

The Court Improvement Program's First Friday Series: Session 2 with Carrie Mason Tennessee Court Improvement Program Attorney <u>Carrie.Mason@tncourts.gov</u> February 7, 2025

1

### Session Agenda: Introduction to Juvenile Court

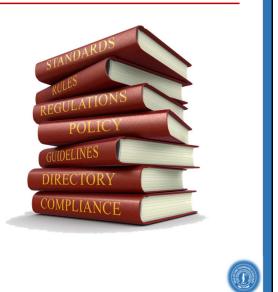
- Legal Framework: Federal and State Laws
- Dependency and Neglect
- The Roles of Key Participants (Judge/Magistrate, Attorneys, CASA, DCS)
- Key Hearings, Legal Standards, and Burdens of Proof
- Balancing Parental Rights with the Best Interests of the Child
- Foster Parent Rights

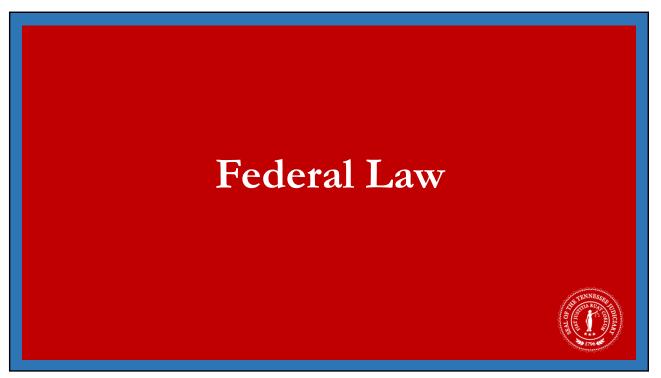


# **Dependency and Neglect**

The United States Congress has established the parameters of juvenile dependency and termination of parental rights law in the United States.

Child welfare practice in Tennessee incorporates these federal requirements into Tennessee Code, the Juvenile Rules of Practice and Procedure, the Tennessee Supreme Court Rules, local rules, and DCS policy; all of which are relevant to the juvenile court practitioner.



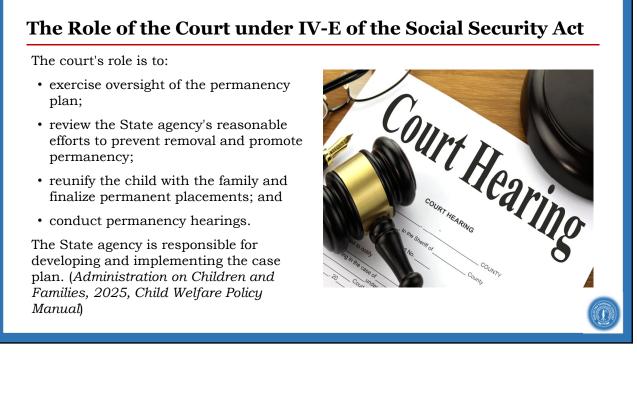


### Child Welfare and the Constitutional Rights of Parents

The U.S. Supreme Court has repeatedly held that parents have a fundamental right to make decisions as to the companionship, care, custody, and management of their children, which right is a protected liberty interest under the due process clause of the Fourteenth Amendment. The state is not permitted to interfere in a family unit absent a showing of unfitness." *Troxel v. Granville*, 530 U.S. 57, 65– 66, 120 S.Ct. 2054, 2060 (2000).



"[W]e have little doubt that the Due Process Clause would be offended if a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the child's best interest." Justice Thurgood Marshall, *Quillion vs. Walcott*, 434 U.S. 246 (1978).



### Federally Required Findings and Timelines under IV-E of the Social Security Act

Court must make the following findings associated with removal into foster care:

- Remaining in the home of the parent/legal guardian would be contrary to the child's welfare/that it is in the child's best interest to be placed in out-of-home care. 45 C.F.R. § 1356.21(c). This finding must be made at the time of the first court ruling authorizing removal of the child from the home. 45 C.F.R. § 1356.21(c).
- Reasonable efforts have been made to prevent or eliminate the need for removal. 45 C.F.R. § 1356.21(b)(1). This finding must be made within 60 days of the date of removal. 45 C.F.R. § 1356.21(b)(1)(i).

7

### Federally Required Findings and Timelines under IV-E of the Social Security Act

Court must engage with the family throughout foster care episode:

- Court must review the child's status and safety no less frequently than once every six months from the date the child entered foster care. 42 U.S.C. § 675(5)(B); 45 C.F.R. § 1355.34(c)(2)(ii).
- For a case in which the court determines that reasonable efforts to return the child home are not required due to aggravated circumstances, the permanency hearing must be held within 30 days of disposition. 45 C.F.R. § 1356.21(h)(2).
- Court must hold a permanency hearing to select a permanent plan no later than 12 months from the date the child entered foster care and must hold subsequent permanency plan hearings every 12 months thereafter. 45 C.F.R. §§ 1355.20, 1356.21(b)(2)(i); 42 U.S.C. § 675(5)(C).
- The title IV-E agency must obtain a judicial determination that it has made reasonable efforts to finalize the permanency plan ... within twelve months of the date the child is considered to have entered foster care in accordance with the definition at § 1355.20 of this part, and at least once every twelve months thereafter while the child is in foster care. 45 CFR 1356.21



A timely warning from the past: "Great powers are lodged in the juvenile court in its particular field, and proceedings there should be conducted according to the mandates of the statute. Unless there is a substantial compliance with the statutory requirements in these cases, the orders of the juvenile court will be reversed[.]" Juvenile Court of Shelby County v. State, 201 S.W. 771, 773 (Tenn. 1918).

### Tennessee Statues, Juvenile Rules of Practice and Procedure and Local Rules

Tennessee Statutes:

- Title 36 pertains to domestic relations generally, with the statutes governing termination of parental rights included as part of Chapter 1. T.C.A. § 36-1-101.
- Title 37 governs proceedings in juvenile courts, which include proceedings allowing the court to determine whether a child is dependent and neglected, as defined at § 37-1-102(b)(13) and, if so, to determine the appropriate disposition of the child.

11

### Tennessee Statues, Rules of Juvenile Practice and Procedure and Local Rules

Juvenile Rules of Practice and Procedure:

- These rules are designed to implement the purposes of the juvenile court as expressed in T.C.A. § 37-1-101 by providing speedy and inexpensive procedures for the hearing of juvenile cases that assure fairness and equity and that protect the rights and interests of all parties; by promoting uniformity in practice and procedure; and by providing guidance to judges, magistrates, attorneys, parties, youth services and probation officers, and others participating in the juvenile court. TRJPP 101: Purpose and Construction.
- Rules apply in every instance in which they address the procedure involved. TRJPP Advisory Commission Comments to TRJPP 101.

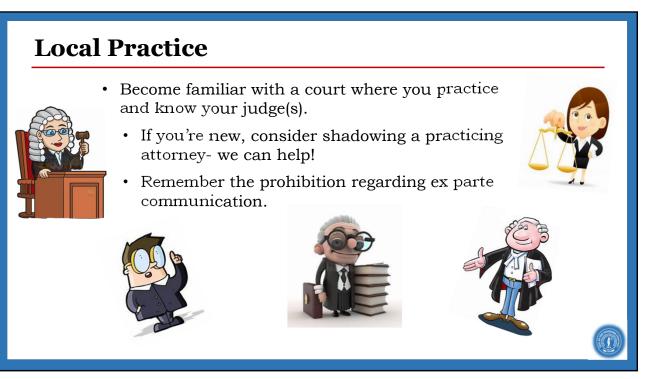
# **Tennessee Supreme Court Rule 18**

Rule18. Local Rules of Practice

- (a) The judge in each judicial district shall adopt written uniform local rules prescribing procedures for:
  - (1) setting cases for trial;
  - (2) obtaining continuances;
  - (3) disposition of pre-trial motions;
  - (4) settlement or plea-bargaining deadlines for criminal cases;
  - (5) preparation, submission and entry of orders and judgments.

Each judicial district may also adopt other uniform rules not inconsistent with the statutory law, the Rules of the Supreme Court, the Rules of Appellate Procedure, the Rules of Civil Procedure, the Rules of Criminal Procedure, the Rules of Juvenile Procedure, and the Rules of Evidence.







# **Jurisdiction of D&N Claims**

- Exclusive jurisdiction of dependency and neglect (T.C.A. § 37-1-103).
- Concurrent jurisdiction related to termination of parental rights and guardianship (Title 36).
- If a petition alleges facts tantamount to claim of dependency and neglect as basis for a modification, as would trigger juvenile court's jurisdiction, circuit court retains its domestic relations jurisdiction, "regardless of nature of the allegations, unless and until a pleading is filed or relief is otherwise sought in a juvenile court invoking its exclusive original jurisdiction," where no pleading had been filed or relief otherwise sought in juvenile court invoking its exclusive original jurisdiction. *Cox v. Lucas*, 2019, 576 S.W.3d 356.

17

### Exercising Temporary Jurisdiction of D&N, TPR or OP: T.C.A §37-1-103(d)

Court has temporary jurisdiction to issue temporary orders for child present or residing in county.

- When notified another court has prior jurisdiction, the temporary jurisdiction court shall:
  - Immediately notify & communicate with court having original jurisdiction.
  - Both courts shall attempt to:
    - Resolve jurisdictional issues.
    - Protect the best interests of the child.
    - Determine duration of the temporary order.

### Who is a Dependent and Neglected Child?

### T.C.A. § 37-1-102(b)(13)

- Without parent or legal guardian;
- Parent, guardian or other with whom child lives is unfit to care for child;
- Child under unlawful or improper care, supervision, custody or restraint by person or organization;
- Child unlawfully kept out of school (educational neglect);
- Parent, guardian or custodian neglects or refuses to provide medical care;
- Child found in place of violation of law because of lack of supervision;
- Child under improper control as to injure or endanger morals or health;

19

### Dependent and Neglected (cont.)

- Child suffering from abuse or neglect;
- Child under care of agency or non-relative for 6 continuous months without a power of attorney or court order and agency/person has not initiated proceeding for custody or adoption;
- Child allowed to engage in prostitution/pornography and parent/guardian/custodian neglects to protect; or
- Child willfully left in sole financial and physical care of relative for at least 18 consecutive months and will suffer substantial harm if removed (does not apply to parent in military service).

### **Abuse Defined**

Person under 18 suffering from or in immediate danger of suffering from injury, disability, or physical or mental conditions caused by brutality, neglect, other actions, or inactions of parent, relative, guardian or caretaker.

T.C.A. § 37-1-102(b)(1)



21

### **Severe Abuse Defined**

- Knowing exposure of child to, or failure to protect child from, abuse or neglect, or knowing use of force likely to cause serious bodily injury or death;
- Brutality, abuse, or neglect towards child, or failure to protect, in opinion of expert, has caused or expected to cause severe psychosis, neurotic behavior, developmental delay, intellectual disability, or severe impairment of child's ability to function adequately in child's environment;
- Commission of act constituting certain child sexual acts or aggravated child abuse, neglect, or endangerment against the child or the knowing failure to protect the child against such act;

Additonal criteria provided at T.C.A. § 37-1-102(b)(27)

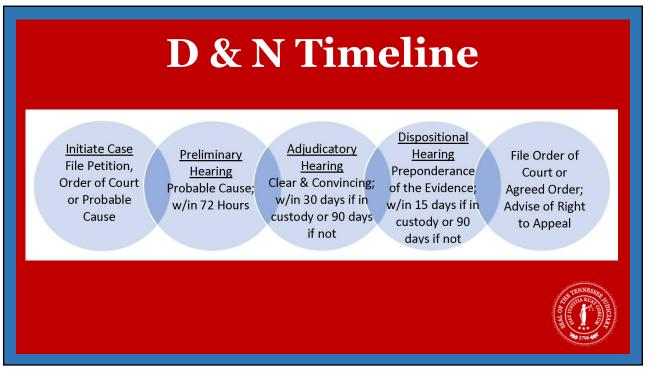
### **Importance of Severe Abuse Finding**

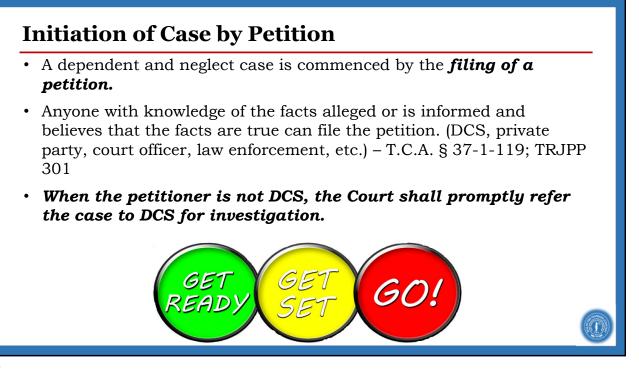
- Ground for termination of parental rights T.C.A. §36-1-113(g).
- Excuses DCS from making reasonable efforts to reunify if so ordered by the court T.C.A. §37-1-166(g)(4).



### Parent Attorneys and Guardians ad Litem

- Parents have a right to counsel at all stages of any proceeding involving abuse, dependency or neglect.
  - Counsel will be appointed if indigent.
  - Parties can waive right to attorney.
    - Waiver must be knowing and voluntary = intelligent & understanding decision.
    - Waiver made orally & in open court & confirmed in writing by party & judge.
- Guardian ad litem (GAL) appointed in all cases where D&N is alleged.





27

### **Taking Child into Custody Prior to Preliminary Hearing**

#### T.C.A. § 37-1-113, TRJPP 302

A child may be taken into custody:

- Pursuant to a Court Order based upon a sworn petition or sworn testimony attesting:
  - 1) the child is dependent, neglected or abused; and
  - 2) removal is required because child is subject to immediate threat to child's health or safety to extent delay for hearing would be likely to result in severe or irreparable harm or the child may abscond or be removed for the jurisdiction of the court. (see T.C.A. § 37-1-114(a)(2))
- If a child is removed from the home prior to the filing of a petition, a petition shall be filed and PC affirmed by the court within 48 hours of removal. T.C.A. 37-1-117(b)(2).

# **Probable Cause Finding**

#### **Purpose:**

To determine if there is probable cause to believe that the child is dependent, neglected, or abused AND an immediate threat to child's health or safety exists that is likely to result in severe or irreparable harm AND that there is no less restrictive alternative to the removal.

#### Timing:

Within 48 hours of custody if no prior written order authorizing custody.

T.C.A. § 37-1-114 TRJPP 302



#### 29

### **Removal of Child**

#### T.C.A. § 37-1-166

Prior to ordering a child committed to or retained within the custody of DCS, the court shall first determine whether *reasonable efforts* have been made to:

- 1) Prevent the need for removal of the child from such child's family; or
- 2) Make it possible for the child to return home.

Based on specific facts, court must find:

- 1) There is no less drastic alternative to removal;
- 2) Reasonable efforts have been made to prevent the need for removal of the child from such child's family or to make it possible for the child to return home; and
- 3) Continuation of the child's custody with the parent or legal guardian is contrary to the best interests of the child.

# **Preliminary Hearing**

#### **Purpose:**

To determine if there is probable cause to believe that the child is dependent, neglected, or abused AND if there is an immediate threat to child's health or safety likely to result in severe or irreparable harm AND that there is no less restrictive alternative to the removal.

#### **Standard of Proof:**

Probable Cause

#### Timing:

Within 72 hours of child's removal, excluding non-judicial days.

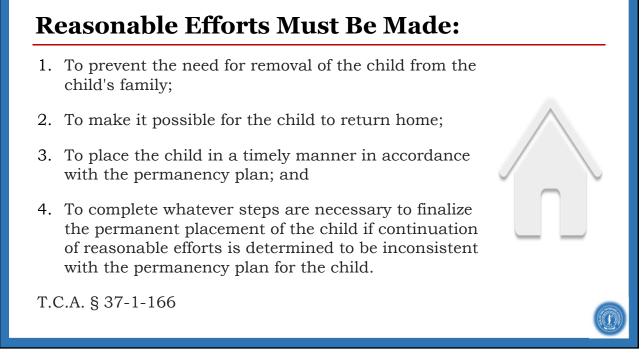
T.C.A. § 37-1-117 TRJPP 302(d)



### **Reasonable Efforts**

### T.C.A. § 37-1-166

- Relevant to each hearing type.
- Reasonable efforts means the **exercise of reasonable care and diligence** by the department to provide services related to meeting the needs of the child and the family.
- Reasonable efforts shall be made to preserve and reunify families.
- **Reasonable efforts to prevent removal** finding **must** be made **within 60 days** of the child entering custody.



### **Reasonable Efforts to Reunify Not Required**

Reasonable efforts shall not be required if a court has determined that the parent has subjected the child or any child in the household to aggravated circumstances, including any of the following:

- Abandonment of a child or an infant;
- Aggravated assault;
- · Aggravated kidnapping or especially aggravated kidnapping;
- Aggravated child abuse and neglect;
- Aggravated sexual exploitation of a minor or especially aggravated sexual exploitation of a minor;
- Aggravated rape, rape, rape of a child, or incest; or
- Others as set out in T.C.A § 36-1-102(9).

T.C.A. § 37-1-166



# **Case Scenario: In re Jane Doe**

Jane Doe is a 6-year-old girl who was removed from her mother, Sarah Doe, after a teacher reported signs of neglect through an ex parte order of removal initiated by Child Protective Services (CPS) on February 4, 2025.

- Background: Teacher observed that Jane frequently came to school with unwashed clothes, no lunch, and often mentioned being hungry. On one occasion, Jane disclosed that her mother "goes to sleep during the day and forgets to feed her & stays in her room with her door locked."
- CPS visited the home and found:
  - A cluttered apartment with spoiled food and dirty dishes.
  - Very little food in the refrigerator or pantry.
  - Jane appeared underweight and had head lice.
  - Sarah reported that she lost her job, struggles with depression, and has limited support.
- CPS implemented a safety plan with increased supervision and nourishment but found Jane home alone during a follow-up visit. Jane said her mom was at the store. Sarah did return one hour later, but without anything from the store. She said she went for a walk to clear her head. Jane's father, John Smith, lives out of state and has had no contact with Jane since infancy.
- Sarah has no criminal history but has a prior CPS case related to a lack of housing, which was closed after successful resolution.
- Jane is currently placed in a foster home and appears to be adjusting well.

37

# **Preliminary Hearing: In re: Jane Doe**

The evidence on the previous slide is presented by the DCS attorney.

- Burden of proof: Probable cause to believe that Jane is in immediate danger if returned to her mother. Probable cause is reasonable cause or a reasonable ground for belief in certain alleged facts. It is more than a hunch, but less than absolute certainty.
- Discuss arguments for or against probable cause based on the teacher's report, CPS home conditions report, and Sarah's statements in breakouts.
- Key Questions:
  - ? Is there probable cause to believe that the child is dependent, neglected, or abused?
  - ? Is there is an immediate threat to child's health or safety likely to result in severe or irreparable harm?
  - ? Is there no less restrictive alternative to the removal? Could any immediate safety measures (e.g., services or protective orders) have prevented removal?

# **Group Discussion - In re: Jane Doe**

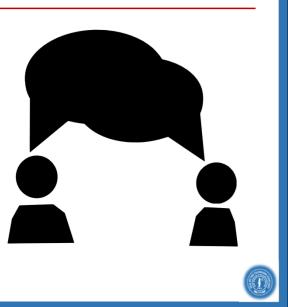
#### **Parent's Perspective:**

How might the parent attorney argue that reasonable efforts were not made before removal? For example: DCS could have provided in-home services or additional support instead of removal.

Can those issues be addressed now?

#### Guardian ad Litem's Perspective:

What factors should the GAL prioritize in presenting a case to the court? For example: safety, stability, and/or access to necessary care.



39

# Adjudication

#### **Purpose:**

Trial on the allegations of dependency, neglect, or abuse alleged in the petition using a clear and convincing evidentiary standard. Must determine if severe abuse was committed by parent or other person with custody.

#### **Standard of Proof:**

Clear and convincing evidence

#### **Timing:**

Within 30 days of removal or filing of petition if child not removed; not more than 90 days.

T.C.A. § 37-1-129 TRJPP 307

**Question:** Assuming Jane remained in care at the February 7, 2025, preliminary hearing, by what date should adjudication occur?



# Disposition

### **Purpose:**

To determine appropriate plans for child.

### Standard of Proof:

Preponderance of the Evidence

### **Timing:**

Within 15 days of adjudication if child has been removed; 90 days if child has not been removed.

 \* Shall be separate from adjudicatory hearing – but can be immediately following.

T.C.A. §§ 37-1-130 to 132 TRJPP 308



### **Review of Magistrate's Orders**

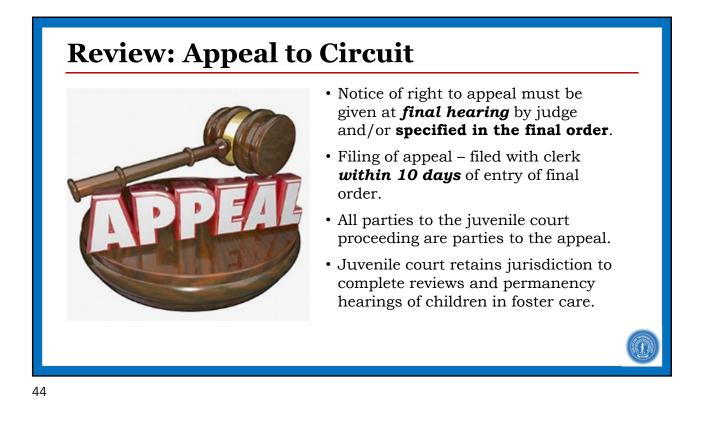
### T.C.A. § 37-1-107 (2023)

- Upon conclusion of hearing, magistrate shall file an order containing written findings of fact, conclusions of law and recommendations.
- A party has the right to review by juvenile court judge with a presumption of correctness as to the magistrate's order.
- Within 10 days, any party may file a written request for a review of the record by the juvenile court judge.
- Written request for review must include specific exceptions to the magistrate's findings, conclusions and/or recommendations (i.e. findings that the party objects to, grounds for objections, and party's proposed findings.)

# **Appeal of Magistrate's Orders**

### T.C.A. § 37-1-107 (2023)

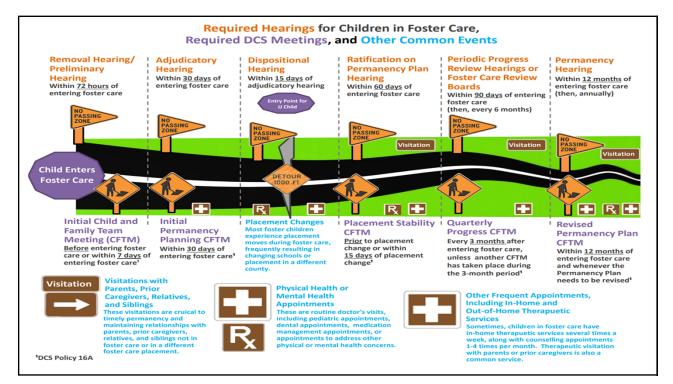
- No judicial review will be granted when the party did not participate in the hearing before the magistrate in good faith;
- A review is not a hearing and is limited to the matters raised in the filed, written exceptions. If no rehearing is requested, findings and recommendations become Courts' order when confirmed by Judge.
- The juvenile court judge shall afford the magistrate's findings, conclusions and recommendations the presumption of correctness. The judge shall modify the findings only when after review, the judge makes written findings that an abuse of discretion exists in any or all of the magistrate's findings.
- The judge shall issue written findings, conclusions, recommendations; OR may schedule the matter for a new hearing on any issues the judge deems necessary, with notice to parties.
- If no review is requested, right to de novo hearing before Circuit Court is not waived.



### Appeal of Final Order: Conduct of the De Novo Hearing

- The de novo hearing is a new hearing.
- Although the entire record of the juvenile court, including the court's findings and written reports, is sent to the circuit court on appeal, the circuit court renders its decision upon evidence presented at trial.
- 2024 amendment to the dependency and neglect statute T.C.A. § 37-1-102 specifies that the *criteria for dependency and neglect must be present at the time of the filing of the petition.*
- There is no presumption of correctness of the juvenile court order, and the circuit court judge can consider only those parts of the record that are introduced into evidence pursuant to applicable evidentiary standards.
- Appeals from circuit court are made to the Tennessee Court of Appeals.





# Permanency Planning in Dependency and Neglect



# **Foster Care Review Proceedings**

Ratification <u>Hearings</u> Approve Perm Plans; Ratify w/in 60 days of custody Periodic Review <u>Hearings</u> Placement is safe & appropriate; w/in 90 days of foster care & every

6 months

<u>Foster Care</u> <u>Review Board</u> All parties; Review recommendations by Judge

Permanency <u>Hearing</u> Final permanency outcome; Evidentiary hearing w/ child present.

For Youth 17+ Perm Hearing w/in 60 days of eligibility of extended foster care



### **Ratification Hearing on the Permanency Plan**

#### **Purpose:**

Court reviews the permanency plan drafted by DCS and ratifies it or orders it be modified. Court must find the plan to be in the child's best interest. Evidentiary hearing held if all parties or GAL do not agree with the plan.

#### **Timing:**

Within 60 days of placement in foster care.

T.C.A. § 37-2-403 TRJPP 401

**Question:** Assuming Jane remained in care at the February 7, 2025, preliminary hearing, by what date should ratification of the permanency hearing occur?



49

### Periodic Progress Review or Foster Care Review Board

#### **Purpose:**

To review the progress of all parties toward the goals specified in the permanency plan and to assess child's safety, services for the child, reasonable efforts provided by DCS to reunify and/or toward another goal on the plan, and the parents' compliance.

#### **Timing:**

Within 90 days of placement in foster care and every 6 months thereafter.

T.C.A. §§ 37-2-404 & 406 TRJPP 402 and 403



### Safety, Permanency and Well-Being



#### Rule 403 (e)

Foster care review board recommendations shall be made addressing the needs according to Rule 402(b).

#### Rule 402(b)

- 1) The continued appropriateness of the permanency goals and if a concurrent goal is needed;
- 2) Whether the child's placement is safe and appropriate;
- 3) Whether the child's well-being is being appropriately addressed through health, education, and independent living skills if applicable;
- 4) Whether the visitation schedule continues to be sufficient to maintain the bond between the child and parent, and the child and siblings, who are not residing in the same placement;
- 5) The reasonableness of DCS's efforts to identify or locate the parent or child whose identity or whereabouts are unknown;
- 6) The reasonableness of DCS's efforts based on the prioritization of the outcomes and corresponding action steps in the statement of responsibilities; and
- 7) The compliance of the parents or child with the statement of responsibilities in the plan.

### **Permanency Hearings**

#### **Purpose:**

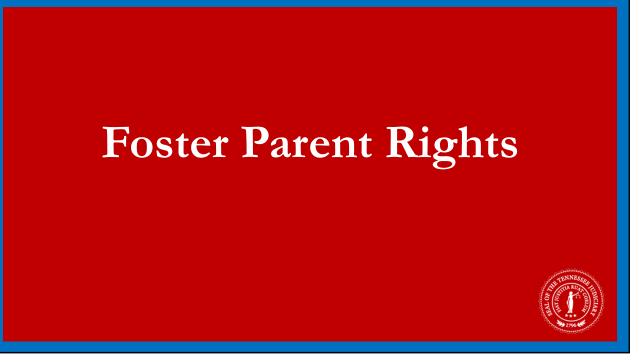
Court decides final permanency outcome for the child, based upon the reasonable efforts provided by DCS to reunify family, the parents' compliance, and the best interest of the child. Court must address child on the child's views of the provisions of the permanency plan. Court must review the independent living plan for child 14 or older and transitional living plan for child 17 or older. Court ensures child who has reached the age of 17 has notice of and understands the opportunity to receive all available post-custody services.

#### **Timing:**

Within 12 months of placement in foster care or within 30 days of a judicial determination that reasonable efforts to reunify are not required.

T.C.A. § 37-1-166(g) TRJPP 404





53

### **Foster Parents' Rights**

DCS shall notify the foster parent, relative caregiver, or prospective adoptive parents, in a complete manner, of all court hearings. This notification may include, but is not limited to, notice of the date and time of the court hearing, the name of the judge or hearing officer hearing the case, the location of the hearing, and the court docket number of the case. Such notification shall be made upon the department's receipt of this information, or at the same time that notification is issued to birth parents.

The foster parent or parents shall be permitted to attend such hearings at the discretion of the court. A foster parent who has served as the physical placement for the child for a period of nine (9) months or more shall be permitted to appear and actively participate in any permanency hearing or dispositional hearing for that child with regard to the best interests of the child;

T.C.A. § 37-2-415(a)(17)



### **Foster Parents' Rights**

(a) DCS shall notify the foster parents, if any, or any prospective adoptive parent or relative providing care for the child in state custody with notice of any review or hearing to be held with respect to the child. The foster parents shall be provided with notice of the right to be heard in any review or hearing to be held with respect to the child.

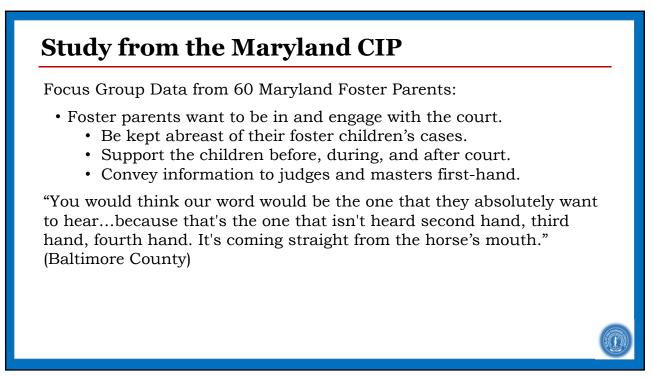
This section shall not be construed to require that any foster parent, prospective adoptive parent, or relative providing care for the child who has served as the physical placement for the child for a period of fewer than 9 continuous months be made a party to such a review or hearing solely on the basis of such notice and right to be heard.

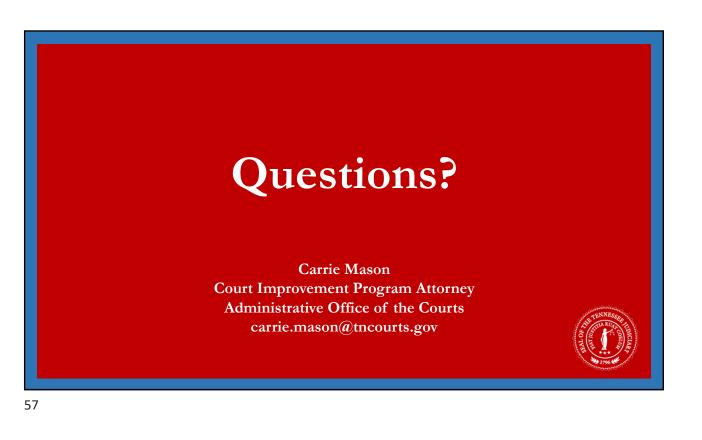
(b) Any foster parent who has served as the physical placement for the child for a period of 9 or more months shall be permitted to appear for the sole purpose of presenting evidence with regard to the best interests of the child.

(c) At each hearing, the court shall determine whether DCS has complied with this section.

T.C.A. § 37-2-416



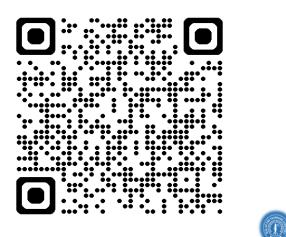




# **CIP Online Resources**

https://www.tncourts.gov/programs/court-improvement

- On-Demand Training
- Upcoming Training/Events
- Sample Motions, Orders, and Forms
- Reference Guides and Manuals



# **Juvenile Court Resources**

- TN Rules of Juvenile Practice & Procedure
  - Delinquent, Unruly and D&N cases
  - 4 Sections: General Provisions, Delinquent & Unruly, Dependency & Neglect, and Foster Care
  - AOC Website: <u>https://www.tncourts.gov/court-rules/215</u>

# **Juvenile Court Resources**

T.C.A. Title 37 - Juveniles

- Juvenile Courts and Proceedings
- Placement of Juveniles
- · Administration of Children and Youth Services
- Interstate Compacts
- Department of Children's Services
- Misc. Provisions
  - Liability of Parent or Guardian for Acts of Juveniles
  - Tennessee Missing Children Recovery Act
  - Parental Consent for Abortions by Minors
  - Childhood Immunizations
  - Information on Child Abuse Prevention
- Juvenile Offender Surcharges