

§ 19-3-702. Permanency hearing

(1)(a) In order to provide stable, permanent homes for every child or youth placed out of the home, in as short a time as possible, a court shall conduct a permanency planning hearing. The court shall hold the permanency planning hearing as soon as possible following the initial dispositional hearing pursuant to this article 3; except that the permanency planning hearing must be held no later than ninety days after the initial decree of disposition. After the initial permanency planning hearing, the court shall hold additional hearings at least every six months while the case remains open or more often in the discretion of the court, or upon the motion of any party. When possible, the permanency planning hearing must be combined with the in-person six-month review as provided for in [section 19-1-115\(4\)\(c\)](#) or [subsection \(6\)\(a\)](#) of this section. The court shall hold all permanency planning hearings in person, provide proper notice to all parties, and provide all parties the opportunity to be heard. The court shall consult with the child or youth in a developmentally appropriate manner regarding the child's or youth's permanency goal.

(b) If the court finds that reasonable efforts to reunify the child or youth and the parent are not required pursuant to [section 19-1-115\(7\)](#) or if there is a finding that no appropriate treatment plan can be devised pursuant to [section 19-3-508\(1\)\(d\)\(I\)](#), the court shall hold a permanency planning hearing within thirty days after the finding. If the court finds that reasonable efforts to reunify the child or youth and the parent are not required and a motion for termination has been filed pursuant to [section 19-3-602](#), the permanency planning hearing and the hearing on the motion for termination may be combined, and the court shall make all determinations required at both hearings in the combined hearing.

(2)(a) When the court schedules a permanency planning hearing pursuant to this section, the court or designee of the court shall promptly issue a notice stating the purpose of the hearing. The notice must set forth the constitutional and statutory rights of the child's or youth's parents or guardian and the statutory rights of the child or youth. The notice of the hearing must comply with the requirements stated in [section 19-3-502 \(7\)](#) and must be sent to parents or guardians, placement providers, and named children or youth.

(b) The county department of human or social services shall propose a permanency plan for each child or youth, which plan must be completed and submitted to the court in the family services plan no later than [five days](#) in advance of the permanency planning hearing.

Commented [AC1]: Change to the timeline for permanency planning hearings, took the EPP timelines and applied them to all cases, also requires the PPH to occur in person. This does NOT apply to deferred adjudications (neither did the previous version). This and (b) both come from the original first paragraph, they were broken into two for clarity.

Commented [AC2]: This language is virtually unchanged from the previous section (1)

Commented [AC3]: This was added to align with current practice and the wide variety of ways in which judicial districts handle this.

Commented [AC4]: This was changed from three working days.

Criteria

(3) At any permanency planning hearing, the court shall first determine if the child or youth should be returned to the child's or youth's parent, named guardian, or legal custodian and, if applicable, the date on which the child or youth must be returned. If the child or youth cannot be returned home, the court shall also determine whether reasonable efforts have been made to find a safe and stable permanent home for the child or youth. The court shall not delay permanency planning by considering the placement of children or youth together as a sibling group. At any permanency planning hearing, the court shall make the following determinations, when applicable:

(a) Whether procedural safeguards to preserve parental rights have been applied in connection with any change in the child's or youth's placement or any determination affecting parental visitation of the child or youth;

(b) Whether reasonable efforts have been made to finalize the permanency goal;

(c) Whether ongoing efforts have been made to identify kin and relatives that are available to be a permanent placement for the child or youth;

(d) When the child or youth resides in a placement out of state, whether the out-of-state placement continues to be appropriate and in the best interests of the child or youth;

(e) Whether a child or youth who is fourteen years of age or older is receiving transition services to successful adulthood, regardless of his or her permanency goal; and

(f) Whether the current placement of the child or youth could be a permanent placement, if necessary.

Commented [AC5]: In this section we made changes to emphasize the priority for parents in permanency planning and to make the findings required clear to encourage better consistency across the state. None of the findings were changed. The requirement that you look at determine if there is a substantial probability that the child can return home within 6 months was removed from this section.

(4)(a) If the child or youth cannot be returned to the physical custody of the child's or youth's parent or legal guardian on the date of the hearing, the court shall enter one or more of the following permanency goals, of which subsections (4)(a)(I) to (4)(a)(V) of this section may be adopted as concurrent goals pursuant to [section 19-3-508\(7\)](#):

(I) Return home;

(II) Adoption with a relative;

(III) Permanent placement with a relative through legal guardianship or allocation of parental responsibilities;

(IV) Adoption with a nonrelative;

(V) Permanent placement with a nonrelative through legal guardianship or allocation of parental responsibilities;

(VI)(A) Other planned permanent living arrangements either through emancipation or long-term foster care.

(B) Other planned permanent living arrangements may only be used as a permanency goal for children or youth in exceptional circumstances for children sixteen years of age or older who have co-occurring complex conditions that preclude their return home, their adoption or legal

Commented [AC6]: This was an addition

Commented [AC7]: This was an addition from the requirements of the Preventing Sex Trafficking and Strengthening Families Act (PSTSFA).

Commented [AC8]: Added to keep the focus/discussion on permanency (per the recommendations from the PHOM committee and report).

Commented [AC9]: Section is organized differently for clarity. Again, took out the substantial probability language preferring that a permanency goal be given to any child who is not returned home. Aligned permanency goal options with volume 7 as this is how most are written.

Commented [AC10]: Made clear that OPPLA cannot be a concurrent goal, consistent with 19-3-508 (7)

Commented [AC11]: Age requirement is consistent with Preventing Sex Trafficking and Strengthening Families Act. The Co-occurring complex condition language is from Volume 7.

guardianship, or allocation of parental responsibilities; or for children and youth who are in the unaccompanied refugee minor program, regardless of their age.

(C) Other planned permanent living arrangements may not be used as a concurrent goal.

(D) The court shall ask the child or youth about his or her desired permanency outcome when considering other planned permanent living arrangements.

Commented [AC12]: From PSTSFA, deliberately stuck with "ask".

(b)(I) The department shall document in the family services plan the compelling reasons why it is not in the best interest of the child or youth to return home, be placed for adoption, be placed with a legal guardian, or be placed with a fit and willing relative. In addition, the department shall document intensive, ongoing, and unsuccessful efforts made to return the child or youth home or to a secure placement with a fit and willing relative, including adult siblings; a legal guardian; or an adoptive parent, including efforts that utilize search technology that includes social media to find biological family members for the children or youth.

Commented [AC13]: Required by PSTSFA

(II) The department shall document in the family services plan and the court shall review whether the child's or youth's placement is following the reasonable and prudent parent standard and whether the child or youth has regular, ongoing opportunities to engage in age-appropriate activities.

Commented [AC14]: Required for all youth per federal law (not just OPPLA youth) – this language again came from the PSTSFA. May need some rule change here.

(c) Prior to closing a case before a child's eighteenth birthday, the court or the child's guardian ad litem shall notify the child that he or she will lose the right to receive medicaid until the maximum age provided by federal law if the case is closed prior to the child's eighteenth birthday.

Commented [AC15]: This was relocated but was in the previous statute with the exception of the "maximum age" language which we changed because of the frequent changes to the age at the federal level.

(d) Every child who is eighteen years of age or older who is leaving foster or kinship care must be provided with his or her birth certificate, social security card, health insurance information, medical records, either a driver's license or state-issued identification card, and proof of foster care.

Commented [AC16]: Required by PSTSFA

(e) If the court finds that there is not a substantial probability that the child or youth will be returned to a parent or legal guardian within six months and the child or youth appears to be adoptable and meets the criteria for adoption in [section 19-5-203](#), the court may order the county department of human or social services to show cause why it should not file a motion to terminate the parent-child legal relationship pursuant to part 6 of this article 3. Cause may include, but is not limited to, any of the following conditions:

Commented [AC17]: Language from the previous statute with the substantial probability language included here.

(I) The parent or legal guardian has maintained regular parenting time and contact with the child or youth, and the child or youth would benefit from continuing this relationship;

(II) A child who is twelve years of age or older objects to termination of the parent-child legal relationship;

(III) The child's foster parents are unable to adopt the child because of exceptional circumstances that do not include an unwillingness to accept legal responsibility for the child. The foster parents must be willing and capable of providing the child with a stable and permanent environment, and it must be shown that removal of the child from the physical custody of his or her foster parents would be seriously detrimental to the emotional well-being of the child; or

Permanent Home

(IV) The criteria for termination in [section 19-3-604](#) have not yet been met.

(5) For a child or youth in a case designated pursuant to [section 19-1-123](#) only:

(a) A permanent home is the place in which the child or youth may reside if the child or youth is unable to return home to a parent or legal guardian. If the court determines by a preponderance of the evidence that a permanent home is not currently available or that the child's or youth's current needs or situation prohibit placement, the court must be shown and the court must find that reasonable efforts, as defined in [section 19-1-103\(89\)](#), were made to find the child or youth an appropriate permanent home and such a home is not currently available or that a child's or youth's needs or situation prohibit the child or youth from a successful placement in a permanent home.

(b) Regardless of any permanent home findings made pursuant to this section, reasonable efforts shall continue to be made to return the child or youth home unless the court has previously found or finds that reunification is not an option pursuant to [section 19-1-115\(7\)](#). Any findings by the court regarding a permanent home shall not delay or interfere with reunification of a child or youth with a parent or legal guardian.

(c) At a permanency planning hearing that occurs immediately prior to twelve months after the original placement of the child or youth out of the home, the court shall make a finding identifying whether the child or youth is in a placement that can provide legal permanency. The court must make this finding to ensure that a child or youth who has been removed from his or her home is placed in a permanent home as expeditiously as possible.

(d) The court shall review the case at a permanency planning hearing at least every six months until the court finds that the child or youth is in a permanent home. The permanency planning hearings shall continue as long as the court is unable to find that the child or youth is in a permanent home. At each hearing, the court must be provided evidence that a child or youth is in a permanent home or that reasonable efforts, as defined in [section 19-1-103\(89\)](#), continue to be made to find the child or youth an appropriate permanent home and such a home is not currently available or that a child's or youth's needs or situation prohibit the child or youth from successful placement in a permanent home.

(e) At each permanency planning hearing, the caseworker and the child's or youth's guardian ad litem shall provide the court with a written or verbal report specifying what efforts have been made to identify a permanent home for the child or youth and what services have been provided to the child or youth to facilitate identification of a permanent home.

(f) In determining whether a child or youth is in a permanent home, the court shall consider placement of the children or youth together as a sibling group pursuant to [section 19-3-213](#).

Commented [AC18]: This is the current law and put the appropriate emphasis on EPP cases.

Commented [AC19]: This was changed from clear and convincing evidence to be consistent with other parts of the children's code.

Commented [AC20]: Language changed here to minimize negative connotation for the youth.

Commented [AC21]: This was added to clarify priority of return home and continued requirements for reasonable efforts.

Commented [AC22]: Similar to the original language.

Commented [AC23]: This is consistent with section (1) as changed in this statute.

Commented [AC24]: From the previous statute with the clarification that the report can be verbal as well as written.

Placement Change Criteria

- (6) If a placement change is contested by a named party or child or youth and the child or youth is not reunifying with a parent or legal guardian, the court shall consider all pertinent information, including the child's or youth's wishes, related to modifying the placement of the child or youth prior to removing the child or youth from his or her placement, and including the following:
- (a) An individualized assessment of the child's or youth's needs created pursuant to Title IV-E of the federal "Social Security Act", as amended, and regulations promulgated thereunder, as amended;
 - (b) Whether the child's or youth's placement at the time of the hearing is a safe and potentially permanent home for the child or youth;
 - (c) The child's or youth's actual age and developmental stage and, in consideration of this information, the child's or youth's attachment needs;
 - (d) Whether the child or youth has significant psychological ties to a person who could provide a permanent home for the child or youth, including a relative, and, if so, whether this person maintained contact with the child or youth during the child's or youth's placement out of the home;
 - (e) Whether a person who could provide a permanent home for the child or youth is willing to maintain appropriate contact after an adoption of the child or youth with the child's or youth's relatives, particularly sibling relatives, when such contact is safe, reasonable, and appropriate;
 - (f) Whether a person who could provide a permanent home for the child or youth is aware of the child's or youth's culture and is willing to provide the child or youth with positive ties to his or her culture;
 - (g) The child's or youth's medical, physical, emotional, or other specific needs, and whether a person who could provide a permanent placement for the child or youth is able to meet the child's or youth's needs; and
 - (h) The child's or youth's attachment to the child's or youth's caregiver at the time of the hearing and the possible effects on the child's or youth's emotional well-being if the child or youth is removed from the caregiver's home.

Commented [AC25]: Clarified when these criteria must be used by the court in the first paragraph, all other language remains the same.

§ 19-3-702.5. Periodic reviews

- (1) The court shall conduct a periodic review at least every six months and, at the periodic review, shall determine the following:
- (a) Whether the child's or youth's safety is protected in the placement;
 - (b) Whether reasonable efforts have been made to find safe and permanent placement for the child or youth;
 - (c) The continuing necessity for and the appropriateness of the child's or youth's placement;

Commented [AC26]: Was in 19-3-702 prior to the change, made it a stand-alone section for clarity as it is not related to permanency. All language except (e) is the same.

(d) The extent of compliance with the individual case plan pursuant to [section 19-3-209](#), and the extent of progress that has been made toward alleviating or mitigating the causes necessitating placement out of the home;

(e) A likely time frame in which the child or youth will be returned to a parent or legal guardian or be in a safe and permanent home; and

(f) If the child or youth is not likely to be returned to a parent or legal guardian within six months, a finding about whether the child or youth is in a potential permanent placement and if not, a likely time frame when he or she will be in a safe and permanent home.

Commented [AC27]: This was added to keep the focus on permanency (consistent with the PHOM group/report).