

# GUIDING QUESTIONS ON PERMANENCY



## UTAH COURT IMPROVEMENT PROGRAM

*The Court Improvement Program's Hearing Quality Checklist and Guide Workgroup developed the Guiding Questions on Permanency. This workgroup included representatives from the Juvenile Court, Division of Child and Family Services, Parental Defense Alliance, Utah Attorney General's Office Child Protection Division, and the Office of Guardian ad Litem and CASA.*

Introduction	3
Hearing Quality Checklist	5
Opening Statements & Engagement of Parties Section	6
Safety & Conditions to Return Home	7
Family Time	9
Permanency and Concurrent Goals	10
Kinship Placement & Connection	11
Child Well-Being	12
Next Steps & Setting Expectations Section	13

---

The Utah Court Improvement Program (CIP) and the Division of Child and Family Services (DCFS), and in participation with judges, attorneys, and DCFS staff, seek to improve permanency outcomes for children and family by supporting high quality hearings. These Guiding Questions on Permanency, including a judicial checklist for hearings, are issued as part of that effort.

The CIP and DCFS began examining the quality of hearings in Utah in January 2019 after findings from the August 2018 Federal Child and Family Services Review (CFSR) revealed concerns regarding appropriate and timely permanency. The CFSR results showed that appropriate permanency goals were not always established in a timely manner and there were not always concerted efforts made towards the permanency and concurrent goals. Together CIP and DCFS along with representatives from the Juvenile Court, Parental Defense Alliance, Utah Attorney General's Office Child Protection Division, and the Office of Guardian ad Litem and CASA reviewed various data to identify why there are delays in achieving permanency and identifying the appropriate permanency and concurrent goals. Despite holding timely hearings, data showed that permanency goals are not reviewed at every hearing and a meaningful conversation about the reasons for the concurrent goal does not occur at every hearing.

Also, the research that indicates linkages between hearing quality and permanency outcomes:

- Engagement of parents in the hearing process has been linked to higher likelihoods of relative placements instead of stranger foster care.[1]
- Courts that were more respectful of parents also had better timeliness outcomes.[2]
- High performing courts (with better and more timely permanency outcomes) also had more youth present in court, more discussion in hearings, and more specific discussion of how to achieve permanency.[3]
- There is a link between the breadth of discussion topics and a host of outcomes, including relative placements, reunification, and timely permanency.[4]

Other states that have focused on improving hearing quality have used bench cards or judicial checklists to improve practice. Here, the Guiding Questions on Permanency, including judicial checklist, are designed to give greater consistency to the permanency process so all practitioners and families are prepared to discuss permanency and other relevant issues along with being active participants so there is substantive discussion of the issues and ensure that relevant topics are discussed with the families present and included in the discussion. The Guiding Questions on Permanency are not only for use in the courtroom but are also meant to support practitioners and families in having consistent conversations at all stages of a child welfare case about permanency in child and family team meetings, mediations, and other meetings.

Specifically, the Guiding Questions on Permanency are developed to ensure that:

- All participants are engaged in respectful hearings in a way that fosters hope and continued participation.
  - Each hearing will sufficiently cover pertinent safety, permanency, and well-being factors with depth and breadth resulting in more meaningful hearings.
  - All parties clearly understand the family's current circumstances at each hearing.
  - Appropriate permanency and concurrent goals are established on a timely basis and evaluated on an ongoing basis.
  - All parties clearly understand the path to permanency and what is needed to achieve permanency including next immediate steps.
  - Each hearing contributes meaningfully in a clear progression towards permanency.
  - Children and families achieve timely and appropriate permanency.
-

The Guiding Questions on Permanency are organized in a format that includes sections applicable to all hearings and sections that relate to specific permanency goals. Overall, the format includes:

- **Opening Statement/Engagement of Parties Section** - frames the hearing by explaining its purpose, explores that everyone required for the hearing is available, and tips on engaging parents and children during the hearing.
- **Specific Goal & Common Issue Topics** - explore topics relevant to specific permanency and concurrent goals and other topics including safety, child well-being, appropriateness of placement, and family time.
- **Next Steps & Setting Expectation Section** - summarizes the proceeding so that all participants (including parents, caretakers, and children) understand what happened during the hearing, what the next steps are, and who is responsible for taking those steps.

It is noted that the Guiding Questions on Permanency can be modified, reworded, or may not be relevant to the unique facts and circumstances of each abuse and neglect case. The overall purpose of these questions is to ensure that the appropriate permanency and concurrent goals are established in a timely manner and reviewed frequently so that all children and families experience timely permanency.

---

# HEARING CHECKLIST

---

## OPENING STATEMENT

- Explain type and purpose of the hearing, including any relevant permanency time frames
- Ask parents/caregivers and children: What is something that has gone well since the last hearing
- Are the right people present? Who is missing, and if so, why? Are all parties identified, located, and notified?

## ENGAGEMENT OF PARTIES

- Address parents by name
- Provide parents and children with an opportunity to be heard (not only through attorney)
- Use understandable language

## SAFETY & CONDITIONS TO RETURN HOME (ONLY REUNIFICATION)

- What are the specific safety issues preventing the child(ren) from returning home today?
- What is being done to address the safety issues? What progress has been made? Any barriers?

## FAMILY TIME

- How is family visitation going?
- Can there be unsupervised visits with the parents? If not, what is the plan to move to unsupervised visits?
- Are the siblings placed together? If not, why not and are they spending time together?

## PERMANENCY GOAL

- What has been accomplished towards the permanency goal since the last hearing? Any barriers?

## CONCURRENT GOAL

- Is the concurrent goal still appropriate?
- What efforts have been made towards the concurrent goal since the last hearing?

## KINSHIP

- Is the child placed with appropriate relatives? If not, what efforts have been made to identify and place the child with appropriate relatives since the last hearing?
- What efforts have been made to maintain relative connections?

## CHILD WELL-BEING

- Does the child have any unmet needs (i.e. physical, social, educational, mental health)? If so, what is being done or needs to be done?
- *Maintain child's significant connections (i.e. cultural and community connections, social/emotional connections, school, sports, extracurricular activities) and refer to Education Court Report*

## NEXT STEPS

- What must be accomplished before the next hearing? Who is responsible for what?

The National Council of Juvenile and Family Court Judges recommends that the court should do all it can to encourage and support the meaningful engagement of children, youth, and families in the child welfare process and in hearings.[5] When the voices of parents and children are heard during hearings, there are clear benefits including a more complete understanding of family strengths, needs, and resources; increased levels of engagement by parents, children and youth; and greater depth and breadth of useful information on which a judge may base his or her decision.[6]

The research demonstrates that positive parental, child, and family engagement is linked to timelier case processing and positive permanency outcomes in cases (e.g., timely permanency and increased reunification rates). For example, judicial engagement was found to be linked to better placements (e.g., less stranger foster care)[7] and reduced time to permanency.[8] Judicial engagement of the mother at hearings predicted mother's attendance at subsequent hearings, and these findings were also true for the engagement of fathers.[9] Other research has found that judicial engagement of parents at the shelter hearing was found to be associated with the likelihood of placement with parents at the review hearing.[10] A study of one state's court practice found that engagement of parents was significantly related to higher levels of reunification, decreased time to permanency, decreased time to adoption, and a lower percentage of youth still in care at 24 months.[11] Finally, another study found judicial engagement, specifically addressing the mother by name, was related to decreased time to permanency.[12]

### Opening Statement

**Explain the type and purpose of the hearing, including any relevant permanency time frames**

**Ask parents/caregivers and children: What is something that has gone well since the last hearing**

**Are the right people present? Who is missing, and if so, why? Are all parties identified, located, and notified?**

### Engagement of Parties

**Address parents by name**

**Provide parents and children with an opportunity to be heard (not only through attorney)**

**Use understandable language**

### Other tips on engaging parents and children:

- Encouraging parents and children's presence and participation at hearing
- If parents have missed any hearings, talking with them about barriers to attend hearings
- Speaking directly to the party
- Asking parents and children if they have any questions or concerns that have not been addressed.
- Ensuring the professionals treat each other with respect
- Giving parents and youth choices, which could be as simple as asking parents what time of day they would prefer to come to court or asking them which qualified service provider they would prefer.
- Allowing parents and youth to speak first at hearings, before the professionals report on the family's progress.

If a child is placed outside a parent’s home, the court should determine the continuing necessity of placement at each hearing.[13] Safety planning is a shared responsibility, but ultimately the court must make critical safety decisions, such as when to remove a child and when to return a child home, throughout the life of the case.[14]

The American Bar Association's *Child Safety Guide for Judges and Attorneys* provides clear standards for judicial decision-making regarding child safety. To determine whether the child is safe, there are three elements to consider: threats of danger (or safety), child’s vulnerability, and protective capacities (or factors). A child is considered unsafe when: 1) threats of danger (or safety) exist in the family; 2) child(ren) are vulnerable to those threats; and 3) parents have insufficient protective capacities (or factors) to manage or control threats. [15]

When threats of danger are present with a vulnerable child and the parents possess insufficient protective capacities, the court decides what will temporarily substitute for the parents’ inability to control the threats. [16] These substitute actions and tasks that focus on controlling threats of danger are called a safety plan.[17] Safety plans may be 100% in-home plans or 100% out-of-home plans — or some combination of both.[18] An out-of-home safety plan or foster care becomes necessary whenever an in-home safety plan is not sufficient, feasible, or sustainable.[19] An out-of-home safety plan poses two issues the court must decide:

- What kind and amount of contact or visitation will there be? [*this will be discussed in the next section below*]; and
- What are the minimum expectations or conditions for the child to return home?[20]

Conditions for return are the benchmarks for reunification and they should guide service provision, provide clarity for caregivers, and help all parties focus on whether safety can be achieved in the home, which is the focus on deciding when to return a child.[21] Judges and attorneys should focus on critical safety issues, which can help deter parties from overemphasizing attending services and can avoid confusing child well-being, such as appropriateness of the child’s education while in care, with child safety.[22] Finally, safety should not be confused with risk. “For a child to be unsafe, the consequences must be severe and imminent. A conclusion about safety means considering: [1] how soon something may occur; [2] how severe the consequences will be to a child; and [3] how out-of-control conditions are. A conclusion about risk assesses the likelihood of maltreatment and has an open-ended timeframe and consequences may be mild or serious.”[23]

## Questions

**What are the specific safety issues preventing the child(ren) from returning home today?**

**What is being done to address the safety issues? What progress has been made? Any barriers?**

The court specifically asking about what are the specific safety issues preventing the child(ren) from returning home today does not imply that the child(ren) is actually going home after the hearing but is used to identify the specific safety issues that prevent the child(ren) from going home under a trial home placement. It is meant for the judge and practitioners to be clear on the specific safety threats as well as provide this information to the parent(s).

Information and follow up questions to assist with having a substantive discussion:

- What services can be arranged to allow the child to safely return home today?
  - What type of in-home safety plan could be developed and implemented in order for the child to return home today?
  - What is the status of the safety threats? Are the safety threats diminishing?
  - What is the status of the parent's protective factors? Have they improved?
  - Asking parents and families if there are any additional services that have not been provided?
-



Family time is critical to maintaining the parent-child relationship when a child is in out-of-home care as well as reducing the potentially damaging effects of separation.[24] It should be liberal and presumed unsupervised unless there is a demonstrated safety risk to the child.[25] “Research shows that children who have regular, frequent contact with their family while in foster care experience:

- A greater likelihood of reunification;
- Shorter stays in out-of-home care;
- Increased chances that the reunification will be lasting;
- Overall improved emotional well-being and positive adjustment to placement.”[26]

The current frequency, duration, and type of family time should be reviewed at each court hearing in order to determine if any changes are required in the frequency and supervision of visits as well as discuss parental participation and engagement and address any barriers to participation.[27]

The research shows the importance of sibling relationships to everyone, but they are particularly vital to children from disorganized or dysfunctional families.[28] Under the Fostering Connections to Success and Increasing Adoptions Act of 2008, DCFS must make reasonable efforts:

- To place siblings removed from their home in the same foster care, kinship guardianship, or adoptive placement, unless the State documents that such a joint placement would be contrary to safety or well-being of any of the siblings; and
- In the case of siblings, who are not placed together, to provide frequent visitation or other ongoing interaction between the siblings, unless there it is documented that frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings.[29]

## Questions

**How is family visitation going?**

**Can there be unsupervised visits with the parents? If not, what is the plan to move to unsupervised visits?**

**Are the siblings placed together? If not, why not and are they spending time together?**

## Information and follow up questions to assist with having a substantive discussion:

- *Current parent-child visits* – consider the nature, quality, and length of visits between child and parent
  - Does the visiting plan include a planned progression so that the parent or caretaker can see how visits will increase and be less restrictive over time assuming visits go well?
  - Is continuing supervised visits necessary based upon the safety of children?
  - Are there any logistical challenges for the family or child in meeting the plan?
  - If visits are not regularly attended, what remedies have been attempted?
  - How does the visiting plan support the permanency goal?
- *Sibling visits*
  - Are these visits included in family visits?
  - Are there separate sibling visits? What is the frequency, duration, restrictions (including out of state placements) and quality of contact (in community, interaction between sibs, supported by existing caregivers)?
  - For older siblings, are they allowed to contact each other on their own without permission? If so, has that been communicated to the siblings?

Every child and youth deserves a permanent family relationship and for those in out-of-home placements, planning for permanence should begin at their entry into foster care.[30] Permanency planning involves achieving permanent placements for children and youth within relatively short periods of time, either through their safe return home, or their placement in a new, safe, legally secure permanent home.[31] Concurrent planning is used alongside permanency planning to shorten a child or youth's stay in foster care by promoting more than one permanent family solution at a time. It is not sufficient to have a concurrent plan in name only; it needs to be actively pursued with the same urgency as the primary permanency goal.[32] It is important to have discussions in hearings about specific barriers to permanency planning, including the concurrent goal, and concrete steps to achieving permanency in order to help the parents (or pre-adoptive home) better understand what they need to do in order to achieve permanency and allows them to play a role in the discussion and problem solve any barriers. Also, the August 2018 CFSR found that we need to improve our efforts in continually assessing whether the concurrent goal is appropriate for that child because it may be appropriate at one time but later on in the case it is no longer appropriate.

**Permanency  
Goal  
Question**

**What has been accomplished towards the permanency goal since the last hearing? Any barriers?**

**Concurrent  
Goal  
Questions**

**Is the concurrent goal still appropriate?**

**What efforts have been made towards the concurrent goal since the last hearing?**

**Information and follow up questions to assist with having a substantive discussion:**

- What steps are still required to finalize the permanency plan?
- Does a permanency hearing need to be scheduled to discuss if the concurrent goal needs to be changed?

Kinship placements can be the best possible opportunity for maintaining familial, cultural, and community ties and reducing the overall trauma of removal and placement.[33] Research shows that family connections are critical to healthy child development and a sense of belonging.[34] In accordance, it's DCFS' policy that "when a child cannot safely remain in their home, the best possible place for that child is with someone familiar to them who can keep them connected to their family, their community, and their culture. Foster care with a stranger is a last resort and should only be used when ongoing efforts have failed to locate, engage, and support safe relative placements." [35] "Any preferential consideration that a relative or friend is initially granted . . . expires 120 days from the date of the shelter hearing. After that time period . . . , a relative or friend who has not obtained custody or asserted an interest in a child, may not be granted preferential consideration by the division or the court." [36]

### Questions

**Is the child placed with appropriate relatives? If not, what efforts have been made to identify and place the child with appropriate relatives since the last hearing?**

**What efforts have been made to maintain relative connections?**

### Information and follow up questions to assist with having a substantive discussion:

- Continuing work to identify and work with kinship resources, including paternal family members as well as non-kin resources who have a relationship with the child (e.g., teacher, coach, neighbor) for both placement resources or supportive resources to assist with reunification and maintain connections with.
- If the child is in a non-kinship care placement, does that remain the best placement? Is there support for the child's connection to family and community? Is there support for the child's cultural and linguistic identity?

---

Every hearing affords the opportunity to discuss a child's physical, emotional, and mental health and educational needs and to identify any gaps in services and ensure the child's voice is heard.[37] Also, all children and youth in out of home placements should have the ability to engage in healthy and developmental activities, such as social, extracurricular, enrichment, or cultural activities, that promote normalcy and well-being. A child's well-being should be focused on with the same urgency as safety and permanency. It highlights for parents, caseworkers, and attorneys the importance of the child's healthy development to case review and permanency planning.[38]

**Q u e s t i o n**

**Does the child have any unmet needs (i.e. physical, social, educational, mental health)? If so, what is being done or needs to be done?**

***Maintain child's significant connections (i.e. social/emotional connections, school, sports, extracurricular activities) and refer to Education Court Report***

**I n f o r m a t i o n a n d f o l l o w u p q u e s t i o n s t o a s s i s t w i t h h a v i n g a s u b s t a n t i v e d i s c u s s i o n :**

- Does the current placement meet all the physical, emotional, and educational needs of the child?
  - If not, what is being done including working with the current caregiver to recognize and attend to the child's physical, emotional, and educational needs and facilitate the child's involvement in services?
  - Are there any services needed to support the current caregiver?
  - Does the child have the opportunity to participate in age or developmentally appropriate extracurricular, enrichment, cultural, and social activities?
-

The end of the hearing provides another opportunity for the judge to directly engage parents, children, and family members.[39] Discussing next steps helps ensure that all parties understand what took place in the hearing along with setting the stage for subsequent hearings by summarizing expectations for those hearings.[40]

**Question****What must be accomplished before the next hearing? Who is responsible for what?**

**Follow up questions to assist with ensuring that all participants understand what took place in the hearing and what the next steps are:**

- What needs to happen to meet any of the needs we discussed in the hearing?
  - Asking parents, children, and caregivers what they need and how can we address it?
  - Setting the next hearing and asking if the next hearing date/time works for the parents.
  - Asking parents/youth if they understand, what happened today and the next steps?
-

- 
- [1] Stephanie Macgill & Alicia Summers, *Assessing the relationship between the quality of juvenile dependency hearings and foster care placements*, 52 *Family Court Review*, 678 (2014).
- [2] Alberta J. Ellett & Sue D. Steib, *Child welfare and the courts; A statewide study with implications for professional development, practice, and change*, 15(5) *Research on Social Work Practice* 339 (2005).
- [3] Alicia Summers & Adam Darnell, *What does court observation tell us about judicial practice and the courts in child welfare?*, 9 *Journal of Public Child Welfare* 341 (2015).
- [4] Alicia Summers, Sophie I. Gatowski & Melissa Gueller, *Examining hearing quality in child abuse and neglect cases: The relationship between breadth of discussion and case outcomes*, 82 *Children and Youth Services Review* 490 (2017).
- [5] Sophie I. Gatowski, Nancy B. Miller, Stephen M. Rubin, Patricia Escher & Candice Maze, *Enhanced resource guidelines: Improving court practice in child abuse and neglect cases* 68, *National Council of Juvenile and Family Court Judges* (2016) (hereinafter *Enhanced Resource Guidelines*).
- [6] Jerry Milner & David Kelly, *How Attorneys and Judges Help Strengthen Families*, 40 *NACC: The Guardian* 1 (2018).
- [7] Macgill, *supra* note 1.
- [8] *Id.*
- [9] Carlene Gonzalez & Alicia Summers, *Assessing the long-term effects of courts catalyzing change preliminary protective hearing benchcard*, *Assessing the long-term effects of courts catalyzing change preliminary protective hearing benchcard*, *National Council of Juvenile and Family Court Judges* (2014); Alicia Summers & Sophie Gatowski, *Nevada Hearing Quality Study: Examining the Quality of Child Welfare Court Hearing Practice in Nevada*, *Nevada Court Improvement Program* (2018).
- [10] Theresa Bohannon, Kelesha Nevers & Alicia Summers, *Hawaii courts catalyzing change case file review and court observation pre and post benchcard*, *National Council of Juvenile and Family Court Judges* (2015).
- [11] Macgill, *supra* note 1.
- [12] Gatowski, *supra* note 9
- [13] *Enhanced Resource Guidelines*, 265.
- [14] Therese Roe Lund & Jennifer Renne, *Child Safety: A Guide for Judges and Attorney*, *American Bar Association*, 2, (2009).
- [15] *Id.* at 2.
- [16] *Id.* at 21.
- [17] *Id.*
- [18] *Id.* at 53.
- [19] *Id.* at 33.
- [20] *Id.*
- [21] *Id.* at 33-36, 77.
- [22] *Id.* at 43.
- [23] *Id.* at 2.
- [24] Wendy Haight, Sarah C. Mangelsdorf, James Black, Margaret Szewczyk, Sarah Schoppe, Grace Ann Giorgio, Lakshmi Tata, *Enhancing parent-child interaction during foster care visits: Experimental assessment of an intervention*, 84 *Child Welfare* 459 (2005); *Enhanced Resource Guidelines*, 85.
- [25] *Enhanced Resource Guidelines*, 16.
- [26] *Partners For Our Children*, *Family Visitation in Child Welfare: Helping Children Cope with Separation while in Foster Care*, 11 (2011), available at [https://partnersforourchildren.org/sites/default/files/2011\\_family\\_visitation.....\\_helping\\_children\\_cope\\_brief.pdf](https://partnersforourchildren.org/sites/default/files/2011_family_visitation....._helping_children_cope_brief.pdf) (last accessed on March 11, 2020).
- [27] *Enhanced Resource Guidelines*, 87.
- [28] *Id.* at 85.
- [29] 42 U.S.C. § 671(a)(31) (2020).
- [30] *Enhanced Resource Guidelines*, 295.
- [31] *Id.* at 36.
- [32] *Id.* at 93.
- [33] *Enhanced Resource Guidelines*, 137; Heidi Redlich Epstein, *Kinship Care is Better for Children and Families*, 36 *American Bar Association Child Law Practice Today* 1 (2017).
- [34] Epstein, *supra* note 34.
- [35] Diane Moore, *DCFS Kinship Memo*, May/June 2019.
- [36] *Utah Code* § 78A-6-307(18)(a) (2020).
- [37] *Enhanced Resource Guidelines*, 75.
- [38] *Id.* at 75-76.
- [39] *Id.* at 70.
- [40] *Id.* at 42.
-