

AAL DEPENDENCY-NEGLECT ADJUDICATION/DISPOSITION HEARING CHECKLIST

Statutory Authority:

A.C.A. '9-27-327; -329; -334; -335

Petitioners:

- ✓ Any adult and any juvenile in the home age 10 years or older **'9-27-310(b)(3)**.
- ✓ Only law enforcement, prosecuting attorney, or DHHS or its designee can file d-n petition seeking ex parte relief **'9-27-310(b)(2)**.

Venue:

- ✓ Shall be commenced in the county where the juvenile resides or where the alleged act or omission occurred. No d-n petition shall be dismissed if filed in the incorrect county, but shall be transferred to the proper county upon the discovery of the juvenile's residence (**'9-27-307(a)(1)(B) - (2)(C)**).
- ✓ Following the adjudication, the court may on its own motion or any party's motion transfer the case to the county of the juvenile's residence when UCCJEA does not apply (**'9-27-307(b)(1)**).

Adjudication & Disposition Purpose:

- To determine whether allegations in the petition are substantiated by the evidence (**'9-27-327(a)(1)(A)**).
- To enter orders consistent with disposition alternatives (**'9-27-329(a)**).
- In considering the disposition alternatives the court shall give preference to the least restrictive disposition consistent with the best interest and welfare of the juvenile (**'9-27-329(d)**).

Best Practice: AAL should request that a concurrent goal be stated for the case.

Best Practice: AAL should object to any stipulation unless the parties agree that the allegations of abuse or neglect are true and correct and that the stipulation will include specific findings of fact.

Pre-trial Preparations:

- Ensure that the foster parent or temporary custodian has been provided with notice of the hearing by DHHS.

- Interview client, investigator, and all witnesses.
- Review all evidence to be submitted during the hearing.
- Share with opposing counsel all evidence to be submitted by AAL during the hearing.
- Attend and participate in any pre-adjudication staffings, discuss case goal and concurrent goal.

Time Constraints:

- ≡ A written adjudication order shall be filed by the court within 30 days of the date of the adjudication hearing or prior to the next hearing, whichever is sooner (**'9-27-327(f)**).
- ≡ Any studies, evaluations, or predisposition reports shall be provided in writing to all parties and counsel at least 2 days prior to the disposition hearing (**'9-27-327(e)(1)**).
- ≡ The Disposition Hearing may be held immediately following or concurrent with the Adjudication Hearing, but shall be held no more than 14 days following the Adjudication Hearing (**'9-27-329(c)**).
- ≡ A written disposition order shall be filed by the court, or by a party or party's attorney as designated by the court, within 30 days of the date of the hearing or prior to the next hearing, whichever is sooner (**'9-27-329(e)**).
- ≡ Within 60 days from removal the court must make reasonable efforts findings to prevent removal (**'9-27-328(b)(2)(D)**).

Burden of Proof:

Preponderance of the evidence

Present at Hearing:

- T Judge;
- T Parties, including children unless excused for good cause by court;
- T Attorneys for all parties;
- T Investigator, case worker, and relevant witnesses;
- T Court Reporter;

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- T CASA volunteer, if appointed; and
- T Foster parents or relative caregivers.

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Exhibits:

- UAMS evaluation;
- Police reports;
- Case plan;
- Medical and health care records;
- Educational records;
- Court reports by DCFS and CASA; and
- Photos, reports, and home studies.

Issues:

- Have all the parties been properly identified and served with petition?
- Counsel for all parties entitled to appointment **OR** proper waiver on the record?
- Did all parties receive a copy of the case plan, UAMS comprehensive, and any exhibits to be admitted at the hearing?
- Is the child **dependent-neglected** which means any juvenile who is at substantial risk of serious harm as a result of:
 - Abandonment;
 - Abuse;
 - Sexual abuse;
 - Sexual exploitation;
 - Neglect;
 - Parental unfitness to the juvenile, a sibling, or another juvenile; or
 - Being present in a dwelling or structure during the manufacturing of methamphetamine with the knowledge of his or her parent, guardian or custodian.
- Dependent-neglected juvenile includes **dependent** juveniles, who are:
 - A child of a parent who is under 18 years of age and is in the custody of DHHS;
 - A child whose parent or guardian is incarcerated and the parent has no appropriate relative or friend willing or able to provide care for the juvenile;
 - A child whose parent or guardian is incapacitated, whether temporarily or permanently, so that the parent cannot provide care for the juvenile and the parent has no

appropriate relative or friend willing or able to provide care for the juvenile;

- A child whose custodial parent dies and no stand-by guardian exists;
- A child who is an infant relinquished to the custody of DHHS for the sole purpose of adoption;
- A safe haven baby (9-34-201 *et seq.*); or
- A child who has disrupted his adoption, and the adoptive parents have exhausted resources available to them.

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Adjudication

- Have the allegations in petition been substantiated by the proof?
- Is child d-n as defined by the statute? Start with A.C.A. '9-27-303(18).

Best Practice: AAL should request that the court make specific findings of fact including findings regarding credibility of witnesses.

AAL should request child support be assigned or redirected to the custodian. AAL should request that any Social Security payments on behalf of the children be redirected to the custodian.

Disposition

Disposition Alternatives & Limitations

- **Order family services** defined at A.C.A. 9-27-303(25) ('9-27-334(a)(1)).
Note: If DHHS is not a party, court must provide DHHS 5 days notice of intent to order DHHS to provide services or order is void ('9-27-335(a)(1)).
 - ✓ Court shall not specify a particular provider for family services when DHHS is the payor or provider ('9-27-335(b)).
 - ✓ Court shall determine parent's, guardian's, or custodian's ability to pay in part or whole for services and shall include findings in written order ('9-27-335(c)(1)).

Best Practice:

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- *AAL should request an order for ILP services for age appropriate children.*
 - *By this stage, the AAL should have thoroughly reviewed the case and can make recommendations to the court for specific services needed to move the family toward the case goals.*
 - *If the juvenile remains in an out of home placement, ask the court to set the review and PPH hearings at the adjudication so that the parent understands that the clock is ticking.*
 - *Ask the court to allow DHHS to expand visitation as long as the health and safety of the juvenile can be protected.*
- △ If in child's best interest - Transfer custody to DHHS, licensed agency responsible for care of juveniles, relative or other individual ('9-27-334(a)(2)).
- ✓ Custody can be transferred to a relative or other individual **only after a home study** by DHHS or licensed social worker of the placement is conducted and submitted to court in writing and court determines placement in child=s best interest ('9-27-335(d)).
 - ✓ Prior to placing a child in DHHS custody, court must find that reasonable efforts were made to prevent need for removal. Reasonable efforts are deemed if emergency ('9-27-335(e)).
 - ✓ If court finds that reasonable efforts could have been made with the juvenile remaining safely at home, but that DHHS failed to do so the court may dismiss the petition, order services or transfer custody to protect child=s health and safety or prevent removal from court=s jurisdiction ('9-27-335(e)(2)).
- If court transfers to DHHS, the court shall issue orders regarding educational issues of the juvenile including:**
- ✍ If the parent or guardian(P/G) shall have access to school records;
 - ✍ If P/G entitled to school records are they entitled to placement information – name and address of foster parent; and
- ✍ If P/G may participate in any school conferences or similar school activities ('9-27-334(a)(1)(D)).
 - ✍ The court may also appoint an individual to consent to the IEP as a surrogate parent, including the foster parent ('9-27-334(a)(2)(E)).
- ✓ Grant Permanent Custody ('9-27-334(a)(3)).
- ⇔ Order parent/guardian/custodian to attend parental responsibility training ('9-27-334(a)(4)).

Post-Trial Activities:

- Review court order for accuracy and completeness.
- AAL must monitor compliance with court orders.
- AAL must explain to age-appropriate clients the hearing outcome and its meaning.

IV-E COURT FINDING REQUIRED

Within 60 days of removal the court must find if DHHS made reasonable efforts to prevent removal of the family specifically:

- Which family services were made available prior to removal of the juvenile;
- △ What efforts were made to provide those family services relevant to the needs of the family before the removal of the juvenile, taking into consideration whether or not the juvenile could remain safely in the home while services were provided;
- ✓ Why efforts made to provide the family services did not prevent removal of the juvenile; and
- ⇔ Whether efforts made to prevent removal were reasonable based on the needs of the family and juvenile (A.C.A. '9-27-328(b)).

Where the state's first contact with the family has occurred during an emergency in which the juvenile could not remain safely in the home even with reasonable efforts being provided, reasonable efforts shall be deemed. A.C.A. '9-27-328(c)).