



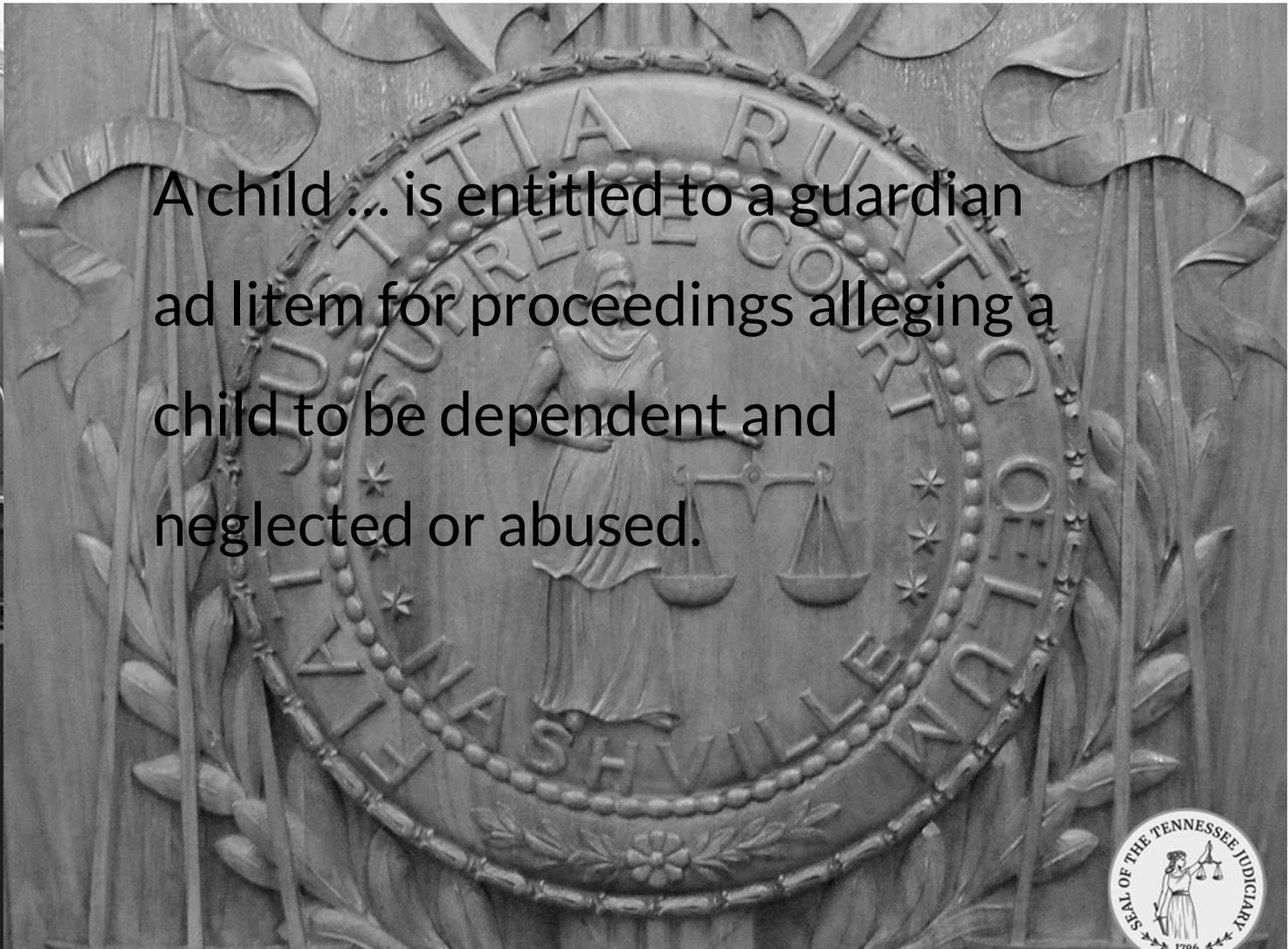
Guardian ad Litem Basics

T.C.A. § 37-1-126(a)(1)

Guardian ad Litem Appointment



A child ... is entitled to a guardian ad litem for proceedings alleging a child to be dependent and neglected or abused.



Dependent and Neglected Child

- No parent, guardian, or legal custodian
- Unfit parent/guardian due to cruelty, incapacity, immorality, or depravity
- Improper care, supervision, custody, or restraint / Kept out of school
- Neglect of necessary medical or hospital care
- Found in an illegal or dangerous place due to lack of supervision
- Under guardianship/control that endangers health or morals
- Suffering from abuse or neglect
- In non-relative care for 6+ months without custody/adoption proceedings
- Exploited in prostitution or pornography
- Left with related caregiver 18+ months (harm if removed, exception: military service)





Tennessee Supreme Court

Rule 40

A 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.



Tennessee Supreme Court Rule 40

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.



Tennessee Supreme Court Rule 40

In determining the best interest of the child the guardian ad litem should consider, in consultation with experts when appropriate, the following 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;



Best Interest Considerations (Continued)

- (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;
- (xii) whether relatives, friends, neighbors, or other people known to the child are appropriate and available as placement resources;
- (xiv) the importance of continuity in the child's life;
- (xv) the home, school and community record of the child;



Best Interest Considerations, (Continued)

- (xvi) the preferences of the child;
- (xiii) the love, affection and emotional ties existing between the child and the potential or proposed or competing caregivers;
- (xvii) 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
- (xviii) in the case of visitation or custody disputes between parents, the list of factors set forth in *Tenn. Code Ann. § 36-6-106*.



Who is the Client?

- The child is the client of the guardian ad litem.
- The guardian ad litem is appointed by the court to represent the child by advocating for the child's best interests and ensuring that the child's concerns and preferences are effectively advocated.
- The child, not the court, is the client of the guardian ad litem.



The Attorney-Client Relationship

- (2) Establishing and maintaining a relationship with the child is fundamental to representation. . . For all but the very young or severely mentally disabled child . . . the guardian ad litem shall provide information and advice directly to the child in a *developmentally appropriate manner*.



**Developmentally
Appropriate Engagement,
Interview and Counsel**



"So, Carol tells me you're a baby."

Junior
CN
COLLECTION



Rule 1.4: Communication

- (a) A lawyer shall:
- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in RPC 1.0(e), is required by these Rules;
 - (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
 - (3) keep the client reasonably informed about the status of the matter;
 - (4) promptly comply with reasonable requests for information; and
 - (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Comment: [6] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or has diminished capacity. See RPC 1.14.



Rule 1.14: Client with Diminished Capacity

When a client's capacity to make adequately considered decisions in connection with representation is diminished, whether because of minority, mental impairment, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

Comment: [1] The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or has a diminished mental capacity, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects.... Nevertheless, a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well being. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody.



Engaging your Child Client

“Just as every lawyer must start ‘where the client is’ in the representation, the lawyer must strive for as specific an understanding as possible of how the child sees her situation in the representation. Otherwise, the lawyer’s attempts to counsel the client, negotiate with the client, negotiate for the client, translate the client’s wishes into legal terms for the court, or otherwise carefully involve the child in the legal proceedings around her, are doomed.”

- Professor Jean Koh Peters



Understanding the Child's General Developmental Level

- Children may not fit neatly into a pattern of development - need to know the unique individual
- Some children regress when exposed to chronic or significant stressors
- Nonetheless – helpful to understand basics of child development to understand how child will process information and communicate
- 4 core domains: Social, Emotional, Physical, Cognitive



Infants and Toddlers

Birth- 1 year	Learns fundamental trust in self, caretakers and environment; Emergence of a primary attachment relationship
1- to 3 years	Mastery of body and rudimentary mastery of the environment (can get others to provide care)
12-18 months	Emerging sense of self– learning to say “no” and the “terrible twos” may begin; Willful, stubborn, tantrums all part of emerging autonomy
18-36 months	Feel pride when they are “good” and embarrassment when they are “bad”
18-36 months	May be emotionally attached to toys or objects for security



Infants and Toddlers

“Communication” between attorney and young child client may not turn on verbal communication;

- Important to be familiar with child’s personality (temperament), circumstances, and context
- Young children often don’t “tell” but rather “show” their feelings and experiences
- Observation and caregiver report are critical
- Visiting and observing is important

While there is more reliance on caregiver report, the attorney will want to make note of:

1. The child’s physical appearance
2. His physical setting
3. How the caretaker interacts with the child
4. How the child responds to the caregiver



Infants and Toddlers: Observations

For Example:

- Physical appearance: growth, health, hygiene
- Physical setting: safe places to explore/play, hazards, availability of food and necessary supplies (diapers, winter jackets)
- Caregiver's interaction with the child: comforts child, holds child, talks to child, responds positively to interest in or praise regarding the child
- Child's response to the caregiver: expresses pleasure, seeks comfort, expresses fear, avoids caregiver



Key Features of Preschooler Development

Egocentric, illogical, magic thinking

Explosion of vocabulary

Poor understanding of time, value, sequence of events

Vivid imagination; some difficulty separating fantasy from reality

Accurate memory, but more suggestible than older children

Primitive drawing, can't represent self in drawing until about 4 years old

Often fail to recognize that others have a different perspective

Leave out important facts

May misinterpret visual cues of emotions

Receptive language better than expressive is typical at least until age 4



Strategies to Use with Preschoolers

- Keep sentences short (6 to 8 words).
- Shorter attention span: Be willing to keep conversations brief and more frequent.
- Engage the child in a toy or activity he likes.
- Have the child draw to explain something.
- Keep aware of facial expressions, to which children are sensitive.
- Give child undivided attention-children respond to attentiveness.

Source: The Institute for Human Services for The Ohio Child Welfare Training Program



Key Features of Early School-Age Development

The child may not understand cause and effect

The child may not understand link between past and future events

Memory is limited

Typically won't grasp hypotheticals

May not be able to concentrate on more than one concept at a time

When presented with "facts" they assume them to be true

Attention is limited

Children will often blame themselves for family problems



Strategies to Use with School Aged Children

- Use concrete language.
- Instead of asking for a conclusion, ask what would make the child feel better about a situation.
- Pictures and diagrams can help explain a situation but stay concrete. (e.g., diagramming multiple hypotheticals can be confusing.)
- If there are many complicated issues, break the time into smaller visits.
- Don't make "maybe promises."
- If you say, "If I have time, I'll stop by tomorrow," the child hears that as a promise.



Key Features of Middle Childhood (7-12) Development

Importance of the peer group, friendships

Desire to “fit in” and share similarities, experiences with peers

Hobbies, special interests

Competence in activities, skills a big focus

May ask more sophisticated questions

Increasing cognitive skills, but still some difficulty with abstract concepts and hypotheticals



Interviewing the Child Client: Approaches and Techniques for a Successful Interview

<https://www.youtube.com/@EmorySchoolofLaw>



Strategies to Use in Middle Childhood

- Establishing rapport can take time. Show interest in peers, activities of interest (sports, hobbies, school)
- Continue to use concrete language, and focus on one topic at a time
- Keep things simple, but be prepared for more sophisticated questions
- Continued importance of trust and reliability—don't make “maybe promises”





Adolescents : Children 13-18

“Maturation of the brain, including the regulation of impulses, thinking ahead, planning and weighing risk and reward lead to improvements in self-regulation and can permit the individual to put the brakes on the sensation-seeking behavior... But they occur very gradually and are not complete until the mid-twenties.... It’s important for parents to realize that teenagers may not be as good as adults in thinking ahead, envisioning the future consequences of their actions, resisting pressure from others and forgoing immediate rewards to get a bigger payoff.”

Source: Laurence Steinberg, Ph.D., Professor of Psychology at Temple University, author of “The 10 Basic Principles of Good Parenting”



Key Features of Adolescent Development

Increasing cognitive skill– ability to engage in abstract thought

Exploration and experimentation

Challenging authority

Keen awareness of self in relation to others

Thinking their experiences are unique and no one can understand them (the “personal fable” and re-emergence of egocentrism)



Strategies for Interacting with Teens

- Listen. Teens often feel misunderstood, so be sure to give your full attention and let him/her know you are listening.
- Acknowledge feelings.
- Avoid judgment.
- Don't impose your opinion. Show the teen how you arrived at your opinion.
- Allow teens to arrive at their conclusions.
- Be honest. On a conceptual level, they can understand everything you tell them, so there is no need to sugarcoat things. They may be suspicious of adults.





The Guardian ad Litem's Responsibilities and Duties

Supreme Court Rule 40

Responsibilities and Duties



Investigation

- Contact lawyers for other parties to obtain background information and permission to interview, or use formal discovery if permission is denied.
- Interview parents, legal guardians, and others involved with the child (e.g., school personnel, caseworkers, foster parents/caretakers, neighbors, relatives, coaches, clergy, mental health professionals, physicians, and other potential witnesses).



Supreme Court Rule 40

Responsibilities and Duties



Investigation

- Review relevant records of parents/legal guardians, including psychiatric, psychological, substance abuse, medical, criminal, and law enforcement records.
- Examine relevant photographs, video, audio, and other evidence.
- Engage and consult with professionals and others with relevant special expertise.



Supreme Court Rule 40

Responsibilities and Duties



Explain

Explain to the child, in a developmentally appropriate manner:

- the subject matter of litigation;
- the child's rights;
- the court process;
- the guardian ad litem's role and responsibilities;
- what to expect before, during and after each hearing or review;
- the substance and significance of any orders entered by the court and actions taken by a review board or at a staffing.



Supreme Court Rule 40

Responsibilities and Duties



Consult and Assess

- Consult with the child before court hearings and during emergencies or significant events; if the child is nonverbal or severely disabled, observe interactions with the caretaker.
- Assess the child's needs and identify resources.
- Consider available supports, such as special education, health care/insurance, and victim's compensation.
- Ensure the child is prepared to testify and that testimony is arranged to minimize potential harm.



Supreme Court Rule 40

Responsibilities and Duties



Advocate and Litigate

- Petition for relief and handling all motions, pleadings, briefs, legal memoranda, and proposed findings of fact/conclusions of law.
- Participate in discovery, depositions, pretrial conferences, settlement negotiations (mindful of delay impacts), and presenting the case through opening/closing statements, evidence, and witness examination (direct, cross, and independent).*
- Ensure prompt, accurate written orders; monitoring compliance; and taking necessary action to secure services.
- Attend reviews, hearings (e.g., permanency plan staffings, foster care review board, judicial reviews, permanency hearings), and necessary treatment, school, and placement meetings.



Supreme Court Rule 40

Responsibilities and Duties



Advocate and Litigate

- Ensure that the services and responsibilities listed in the permanency plan are in the child's best interests.
- Ensure that particular attention is paid to maintaining and maximizing appropriate, non-detrimental contacts with family members and friends.
- Provide representation with respect to appellate review including:
 - (i) discuss appellate remedies with the child if the order does not serve the best interest of the child, or if the child objects to the court's order;
 - (ii) file an appeal when appropriate; and
 - (iii) represent the child on appeal, whether that appeal is filed by or on behalf of the child or filed by another party.



The Child's Expressed Preference

The GAL must provide objective consideration of the child's specific needs and preferences.

- What happens when need and preference are not aligned?
 - If a child asks the GAL to advocate for a position the GAL believes is not in the child's best interest, the GAL must:
 - Fully investigate the circumstances;
 - Identify all supporting facts and arguments; and
 - Ensure the child understands all options, benefits, risks, and likelihood of success.



Best Interest vs. Expressed Preference

If disagreement remains, the GAL may request the court appoint another lawyer

- Either as GAL while the original GAL advocates the child's position,
- Or, to represent the child while the GAL advocates for the child's best interests.

If the court does not appoint separate counsel, the GAL must still subpoena witnesses, produce supporting evidence, and advise the court of the child's wishes and the evidence available to support them.



Judicial Timeline

Dependency and Neglect Judicial Timeline

Initiate Case
File Petition,
Order of Court
or Probable
Cause

Preliminary
Hearing
Probable Cause;
w/in 72 Hours

Adjudicatory
Hearing
Clear & Convincing;
w/in 30 days if in
custody or 90 days
if not

Dispositional
Hearing
Preponderance
of the Evidence;
w/in 15 days if in
custody or 90
days if not

File Order of
Court or
Agreed Order;
Advise of Right
to Appeal



The Petition

- 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.)
- When the petitioner is not DCS, the Court shall promptly refer the case to DCS for investigation.



The Petition

A petition must be verified and include:

- Jurisdictional facts – Approximate date, manner, and place of alleged acts; statement that filing is in the child’s and public’s best interest.
- Child’s information – Name, age, residence (if any), five-year address history, and names/addresses of persons with whom the child lived during that time.
- Parent/guardian/custodian information – Names/addresses of legal parents, guardians, custodians, child’s spouse, or others with custody/visitation rights.
- Alleged biological father(s) – Names/addresses, if rights not terminated.



The Petition

A petition must be verified and include:

- Related proceedings – Court, case number, and nature of any proceeding affecting custody/visitation (e.g., domestic violence, TPR, adoption).
- Petitioner’s prior involvement – Any role in prior custody/visitation proceedings, with court, case number, and date.
- Military status – Whether parents are serving in the armed forces.
- Tribal status – Whether the child or parent is a member or eligible for membership in a federally recognized tribe under the Indian Child Welfare Act.



T.C.A. § 37-1-113, TRJPP 302

Taking Child into Custody Prior to Preliminary Hearing

A child may be taken into custody:

- Pursuant to a Court Order based upon a sworn petition or sworn testimony attesting:
 - the child is dependent, neglected or abused; and
 - removal is required; child is subject to immediate health or safety threat & delay for hearing would likely result in severe or irreparable harm, flight or removal from the jurisdiction of the court.
- ❖ If removal occurs prior to petition, petition with court-affirmed probable cause is required in 48 hours.



T.C.A. § 37-1-114, TRJPP 302

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 drastic alternative than removal.

Timing:

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



Preliminary Hearing

Purpose:

To determine if there is probable cause to believe that the child is dependent, neglected, or abused AND if 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 drastic alternative to the removal.

Standard of Proof:

Probable Cause

Timing:

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



Application

In re: Jane

Child: Jane Doe, age 6

Parent: Sarah Doe (mother)

Other Parent: John Smith (father, lives out of state, no contact since infancy)

Reason for Removal: On September 1, 2025, Jane was removed from her mother under an ex parte order after a school report of neglect.

Reported Concerns: Teacher noticed Jane often came to school in unwashed clothes and without lunch.

Jane told her teacher that her mom “goes to sleep during the day, forgets to feed me, and stays in her room with the door locked.”

You are appointed to represent Jane before the preliminary hearing.

What do you do?



Application

In re: Jane

- CPS Findings: Home was cluttered with spoiled food and dirty dishes.
- Refrigerator and pantry had very little food.
- Jane was underweight and had head lice.
- Sarah said she lost her job, struggles with depression, and has little support.
- Safety Plan: CPS provided increased supervision and help with food. During a follow-up, CPS found Jane home alone. Jane said her mom was “at the store.” Sarah returned an hour later with nothing from the store, saying she went for a walk to clear her head.
- History: Sarah has no criminal record. Prior CPS case for lack of housing—closed after resolution.



Application

In re: Jane

1. Review Case File, petition and affidavit – note allegations of neglect.
2. Check prior CPS history (housing case, closed successfully).
3. Meet with Jane before hearing if possible.
4. Key Interviews:
 - Parent, DCS caseworker, Teacher, Others
5. Immediate Needs to Assess:
 - Medical care (lice treatment, nutrition evaluation).
 - Counseling for possible neglect trauma.
 - Consistent school attendance and meals.



Application

In re: Jane

Questions at Preliminary hearing:

1. Is Jane dependent and neglected?
2. Is there an immediate threat to Jane's health or safety, likely to result in severe or irreparable harm?
3. Is there any less drastic alternative than removal in the circumstances?



T.C.A. § 37-1-129; TRJPP 307

Adjudication

Purpose:

Trial on the allegations of dependency, neglect, or abuse alleged in the petition using a clear and convincing evidentiary standard. Must determine if severe abuse was committed by parent or other person with custody.

Standard of Proof:

Clear and convincing evidence

Timing:

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



T.C.A. §§ 37-1-130 -132 ; TRIPP 308

Disposition

Purpose: To determine appropriate plans for child.

Standard of Proof: Preponderance of the Evidence

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

* Shall be separate from adjudicatory hearing – but can be immediately following.





T.C.A. § 37-1-107

Review of Magistrate's Orders

- Only parties who participated in good faith may request review.
- Request must be in writing, filed within 10 days, and list specific exceptions, grounds, and proposed findings.
- Review is not a new hearing—limited to the issues raised in the request.
- Judge presumes magistrate's order correct; may change it only for abuse of discretion.
- Judge may issue written findings or order a new hearing on selected issues.
- If no review is requested, order becomes final when confirmed by the judge.
- De novo hearing in circuit available.





T.C.A. §§ 37-1-130 -132 ; TRJPP 308

Review: Appeal to Circuit

- Notice of right to appeal must be given at final hearing by judge and/or specified in the final order.
- Filing of appeal – filed with clerk within 10 days of entry of final order.
- All parties to the juvenile court proceeding are parties to the appeal.
- Juvenile court retains jurisdiction to complete reviews and permanency hearings of children in foster care.





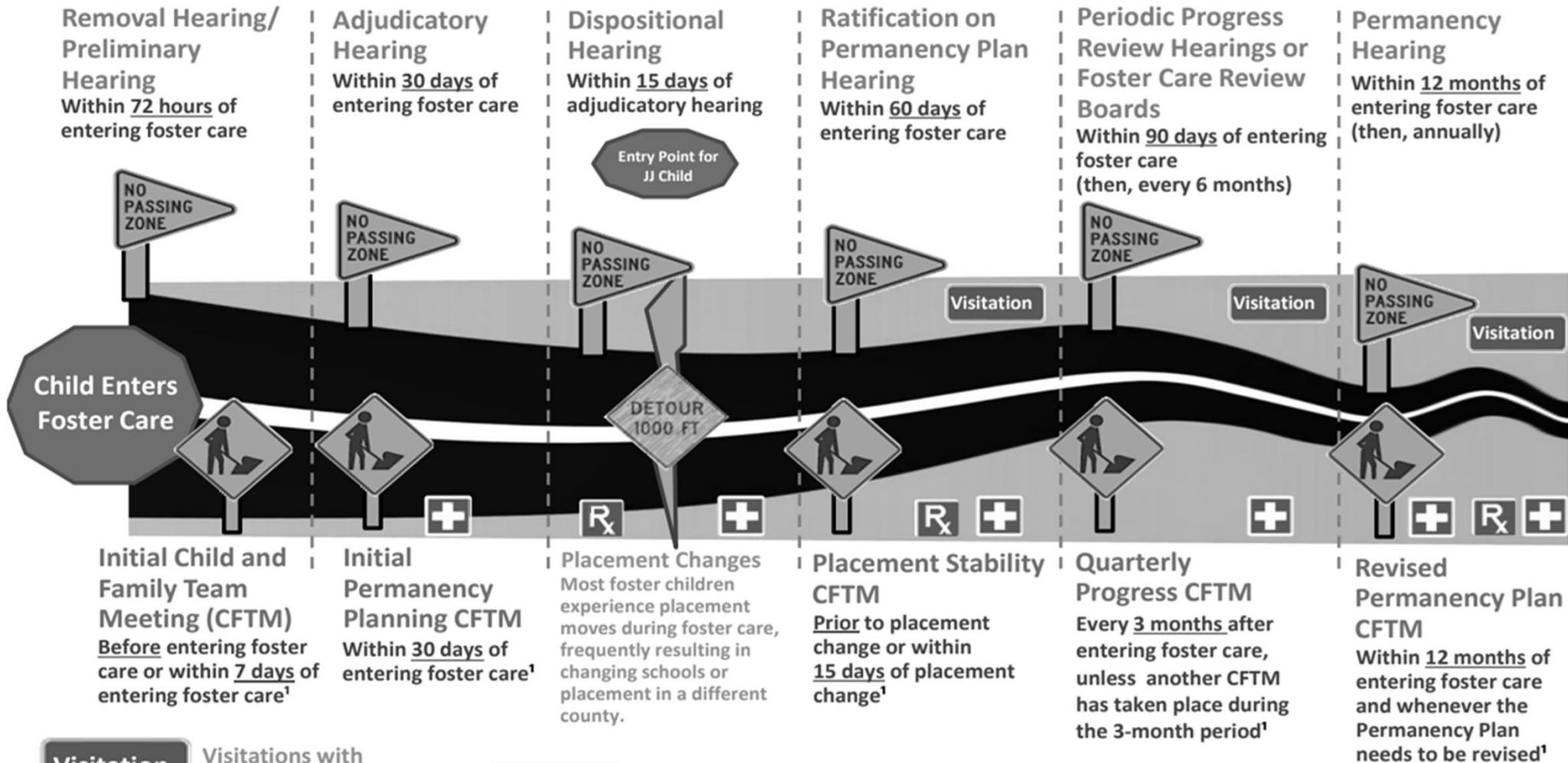
T.C.A. §§ 37-1-102

Review: Appeal to Circuit

- A de novo hearing is a completely new trial in circuit court.
- While the juvenile court record is sent on appeal, the circuit court decides the case based only on evidence admitted under applicable rules.
- Under the 2024 amendment to T.C.A. § 37-1-102, dependency and neglect criteria must exist at the time the petition is filed.
- There is no presumption of correctness for the juvenile court order. Appeals from circuit court go to the Tennessee Court of Appeals.



Required Hearings for Children in Foster Care, Required DCS Meetings, and Other Common Events



Visitations with Parents, Prior Caregivers, Relatives, and Siblings
These visitations are crucial to timely permanency and maintaining relationships with parents, prior caregivers, relatives, and siblings not in foster care or in a different foster care placement.



Physical Health or Mental Health Appointments
These are routine doctor's visits, including pediatric appointments, dental appointments, medication management appointments, or appointments to address other physical or mental health concerns.



Other Frequent Appointments, Including In-Home and Out-of-Home Therapeutic Services
Sometimes, children in foster care have in-home therapeutic services several times a week, along with counselling appointments 1-4 times per month. Therapeutic visitation with parents or prior caregivers is also a common service.

¹DCS Policy 16A



DCS Policy 16.4

Child and Family Team Meetings

- Called by DCS, parents, GAL, anybody
- First held within 7 days of foster care
- Another within 30 days of foster care
- Reviews
- Special-called
- Placement
- Plan development
- 10 days notice in writing, 7 days if by phone or email
- CFTMGuide.pdf (tn.gov)



Permanency Planning Timeline

Ratification Hearings

Approve Perm Plans; Ratify w/in 60 days of custody

Periodic Review Hearings

Placement is safe & appropriate; w/in 90 days of foster care & every 6 months

Foster Care Review Board

All parties; Review recommendations by Judge

Permanency Hearing

Final permanency outcome; Evidentiary hearing w/ child present.

For Youth 17+ Perm Hearing w/in 60 days of eligibility of extended foster care





T.C.A. § 37-2-403; TRJPP 401

Ratification

- Purpose: Court reviews the permanency plan drafted by DCS and ratifies it or orders it be modified. Court must find the plan to be in the child's best interest. Evidentiary hearing held if all parties or GAL do not agree with the plan.
- Timing: Within 60 days of placement in foster care.



T.C.A. §§ 37-2-404 & 406; TRJPP 402 & 403

Periodic Progress Review or Foster Care Review Board

- Purpose: Court reviews the permanency plan drafted by DCS and ratifies it or orders it be modified. Court must find the plan to be in the child's best interest. Evidentiary hearing held if all parties or GAL do not agree with the plan.
- Timing: Within 90 days of placement in foster care.



T.C.A. §§ 37-2-404 & 406; TRJPP 402 & 403

Periodic Progress Review or Foster Care Review Board

- Continued appropriateness of the permanency goal(s);
- Safe and appropriate child placement;
- Well-being appropriately addressed through health, education and independent living skills if applicable;
- Sufficient visitation schedule to support child-parent bond; sibling visitation if in separate placements;
- Reasonable diligent search efforts;
- Reasonable efforts to finalize permanency plan; and
- Parent / child compliance to responsibilities in the plan.





T.C.A. § 37-1-166(g); TRJPP 404

Permanency Hearing

- Purpose: Court determines the child's permanency outcome based on DCS's reasonable efforts, parental compliance, and the child's best interest. Court must hear the child's views on the permanency plan, review independent living plans for youth 14+, transitional living plans for youth 17+, and ensure 17-year-olds are informed of available post-custody services.
- Timing: Within 12 months of placement in foster care or within 30 days of a judicial determination that reasonable efforts to reunify are not required.



Child Participation Requirements

Law / Policy	Age	Requirement	Context / Process
Tenn. R. Evid. 803(25)	13+	Must testify (under 13 subject to narrow hearsay exception, subject to relevance and competency)	Experiences reflecting abuse
TRJPP 103(a)	14+	Must be served with petition	Dependency & neglect cases
TRJPP 112	Any age	Attendance required if a necessary party	Court hearings
T.C.A. § 33-8-202	16+	May consent or refuse certain medical care, including mental health treatment	Medical decision-making
T.C.A. § 36-1-117(i)(6)	14+	Must consent to own adoption	Adoption proceedings
T.C.A. § 37-2-409(a)(2)	Any age	Must attend permanency hearings unless excused for medical reasons	Permanency hearings
T.C.A. § 37-1-149(a)(1) & Tenn. S. Ct. R. 40	Any age	Request attorney appointment when best interests conflict with preferences; GAL must communicate preferences to court	GAL representation
DCS Policy 15.15	12+	Must be consulted on SPG and attend CFTM when SPG is discussed	Special Permanency Goals & Child and Family Team Meetings

Children's Testimony

Children have the right to be heard in court

- Our job is to make sure they can be heard safely and effectively
- Trial courts must balance protection with access
- Rule 306 offers accommodations
- Exclusion of testimony requires legal grounds



Children's Testimony

Designed To Reduce Trauma Without Excluding Testimony

Court must consider:

- Clearing courtroom
- Support person
- Comfort item
- Developmentally appropriate language
- Judge-led or written questioning
- Protective seating/room arrangements





Children's Testimony

In re Kansas B. (Tennessee Court of Appeals, Middle Section, October 12, 2022).

In *In re Kansas B.*, the trial court excluded a seven-year-old's testimony due to emotional harm.

The Court of Appeals reversed: if a child is competent, exclusion is not allowed merely for protective reasons—and any exclusion must follow Rule 403, not a harm-balancing test





Children's Testimony

In re Karisas B. (Tennessee Court of Appeals, Middle Section, October 12, 2022).

Court of Appeals said that exclusion was error because:

- Competency was not addressed (Rule 601)
- Emotional harm alone not a basis for exclusion (Rule 403)
- Court should have used Rule 306 accommodations
- ***Key takeaway: Use accommodations before considering exclusion***



GAL Responsibilities



**Assess Child's
Desire and Ability
to Testify**



**Propose Rule 306
Accommodations**



**Prepare Child
Sensitively**



Checklist for Assessing Child Competency



- Can the child describe a recent event in their own words?
- Can the child distinguish between the truth and a lie?
- Does the child understand that they must tell the truth in court?
- Can the child respond to simple questions with coherent answers?
- Does the child show basic memory and understanding?



Application

In re: Jane

- Can Jane testify competently and safely, with the right supports—and does her testimony meaningfully advance the court’s decision? Why or why not?
- Imagine Jane is 13 but has a language impairment and ADHD. How would you prepare Jane and advocate for Rule 306 accommodations?



Trial Preparation and the Child Witness

Training Segment	Evidence Concept	Considerations
Case Theory & Theme	Rule 401, 403	Does the child's testimony support your theme? Is it more helpful than harmful?
Witness Prep	Rule 601	Is the child competent? How do you prepare developmentally appropriate direct and cross?
Objections & Strategy	Rules 403, 802	Is the testimony subject to hearsay objection? Are you anticipating and preserving objections properly?
Ethical Advocacy	Professional Responsibility + Rule 306	Are you advocating to include the child's voice while protecting them from harm?

Preparing the Child Witness

Witness Preparation is Trauma Informed



- Meet in advance in a calm, neutral setting
- Explain courtroom roles and what to expect using child-friendly language
- Use developmentally appropriate questions during prep
- Practice responses without coaching or scripting
- Explore Rule 306 accommodations with the child and court (e.g., support person, comfort items). Reassure the child that it's okay to say "I don't know" or "I don't remember"
- Avoid repeated or emotionally loaded questioning
- Collaborate with caregivers and mental health professionals when appropriate



Termination of Parental Rights

Termination of Parental Rights

Who Can File:

- Prospective adoptive parents (look at adoption petition rules)
- GAL
- DCS
- Intervening party if granted permission

Standard:

- Clear and Convincing Standard

Petition:

- Petition must be verified and contain certain information



T.C.A. § 36-1-113

Termination of Parental Rights

- Grounds for termination at T.C.A. § 36-1-113(g)
- After ground is found, the court addresses best interest factors, located at T.C.A. § 36-1-113(i)
- Filing suspends all other custody proceedings except Title IV-E or other federally required hearings in Juvenile court: PPR, APH, etc. (T.C.A. § 36-1-116(f)(2) & § 37-1-103(c))
- GALs are necessary in contested TPRs (Tenn. S. Ct. R. 13 sect. 1 (d)(2)(D))





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