

# **Module 5: Disposition Hearing**

## **Introduction to Disposition Hearing**

Welcome to the disposition hearing module. The information contained within this module is intended for educational purposes only.

### **Course Accessibility**

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## **Section 1: Procedure**

### **Purpose**

Disposition is a critical point in a dependency case where the court determines who should have custody and control of the child, and how the case will proceed to achieve reunification or an alternative permanent plan for the child. Clear and thorough disposition orders provide a roadmap for all parties to understand the tasks that need to be accomplished so that the child can safely return home.

This sets a clear focus for subsequent review hearings and a criteria for determining parents' progress and compliance towards remedying the safety issues that brought the child into state care.

### **Timing**

The disposition hearing must be held immediately after the fact finding hearing if dependency is ordered. However, it may be continued for up to 14 days upon a showing of good cause. The case may be continued for longer than 14 days if good cause is shown.

### **Notice**

If the hearing is continued, notice of the time and place of the disposition hearing may be given in open court. Parties who are not provided notice in open court must be notified by certified mail of the time and place of the hearing. Unless there is reasonable cause to believe the health, safety, or welfare of the child would be jeopardized, or efforts to reunite the parent and child would be hindered. The court shall direct the Department of Children, Youth, and Family to provide notice to:

1. Related by blood or marriage to the child in the following degrees: Parent, grandparent, brother, sister, stepparent, stepbrother, stepsister, uncle, or aunt;
2. Known to the Department as having been in contact with the family or child within the past twelve months,
3. Would be an appropriate placement for the child.

Reasonable cause to dispense with notification to a parent under this section must be clear, cogent, and convincing evidence.

### **Social Study**

The department must prepare a social study to aid the court with its decision on disposition. The social study is commonly referred to as a court report. The social study contains vital information about the child and family, which may also include facts relating to the child's cultural heritage. The social study and proposed service plan needs to be in writing or in a form understandable to the parent. The department needs to provide an opportunity for parents to review and comment on the plan. The Department must mail its social study and proposed service plan to the parent and their attorney at least 10 working days prior to the disposition hearing.

If the parent disagrees with the Department's plan, the parent needs to submit an alternative plan to the court at least 24 hours before the hearing. Even if the parent does not respond in writing the parent retains the right to oral argument at the disposition hearing.

### **GAL/CASA Report**

The Guardian Ad Litem or Court Advocate shall file their report with both the court and the parties prior to the disposition hearing in accordance with local court rules. Other parties may file written responses to the report with the court and deliver responses to the other parties at a reasonable time.

## **Rules of Evidence**

In addition to the social study and reports, the court shall consider evidence produced at the dependency trial and any testimony and evidence produced by the parties at the disposition hearing. The Rules of Evidence need not apply at the disposition hearing.

## **Agreed Orders**

Parties may stipulate, or agree, to the entry of a disposition order.

Stipulated or agreed orders are subject to approval by the court. Before approving an agreed disposition order, the court must receive and review the social study and consider whether a disposition order is consistent with the allegations in the dependency petition and the problems that necessitated the child's out-of-home placement.

## **Court-Ordered Termination Petition**

Under very specific and limited circumstances, the court may order the Department of Children, Youth, and Families to file a petition for termination of the parent and child relationship during the disposition hearing.

Those limited circumstances require that:

1. The court has ordered removal of the child;
2. Termination is recommended by the Department of Children, Youth, and Families;
3. The court finds that termination is in the best interests of the child;
4. By clear, cogent, and convincing evidence, the court finds aggravated circumstances exist.

In determining whether aggravated circumstances exist by clear cogent, and convincing evidence, the court shall consider of or more of the following:

- A. Conviction of the parent of rape of the child in the first, second, or third degree.
- B. Conviction of the parent of criminal mistreatment of the child in the child in the first or second degree.
- C. Conviction of the parent of assault in the first or second degree, or assault of a child in the first or second degree, when the victim was the child.

- D. Conviction of the parent of murder, manslaughter, or homicide by abuse of the child's other parent, sibling, or another child.
- E. Conviction of the parent of trafficking, or promoting commercial sexual abuse of a minor when the victim of the crime is the child, the child's other parent, a sibling of the child, or another child.
- F. Conviction of the parent of attempting, soliciting, or conspiring to commit a crime listed in (a), (b), (c), or (d).
- G. A finding by a court that a parent is a sexually violent predator.
- H. Failure of the parent to complete available treatment ordered, where such failure has resulted in a prior termination of parental rights to another child, and the parent has failed to effect a significant change in the interim. *In the case of a parent of an Indian child, as defined in RCW 13.38.040, the court shall also consider tribal efforts to assist the parent in completing treatment and make it possible for the child to return home.*
- I. An infant under three years of age has been abandoned.
- J. Conviction of the parent, when the child was born as a result of a sex offense or incest.

## **Section 2: People**

### **Excluding the Public**

All hearings shall be public, except if the court finds that excluding the public is in the best interest of the child.

Whether courtroom proceedings should be closed to the public requires the court to make an individualized determination based upon five factors.

1. The proponent of closure must make some showing of the need to do so, and the need involves a serious and imminent risk.
2. Anyone present when the closure motion is made must be given an opportunity to object to the closure.
3. The proposed method for curtailing open access must be the least restrictive means available to protect the threatened interest.
4. The court must weigh the competing interest of the closure proponent in the public.
5. The order must be no broader in its application or duration than necessary to serve its purpose.

Either parent, the child's attorney, or the child advocate may move the court to exclude the public.

The statute is silent as to whether the department or the attorney general's office can seek to close a hearing.

## **Section 3: Placement Decisions**

### **Disposition Order**

State law requires the court to order one of the following dispositions.

1. A disposition that maintains the child in the home and provides a program designed to alleviate immediate danger to the child, mitigate or cure damage already suffered, and aid the parents so that the child will not be in danger in the future.
2. A disposition for the child to be removed from their home and into the custody, control, and care of a relative, suitable other person, or the Department of Children, Youth and Families.

### **Parent Priority**

The placement decision at disposition is a highly fact-specific inquiry that cannot be reduced to a mathematical equation. The priority placement option for a dependent child is with the child's parent or parents. When making placement decisions, it is important to remember that factors such as a parent's criminal history, substance use issues, and mental health issues do not automatically disqualify the parent from having placement of their child.

However, these issues may be relevant to the extent that they affect the child's welfare or reflect on the ability of the parents to safely care for the child.

### **Reasonable Efforts**

Reasonable efforts is one element among others that must be established before a child can be placed out of the home at disposition. Unless the health, safety, and welfare of the child cannot be protected adequately in the home, the court must make the following findings before ordering out-of-home placement.

- A. Reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home. Specifying the services, including housing assistance, that have been provided to the child and the child's parent.
- B. Prevention services have been offered or provided and have failed to prevent the need for out-of-home placement.

One of the following must also apply:

- A. There is no parent or guardian available to care for such child.
- B. The parent, guardian, or legal custodian is not willing to take custody of the child.
- C. The court finds, by clear, cogent, and convincing evidence, a manifest danger exists that the child will suffer serious abuse or neglect if the child is not removed from the home, and an order under RCW 26.44.063 would not protect the child from danger.

Courts should take note that the standard for out-of-home placement under the abuse and neglect part of the statute at the time of disposition is different from the removal standard that applied while the case was in shelter care, which requires that the removal be necessary to prevent imminent physical harm to the child in cases of abuse and neglect.

Similar to the removal decision made during shelter care, the court shall give great weight to the lethality of high-potency synthetic opioids and public health guidance from the Department of Health related to high-potency synthetic opioids, including fentanyl, when deciding whether a manifest danger exists at the disposition hearing in cases of abuse and neglect.

A link to the page containing the most current version of the downloadable PDF version of the Department of Health's Public Health Guidance on High-Potency Synthetic Opioids can be found in the resources tab on the toolbar above.

### **Reasonable Efforts**

Prevent/Eliminate Need for Removal: In determining whether reasonable efforts have been made, the court should consider the facts and circumstances of each parent individually. While the reasonable effort standard is flexible. This does not permit the department to make no efforts to maintain placement with a parent. It is important for judicial officers to remember that just checking a box is not sufficient to protect the important interests involved or to provide information necessary for review.

If the court concludes the department has made reasonable efforts, it must make findings on the record to support its conclusion.

Provide Prevention Services: Prevention services include services that help preserve the family and other reasonably available services, including housing assistance capable of preventing the need for out-of-home placement while protecting the child. Prevention services also include specific prevention and treatment services for mental health and substance abuse, along with in-home parents skill-based programs that qualify for federal funding under the Federal Family First Prevention Services Act.

Prevention services focus on preventing or eliminating the need for out-of-home placement. This is different from remedial services, which facilitate the reunification of the child. Judicial officers should remain aware that the court does have the authority to order the department to provide families some form of housing assistance in cases where homelessness or lack of adequate housing is the primary reason for out-of-home placement. However, the court does not have the authority to determine what type of housing assistance should be offered in each case. Thus, the type of housing assistance offered to the family is a determination made by the department, and the reasonableness of the department's effort in offering housing assistance is a determination to be made by the court.

### **Aggravated Circumstances**

In cases in which aggravated circumstances have been established by clear, cogent, and convincing evidence, the Department is not required to make reasonable efforts to unify the family unless such efforts are determined to be in the best interests of the child.

In determining whether aggravated circumstances exist, the court must consider the factors in RCW 13:34:132.

The existence of aggravated circumstances makes it unlikely that services will result in the return of the child to the parent in the near future. If reasonable efforts are not ordered, the court shall set a permanency planning hearing within 30 days of the disposition order.

### **Out-of-Home Placement**

When a child is ordered into out-of-home placement, the law prioritizes placement with relatives or suitable others. Specifically, unless there is reasonable cost to believe that the health, safety or welfare of the child would be jeopardized, or that efforts to reunite the parent and child will be hindered, the child must be placed with a relative or suitable other person who has a relationship with the child, as long as that person is willing, appropriate, and available to care for the child.

Relatives & Suitable Others: If a child is placed out of the home placement with a relative or a suitable other shall be given preference by the court. The court has the authority to place a child in the care of a relative or suitable other without a background check if that person appears otherwise suitable and competent to provide care and treatment.

As long as the background check is provided as soon as possible after placement. Any placement with a relative is contingent upon cooperation by the relative or suitable other with the department's case plan and compliance with court orders related to care and supervision of the child, including parent, child contacts, sibling contacts, and any other conditions imposed by the court.

Non-compliance with the case plan or court order is grounds for removal of the child from the relative's or suitable other's home, subject to review by the court.

Persons related to the child are broadly defined as:

1. Any blood relative, including those of half-blood, first and second cousins, nephews, nieces, and persons of preceding generations, prefixed with grand or great-grand.
2. Stepfather, stepmother, stepbrother, or stepsister.
3. A person who has legally adopted the child or child's parent, as well as the natural or other legally adopted children of such persons and other relatives of the adoptive parents.
4. Spouses of any of the aforementioned relatives, even after the marriage is terminated.
5. Relatives of any half-sibling of the child,
6. Extended family members, as defined by the law or custom of the Indian child's tribe.

Subject to review and approval by the court. The department has authority to place a child in the home of another suitable person if:

- A. The child or family has a preexisting relationship with that person

- B. That person has completed all required criminal history, background checks
- C. That person appears to the department to be suitable and competent to provide care for the child.

Licensed Foster Care: The court may place a child in a licensed foster care placement only when the court finds that the placement is in the child's best interest.

In matching children to foster homes, the department should consider family constellation, sibling relationships, ethnicity, and religious practice or preference.

If the court places a child into foster care, the court shall order a placement that allows the child to remain in the same school they attended prior to the initiation of the dependency proceeding when such a placement is practical and in the child's best interest.

Contact between the foster parent and the birth parents is to be encouraged, including assistance in understanding the needs of the child, participation in educational activities, and transportation for visitation.

Qualified Residential Treatment Centers: Depending upon the needs of the child, the court may also place a child in a qualified residential treatment program, or QRTP. A QRTP is a specific category of a non-foster family home placement setting that meets the definition of a child care institution. QRTPs provide trauma-informed care to children with serious emotional or behavioral disorders.

The court must hold a hearing within 60 days of placement into a QRTP.

## **Section 4: ICWA Application**

### **Indian Status Determination**

The timely determination of Indian status and child dependency cases is crucial due to the significant legal, cultural, and social implications. Native American children have a right to maintain connections with their tribal heritage and community. Early recognition of Indian status helps prevent unnecessary separation and loss of cultural identity.

The determination of the Indian status of a child shall be made as soon as possible in order to serve the best interests of the Indian child and protect the interest of the child's tribe.

## **Placement**

When out-of-home placement of an Indian child is necessary, a good faith effort must be made to place the child:

- In the least restrictive setting
- Most approximates a family situation
- Is in reasonable proximity to the Indian child's home
- Where the Indian child's special needs, if there are any, will be met.

A preference shall be given in the absence of good cause contrary to the child's placement with one of the following.

1. A member of the child's extended family.
2. A foster home licensed, approved, or specified by the child's tribe.
3. An Indian foster home license or approved by an authorized non-Indian licensing authority.
4. A child foster care agency approved by an Indian tribe, or operated by an Indian organization, which has a program suitable to meet the Indian child's needs.
5. A non-Indian child foster care agency approved by the child's tribe.
6. A non-Indian family that is committed to promoting and allowing appropriate extended family visitation, establishing, maintaining, and strengthening the child's relationship with his or her tribe or tribes, and participating in the cultural and ceremonial events of the child's tribe.

## **Active Efforts**

If the child is an Indian child and if the department is seeking to place the child out of the home, the department must show that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and that these efforts have been unsuccessful.

ICWAs regulations define active efforts as affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family. WICWA defines active efforts as timely and diligent efforts to provide or procure such services, including engaging the parent in reasonably available and culturally appropriate preventative, remedial, or rehabilitative services.

The court must evaluate the department's provision of active efforts at every proceeding where the child is placed out of the home and make a clear, detailed record of the efforts made by the department.

## **Burden of Proof**

To order out-of-home placement in a case where ICWA or WICWA applies, the court must find by clear and convincing evidence, including the testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

A qualified expert witness or QEW should have knowledge of prevailing social and cultural standards of the Indian child's tribe. In addition, the qualified expert witness should have specific knowledge of the prevailing social and cultural standards of the tribe. This ensures that relevant cultural information is provided to the court and that the expert testimony is contextualized within the tribe's social and cultural standards.

## **Section 5: Visitation Plan**

### **Family Time Visitation**

Removal from the home is often traumatic for children. Regular visits help mitigate feelings of abandonment, fear, and confusion, along with ensuring that the bond between children and their parents remains intact even during separation, which is crucial for family reunification. Courts should prioritize early, consistent, meaningful family-like visitation with safeguards in place to address any safety issues.

According to state law, family time visitation must occur in the least restrictive setting and be unsupervised unless the presence of threats or danger to the child requires the constant presence of an adult to ensure the safety of the child.

### **Providing Visitation**

The court must advise the department that the failure to provide court-ordered visitation may result in a finding that the department failed to make reasonable efforts to finalize the permanency plan. Judicial officers should take note that a lack of sufficient contracted visitation providers does not excuse the failure to provide court-ordered visitation.

### **Sibling Visitation**

The sibling relationship is one of the most significant in enduring connections in a person's life. For children, particularly those in challenging circumstances such as foster care, maintaining sibling bonds can provide support, stability, and continuity. If the court

orders that a child should be removed from their home, the court shall consider whether it is in a child's best interest to be placed with, have contact with, or have visits with siblings.

There shall be a presumption that such placement, contact, or visits with siblings are in the best interests of the child, provided that the court has jurisdiction over all siblings subject to the order. The court must also find that there is no reasonable cause to believe that the health, safety, or welfare of any child would be jeopardized or that efforts to reunite the parent and child would be hindered.

### **Presumption of Unsupervised**

If the court previously ordered that visitation between a parent and child be supervised or monitored, there shall be a presumption that supervision or monitoring will no longer be necessary when the permanency plan is entered. To overcome this presumption, a party must provide a report to the court, including evidence establishing that removing visit, supervision or monitoring would create a risk to the child's safety. Then the court shall make a determination as to whether visit supervision or monitoring must continue.

### **Incarcerated Parents**

Visitation for incarcerated parents is crucial for maintaining and strengthening the parent-child bond. Regular visits can provide emotional reassurance to children, reduce feelings of abandonment, and support their overall well-being. For incarcerated parents, visitation fosters a sense of responsibility and connection, which can motivate rehabilitation and successful reintegration into family life post-incarceration.

Maintaining these relationships benefits both children and parents, promoting family stability and reducing the intergenerational cycle of incarceration. If a parent is incarcerated, the parent's disposition plan must provide for visitation opportunities unless visitation is not in the best interests of the child.

### **Limiting Visitation**

Visitation is a right of the family. The court can limit or deny visitation only if it determines that such limitation or denial is necessary to protect the child's health, safety, or welfare. In this situation, the risk of harm to the child must be an actual risk, not speculative. Importantly, judicial officers should remember that visitation cannot be limited as a sanction for a parent's failure to comply with recommended services.

## **Section 6: Permanency Plan**

### **Permanency Plan**

Achieving timely permanency is a critical goal in child dependency cases. Not only do federal and state laws mandate that child welfare agencies establish and pursue permanency goals within strict timelines, achieving timely permanency is important to a child's overall development and well-being. A permanency plan is a cornerstone of child dependency cases designed to ensure a stable, long-term permanent solution that prioritizes the well-being of the child.

It serves as a time-sensitive roadmap for supporting families through services and monitoring progress towards reunification. When reunification is not possible, permanency planning ensures that alternatives such as guardianship, adoption, or independent living are pursued as viable and timely alternatives.

A clear, focused permanency plan keeps children from languishing in care without a permanent solution and helps ensure that parents and children are not separated longer than necessary. Whenever a child is ordered to be removed from the home, a permanency plan must be developed no later than 60 days from either the time the department assumes responsibility for providing services, which includes placing the child, or at the time of the disposition hearing, whichever occurs first.

### **Permanency Goals**

The court shall identify one of the following as the primary goal in the permanency plan. The court may also identify alternative permanency goals if appropriate, sometimes referred to as concurrent planning.

- Return of the child to the home of the child's parent
- Adoption
- Guardianship pursuant to Chapter 13
- Guardianship of a Minor pursuant to Chapter 11.
- Long-term relative or foster care if the child is between the ages of 16 and 18
- Successful completion of a responsible living skills program
- Independent living if appropriate, and if the child is 16 or older.

### **Permanency Plan Contents**

The department works to achieve permanency for children as quickly and safely as possible. The goal is to reunify children with their families when parents demonstrate

that they're able to safely care for their children. If the child is placed out of the parent's home, the Department's permanency plan shall specify:

- What services the parents will be offered to enable them to resume custody
- What requirements the parents must meet to resume custody.
- And a time limit for each service plan and parental requirement.

## **Section 7: Services**

### **Services: In-Home**

If the court places the child in the home of a parent at the dispositional hearing, the court shall provide services designed to alleviate immediate danger to the child, mitigate or cure any damages the child has already suffered, and to aid the parents so that the child will not be endangered in the future.

The court should choose dispositional services to assist the parents in maintaining the child in the home that least interferes with family autonomy and are adequate to protect the child. This includes housing assistance if appropriate.

### **Services: Out-of-Home**

Suppose the child is placed out of the parent's home. In that case, the department's permanency plan shall specify what services the parents will be offered to enable them to resume custody, what requirements the parents must meet to resume custody, and a time limit for each service plan and parental requirement.

### **Remedial Services**

The types of services ordered at the disposition hearing for out-of-home cases are known as remedial services. Remedial services are defined in the Federal Adoption and Safe Families Act as services that facilitate the reunification of the child safely and appropriately within a timely fashion. They include:

- Individual, group, and family counseling
- Substance abuse treatment services
- Mental health services
- Assistance to address domestic violence
- Services designed to provide temporary childcare and therapeutic services for families; and
- Transportation to or from any of the above services and activities

In practice, remedial services are commonly called case plan services. The goal of these services is to increase parental capacity to manage or control the identified threats to child safety in the home so that children can safely return and remain in the care of one or both parents.

For example, if the department's identified threat to child safety was a lack of adequate supervision of a young child due to parental substance use, the court might order that parent to undergo a chemical dependency assessment and follow treatment recommendations.

The goal of ordering this as a remedial service is to address the parent's substance misuse so that they are able to provide adequate supervision for the child. If court-ordered remedial services are unavailable for any reason, including lack of funding, lack of services, or language barriers, the department must promptly notify the court that the parent is unable to engage in the service due to the inability to access the service.

### **Incarcerated Parents**

If the parent is incarcerated, the plan must address how the parent will participate in case conferences and permanency planning meetings. Where possible, the plan must include services that reflect the resources available at the facility where the parent is confined. Judicial officers should always remain aware that the types of services available to incarcerated parents will vary depending on the correctional center.

The department casework should be able to provide to court with information about the specific services available to parents.

### **Parents with Disabilities**

If a parent has a developmental disability and that parent is eligible for services provided by the Department of Social and Health Services, Developmental Disabilities Administration, or DDA, the department shall make reasonable efforts to consult with the DDA to create an appropriate plan for services.

For parents who meet the definition of developmental disability and who are eligible for services through the DDA, the plan for services must be tailored to correct the identified parental issues. Taking into consideration the parent's disability, the department must also determine an appropriate method to offer those services based on the parent's disability.

## **Closing**

Congratulations, you have completed the Disposition Hearing Module. You can learn more about this module by clicking on the tabs on the bottom of the screen. Click the done button when you are ready to exit this module.