

Basics of Child Dependency and Neglect Law

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A screenshot of the Tennessee Courts website (tncourts.gov) with a blue navigation menu. The 'COURT IMPROVEMENT' option is highlighted in red. The main content area features a banner for 'Juvenile Court Claims' with the subtitle 'How Attorneys can navigate the system effectively'. A notification states that courts and offices are closed on Monday, May 27, for Memorial Day. A 'home' button is visible on the left, and a 'MEETINGS' button is at the bottom. The website also includes a search bar, social media icons, and a 'TENNESSEE COURTS' logo.

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tncourts.gov/programs/court-improvement

Home / Programs / Court Improvement

Court Improvement

The Court Improvement Program is funded by a federal grant program provided under the auspices of the U.S. Department of Health and Human Services. The Tennessee Supreme Court received its initial Court Improvement Program grant in 1995. The CIP grant provides funding for Tennessee to assess the role, responsibilities and effectiveness of juvenile courts in carrying out state laws guiding child welfare proceedings and to implement improvements based on those assessments, including: to provide for the safety, well-being, and timely permanence of children in foster care; to support engagement of families in child welfare cases; and to improve collaboration between the courts and the Department of Children's Services around data collection and analysis, training, and around Child and Family Services and Title IV-E Foster Care Eligibility Reviews.

The Court Improvement Program Multidisciplinary Task Force is a statewide multi-disciplinary group appointed by the Supreme Court to review and address issues of safety, permanency and well-being for children and families in the child welfare system.

CONTACT
If you would like further information on the Court Improvement Program, [click here](#).

COURT IMPROVEMENT EVENTS
May 2024

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ACCESS TO JUSTICE

COURT IMPROVEMENT

- Assessments & Reports
- Forms & Orders
- Guides & Manuals
- Training
- On-Demand Distance Learning Training
- Foster Care Review Board Members and Juvenile Court Staff Training
- Youth in Juvenile Court

COURT INTERPRETERS

COURT REPORTERS

GAVELS PROGRAM

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tncourts.gov/programs/court-improvement/trainings

Home / Programs / Court Improvement / Trainings

Trainings

The Court Improvement Program provides training for judges, attorneys and foster care review boards.

UPCOMING TRAINING EVENTS

Live Trainings

Dependency and Neglect Basics
May 24 2024 @ 12:00 pm - 1:00 pm CT
Virtual Training
Approved for 1.0 general CLE hour
Click [here](#) for more information
Click [here](#) to register

For information on the 2024 monthly training series click [here](#)

CIP Partner Trainings

Davidson County Juvenile Court
April CLE: The World of DCS
May 29 2024 @ 11:15 am - 12:45 pm CT
Nashville, TN
Click [here](#) for more information

COURT IMPROVEMENT TRAINING
May 2024

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COURT INTERPRETERS

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GAVELS PROGRAM

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Jurisdiction of D&N Claims

- **T.C.A. § 37-1-103:** Juvenile Court has exclusive jurisdiction over dependent and neglected claims when Petition filed triggers said claims.
- If Petition alleges facts tantamount to claim of dependency and neglect as basis for a modification, as would trigger Juvenile Court's jurisdiction, Circuit Court retains its domestic relations jurisdiction, “regardless of nature of the allegations, unless and until a pleading is filed or relief is otherwise sought in a Juvenile Court invoking its exclusive original jurisdiction,” where no pleading had been filed or relief otherwise sought in Juvenile Court invoking its exclusive original jurisdiction. [Cox v. Lucas, 2019, 576 S.W.3d 356.](#)



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Confidentiality of Proceedings: TRJP Rule 114

- Dependent and Neglect proceedings are not open to public.
- Delinquent and Unruly – General public may be excluded in discretion of the Court on application of a party or on the Court’s own initiative.
 - Court balances interest of the party seeking closure to avoid prejudice verses compelling interest of the public in an open hearing.



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What is a Dependent and Neglected Child?

T.C.A. § 37-1-102(b)(13)

- Without parent or legal guardian;
- Parent, guardian or other with whom child lives is unfit to care for child;
- Child under unlawful or improper care, supervision, custody or restraint by person or organization;
- Child unlawfully kept out of school (educational neglect);
- Parent, guardian or custodian neglects or refuses to provide medical care;
- Child found in place of violation of law because of lack of supervision;
- Child under improper control as to injure or endanger morals or health;



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Dependent and Neglected (cont.)

- Child suffering from abuse or neglect;
- Child under care of agency or non-relative for 6 continuous months without a power of attorney or court order and agency/person has not initiated proceeding for custody or adoption;
- Child allowed to engage in prostitution/pornography and parent/guardian/ custodian neglects to protect; or
- Child willfully left in sole financial and physical care of relative for at least 18 consecutive months and will suffer substantial harm if removed (does not apply to parent in military service).



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Abuse Defined

Person under 18 suffering from or in immediate danger of suffering from injury, disability, or physical or mental conditions caused by brutality, neglect, other actions, or inactions of parent, relative, guardian or caretaker.

T.C.A. § 37-1-102(b)(1)



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Severe Abuse Defined

- Knowing exposure of child to, or failure to protect child from, abuse or neglect, or knowing use of force likely to cause serious bodily injury or death;
- Brutality, abuse, or neglect towards child, or failure to protect, in opinion of expert, has caused or expected to cause severe psychosis, neurotic behavior, developmental delay, intellectual disability, or severe impairment of child's ability to function adequately in child's environment;
- Commission of act constituting certain child sexual acts or aggravated child abuse, neglect, or endangerment against the child or the knowing failure to protect the child against such act;



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Severe Abuse (cont.)

- Knowingly allowing a child to be present in structure where methamphetamine is being created;
- Allowing a child under 8 to ingest an illegal substance resulting in a positive drug screen; or
- Knowingly allowing a child to be within a structure where any of the following controlled substances are present and accessible to the child:
 - i. Any Schedule I controlled substance listed in T.C.A. § 39-17-406 (opiates);
 - ii. Cocaine;
 - iii. Methamphetamine; or
 - iv. Fentanyl.

T.C.A. § 37-1-102(b)(27)



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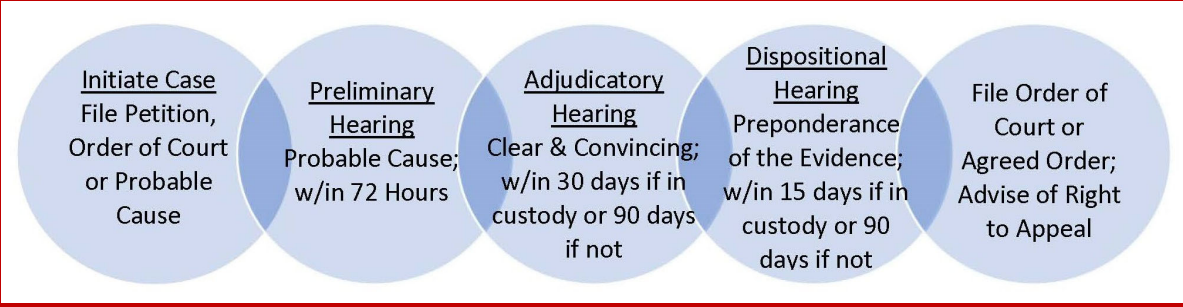
Importance of Severe Abuse Finding

- Ground for termination of parental rights - *T.C.A. § 36-1-113(g)*.
- If in DCS custody, must follow statutory requirement to return child to the home - *T.C.A. § 37-1-130(d)*.
- Excuses DCS from making reasonable efforts to reunify if so ordered by the court - *T.C.A. § 37-1-166(g)(4)*.

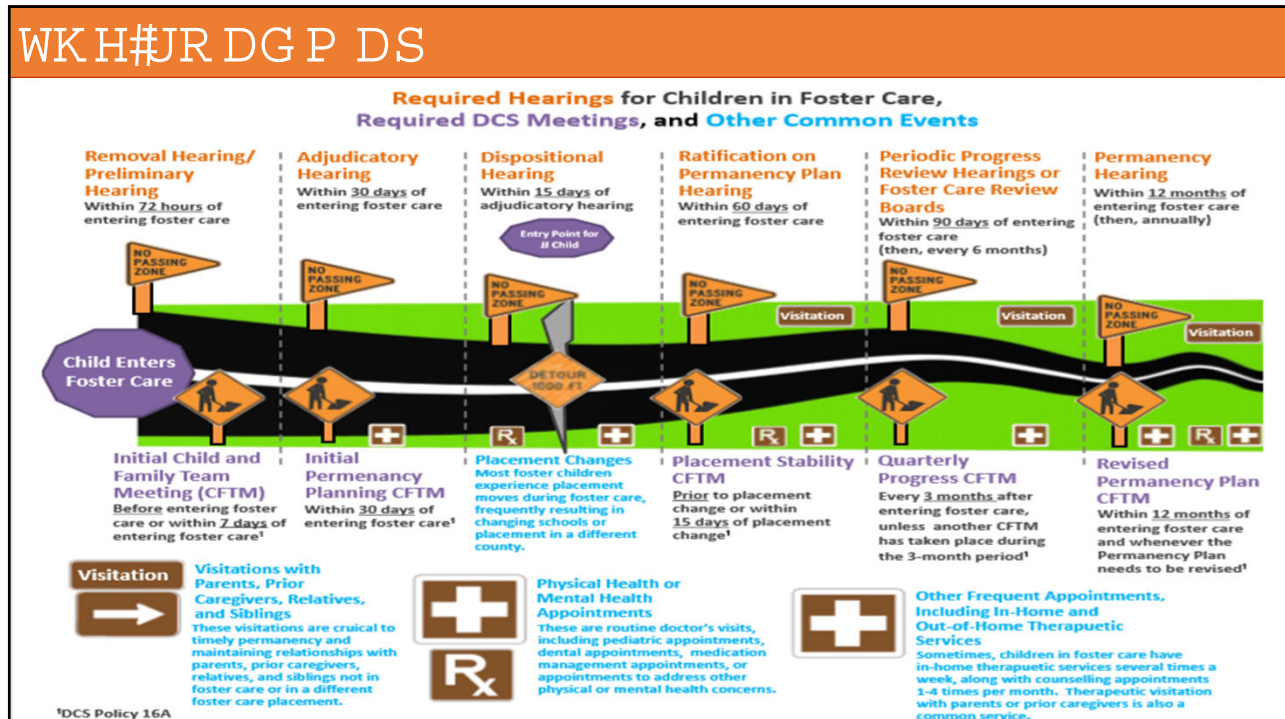


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D & N Timeline



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Initiation of Case by Petition

TRJP Rule 301

- A dependent and neglect case is commenced by the ***filing of a petition.***
- Anyone with knowledge of the facts alleged or is informed and believes that the facts are true can file the petition. (DCS, private party, court officer, law enforcement, etc.) – *T.C.A. § 37-1-119*
- ***When the petitioner is not DCS, the Court shall promptly refer the case to DCS for investigation.***



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Probable Cause Finding

Purpose:

To determine if there is probable cause to believe that the child is dependent, neglected, or abused AND an immediate threat to child's health or safety exists that is likely to result in severe or irreparable harm AND that there is no less restrictive alternative to the removal.

Timing:

Within 48 hours of custody if no prior written order authorizing custody.

T.C.A. § 37-1-114
TRJP 302



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Taking Child into Custody Prior to Preliminary Hearing

T.C.A. § 37-1-113

Pursuant to Court Order:

- Based upon **sworn petition** or **sworn testimony**:
 1. child is dependent, neglected or abused; and
 2. removal is required because **child is subject to immediate threat to child's health or safety** to extent delay for hearing would be **likely to result in severe or irreparable harm** or the child may abscond or be removed from the jurisdiction of the court.
- Written affidavit, sworn in person or by audio-visual electronic means
- Can order child removed from custody of parent/legal guardian and placed with DCS or suitable guardian pending further investigation and hearing.



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Attorney Appointment



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Parent Attorneys and Guardians ad Litem

- Parents have right to attorney at all stages of any proceeding involving abuse, dependency or neglect.
 - Counsel will be appointed if indigent.
 - Parties can waive right to attorney.
 - Waiver must be knowing and voluntary = intelligent & understanding decision.
 - Waiver made orally & in open court & confirmed in writing by party & judge.
- ***GAL appointed in all cases where D&N is alleged.***



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Private Party D&N Petitions

- Hold preliminary hearing? YES, if change of custody or altered parenting time - foster care timeline applies
- Make referral to DCS
- Appoint GAL and counsel for indigent parents
- If parent versus parent case, and parenting time not affected, no preliminary hearing required; hold adjudicatory hearing within 30 days and disposition within 90 days.
- If nonparent custodian and parenting time is altered, use foster care time line, i.e. 72 hour preliminary, etc.



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Guardian Ad Litem (GAL) Appointment

"Guardian ad litem" is a lawyer appointed by the court to advocate for the **best interests of a child** and to ensure that the child's concerns and preferences are effectively advocated.

Tenn. Sup. Ct. Rule 40



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What is Best Interest?

"**Child's best interests**" refers to a determination of the most appropriate course of action based on objective consideration of the child's specific needs and preferences. In determining the best interest of the child the guardian ad litem should consider, in consultation with experts when appropriate, the best interest factors.

Appointed ahead of Preliminary Hearing, if at all possible.



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Best Interest Factors

- i. the child's basic physical needs, such as safety, shelter, food, clothing, and medical care;
- ii. the child's emotional needs, such as nurturance, trust, affection, security, achievement, and encouragement;
- iii. the child's need for family affiliation;
- iv. the child's social needs;
- v. the child's educational needs;
- vi. the child's vulnerability and dependence upon others;
- vii. the physical, psychological, emotional, mental, and developmental effects of maltreatment upon the child;
- viii. degree of risk;
- ix. the child's need for stability of placement;
- x. the child's age and developmental level, including his or her sense of time;
- xi. the general preference of a child to live with known people, to continue normal activities, and to avoid moving;



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Best Interest Factors

- xii. whether relatives, friends, neighbors, or other people known to the child are appropriate and available as placement resources; (xiii) the love, affection and emotional ties existing between the child and the potential or proposed or competing caregivers;
- xiii. the importance of continuity in the child's life;
- xiv. the home, school and community record of the child;
- xv. the preferences of the child;
- xvi. the willingness and ability of the proposed or potential caretakers to facilitate and encourage close and continuing relationships between the child and other persons in the child's life with whom the child has or desires to have a positive relationship, including siblings; and
- xvii. in the case of visitation or custody disputes between parents, the list of factors set forth in Tenn. Code Ann. § 36-6-106.



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Reasonable Efforts



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Removal of Child

T.C.A. § 37-1-166

Prior to ordering a child committed to or retained within the custody of DCS, the court shall first determine whether ***reasonable efforts*** have been made to:

- 1) Prevent the need for removal of the child from such child's family; or
- 2) Make it possible for the child to return home.

Based on specific facts, Court must find:

- 1) There is no less drastic alternative to removal;
- 2) Reasonable efforts have been made to prevent the need for removal of the child from such child's family or to make it possible for the child to return home; and
- 3) Continuation of the child's custody with the parent or legal guardian is contrary to the best interests of the child.



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Reasonable Efforts

T.C.A. § 37-1-166

- Relevant to each hearing type.
- Reasonable efforts means the ***exercise of reasonable care and diligence*** by the department to provide services related to meeting the needs of the child and the family.
- ***Reasonable efforts shall be made to preserve and reunify families.***
- **Reasonable efforts to prevent removal finding must** be made **within 60 days** of the child entering custody.



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Reasonable Efforts

Tennessee law defines as:

“The exercise of reasonable care and diligence by the Department to provide services related to meeting the needs of the child and the family.”

T.C.A. § 37-1-166(g)



In determining reasonable efforts to be made with respect to a child and in making such reasonable efforts, the child's health and safety shall be the paramount concern.



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Reasonable Efforts Must Be Made:

1. To prevent the need for removal of the child from the child's family;
2. To make it possible for the child to return home;
3. To place the child in a timely manner in accordance with the Permanency Plan; and
4. To complete whatever steps are necessary to finalize the permanent placement of the child if continuation of reasonable efforts is determined to be inconsistent with the Permanency Plan for the child. (T.C.A. § 37-1-166)



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Reasonable Efforts to Reunify Not Required

Reasonable efforts shall not be required if a court has determined that the parent has subjected the child or any child in the household to aggravated circumstances, including any of the following:

- Abandonment of a child or an infant;
- Aggravated assault;
- Aggravated kidnapping or especially aggravated kidnapping;
- Aggravated child abuse and neglect;
- Aggravated sexual exploitation of a minor or especially aggravated sexual exploitation of a minor;
- Aggravated rape, rape of a child, or incest; or
- Others as set out in T.C.A § 36-1-102(9).

T.C.A. § 37-1-166



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Reasonable Efforts

Should be reasonably related to the reasons the child came into custody or that prevents the child from safely returning home.



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Reasonable Efforts

DCS must make "reasonable efforts" to assist the parent by doing more than simply providing a list of service providers. *In re Matthew T.*, [No. M2015-00486-COA-R3-PT](#), [2016 WL 1621076](#), at [7](#) (Tenn. Ct. App. Apr. 20, 2016). The Department should utilize its superior resources in assisting a parent to establish a suitable home, but "[its] efforts do not need to be 'Herculean.'" *In re Hannah H.*, 2014 WL 2587397, at 9 (citing *Dep't of Children's Servs. v. Estes*, [284 S.W.3d 790, 801](#) (Tenn. Ct. App. 2008), overruled on other grounds by *In re Kaliyah S.*, [455 S.W.3d 533](#) (Tenn. 2015)); see also *In re Matthew T.*, 2016 WL 1621076, at 7.



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Initial Hearings in Dependency and Neglect



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Preliminary Hearing

Purpose:

To determine if there is probable cause to believe that the child is dependent, neglected, or abused AND there is an immediate threat to child's health or safety likely to result in severe or irreparable harm AND that there is no less restrictive alternative to the removal.

Timing:

Within 72 hours of child's removal, excluding non-judicial days.

T.C.A. § 37-1-117
TRJP 302(d)



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Preliminary Hearing

TRJP 302/T.C.A. §§ 37-1-114 & 37-1-117

- Standard of Proof at Preliminary Hearing is **probable cause**.
- For removal must find there was probable cause that:
 - Child was abused/neglected AND
 - Child subject to immediate threat to health & safety and severe or irreparable harm or child may abscond or be removed from Court's jurisdiction AND
 - No less drastic alternative to removal.
- Same probable cause determination for removal of child shall be made for *continued* removal of child.
- Indian Child Welfare Act (ICWA) – Requires that inquiry be made in all cases to see if child is of Native American descent and covered under ICWA.



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Adjudication

Purpose:

Trial on the allegations of dependency, neglect, or abuse alleged in petition using a clear and convincing evidentiary standard.

Timing:

Within 30 days of removal or filing of petition if child not removed; not more than 90 days.

T.C.A. § 37-1-129
TRJP 307



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Adjudicatory Hearing

TRJP 307/T.C.A. § 37-1-129

- Trial on the merits of the Petition.
- TN Rules of Evidence Apply.
- Standard of Proof at Preliminary Hearing is **clear and convincing**.
- Time Limits:
 - Child placed out of home by court order, hearing held within 30 days.
 - Other cases held within 30 days if reasonable, but no later than 90 days.
 - Upon good cause, may be continued to date certain.
- Must determine if severe abuse was committed by parent or other person with custody. (T.C.A. § 37-1-129(a)(2))



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Adjudicatory Hearing

Adjudicatory Hearing Order Includes:

1. Whether necessary parties are served/notified and present
 2. Whether parties are represented
 3. Relationship of parties
 4. The rights of the parties, purpose of the hearing and consequences of the hearing have been explained.
 5. If allegations have been proved by clear and convincing evidence to adjudicate child dependent and neglected
 6. Findings of fact to support the D&N finding
- Adjudicatory Hearing Order must be filed within 30 days from the closing of the hearing.
 - Following the adjudicatory hearing, the Court may transfer the case to the child's home county, within TN, for disposition. (T.C.A. § 37-1-112)



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Disposition

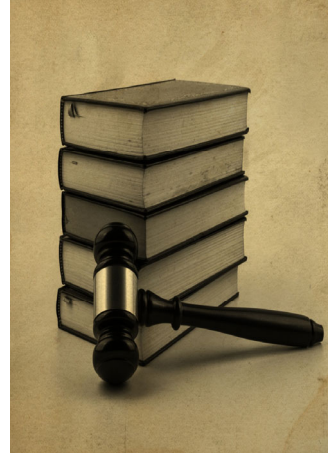
Purpose:

To determine appropriate plan for child.

Timing:

Within 15 days of adjudication if child has been removed; 90 days if child not removed.

*T.C.A. §§ 37-1-130 to 132
TRJP 308*



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Dispositional Hearing

TRJP 308/T.C.A. § 37-1-130

- Standard of proof at dispositional hearing is by ***preponderance of the evidence***.
- Purpose is to design an appropriate order to meet the needs of the child and to achieve the objectives of the state.
- Time Limits:
 - If placed out of home, then must be held within 15 days of adjudication.
 - For other cases held, then held within 90 days of adjudication if reasonable.
 - Can be held past 90 days if for good cause and set for date certain.
 - ***Shall be separate from adjudicatory hearing – but can be immediately following.***
- TN Rules of Evidence apply, except reliable hearsay is admissible.
- YSO and Probation Officers should be witnesses regarding admissible evidence of which they have knowledge.



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Dispositional Hearing

TRJP 308/T.C.A. § 37-1-130

- Dispositional Order Includes:
 1. Placement with parents subject to conditions and limitations (unless severe abuse finding made, then only if T.C.A. § 37-1-130(c) is satisfied);
 2. Temporary custody to any individual qualified to care for child (must have conduct home study);
 3. Custody to DCS;
 4. Visitation plan;
 5. Address child support if not previously done;
 6. Court must advise parties of the right to appeal and time limits; and
 7. Set ratification hearing on permanency plan.



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Review of Magistrate's Orders

T.C.A. § 37-1-107

- Upon conclusion of hearing, Magistrate makes written findings of fact and recommendations – transmitted to judge.
- Within 10 days, any party may file a written request for a review of the record by the juvenile court judge.
 - Request must include:
 - Written exceptions to the magistrate's findings, conclusions, recommendations;
 - The findings that the party objects to;
 - Grounds for objections; and
 - The party's proposed findings.



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Review of Magistrate's Orders

T.C.A. § 37-1-107 (2023)

- A review is not a hearing and is limited to the matters raised in the filed, written exceptions. If no review requested, findings and recommendations become Courts' order when confirmed by Judge.
- No judicial review will be granted when the party did not participate in the hearing before the magistrate in good faith;
- The juvenile court judge shall afford the magistrate's findings, conclusions and recommendations the presumption of correctness. The judge shall modify the findings only when after review, the judge makes written findings that an abuse of discretion exists in any or all of the magistrate's findings.
- The judge shall issue written findings, conclusions, recommendations; OR may schedule the matter for a new hearing on any issues the judge deems necessary, with notice to parties.



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Appeal

- Notice of right to appeal must be given at final order by Judge.
- Filing of Appeal – filed with clerk **within 10 days** of entry of Final Order.
- Perfecting an appeal:
 - ✓ a filing fee is paid, or bond in lieu of the filing fee is posted;
 - ✓ an affidavit of indigency is filed within the applicable time period and an order allowing filing on a pauper's oath is subsequently entered; or
 - ✓ the court has previously determined the appellant to be indigent.
- All Parties to the Juvenile Ct. proceeding are parties to the Appeal.
- Juvenile Ct. retains jurisdiction to complete Reviews and Permanency Hearings of children in foster care.



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Questions?

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