

## OCC ADJUDICATION/DISPOSITION HEARING CHECKLIST

**Statutory Authority: 9-27-327, 9-27-329, 9-27-334, 9-27-335**

### **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)**
- Although the adjudication and disposition can be held on separate days, the adjudication and disposition are usually held on the same day with the disposition phase immediately following the adjudication.

### **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 juvenile's residence when UCCJEA does not apply. **9-27-307(b)(1)**

### **Pre-trial Preparations:**

- Ensure foster parent or temporary custodian has been provided with notice of hearing by caseworker
- Serve parents in accordance with Rules of Civil Procedure
- Determine if juvenile has been excused from attendance at hearing
- Ensure that the responsible attorney has obtained a transport order for incarcerated parents
- Request time specific hearing

- Provide written notice of the Adjudication Hearing to the investigator and caseworker.
- Subpoena CACD investigator, if needed, to ensure attendance
- Pulaski staff add Adjudication Hearing Date to Outlook Court Docket.
- Identify witnesses for Adjudication Hearing and issue subpoenas. Obtain witness fee check.
- Communicate with all witnesses prior to adjudication hearing regarding their testimony.
- Communicate with counsel for all parties to see if any facts can be stipulated
- Identify, copy and mark each exhibit. Share with counsel prior to hearing.
- Attend pre-adjudication staffing to discuss goal of case as well as concurrent goal.
- Obtain a copy of the case plan from the caseworker
- Ensure case plan is filed no later than thirty days after the petition was filed.
- Bring calendar to court

### **Time Constraints:**

- Any 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)**
- 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)**
- Within 60 days from removal the court must make reasonable efforts findings to prevent removal. **9-27-328(b)(1)(C)**

### **Burden of Proof:**

Preponderance of the evidence

## OCC

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### Adjudication Issue:

- To prove that the allegations in petition been substantiated by the proof.
- 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 old 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); or
  - A child who has disrupted his adoption, and the adoptive parents have exhausted resources available to them.

### Hearing Issues:

- Whether or not reasonable efforts were made to prevent removal of the juvenile.
- Facts to support the allegations in the petition and affidavit
- Ask court to make specific findings as to the basis of the finding of dependency-neglect

### Exhibits:

- Police reports
- Medical records

*Best Practice: If the juvenile remains in an out of home placement, ask the court to set the review and PPH hearings at the adjudication hearing so the client understands the clock is ticking.*

### Disposition

*Best Practice: If the adjudication hearing is contested, bifurcate your hearing and do the disposition phase after the court rules on the adjudication issue*

### Disposition Alternatives & Limitations

- **Order family services** defined at A.C.A. 9-27-303(25) **9-27-334(a)(1)**
  - ✓ If DHHS is not a party, court must provide DHS 5 days notice of intent to order DHS 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)**
- 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

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placement is conducted and submitted to court in writing and court determines placement in child's best interest. **9-27-335(d)**

### Elicit Testimony at Disposition:

- Whether reasonable efforts were made to prevent removal (if court hasn't already made this finding).
- Whether or not the juvenile can safely be returned home.
- What services have been outlined in the Case Plan that are needed by the family to remedy the reasons that caused removal or to prevent the removal of the juvenile from the custody of his parent?
- DHHS' recommendation for a goal in the case.
- How much child support should be ordered paid by the parents if the child remains out of the home?

### Educational Issues

If the court transfers custody of the juvenile to DHHS, the court shall issue orders regarding the following:

- Whether the parent or guardian shall have access to school records of the juvenile;
- Whether the parent or guardian who has access to school records of the juvenile is entitled to obtain information on the current placement of the juvenile, that is, the name and address of the foster parent or provider; and
- Whether the parent or guardian may participate in school conferences or similar activities at school.
- Whether the parent can serve or continue to serve as the parent for purposes of IDEA (20 U.S.C. 1400 et seq.) and if not, who will serve as a surrogate parent. 9-27-334(a)(2)(E).

*Best Practice: Ask the court for DHHS discretion to increase visitation as long as the health and safety of the juvenile can be protected*

### Exhibits:

- Case Plan
- PACE
- Psychological evaluations and other court ordered evaluations and assessments

### Post Trial Activities:

- A written order shall be filed by the court or by a party, CASA, or party's attorney as designated by the court within 30 days of the date of the emergency hearing, or prior to the next hearing, whichever is sooner.
- Distribute a copy of the order to all parties and CFS within 30 days.
- Inform caseworker of date and time of next hearing (Pulaski staff add to docket calendar).
- Key data in legal screens on CHRIS.

*Best Practice: The adjudication court order needs to specifically spell out all of the services that the parents are ordered to participate in. The order should mirror the case plan. If the order requires more services than the case plan, another staffing must be held to amend the case plan.*