



TIPS FOR LAWYERS

**BASICS OF PERMANENCY PLANNING**

# What is the permanency plan requirement?

The federal Adoption and Safe Families Act (ASFA) requires the Department of Children and Families to have a permanency plan for every child in its care. The plan must tell the court what permanency outcome the Department feels is in the best interests of the child and what facts form the basis of the Department's position.

Under ASFA, permissible permanency options include:

* Reunification with Parent
* Adoption/Termination of Parental Rights
* Legal Guardianship
* Permanent Placement with a Fit and Willing Relative

If the permanency plan recommends long term foster care with a non-relative or any other placement not listed above (i.e. "APPLA: Another Permanent Planned Living Arrangement"), DCF must document to the court that a compelling reason exists why it is not in the best interests of the child to be recommended for the one of the other, above-mentioned permanency options. *45 C.F.R. §1355.20; C.G.S. § 46b-129(k).*

**NOTE**: The Preventing Sex Trafficking and Strengthening Families Act (“SFA”)includes new provisions for older youth in foster care. Courts must oversee these provisions and work with DCF to develop policies and enforce them. As a result, both federal and state law prohibit APPLA to be goal for youth under age 16. *42 U.S.C.A. § 675(5)(C)(i); C.G.S. § 46b-129(k)(2)(D).* Additionally, where APPLA is the goal, the court must now inquire **directly** of the youth about his or her desired permanency plan. Id.

**NOTE**: State law also provides for a "Permanent Guardianship,” which is a hybrid between traditional guardianship and termination of parental rights. To order permanent guardianship, the court must find that one of the adjudicative grounds has been established, and that permanent guardianship serves the child's best interests.

If the child is over 12, the child must consent to the permanent guardianship. The child must have resided with the proposed guardian for one year, and the parent must be advised that he or she cannot move to revoke or dissolve the permanent guardianship (or the court must record why the parent cannot be so advise d). The court may dissolve the permanent guardianship upon the motion of any party *other than the* *parent* if the guardian is no longer "suitable or worthy." *C.G.S. § 46b-129(j)(6)*

# What are permanency plan requirements in CT?

Permanency plans must contain information about what the best plan is for the child. The plan must also include critical information about the child's well-being. For a child age five and under, the plan must address what steps DCF has taken to ensure the child is screened for and receiving Early Intervention, special education, and regular education services. *DCF Policy 20-1; Practice Guide 3-1.*

If a child is at least 16 years of age, he/she should identify up to three adults with whom he/she has a significant relationship and who may serve as a permanency resource; the identity of such adults shall be recorded in the case plan. *DCF Policy 28-1.*

For older children whose plan is APPLA, the plan must include information about the child's individual transition plan, including specific information about how the child will complete education or vocational training, and how the child will access housing, job supports, mentorship, benefits, and medical care. For all children, the plan must include information about the child's educational status, including absenteeism and grade level performance. *DCF Policy 28-1.*

The court must review the services that will be needed to fulfill the plan and ensure that the state is making reasonable efforts to achieve the plan. Where the plan is reunification, the court may direct a schedule of services to support the implementation ofthe plan. *C.G.S. § 46b-129k.*

# When must DCF create and file the Permanency Plan?

* DCF must review the child's treatment plan every 6 months from the date ofremoval.
* DCF must submit the child's permanency plan for judicial review within 9 months ofthe child coming into care.
* The court must hold and complete hearings to review the permanency plan within 12 months of

foster care placement and every 12 months thereafter

*45 C.F.R. § 1355.20; C.G.S. § 46b-129*

# What constitutes a Permanency Hearing?

* The Permanency Hearing must be held by a court or court-approved administrative body, *not* by the child placing agency, i.e. DCF.
* The hearing may not be conducted *ex parte,* or pursuant to stipulations or records reviews. There must be an actual hearing in the court.
* The parent, child, and caretakers are entitled to notice and opportunity to be heard.

*45 C.F.R. § 1355.20*

**IMPORTANT NOTE FOR ATTORNEYS REPRESENTING CHILDREN:** The CT Practice Book requires counsel to file a report with the Court stating when counsel last consulted with the child or youth, whether the specifics of the plan were discussed and whether the child’s or youth’s opinion and position on the plan were elicited. See *P.B. 32a-5(a).*

# What will court decide after the Permanency Hearing?

* The court will decide whether it is appropriate to continue to make reasonable efforts to reunify the child with the parent. It will consider:
  + What is in the best interests of the child; and
  + The child's need for permanency.
* If the court finds that further efforts with the parent **are** appropriate, the efforts should be **specified** by the court, including the services to be provided **to the parent**. The parties should ensure that services are identified, and that it is clear what steps the parent must take to address the problem(s) preventing reunification. The parent then has six months for the steps to be accomplished.
* The court may revoke commitment if the cause for commitment no longer exists *and* it is in the best interests of the child. The court may not revoke commitment *sua sponte,* however. A revocation order can only be granted after a written motion is filed.

*C.G.S. § 46b-129(k)*

**NOTE:** Reunification efforts are **not** requiredwhen the parent has subjected the child to aggravating circumstances, which include knowingly permitting someone else to sexually molest, exploit, severely abuse, or engage in a pattern of abusing the child.

# Can I object to a permanency plan if my client disagrees with it?

* Any party may object to the permanency plan by filing a motion in opposition within 30 days after the filing of DCF's motion for review of the permanency (MRP) plan, and to maintain or revoke commitment. A hearing will be held within 90 days of the filing of the motion. This is an evidentiary hearing. The burden of proof is on DCF to establish that commitment should be maintained. Attorneys may call witnesses in support of their position. Federal law requires that the hearing provide parties a meaningful opportunity to be heard on the issues. *45 C.F.R. § 1355.20*
* The parent may include with his/her objection a motion to revoke DCF’s commitment. The parent will bear the burden of persuading the court that the cause for commitment no longer exists. DCF will then have to prove that it is in the best interests of the child to remain in DCF custody.
* Remember that the child's attorney has an ethical obligation to represent the stated interests of his or her client, unless that client is not capable of reasonably directing the lawyer's representation efforts. Additionally, Conn. Gen. Stat. § 45a-724 provides that a child age 12 and over must consent to a permanency plan of adoption. Finally, the Juvenile Court Standing Orders require that: "Before a hearing on a motion to review a permanency plan (‘MRP’), the attorney for the child who is the subject of the plan shall consult directly with the child, in a manner appropriate for the child's age, about the content of the plan and about the child's position on the plan. The child's attorney shall submit the child's position on the plan in writing, prior to or at the hearing on the motion.”

# How do a permanency plan recommending TPR and a petition asking for TPR intersect?

* Federal law requires that the permanency plan be approved by the court within 12 months of the child having come into care. For this reason, courts may be reluctant to "consolidate" permanency plan objections with contested termination of parental rights hearings, although they also may decide to do so for purposes for judicial economy.
* DCF has 60 days from the court's approval of an adoption plan in which to file a termination petition.

# What can attorneys do to help prepare for permanency plans and hearings?

* Remember that permanency planning and advocacy start the moment the case opens. An attorney must think about permanency from the day he or she is appointed.
* An attorney should inform his or her client of DCF's obligation to have a permanency plan for every child in its care and of the timelines that DCF must follow. Let the parent know that DCF will file its permanency plan in 9 months from the date of the child's removal from the home, and that if the parent is not making sufficient progress, the plan will change from reunification to another permanent plan, such as TPR. Advise the client to comply with services without delay.
* Advocate for appropriate and timely referrals from DCF. Follow up to ensure referrals are made. If DCF is not making timely referrals, document your client’s requests by sending letters to DCF and, if appropriate, filing motions seeking court orders for services.
* Attend the DCF treatment planning conferences and administrative case reviews (ACR) and advocate for timely referrals and services, including appropriate visitation to ensure continuation of the familial relationship. Ensure that your requests are documented appropriately on the ACR form.
  + Explain concurrent planning to your client so that he/she understands that DCF may pursue two plans at the same time. Identify appropriate concurrent plans and advocate for them as early as possible. For example, if your client's "backup plan" is for his/her child to go with a relative, advocate for the child's placement with the relative as early as possible.

**For information re: permanency planning for older youth, *see also*:**

Pokempner, Jennifer, *Implementing the Older Youth Permanency Provisions of the Strengthening Families Act: The Court’s Role,* Center on Children and the Law (2018).

DCF Adolescent Services Policy 28-1.