i.e. why reunification is not safe and appropriate
- Placement for adoption
- Placement with a guardian
- Permanent placement with a fit and willing relative

Permanency Goals: What Are They?

- Other Planned Permanent Living Arrangement (OPPLA)
[§ 48.38 (4)(fg)]
 - ▶ 16 years and over
 - ▶ If the plan is OPPLA, it must document a compelling reason why one of the other permanency goals is not in best interests of the child
 - ▶ If OPPLA, the living arrangement must include an appropriate and enduring relationship with an adult
 - ▶ OPPLA goal must have a concurrent goal (return home, adoption, placement with a guardian or placement with a relative) recommended by agency [§ 48.38 (4)(fm)]

Concurrent Planning: What Is It?

- The permanency plan may have two goals: a permanency goal and a concurrent permanency goal. [§ 48.355 (2b); § 48.38 (4)(fg)]
- The plans can be contradictory to each other (i.e., return home and TPR/Adoption)
- Neither goal is “primary” or “secondary;” they stand on equal footing
- Concurrent planning requires the Agency to simultaneously work through appropriate efforts to achieve **both** permanency goals [§ 48.355 (2b)(a)]
- Agency must determine under DCF guidelines if CC planning is appropriate and, if so, engage in CC planning *unless* court or review panel determine it is not appropriate
[§ 48.355 (2b)(b); § 48.38 (5)(c)5m]

Concurrent Planning: Why?

Why two plans at once?

To move things towards permanency faster.

In the past, we’ve done one thing and only after that has failed have we moved on to an alternative goal.

That takes too long!

Meanwhile, a child languishes in impermanence!

Permanency Reviews & Hearings

Timing

Permanency Plan Timing – Removal Date

- Typically, date taken into custody under TPC
- If a child was out of home, returned home, and then re-removed:
 - ▶ Permanency plan timing would be based off the most recent re-removal date
 - ▶ However, the time child spent in all out-of-home placement episodes would be included in the 15 out of 22 months calculation for purposes of filing a TPR petition
- If a child is already living with a relative/guardian prior to CHIPS petition (no TPC), removal is the date of the first order placing with relative/guardian

Permanency Hearings & Reviews: When Must They Be Held?

- Permanency Review – § 48.38(5)(a)
 - ▶ Panel or court
 - ▶ No later than 6 months after date of removal
 - ▶ Every 6 months thereafter
- Permanency Hearing – § 48.38(5m)(a)
 - ▶ No later than 12 months after date of removal
 - ▶ Thereafter, the earlier date of:
 - ✓ 6 months from prior permanency review
 - ✓ 12 months from prior hearing
- Court commissioners may conduct

Examples

Court Conducts 6-Month Review

Removal: 1/1/22

6-month review: 7/15/22

- Not timely
- Over 6 months from previous review

12-month hearing: 1/6/23

- **Timely**
- Within 6 month from previous review & 12 months from removal

Panel Conducts 6-Month Review

Removal: 1/1/22

6-month review: 7/15/22

- Not timely
- Over 6 months from previous review

12-month Hearing: 1/6/23

- **Not timely**
- Within 6 months of previous review, but over 12 months from removal

Permanency Hearings and Reviews: Timeliness

- Time cannot be tolled/extended for conducting the 12-month permanency hearings
 - ▶ See § 48.315(2m)(b)
- DCF data shows the statewide average of permanency reviews/hearings (as of February 2024):
 - ▶ 60 day Permanency Plan - 61% were filed timely
 - ▶ 6 month Permanency Reviews/Hearings - 68% were timely
 - ▶ 12 month Permanency Hearings - 53% were timely

Reasonable Efforts Not Required Cases

- If a court determines that the agency is not required to provide reasonable efforts to prevent removal/safely reunify the child in the case...
- **Then the court must hold a permanency determination hearing within 30 days of that finding.**

See § 48.355(2d)(b)

Why Must Permanency Hearings Be Held?

- The simple answer is \$\$\$\$
 - ▶ If timely permanency hearings do not occur, the state will be deprived of foster care cost reimbursement [45 C.F.R. sec. 1356.21]
- But the REAL answer: timely permanence is for the child
 - ▶ Every piece of federal child welfare legislation since 1980 has emphasized the critical importance of timely permanence *to the child*

Conducting the Hearing

Preparing for the Hearing: Review of Documents

- Most recent Permanency Plan
 - ▶ DCF recently made changes to limit history (character limit)
 - ▶ Must be filed and distributed 5 days prior to the permanency review/hearing
 - ▶ Foster parent or relative caregiver not permitted to receive copy
- Dispositional Order
- GAL or CASA report (if any)
- Any mental health or AODA evaluation filed with the court
- Any written comments from the child, parents, child's caregiver, and school

Permanency Hearings Schools

- Child's school required to receive notice of hearing
- Has right to provide written comments
- DPI created guide for schools: https://dpi.wi.gov/sites/default/files/imce/foster-care/Perm_Plan_Review_Input_Tool.pdf

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY	
IN THE INTEREST OF _____	<input type="checkbox"/> Amended Request for Permanency Hearing
Name _____	
Date of Birth _____	Case No. _____
I REQUEST THE COURT SCHEDULE A PERMANENCY HEARING:	
1. I am interested as <input type="checkbox"/> Caseworker <input type="checkbox"/> District Attorney/Corporation Counsel <input type="checkbox"/> Other: _____	
2. The Permanency Plan must be filed at least 5 business days prior to the hearing. The child/juvenile was removed from the home on: _____ The Permanency Hearing must be held by: _____ The child/juvenile's school name and address: _____	
<input type="checkbox"/> 3. A party's address has changed. A Notice of Change of Address (JD-1830) <input type="checkbox"/> was previously filed with the court. <input type="checkbox"/> is attached.	
DISTRIBUTION: 1. Court 2. Child/Juvenile 3. Child/Juvenile's Guardian ad Litem/Adversary Counsel 4. Parents 5. Parents' Attorney(s) 6. Child's Guardian/Legal Custodian 7. Relative Caregiver/Foster Parent 8. District Attorney/Corporation Counsel 9. Caseworker 10. Court Appointed Special Advocate (CASA) 11. Tribe 12. Indian Custodian	_____ Signature _____ Name Printed or Typed _____ Address _____ Email Address Telephone Number _____ Date State Bar No. (if any)

Conducting the Permanency Hearing

Best practice suggests that a Permanency Hearing should take
45 to 60 minutes to complete

How many of you just said to yourself, “Yeah right”?

TAKE THE TIME to conduct a **THOROUGH** Permanency Hearing.

Better hearings will result in:

Earlier permanency for kids

Fewer hearings for you in the future

How to Conduct Permanency Hearings

- Keep hearing more informal and on a level with the parents and child
- Neither § 48.38 (5m) nor § 48.299 dictate how permanency hearings should be conducted or whether rules of evidence apply
- But...§ 48.38 (5m)(e) calls for “findings of fact and conclusions of law” to be made:
 - ▶ That suggests an evidentiary hearing
 - ▶ Plus § 48.38 (5m)(f) requires the court revise the order or change placement if the findings of fact and conclusions of law conflict with the existing dispositional order

Summary of Important Issues

- ▶ When and why the child was removed from the home?
- ▶ Is the child placed with siblings (if not, why not)?
- ▶ Is the child placed with relatives (if not, why not)?
 - ✓ Strong preference for placement with fit and willing relatives, including out-of-state relatives [§ 48.355 (1)]
 - ✓ § 48.38 (4)(bm) directs inquiry in this regard if the child is not with relatives
- ▶ Educational issues (including whether agency tried to keep child in same school)
- ▶ Medical issues

Determining the Permanency Goal

- What permanency goal(s) is the agency recommending?
- Are any parties advocating for an alternate plan?
- How was the plan determined and who was involved in developing the plan?
- What is the child's position and how was the child consulted?
- Is there a concurrent goal? Should there be?

Judicial Checklists

Permanency Hearing
and
Post-TPR Permanency
Hearing Checklists
for judges and court
commissioners
(see online materials)

JUDICIAL CHECKLIST – PERMANENCY HEARING

A Permanency Hearing is a critical event where the court must assess the appropriateness of a child's permanency goal and progress towards that goal. This checklist is designed to highlight key questions that the court should ask at every Permanency Hearing to elicit more detailed information.

AT EVERY PERMANENCY HEARING:

1. **Address appearances, written information, and youth consultation:**
 - ☐ Are all parties and participants present, including the child? If not, did they receive proper notice?
 - ☐ Address the parents and child (if age appropriate). What is their opinion about the proposed plan?
 - ☐ If child is 14 years or older, has the agency prepared the plan in consultation with the child and described the programs and services for transition from out-of-home care to successful adulthood?
 - ☐ If the child is not present, why is the child not there? When did the guardian ad litem (GAL) or adversary counsel consult with the child? What is the child's opinion about the proposed plan?
 - ☐ Were any written statements submitted? If so, have they been distributed to all parties?
 - ☐ If present, has the caregiver been given opportunity to provide a statement to the court?
 - ☐ Has everyone received a copy of the Permanency Plan and any additional reports?
2. **Review the child's out-of-home placement status:**
 - ☐ How long has the child resided outside the home?
 - ☐ What prevents a safe return home with either parent today?
 - ☐ What are the reasons for continued placement of the child?
 - ☐ Has the child resided outside the home for 15 out of the past 22 months? If yes, is there an exception to a termination of parental rights filing?
 - ☐ Have the parents been given termination of parental rights warnings?
3. **Examine the child's current placement:**
 - ☐ Does the current placement remain necessary, safe, and appropriate?
 - ☐ Does the current placement meet all the physical, emotional, and educational needs of the child?
 - ☐ Does the child have opportunity to participate in age or developmentally appropriate extracurricular, enrichment, cultural, and social activities?
 - ☐ How does the child feel about his or her current placement?
 - ☐ Is the child placed with a relative? If not, why?
 - ☐ Has the parent provided names of relatives? Has the agency searched for relatives and examined them as potential placements or adoptive resources?
 - ☐ If the child has siblings, are the child and siblings placed together? If not, why?
 - ☐ If the siblings are not placed together, are they spending time together? How often and in what setting? How is the sibling interaction going?
 - ☐ If this case is subject to the Wisconsin Indian Child Welfare Act, is the child placed in accordance with the placement preferences under Wis. Stat. § 48.02(7)?
4. **Evaluate progress made to address safety and the efforts made to rehabilitate the family:**
 - ☐ What progress has been made toward eliminating the causes for the out-of-home placement?
 - ☐ What is the status of threats of danger in the home? Are they decreasing? Any additional threats?
 - ☐ What is the status of each parent's protective capacities?
 - ☐ What progress has each parent made in meeting the conditions of return?
 - ☐ Are the parent and child spending time together? How often and in what setting? Is the level of supervision appropriate and sufficient? How is the family interaction going?
 - ☐ What services has the agency offered or provided? Are services available? Are there additional services that should be offered to the parents or child?
 - ☐ Have adequate efforts been made to involve appropriate service providers?

Reunification – Examples

- Can the child be safely reunified today?
- What is the specific safety issue preventing reunification?
- If the child cannot be returned home today, what specific steps will be taken to promote reunification within a reasonable amount of time?

Adoption – Examples

- Has the agency filed a petition for termination of parental rights? If so what is the anticipated trial date? If not, when will the petition be filed?
- Is the child placed with relatives? If not, why not?
- Are there relatives interested in permanent guardianship, but not willing or able to adopt?
- If the child is an Indian child, does the tribe support the plan? If not, why not?

Guardianship – Examples

- Is the proposed guardian financially able to care for the child through the age of majority?
- Has the agency explored opportunities for relative caregiver payments and/or entitlements (e.g. subsidized guardianship, if qualify, Social Security payments, food stamps, Medicaid, etc.)?
- If the parents are not to have contact with the child, will the proposed guardian:
 - ▶ Actually be willing to keep the parents away?
 - ▶ Be able to protect the child from further maltreatment?

Placement With a Fit and Willing Relative – Examples

- How is placement with a fit and willing relative rather than reunification, adoption or a permanent guardianship in the child's best interest?
- Why isn't a guardianship being pursued?
- **Are the relatives fully informed about the benefits of adoption and/or guardianship?**

Other Planned Permanent Living Arrangement (OPPLA) – Examples

- What is the identified, long-term placement for the child?
- What efforts have been made to identify and contact relatives or non-relatives who may be able and willing to care for the child on a permanent basis?
- What is the plan to prepare the child to transition to independent living? Are adult services needed and a plan for that transition?

Findings & Orders

Permanency Hearing Order (JD-1791 & IW-1791)

STATE OF WISCONSIN, CIRCUIT COURT, COUNTY
IN THE INTEREST OF ☐ Amended
Name
Date of Birth
Permanency Hearing Order
with Termination of Parental Rights Notice
Case No.

A Request for Hearing was filed with the Court and notice was given to all interested parties.
A hearing was held on [Date], which is the effective date of this Order.

THE COURT REVIEWED THE PERMANENCY PLAN FILED BY THE AGENCY AND FINDS:

1. The provisions of the Indian Child Welfare Act do not apply. (For an Indian child, use the Indian Child Welfare Act version (IW-1791) of this form.)

2. ☐ A. The permanency goal for the child/juvenile has been
☐ return to the home.
☐ adoption.
☐ placement with a guardian.
☐ permanent placement with a fit and willing relative.
☐ placement in some other planned permanent living arrangement that includes an appropriate, enduring relationship with an adult (if 16 years or older).

B. This goal ☐ continues to be ☐ is no longer appropriate.

- ☐ 3. A. The concurrent permanency goal for the child/juvenile has been
☐ return to the home.
☐ adoption.
☐ placement with a guardian.
☐ permanent placement with a fit and willing relative.
☐ placement in some other planned permanent living arrangement that includes an appropriate, enduring relationship with an adult (if 16 years or older).

B. This goal ☐ continues to be ☐ is no longer appropriate.

4. It ☐ is ☐ is not appropriate for the child/juvenile to have a concurrent permanency goal.

5. The extent of compliance with the Permanency Plan is as follows:

	in compliance	in partial compliance	not in compliance
<input type="checkbox"/> agency	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> service provider	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Parent #1 [Name]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Parent #2 [Name]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> child/juvenile	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

6. The placement of the child/juvenile ☐ continues ☐ no longer continues to be necessary, safe, and appropriate.
☐ Placement in a planned permanent living arrangement is the best permanency goal for the child/juvenile at this time. It continues not to be in the best interests of the child/juvenile to be returned home or placed for adoption, with a guardian, or with a fit and willing relative. The reasons for these findings are:

7. Adequate efforts ☐ have ☐ have not been made to involve the appropriate service providers in meeting the special needs of the child/juvenile and his or her parent(s).

8. Sufficient progress ☐ has ☐ has not been made in eliminating the causes for the child/juvenile's out-of-home placement and toward returning the child/juvenile safely to his or her home or toward obtaining a permanent placement for the child/juvenile.

☐ 9. The child/juvenile has been placed outside of his or her home in a foster home, group home, residential care center for children and youth, or shelter care facility for 15 of the most recent 22 months.
The permanency plan is
☐ appropriate.
☐ not appropriate because it fails to sufficiently address the circumstances which prevent the child/juvenile from
☐ being returned safely to the home;
☐ being placed safely in the home of a fit and willing relative;
☐ having a petition for involuntary termination of parental rights filed on behalf of the child/juvenile;
☐ being placed for adoption;
☐ being placed with a guardian;
☐ being placed in some other planned permanent living arrangement that includes an appropriate, enduring relationship with an adult (if 16 years or older).

☐ 10. The child/juvenile is likely to be returned home, placed for adoption, placed with a guardian, placed with a fit and willing relative, or placed in some other planned permanent living arrangement that includes an appropriate, enduring relationship with an adult by [Date].

11. Reasonable efforts to achieve the permanency goal of the permanency plan, including through an out-of-state placement if appropriate, were
☐ made by the department or agency responsible for providing services as follows:
☐ not made by the department or agency responsible for providing services as follows:

12. Reasonable efforts to place the child/juvenile in a placement that enables the sibling group to remain together were
☐ made.
☐ not required because the child/juvenile does not have siblings in out-of-home care.
☐ not required because it would be contrary to the safety or well being of the child/juvenile or any of the siblings.

☐ 13. The child/juvenile has a permanency goal of placement in a planned permanent living arrangement, and the agency has taken the following steps, including consulting with the child/juvenile, to ascertain whether the child/juvenile has regular, ongoing opportunities to engage in age or developmentally appropriate activities and to ensure that the caregiver is applying the reasonable and prudent parent standard to decisions concerning participation in those activities:

Key Findings and Orders

- Clearly identify the permanency goal(s)
- If the agency made reasonable efforts to achieve the permanency goal---just the permanency goal---not any concurrent permanency goal
- Extent of compliance with permanency plan by parents and agency
- Efforts to involve service providers and staff to meet special needs of child and parents

Key Findings and Orders

- The continuing necessity for, safety and appropriateness of the out of home placement
- The progress towards eliminating safety concerns necessitating out of home placement and safely reunifying or achieving alternative permanence
- A projected date by which safe reunification or other alternative permanence is likely to be achieved

Key Findings and Orders

- If child was out of home for 15 of the most recent 22 months, the appropriateness of the present permanency goal and the circumstances which prevent safe return or one of the alternative permanence goals
- If child has siblings in out-of-home care, whether agency made reasonable efforts:
 - ▶ To keep them together and
 - ▶ If they could not be safely placed together, made reasonable efforts to assure frequent sibling visits (unless visits are not safe)

Key Findings and Orders – WICWA

- If a WICWA child, whether:
 - ▶ Agency made active efforts to prevent breakup of Indian family and,
 - ▶ Placement is compliant with WICWA placement preferences (or if there is good cause to depart from those preferences)

Key Findings and Orders – OPPLA

- When making the continuing necessity and appropriateness findings for OPPLA:
 - ▶ Why is OPPLA the best permanency goal for the child?
 - ▶ Why are other goals not in child's best interests?
 - ▶ Regular, ongoing opportunities to engage in age or developmentally appropriate activities?
 - ▶ Is there an appropriate, enduring relationship with an adult?
Who?

Additional Considerations – TPR

- If the agency is required to file a TPR petition, but has not done so or has expressed an intention not to file, indicate if exception exists:
 - 1) the child is placed with a relative;
 - 2) agency has not made reasonable efforts/active efforts to return child home;
 - 3) TPR is not in child's best interests; or
 - 4) TPR grounds do not exist.
- If TPR is appropriate, consider ordering date by which the agency must file TPR petition

Additional Considerations – Transition to Adulthood

- If the child is 14 years old at the time of the review, whether the agency is providing services needed to assist the child to make the transition from out-of-home care to successful adulthood

Closing the Permanency Hearing

- You must advise the parents of TPR warnings and conditions of return (orally and in writing) [§ 48.356]
- Schedule the next hearing
- Engage parents, child, caregiver, and other participants
- Set clear expectations/deadlines
- Make oral findings and orders that all participants can understand
- If possible, copy and distribute order to parties at the end of the hearing


Family Participation

Engaging with Parents

- Parents should be asked about progress on their Conditions for Return



- There are 6 types of Solution Focused Strategies that can be asked (see online materials)



Solution Focused Strategies for Engaging Families in Child Welfare Proceedings

Open ended questions	Open ended considerations	Exception Finding Questions	Exception Finding Considerations	Scaling Questions	Scaling Considerations
<ul style="list-style-type: none"> What are 3 main priorities that you plan to begin working on? Help me understand your progress or struggles with... How can we help you with your conditions for return? Are there additional services that you need to assist you with your conditions? Have you tried to change this behavior or get sober before? What worked well during that time? What was difficult? What might you do differently this time? 	<ul style="list-style-type: none"> Ask open ended questions Expand the dialogue without leading Be thoughtful in phrasing the question Give families an opportunity to respond beyond a yes or no answer 	<ul style="list-style-type: none"> How can we plan so you don't run into that problem again? Can you think of a time when you were able to do ... (make your appointments, stay sober, etc)? You know what you need to do to change your behavior. How can we help? Think about a time you were sober. What was that like? How did you start? How can we get you back there? You have made some changes. How can we help so we continue to see progress? 	<ul style="list-style-type: none"> Exceptions are times when problems could have occurred but did not Use when someone is stuck and cannot see beyond the problem Use instead to show the problem is not always happening Stating the positive rather than in the negative 	<ul style="list-style-type: none"> On a scale from 1-10, where are you today with... (condition, service, overall progress, etc.)? What's keeping you from going up or down a point? How can we help you increase up the scale? Your priority was to make your AODA appointments. You started at 0, where are you today? Social workers could include the parent's scale number in the permanency plan so the judge can ask about progress at the next hearing. At the last court hearing, you were a 5 and today you're a 8! 	<ul style="list-style-type: none"> Can be used to assess the level of change that has occurred Focus on working towards the goal Smaller increments - 1-2 points at a time Be realistic about moving up the scale

Solution Focused Strategy: Techniques

- Ask open-ended questions
- Use scaling questions to describe progress
- Give compliments and affirmations (empower parties)
- Frame questions referencing relationships
- Ask Best Hope/Miracle Questions

Child's Participation

- It is strongly presumed that the child will be present and participate in permanency reviews and hearings
 - ▶ Court or panel “shall consult with the child in an age appropriate ... manner regarding the child’s ...”, unless child’s age and developmental level indicate it is not appropriate [§ 48.38 (5)(bm)2 and (5m)(c)2]
 - ▶ Plan must tell you whether child’s age and development are sufficient to allow the court/panel to consult with child at PH/PR and, if not, why not [§ 48.38 (4)(i)]
 - ▶ However, court or panel can still determine if it would be in best interests of child to participate [§ 48.38 (5)]

Youth involvement is their own case planning and advocacy
is important!

“Nothing about us without us”



Questions or Comments?