

Introduction to **ABUSE, NEGLECT AND DEPENDENCY**

The following is a **general outline** of how an abuse, neglect, or dependency case will move through the Portage County Juvenile Court and the primary issues at each stage. This is **not** to be taken as a **complete explanation of the law**. For a complete understanding of the law please refer to the Ohio Revised Code, Chapter 2151, Ohio Juvenile Rules of Procedure, Portage County Local Rules of Procedure and **consult an attorney**.

If you are a party to an abuse, neglect, or dependency case, **you are strongly encouraged to hire an attorney**. If you cannot afford an attorney, you can apply to have one appointed to you by contacting a Bailiff at Juvenile Court, 8000 Infirmary Road, Ravenna, Ohio 44266 (330) 297-0881. A guardian ad litem may be appointed to represent the interests of the child(ren) involved.

GOAL OF THE COURT IN ABUSE, NEGLECT AND DEPENDENCY CASES

The goal of the Juvenile Court is to offer assistance and services to a family, in an effort to provide a safe and stable environment for the child(ren) and/or to reunify the family. The family will be given the opportunity to participate in these services for twelve (12) months to address the concerns which led to the court's involvement. In certain circumstances the time period can be extended another six months.

On Motion of Portage County Department of Job and Family Services a second six months extension, based upon statutory factors, can be granted. In no case can temporary custody granted to the agency exceed two years before a decision is made regarding legal custody.

THIS PRESENTATION FOR ABUSE, NEGLECT AND DEPENDENCY WAS PRODUCED BY:

- Akron Law Student / Intern Karlek Jarvis
- Chief Magistrate Joseph Szymanski
- Magistrate Roxana Lyle
- Judge Bob Berger
- Common Pleas Court Director of Technology Gordon Fischer

HELPFUL COURTROOM DEFINITIONS

Abandoned Child: a child shall be presumed abandoned when the parents of the child have failed to visit or maintain contact with the child for more than ninety days, regardless of whether the parents resume contact with the child after that period of ninety days.

Party: a child who is the subject of a juvenile court proceeding, the child's spouse, if any, the child's parent or parents, or if the parent of the child is under the age of 18, the parent of that parent, in appropriate cases, the child's custodian, guardian, or guardian ad litem, the state, and any other person specifically designated by the court.

Guardian ad litem (GAL): a person appointed to protect the interests of a child who is the subject of a juvenile court proceeding.

Guardian: a person, association, or corporation that is granted authority by a court to exercise parental rights over a child to the extent provided in the court's order and subject to the residual parental rights of the child's parents.

Custodian: a person who has legal custody of a child or public children's services agency or private child-placing agency that has permanent, temporary, or legal custody of a child.

Temporary Custody: legal custody of a child who is removed from the child's home, which custody may be terminated at any time at the discretion of the court or, if the legal custody is granted in an agreement for temporary custody, by the person or persons who executed the agreement.

Legal Custody: a legal status that vests in the custodian the right to have physical care and control of the child and to determine where and with whom the child shall live, and the right and duty to protect, train, and discipline the child and provide the child with food, shelter, education, and medical care, all subject to any residual parental rights, privileges, and responsibilities.

Permanent Custody: a legal status that vests in a public children's services agency or private child-placing agency, all parental rights, duties, and obligations, including the right to consent to adoption, and divests the natural (biological) or adoptive parents of any and all parental rights, privileges, and obligations, including all residual rights and obligations.

Planned Permanent Living Arrangement (PPLA): an order of a juvenile court pursuant to which both of the following apply: (1) the court gives legal custody of a child (age 16 or older) to a public children's services agency or a private child-placing agency without the termination of parental rights; (2) the order permits the agency to make an appropriate placement of the child and to enter into a written planned permanent living arrangement agreement with a foster care provider or with another person or agency with whom the child is placed.

Residual Parental Rights: those rights, privileges, and responsibilities remaining with the natural parent after the transfer of legal custody of the child, including but not limited to the privilege of reasonable visitation, consent to adoption, the privilege to determine the child's religious affiliation, and the responsibility of support.

Complaint: the legal document that sets forth the allegations that form the basis for juvenile court jurisdiction.

Case Plan: a written plan addressing shortcomings within the household (e.g. unstable housing, substance abuse, mental or physical illness) that must be addressed in order for reunification to safely occur.

Clear and Convincing Evidence: that measure of degree of proof which is more than a mere 'preponderance of the evidence', but not to the extent of such certainty as required 'beyond a reasonable doubt' in criminal cases and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.

Preponderance of the Evidence: the greater weight of the evidence for the trier of fact to decide in favor of one side. This preponderance is based on the more convincing evidence and its probable truth or accuracy, and not on the amount of evidence.

Probable Cause: sufficient reason based upon known facts to believe something has occurred. Requires more than mere suspicion but not an absolute certainty.

THE HEARINGS THAT MAY OCCUR FOLLOWING THE REMOVAL OF A CHILD FROM YOUR HOME AND THE FILING OF AN ABUSE, NEGLECT AND DEPENDENCY COMPLAINT.

Shelter Care: the initial hearing to determine if there was probable cause to remove the child.

Adjudicatory: the juvenile court equivalent to a trial in an adult court. Clear and convincing evidence of abuse, neglect, or dependency must be presented.

Dispositional: a hearing to determine what action shall be taken concerning a child who is within the jurisdiction of the court.

Review and Semiannual Administrative Review (SAR):

Review: every 12 months the court will hold a review hearing to address: (1) the child's placement or custody arrangement, (2) the case plan for the child, (3) the agency's actions in implementing the case plan, (4) the permanency plan (if applicable), (5) actions taken by child's custodian, (6) the need for a change in the child's custodian or caseworker, (7) the need for any specific action to be taken with respect to the child, (8) any other aspect of the child's placement or custody arrangement.

Semiannual Administrative Review (SAR): every 6 months the agency will hold a meeting with the child's parents, guardian, custodian, guardian ad litem, and foster care provider to discuss: (1) the safety and appropriateness of the child's foster care placement, (2) case plan compliance, (3) progress towards alleviating the circumstances that required removal, (4) estimated date of reunification or the child being placed for adoption or legal custody, (5) updated case plan, (6) custodial rights for the next 6 months. This meeting will be followed shortly by a SAR hearing.

Planned Permanent Living Arrangement (PPLA): an order of a juvenile court, applicable to juveniles age 16 and over, pursuant to which both of the following apply:

- (1) The court gives legal custody of a child to a public children's services agency or a private child-placing agency without the termination of parental rights;
- (2) The order permits the agency to make an appropriate placement of the child and to enter into a written planned permanent living arrangement agreement with a foster care provider or with another person or agency with whom the child is placed.

Motion for Permanent Custody:

Divest the parents of all parental rights based upon a number of factors which occur over time.

ABUSE, NEGLECT AND DEPENDENCY DEFINED

An **ABUSED** child includes any child who:

1. Is the victim of sexual activity, as defined in Ohio Revised Code Section 2907;
2. Is endangered (substantial risk to the health or safety of the child due to a violation of a duty of care, protection, or support);
3. Exhibits evidence of any physical or mental injury or death inflicted by non-accidental means;
4. Because of the acts of the parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare.
5. Is subject to out-of-home care child abuse.

A **NEGLECTED** child includes any child:

1. Who is abandoned by the child's parents, guardian, or custodian;
2. Who lacks adequate care because of the faults or habits of the child's parents, guardian, or custodian;
3. Whose parents, guardian, or custodian neglects the child or refuses to provide proper or necessary subsistence, education, medical or surgical care or treatment, or other care necessary for the child's health, morals, or well-being;
4. Whose parents, guardian, or custodian neglects the child or refuses to provide special care made necessary by the child's mental condition;
5. Whose parents, legal guardian, or custodian have placed or attempted to place the child in violation of section 5103.16 and 5103.17 of the Ohio Revised Code.
6. Who because of the omission of the child's parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare;
7. Who is subjected to out-of-home care child neglect

A **DEPENDENT** child includes any child:

1. Who is homeless or destitute without adequate parental care through no fault of the child's parents, guardian, or custodian;
2. Who lacks adequate parental care by reason of mental or physical condition of the child's parents, guardian, or custodian;
3. Whose condition or environment is such as to warrant the state, in the interests of the child, in assuming the child's guardianship;
4. To whom BOTH of the following apply:
 - A. The child is residing in a household in which a member of the household committed an act that was the basis for an adjudication that a sibling of the child or other child who resides in the household is an abused, neglected, or dependent child.

B. Because of the circumstances surrounding the abuse, neglect, or dependency of the sibling or other child and the other conditions in the child's household, the child is in danger of being abused or neglected by that parent, guardian, custodian, or member of the household.

REMOVAL OF THE CHILD

(This will have occurred before the Court Hearing)

If your child was removed from your household by a law enforcement officer and placed with Portage County Department of Job and Family Services, the possible reasons for this action are as follows:

- 1) Pursuant to an order of the court;
- 2) There are reasonable grounds to believe:
 - A) The child is suffering from illness or injury and is not receiving proper care, and the child's removal is necessary to prevent immediate or threatened physical or emotional harm;
 - B) The child is in immediate danger from the child's surroundings;
 - C) A parent, guardian, custodian, or other member of the child's household has abused or neglected another child in the household;
 - D) The child has run away from the child's parents, guardian, or other custodian;
 - E) The conduct, conditions, or surroundings of the child are endangering the health, welfare, or safety of the child;
- 3) A complaint has been filed with respect to the child and there are reasonable grounds to believe that the child may flee or be removed from the jurisdiction of the court;
- 4) The child is required to appear in court and there are reasonable grounds to believe that the child will not be brought before the court when required.

REASONABLE EFFORTS & BEST INTEREST MUST BE ESTABLISHED AT ANYTIME THE CHILD IS PLACED OUTSIDE THE HOME.

In all court proceedings where a child continues to be placed outside the custody and household from which they were removed, reasonable efforts will be addressed and the child's best interest will determine all agency and court actions.

At any hearing where the court removes a child from their home or continues the removal of a child from the child's home, the court will determine whether the agency that filed the complaint in the case, removed the child from the home, has custody of the child, or will be given custody of the child, has made **reasonable efforts** to *prevent the removal of the child from the child's home, to eliminate the continued removal of the child from the child's home, to make it possible for the child to return safely home* or finalize an alternative placement if reunification is not appropriate. If the child is placed outside their home and is not already placed with a relative, the court will make continual efforts to locate an appropriate relative to place the child with.

Reasonable efforts will be based on the individual needs of a given household and are focused on the best interests, safety, health, and welfare of the child. Reasonable efforts may include, but are not limited to, providing gas cards or other transportation services, housing vouchers, arranging child care options, and referrals for services such as mental health counseling, couples counseling, and drug and alcohol treatment services.

The agency has the burden of proving that it has made appropriate reasonable efforts unless one of the following applies:

- 1) The child was removed from the home during an emergency in which the child could not safely remain at home and the agency did not have prior contact with the child.
- 2) The parent from whom the child was removed has been convicted of or pleaded guilty to one of the following:
 - A) Aggravated Murder, Murder, Voluntary Manslaughter
 - B) Felonious Assault, Aggravated Assault, Assault
 - C) Endangering Children
 - D) Rape, Sexual Battery, Unlawful Sexual Conduct with Minor, Gross Sexual Imposition, Sexual Imposition
 - E) Trafficking in Persons, Compelling Prostitution, Promoting Prostitution
 - F) Conspiracy or attempt to commit, or complicity in committing a crime under A, D, or E.
- 3) The parent from whom the child was removed has repeatedly withheld medical treatment or food from the child when the parent has the means to provide treatment or food.
- 4) The parent from whom the child was removed has placed the child at substantial risk of harm two or more times due to alcohol or drug abuse and has rejected treatment two or more times or refused to participate in further treatment two or more times after a case plan or other court order has required such treatment.
- 5) The parent from whom the child was removed has abandoned the child.
- 6) The parent from whom the child was removed has had parental rights involuntarily terminated with respect to a sibling of the child.

SHELTER CARE HEARING

After a child is removed, a shelter care hearing is scheduled. The shelter care hearing will be held at approximately 11 am the next court day and will take place at the Portage County Juvenile Court. At the shelter care hearing, the reason(s) for removal will be reviewed and a determination made as to whether there was probable cause for the removal. At this hearing the following apply:

- This is an informal hearing where any applicable evidence may be presented;
- The standard of proof is **probable cause**;
- Parties have the right to be represented by an attorney, you are encouraged to have an attorney represent you;
- A guardian ad litem will be appointed to represent the child's best interests;
- If a party has not received notice of the hearing, did not attend the hearing, and did not waive their right to notice or attendance, a motion for rehearing may be filed at any time and a new hearing will be held within 72 hours.
- The prosecutor will present evidence that there was probable cause for the removal, and a finding of **reasonable efforts** to:
 - a) Prevent the removal of the child from the child's home;
 - b) Eliminate the continued removal of the child from the child's home;
 - c) Make it possible for the child to return home.
- If it is found that the child cannot be returned home at that time, the court will determine if there are any relatives of the child who are willing, able, and appropriate to be temporary custodians of the child. If appropriate relatives are not available, the Portage County Department of Job and Family Services will be granted interim pre-dispositional custody. If Portage County Job and Family Services is granted interim pre-dispositional custody, the child may still be placed to live with a relative.

If probable cause for the child's removal is found to exist, the court will determine the custodial status (where the child will live) of the child while the case is pending.

An adjudicatory hearing will be scheduled to take place approximately 30 days after the shelter care hearing. At the adjudicatory hearing the court will determine whether the child is abused, neglected, or dependent.

GUARDIAN AD LITEM

(A) APPOINTMENT

- (1) The Court will appoint a Guardian ad Litem when necessary and appropriate to protect the interests of a child or whenever the Court is required to do so by statute.

(B) ROLE

- (1) The role of the Guardian ad Litem is to assist the Court and to represent the best interests of the child or incompetent adult.
- (2) A Guardian ad Litem is the **legal representative of the child** and must be given notice of all hearings and must be forwarded copies of any and all filings made by the other parties to the action.

(C) DUTIES AND RESPONSIBILITIES

- (1) The Guardian ad Litem will have full access to all Court records regarding that child or children, including closed prior cases, and will perform whatever functions are necessary to protect the best interests of the child or the incompetent adult pursuant to O.R.C. 2151.281(I).
- (2) The Guardian as Litem may perform the following duties upon appointment in each case:
 - (a) Interview each parent or party separately (or state in the report why such interviews would be unnecessary or impractical).
 - (b) Interview the child or children separately (or state in the report why such interviews would be unnecessary or impractical).
 - (c) Observe each child's interaction with each parent (when possible).
 - (d) Visit the child or children a minimum of one time per month (or state in the report why such interviews would be unnecessary or impractical). In the initial stages of the case this visit can be combined with interviews or observation.
 - (e) Investigate all significant persons and interview them independently, either in person or by telephone.
 - (f) Review pleadings and consult with each attorney as to position and issues.
 - (g) Contact all mental health providers involved in the case.
 - (h) Contact the school of the child.
 - (i) Review records regarding the child from school, courts, health care providers, child protective agency, etc.
 - (j) Perform appropriate home visits (this can be combined with interviews or observation).
 - (k) Evaluate the necessity of psychological evaluations or counseling.
 - (l) Communicate with the Children Services worker.
 - (m) Attend all hearings and depositions concerning the child.
 - (n) File, or if not an attorney, seek counsel to file all Motions or other Pleadings necessary to further the child's interests.

ADJUDICATORY HEARING

An adjudicatory hearing is essentially the “trial” in a juvenile court. At an adjudicatory hearing for cases involving abuse, neglect, or dependency the following apply:

- This is a formal hearing to determine whether a child is abused, neglected, or dependent; (see factors relevant to each determination below)
- The burden of proof is **clear and convincing evidence**, and formal rules of evidence apply;
- All parties have the right to and are encouraged to have an attorney, to subpoena witnesses, to cross examine witnesses, and to discovery (interrogatories, admission of fact, depositions).

Due to the limited time to engage in discovery prior to adjudication, a court order should be sought giving a definite time (7 days before the hearing) to have discovery completed.

- If the child or family are receiving services from an agency such as Portage County Department of Job and Family Services, the agency is required to file a case plan prior to or at the time of the adjudicatory hearing.

If abuse, neglect, or dependency is established by clear and convincing evidence, an interim order of temporary custody pending disposition will be made.

As during the shelter care hearing, reasonable efforts will again be stated. If the child is not already residing with a relative, the court will again make reasonable efforts to place the child with an appropriate relative.

The court may also return the child to the parent, guardian, or custodian’s custody under the protective supervision of Portage County Department of Job and Family Services if this is considered to be in the child’s best interest.

CASE PLAN / CASEWORKERS

A case plan is a written document developed jointly with parents, guardians and caseworkers to address concerns within the family that impact child safety and well-being. The case plan is a “road map” that builds upon families’ strength while addressing parental behaviors that impact the care of the children.

JFS caseworkers are responsible to engage the family in a collaborative partnership. The caseworkers provide three different type of services; case management, direct service and advocacy. As a case manager, the caseworker refers the family to appropriate community services, speaks with the service provider about the family, assist as needed with arranging transportation to the service and follows up regularly to assess the families progress. The JFS caseworker is also responsible to aid the family with emergency services such as food and shelter as needed.

Caseworkers also provide services directly to families such as supportive counseling and role modeling. Caseworkers offer parents guidance on the homemaking activities such as meal prep, cleaning, grocery shopping, budgeting and money management. The JFS caseworker also offers direction with parenting activities such as understanding child development, age appropriate discipline and play.

The caseworker is charged with advocating for families. The assigned caseworker will accompany families to school meetings, medical appointments as well as service provider appointments. This advocacy is a rapport builder as families often need help overcoming organizational and systemic barriers to accessing needed services and benefits.

DISPOSITION HEARING

If a child is adjudicated abused, neglected, or dependent, a disposition hearing will take place (Approximately 90 days from the filing of the Complaint). All parties are encouraged to have an attorney represent them at this hearing.

At the disposition hearing, the court will make a determination as to the custody arrangement that is in the child's best interest. Possible custody options include:

1. **Protective Supervision** (child is in parent's custody with agency supervision)
2. **Temporary Custody** (agency or other person has custody, parents have residual parental rights, may be terminated at court's discretion at any time)
3. **Legal Custody** (agency or someone who is granted legal custody of child maintains custody, parent maintains residual rights)
4. **Permanent Custody** (parental rights are terminated)
5. **Planned Permanent Living Arrangement** (for children 16+ years old, court give's legal custody to agency, parental rights are not terminated)
6. Order the removal from the child's home until further order of the court of the person who committed abuse as described in section [2151.031](#) of the Revised Code against the child, who caused or allowed the child to suffer neglect as described in section [2151.03](#) of the Revised Code, or who is the parent, guardian, or custodian of a child who is adjudicated a dependent child and order any person not to have contact with the child or the child's siblings.

In cases where protective supervision, temporary custody, or legal custody are plead, the rules of evidence and evidentiary standard may be relaxed. In cases where permanent custody or a planned permanent living arrangement is plead, formal rules of evidence and an evidentiary standard of **clear and convincing evidence** apply. Disposition hearings may be formal hearings.

As part of the dispositional order, a case plan will be journalized by the court. Case plans are constructed based on the needs of an individual family and the best interest of the child's health and safety. Failure to follow the terms of a journalized case plan may result in that party being held in contempt.

If a child remains in agency custody or under agency supervision, a semiannual review (SAR) will be held every 6 months to update the case plan. A SAR hearing will also take place. Any changes or updates to the case plan will be journalized.

- During all stages of the case, the court will act in the child's best interest. Reasonable efforts should continually be made to prevent the removal of the child, eliminate the continued removal of the child, and make it possible for the child to return home.
- At any stage of the case, the court may order removal of the person responsible for the child's abuse, neglect, or dependency to leave the child's home. The court may also order any person not to have contact with the child or the child's siblings if such contact is not in the child's best interest.

ANNUAL AND SEMIANNUAL REVIEW HEARINGS

At the review hearing, the court will determine the appropriateness of any agency actions, the safety and appropriateness of continuing the child's current placement or custody arrangement, and whether any changes should be made. Parties have the right to be represented by an attorney at review hearings.

The court will review evidence related to the child's placement or custody arrangement, the case plan, the agency's actions in implementing the case plan, the permanency plan (if applicable), actions taken by the child's custodian or caseworker, and the need for any specific action to be taken with respect to the child. At this time, the court will:

- (1) determine the continued necessity for and safety and appropriateness of the child's placement;
- (2) determine the extent of each party's compliance with the case plan;
- (3) determine the extent of progress that has been made toward alleviating or mitigating the causes necessitating the child's placement in foster care;
- (4) project the likely date by which the child may be safely returned home or be placed for adoption or legal custody;
- (5) approve the permanency plan for the child (if applicable); and
- (6) if the child is 16 years old or older and in the temporary custody of Portage County Department of Job and Family Services, make findings as to the services needed to assist the child in making the transition from foster care to independent living.

The court will determine whether the conclusions of any administrative review conducted by the agency are supported by a preponderance of the evidence.

Based on the evidence presented, the court may require the agency, parents, guardian, custodian, or other physical custodians of the child to take any reasonable action the court determines is necessary and in the child's best interest or discontinue any action that is not in the child's best interest.

WHAT IS PPLA?

Planned Permanent Living Arrangement (PPLA) (Parents Rights NOT terminated)

ORC 2151.353 (A) (5)

1. The Court finds by clear & convincing evidence that it is in the best interest of a 16 year old to under 18 year old to be placed with a public children's services agency or private child placing agency if one of the following exist:

(a) The child, because of physical, mental, or psychological problems or needs, is unable to function in a family-like setting and must remain in residential or institutional care now and for the foreseeable future beyond the date of the dispositional hearing held pursuant to section [2151.35](#) of the Revised Code.

(b) The parents of the child have significant physical, mental, or psychological problems and are unable to care for the child because of those problems, adoption is not in the best interest of the child, as determined in accordance with division (D)(1) of section [2151.414](#) of the Revised Code, and the child retains a significant and positive relationship with a parent or relative.

(c) The child has been counseled on the permanent placement options available to the child, and is unwilling to accept or unable to adapt to a permanent placement.

ORC 2151.353 (B)

(1) When making a determination on whether to place a child in a planned permanent living arrangement pursuant to division (A)(5)(b) or (c) of this section, the court shall consider all relevant information that has been presented to the court, including information gathered from the child, the child's guardian ad litem, and the public children services agency or private child placing agency.

(2) A child who is placed in a planned permanent living arrangement pursuant to division (A)(5)(b) or (c) of this section shall be placed in an independent living setting or in a family setting in which the caregiver has been provided by the agency that has custody of the child with a notice that addresses the following:

(a) The caregiver understands that the planned permanent living arrangement is intended to be permanent in nature and that the caregiver will provide a stable placement for the child through the child's emancipation or until the court releases the child from the custody of the agency, whichever occurs first.

(b) The caregiver is expected to actively participate in the youth's independent living case plan, attend agency team meetings and court hearings as appropriate, complete training, as provided in division (B) of section [5103.035](#) of the Revised Code.

WHAT HAPPENS IF A MOTION FOR PERMANENT CUSTODY IS FILED?

PERMANENT CUSTODY HEARING

- 1) Parents have a constitutionally protected and fundamental right in the care, custody, and management of their children. However, these rights are not unconditional and are subordinate to the best interest of the child when considering a motion to terminate parental rights. Thus, in certain circumstances, the state may terminate one's parental rights when doing so is in the best interest of the child.
- 2) Before a juvenile court can terminate parental rights and award permanent custody to the requesting agency, it must conduct a hearing and apply a two-pronged analysis. **First**, a court must find by clear and convincing evidence that one or more of the factors spelled out in **R.C. 2151.414(B)(1)(a)-(e)** applies.
- 3) **Second**, upon finding one or more of these factors applicable, the trial court then must determine whether granting custody of the child to the Agency is in the child's **best interest pursuant to the analysis** delineated in **R.C. 2151.414(D)**.
- 4) After a hearing, the court must find by clear and convincing evidence that granting permanent custody of the child to the agency is in the best interest of the child upon considering all relevant factors including those in R.C. 2151.414(D). Clear and convincing evidence is evidence sufficient to "produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established."

To seek permanent custody of a child a motion or a prayer in the Complaint must be filed notifying the parents of the action.

MOTION REQUESTING PERMANENT CUSTODY

The Court then will set a hearing on the Motion for Permanent Custody.

2151.413 **MOTION REQUESTING PERMANENT CUSTODY**

WHO MAY FILE A MOTION FOR PERMANENT CUSTODY?

- (A) Any agency (private or public) who at disposition, under 2151.353(A)(2) are granted temporary custody of child **not** abandoned or orphaned may file;
- (B) Any agency (private or public) granted temporary custody under 2151.353(A)(2) where child **is** orphaned whenever the agency it can show no relative of child is able to take legal custody;
- (C) Any public or private agency granted temporary custody under 2151.353(A)(5) who places a child in planned permanent living arrangement may seek permanent custody;
- (D) Temporary Custody of one or more agencies, 12 or more months of a consecutive 22 month period – and that agency has temporary custody can file motion for permanent custody.

Time runs beginning at the earliest adjudication 2151.28 or date 60 days after removal from home;

WHO MAY NOT FILE MOTION FOR PERMANENT CUSTODY?

- (D)(3) Agency cannot file a motion for permanent custody under D(1) and D(2) if **ANY** of following:
 - a) Agency documents in case plan or permanency plan a **compelling** reason that permanent custody is **not** in child’s best interest
 - b) If **reasonable efforts** to return child to child’s home is required under **2151.419**, and the agency has not provided services required by the case plan to ensure safe return to child’s home
 - d) The child has been returned home pursuant to Court Order 2151.419(A)(3)
- (E) The agency shall include case plan, giving specific actions taken to seek an adoptive family and prepare child for adoption;
- (F) Department may adopt Rules Chapter 119 and time frames

HEARING ON PERMANENT CUSTODY

WHAT THE COURT DOES PRIOR TO THE HEARING

2151.414 Hearing on Motion Permanent Custody

(A)(1) After the filing of a motion for permanent custody, the Court will:

- a) Schedule hearing
- b) Notice of filing motion and hearing to all parties and GAL
- c) Notice shall contain:
 - Full explanation that granting of the permanent custody **Permanently** divests parents of parental rights
 - Right to counsel (appointed) if indigent
 - Name, telephone # of court employee to arrange appointment of counsel for indigent persons

Hearing on Permanent Custody

Court conducts hearing – pursuant to 2151.35 to determine if it's in child's best interest to permanently terminate parental rights **and** grant permanent custody to agency

The adjudication of abuse, neglect, or dependency and dispositional orders under 2151.353 shall not be re-adjudicated and not be affected if permanent custody is denied

(A)(2) Court holds a hearing no later than 120 days after agency files motion for permanent custody – the Court may continue the hearing for **good cause**, but not later than 200 days

(B)(1) Clear and convincing evidence is the burden of proof to the moving party – **best interest** of child can be proven if **any** following are shown:

- (a) The child if **not** abandoned or orphaned, or has **not** been in an agency's temporary custody for 12 or 22 consecutive and the child:
 - Cannot be placed with child's parents within a reasonable time **or** should not be placed with parents
- (b) Child is abandoned (2151.011 (C) presumed abandoned when parents have failed to visit or maintain contact for more than 90 days, regardless of whether parents resume contact after that period)
- (c) Child is orphaned and no relatives are able to take permanent custody
- (d) Temporary custody of an agency or agencies as occurred in 12 or more months of a consecutive 22 month period (see 2151.413(D)(1))

(e) The child or another child in custody of parents has been removed and adjudicated as abused, neglected, or dependent on **3 separate occasions**

- Temporary custody is date child was adjudicated abused, dependent or neglected **AND/OR** 60 days after child's removal from home

(B)(2) Motion, pursuant to 2151.413(D)(2) may be granted but the Court still needs to find:

- The child cannot be placed with one of child's parents within reasonable time or should not
- And, permanent custody is in child's best interest

(C) *The Court shall **not** consider affect permanent custody shall have on an agency or will have on a parent

*Written report by GAL to Court shall be submitted

*The Court shall **not** deny an agency's motion for permanent custody **solely** based on agency's failure to implement any particular aspect of child's case plan

Best Interest Standard

(D) In determining best interest, the Court shall consider all relevant factors, including:

- (a) The child is not abandoned or orphaned, has not been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period, or has not been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period if, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state, **and the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents.**
- (b) The child is abandoned.
- (c) The child is orphaned, and there are no relatives of the child who are able to take permanent custody.
- (d) The child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period, or the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive

twenty-two-month period and, as described in division (D)(1) of section [2151.413](#) of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state.

- (e) The child or another child in the custody of the parent or parents from whose custody the child has been removed has been adjudicated an abused, neglected, or dependent child on **three** separate occasions by any court in this state or another state.

(D)(2) If **ALL** of the following apply, permanent custody is in the best interest of the child, and court **SHALL** commit child to permanent custody of agency:

- (a) The court determines by clear and convincing evidence that one or more of the factors in division (E) of this section exist **and** the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent.

- (b) The child has been in an agency's custody for two years or longer, and no longer qualifies for temporary custody pursuant to division (D) of section [2151.415](#) of the Revised Code.

- (c) The child does not meet the requirements for a planned permanent living arrangement pursuant to division (A)(5) of section [2151.353](#) of the Revised Code.

- (d) Prior to the dispositional hearing, no relative or other interested person has filed, or has been identified in, a motion for legal custody of the child.

(E) In determining (A)(4) 2151.353 (orders of disposition for abuse, neglect and dependent) whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents. If a Court determines, by clear and convincing evidence, at hearing that one or more of following exist as to each parent (A)(4) of 2151.353 is proved:

- (1) Following the placement of the child outside the child's home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home, **the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home.** In determining whether the parents have substantially remedied those conditions, the **court shall consider parental utilization of medical, psychiatric, psychological, and other social and rehabilitative services** and material resources **that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties.**

(2) **Chronic** mental illness, **chronic** emotional illness, intellectual disability, physical disability, or chemical dependency of the parent that is so severe that it makes the parent **unable to provide an adequate permanent home** for the child at the present time and, as anticipated, within one year after the court holds the hearing pursuant to division (A) of this section or for the purposes of division (A)(4) of section [2151.353](#) of the Revised Code;

(3) The parent committed any abuse as described in section [2151.031](#) of the Revised Code against the child, caused the child to suffer any neglect as described in section [2151.03](#) of the Revised Code, or **allowed the child to suffer any neglect** as described in section [2151.03](#) of the Revised Code **between the date that the original complaint alleging abuse or neglect was filed and the date of the filing of the motion for permanent custody;**

(4) The parent has demonstrated a **lack of commitment toward** the child by failing to **regularly support, visit, or communicate** with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child;

(5) The **parent is incarcerated** for an offense committed **against the child** or a sibling of the child;

(6) The parent has been convicted of or pleaded guilty to an offense under division (A) or (C) of section [2919.22](#) or under section [2903.16](#), [2903.21](#), [2903.34](#), [2905.01](#), [2905.02](#), [2905.03](#), [2905.04](#), [2905.05](#), [2907.07](#), [2907.08](#), [2907.09](#), [2907.12](#), [2907.23](#), [2907.25](#), [2907.31](#), [2907.32](#), [2907.321](#), [2907.322](#), [2907.323](#), [2911.01](#), [2911.02](#), [2911.11](#), [2911.12](#), [2919.12](#), [2919.24](#), [2919.25](#), [2923.12](#), [2923.13](#), [2923.161](#), [2925.02](#), or [3716.11](#) of the Revised Code, **and the child or a sibling of the child was a victim of the offense**, or the parent has been convicted of or pleaded guilty to an offense under section [2903.04](#) of the Revised Code, a sibling of the child was the victim of the offense, and the parent who committed the offense poses an ongoing danger to the child or a sibling of the child.

(7) The parent has been convicted of or pleaded guilty to one of the following:

(a) An offense under section [2903.01](#), [2903.02](#), or [2903.03](#) of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections **and the victim of the offense was a sibling of the child** or the victim was another child **who lived** in the parent's household at the time of the offense;

(b) An offense under section [2903.11](#), [2903.12](#), or [2903.13](#) of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections **and the victim of the offense is the child, a sibling of the child, or another child** who lived in the parent's household at the time of the offense;

(c) An offense under division (B)(2) of section [2919.22](#) of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to the offense described in that section **and the child, a sibling of the child, or another child** who lived in the parent's household at the time of the offense is the victim of the offense;

(d) An offense under section [2907.02](#), [2907.03](#), [2907.04](#), [2907.05](#), or [2907.06](#) of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections **and the victim of the offense is the child, a sibling of the child, or another child** who lived in the parent's household at the time of the offense;

(e) An offense under section [2905.32](#), [2907.21](#), or [2907.22](#) of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to the offense described in that section and the victim of the offense **is the child, a sibling of the child, or another child** who lived in the parent's household at the time of the offense;

(f) A conspiracy or attempt to commit, or complicity in committing, an offense described in division (E)(7)(a), (d), or (e) of this section.

(8) The parent has **repeatedly withheld** medical treatment or food from the child when the parent **has the means** to provide the treatment or food, **and**, in the case of withheld medical treatment, the parent withheld it for a purpose other than to treat the physical or mental illness or defect of the child by spiritual means through prayer alone in accordance with the tenets of a recognized religious body.

(9) The parent has placed the child **at substantial risk of harm two or more times** due to **alcohol or drug** abuse **and** has rejected treatment **two or more times** or refused to participate in further treatment two or more times **after a case plan** issued pursuant to section [2151.412](#) of the Revised Code requiring treatment of the parent **was journalized** as part of a dispositional order issued with respect to the child or an order was issued by any other court requiring treatment of the parent.

(10) The parent has **abandoned** the child. (Ohio Revised Code 2151.011 Juvenile Court definitions):

(C) For the purposes of this chapter, a child shall be presumed **abandoned** when the parents of the child have failed to visit or maintain contact with the child for more than ninety days, regardless of whether the parents resume contact with the child after that period of ninety days.

(11) The parent has had **parental rights involuntarily terminated** with respect to a **sibling** of the child pursuant to this section or section [2151.353](#) or [2151.415](#) of the Revised Code, or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to those sections, **and** the parent

has failed to provide clear and convincing evidence to prove that, notwithstanding the prior termination, the parent can **provide a legally** secure permanent placement and adequate care for the health, welfare, and safety of the child.

(12) The **parent is incarcerated at the time of the filing** of the motion for permanent custody **or** the dispositional hearing of the child **and** will not be available to care for the child for at **least eighteen months after the filing** of the motion for permanent custody or the dispositional hearing.

(13) The parent is **repeatedly incarcerated**, and the repeated incarceration **prevents the parent from providing care** for the child.

(14) The parent for **any reason** is **unwilling to provide food, clothing, shelter**, and other **basic necessities** for the child or to prevent the child from suffering physical, emotional, or sexual abuse or physical, emotional, **or** mental neglect.

(15) The parent has **committed abuse** as described in section [2151.031](#) of the Revised Code against the child or caused **or allowed the child to suffer neglect** as described in section [2151.03](#) of the Revised Code, and the court determines that the **seriousness, nature, or likelihood of recurrence** of the abuse or neglect makes the child's placement with the child's parent a **threat to the child's safety**.

(16) Any other factor the court considers relevant.

(F) The parents of a child for whom the court has issued an order granting permanent custody pursuant to this section, upon the issuance of the order, cease to be parties to the action.