



# THE DEPENDENCY PROCESS & THE ROLE OF THE JUDGE

*Presented by:* Honorable Anna Young

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## PRE-PETITION

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## SETTING THE STAGE

Dependency issues can surface in just about any type of case:

- ⚖️ **Probate**
- ⚖️ **Criminal**
- ⚖️ **Delinquency**
- ⚖️ **Family Law**




- ✓ A judge **can** order a DCS investigation.
- ✗ A judge **cannot** order a petition be filed.

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## PRIVATE DEPENDENCY OR DCS?

A private dependency may be filed by someone other than DCS:

- 👤 **Grandparents**
- 👤 **Relatives**
- 👤 **Guardian ad Litem**
- 👤 **Other interested party**



**DCS may or may not be substituted as the Petitioner.**

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**SAFE  
OR  
UNSAFE  
?**



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**Introduction  
to the  
Safety  
Guide**


**SAFE  
STRONG  
SUPPORTIVE**

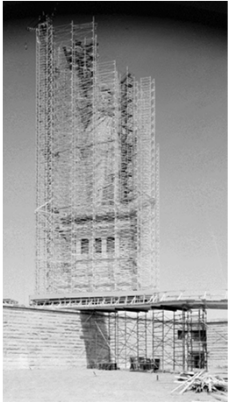
casey family programs

**Child Safety: A Guide for Judges and Attorneys:** [www.americanbar.org](http://www.americanbar.org)

safe children | strong families | supportive communities

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 **CHILD SAFETY FRAMEWORK**



**A  
Structure for  
Decision-Making  
in  
Dependency Court**

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# Threats

- Specific and Observable
- Out of Control (i.e. “unmanaged”)
- Immediate or Liable to Happen Soon
- Severe Consequences



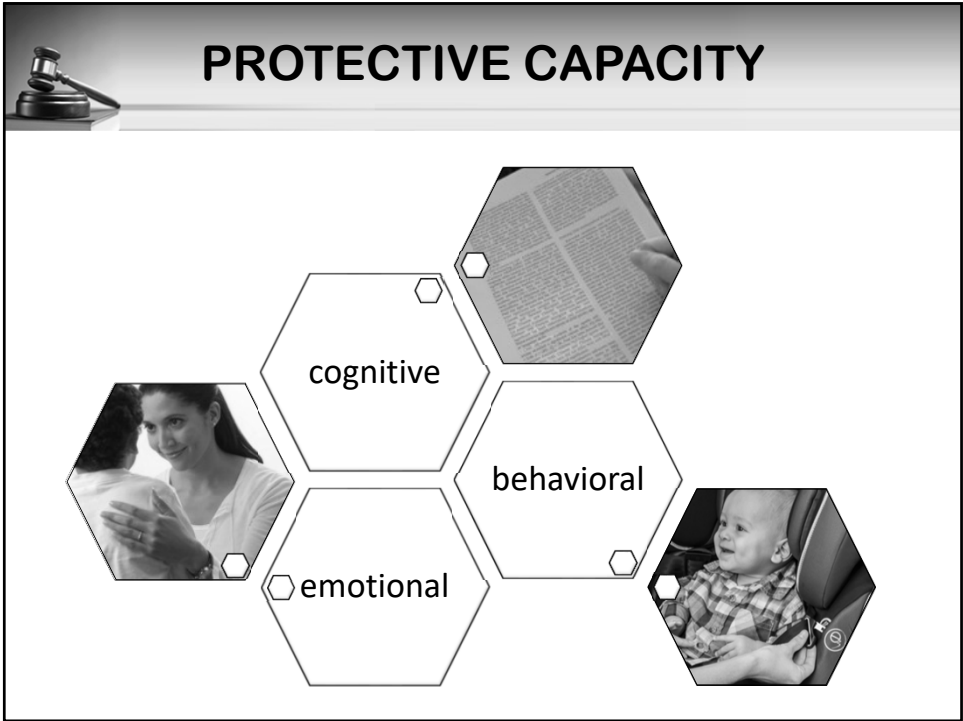
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# Vulnerabilities

- Child Specific
- Vulnerable or Not, Not Judged in Degrees
- If Threat Exists, Presume Vulnerability



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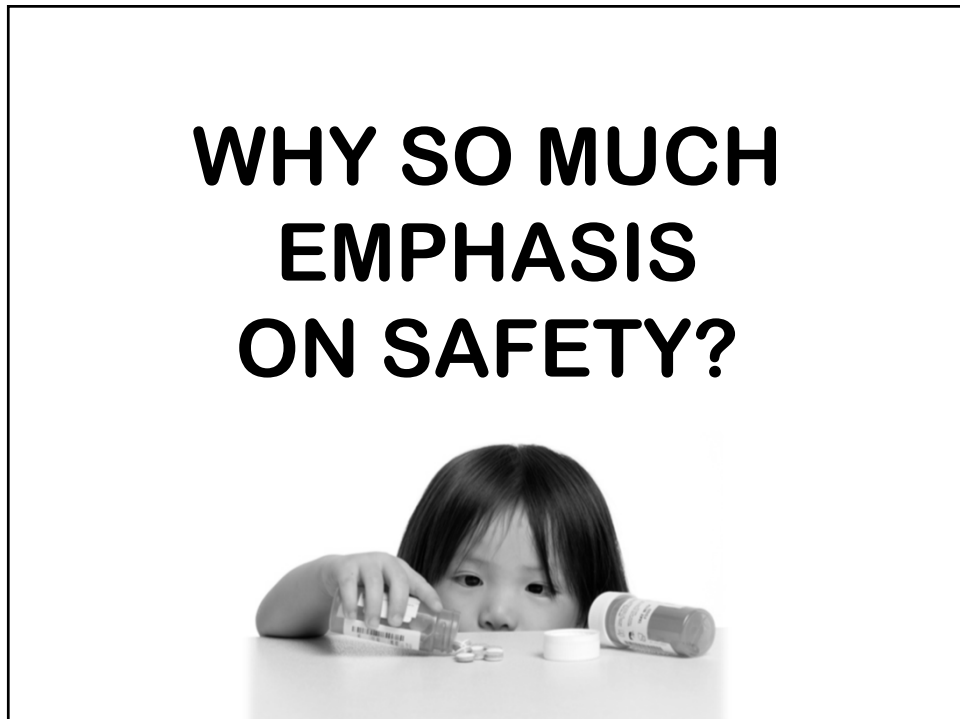
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SENATE BILL 1395


**JULY 1, 2018**

- 👤 **Judge must determine probable cause prior to removal based on review of petition**
- 👤 **exigent circumstances exception**


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## THERE'S A PROBLEM WITH DCS?



**Arizona Office of the Auditor General Report No. 15-118**


2015

Arizona Department of Child Safety

**“... the lack of structure in the Department’s Child Safety and Risk Assessment tool contributes to poor documentation and subjective decision-making by caseworkers in their assessment of child safety and risk...”**


Department uses common factors to assess child safety...  
 Department has inadequately implemented critical components of its child safety and risk assessment process...  
 Deficiencies in the child safety and risk assessment process impact effective...

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## THE SYMPTOMS OF THE PROBLEM

- Ineffective assessment of risk
- + Poor documentation
- + Subjective decision making by caseworkers
- + Limited ability to track and analyze safety and risk metrics
- + Together with unavailable services
- = **UNNECESSARY CHILD REMOVALS**



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## THE SOLUTION

### FOCUS ON SAFETY


- ✓ More focus prior to removal on safety and risk
- ✓ More focus on remedial safety measures prior to removal
- ✓ Better documentation of why in-home safety measures were inadequate
- ✓ Consistent use of assessment tool
- ✓ Full disclosure of safety assessment prior to PPC/PHC

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## DCS POLICY – Safety Planning

- When a CSRA concludes a child is unsafe, DCS shall develop a safety plan
  - If the CSRA or the CCSRA (Continuous CSRA) concludes the child is safe, a safety plan is not required
- A determination that a child is unsafe does not mean the child must be removed from the home.



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**DCS POLICY – Assessment of Child Safety and Risk (CSRA)**

Promote the safety and protection of children

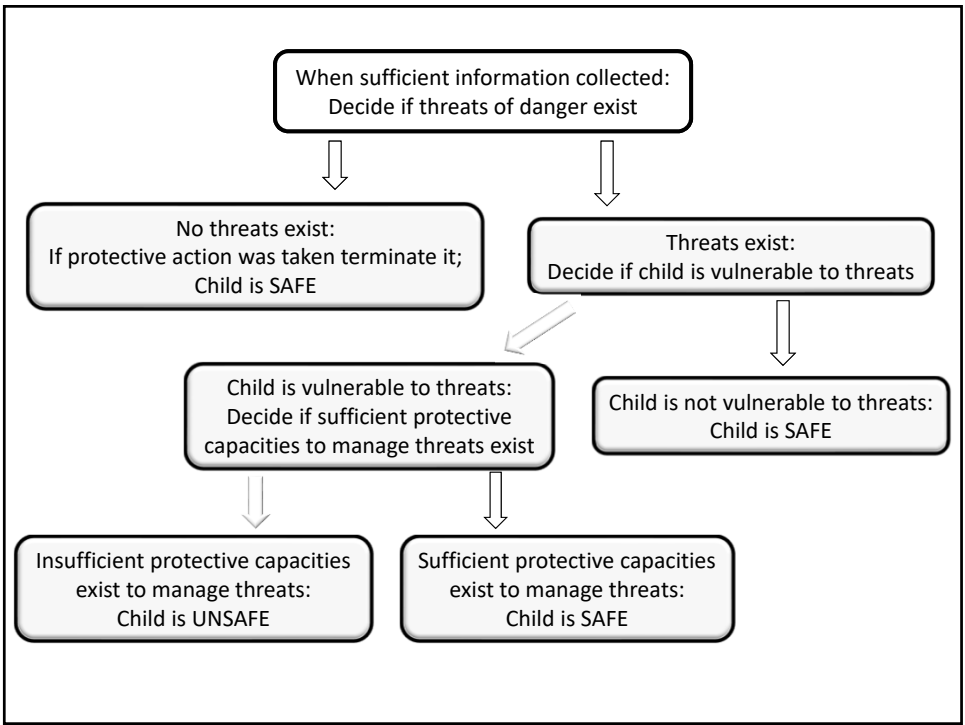
Assess whether any child in the home is in present or impending danger of serious harm

Prevent, intervene in, and treat abuse and neglect of children

Promote the well-being of the child in a permanent home


Coordinate service to strengthen the family

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## SAFETY PLANNING




- Does not require change in parents behavior or attitude
- Controls threats – immediately

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- Sufficient
- Feasible
- Sustainable


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- ✓ Assessing Reasonable Efforts




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## SAFETY PLANNING: OUT OF HOME PLAN



- Assessing Reasonable Efforts
- Conditions for Return - Clear
  - ✓ Value Congruence
  - ✓ Behavior/Circumstance-Based Language
- Kind and Amount of Parent-Child contact




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## Setting the Stage


Dependency issues can surface in just about any type of case:

- Probate
- Adult Criminal
- Delinquency
- Family Law



Judge can order a DCS investigation.

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## The Players

**DCS**

**CASA**

**PARENT'S ATTORNEYS**

**AG'S OFFICE**

**FCRB**

**PLACEMENTS**

**TRIBES**

**CHILDREN'S ATTORNEYS**

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## Private Dependency

May be filed by someone other than DCS:



- Grandparents
- Relatives
- Guardian ad Litem
- Other interested party

DCS **may** or **may not** be substituted as the Petitioner. Be careful about 8-841(B) & delinquency

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**ONCE A PETITION IS FILED**

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## **PRE-HEARING CONFERENCE**

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## **DOES ICWA APPLY?**

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# CUSTODY, PLACEMENT, PARENTING TIME/VISITATION, AND SERVICES

## ⌚ Parenting Time

- Therapeutic
- Supervised
- Unsupervised



## ⚙️ Services

- For parents and children
  - ✓ Reasonable to facilitate the case plan
- Wide variety
  - Parent aides for parenting time
  - Mental health services
  - UA's, hair follicle test
  - Parenting classes




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# PLACEMENT

- ⚙️ appropriate relatives or kinship
- ⚙️ licensed foster care
- ⚙️ unlicensed foster care
- ⚙️ group home
- ⚙️ therapeutic group home



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 **PLACEMENT GOALS**



- Ⓢ least restrictive
- Ⓢ safe placement
- Ⓢ stable

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**NOT THIS,  
x  
PLEASE**

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## VISITATION PLANS



Assess

Learn

Practice


Demonstrate

- \* **Quick to Start**
- \* **Include Siblings**
- \* **Alternative Contact**
- \* **Written Plan**
  - Court Order
- \* **Right of Family**
  - Not Carrot-and-Stick
- \* **Explain Supervision**
  - How will it progress



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## CASE PLANNING



Use Safety Framework to design case plan

↓

Looking toward the Court and DCS exiting the family


↓

Usually requires change in parental behavior

↓

Why concurrent planning

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## Preliminary Protective Conference & Preliminary Protective Hearing

**Preliminary Protective Conference (PPC)**

- A conference outside the courtroom
- Parties and counsel discuss temporary custody and placement, visitation, and services.

**Preliminary Protective Hearing (PPH)**

- ❖ Is continued temporary custody of the child clearly necessary to prevent abuse or neglect?
- ❖ The court enters orders regarding custody, placement, visitation, and services and reviews agreements reached.
- ❖ If parents contest removal and continued out-of-home placement, there is an evidentiary hearing on those issues only.

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*Here's a*  
**Tip!**

- 💡 **Review PHC agreement before taking the bench**
- 💡 **Prepare your PPH script and findings ahead of time**


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## INITIAL DEPEDENCY HEARING

- ⌚ **Held at the time of the Preliminary Protective Hearing if party appears or within 21 days after filing of the petition**
- ⌚ **If service by publication - no sooner than 10 days after completion of service.**
- ⌚ **Advise parents of rights**
  - **Counsel, cross examine, trial, subpoena, right to close hearing**
- ⌚ **Take plea**
  - **Admit/no contest, Denial, FTA**

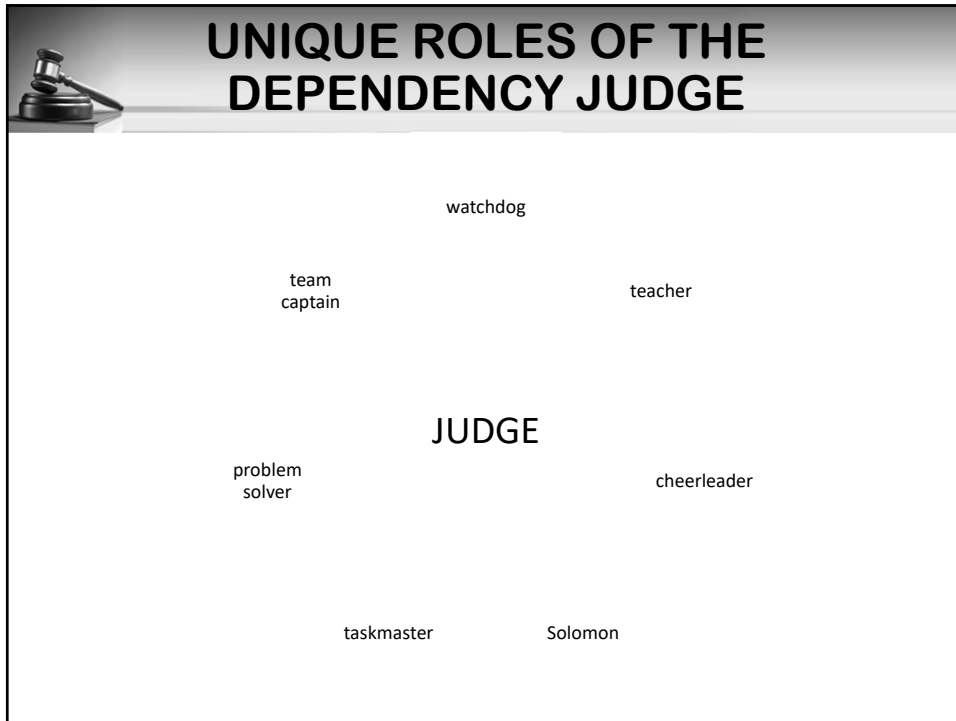


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## PARENTAL EXPECTATIONS AT PPH






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**PRIVACY**

- 🔒 **Dependency hearings are presumptively open**
  - 🔒 Can be closed for good cause shown
  - 🔒 By being present observers are submitting to the jurisdiction of the Court and are not to reveal any information about the matter
    - 🔒 No GoFundMe pages to “get my kids out of foster care”

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## REASONABLE EFFORTS

Reasonable efforts findings are made throughout the dependency case.

- ⌘ Reasonable efforts to prevent removal
- ⌘ Reasonable efforts to finalize permanency plan

What is need to comply with safety concerns and return the child home?

**Federal funding is tied to these findings!**



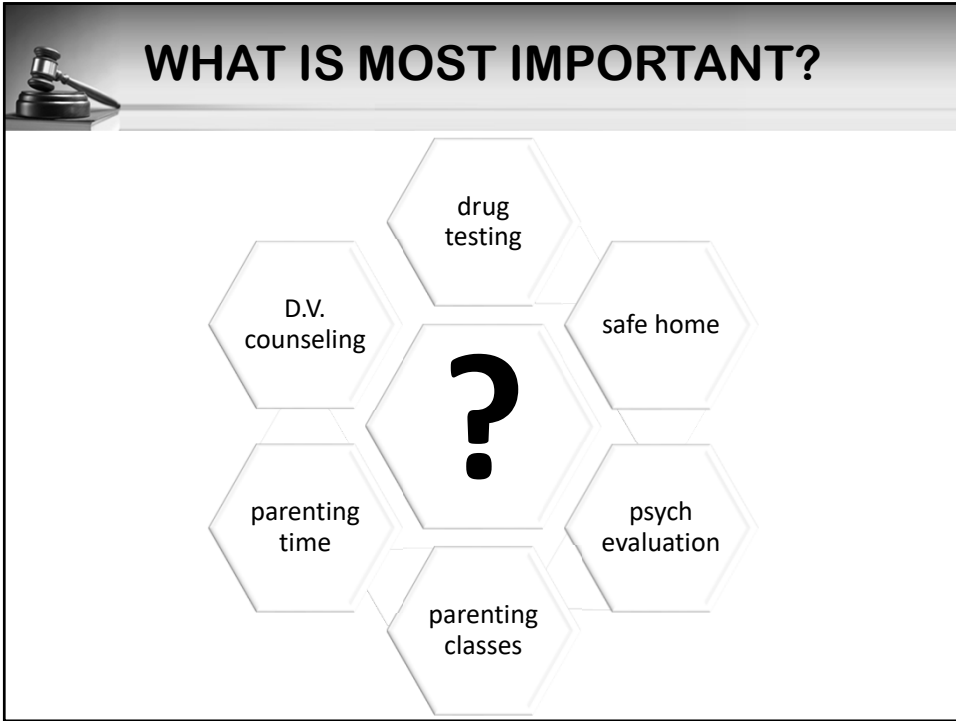
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*Here's a*  
**Tip!**

🎤 **Have DCS clearly state conditions of return**

**! Prioritize services**

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## Behavioral Health & Judicial Authority

Court may order the private behavioral provider or service provider to come to court to address medically necessary services.

**A.R.S. § 8-248**

A black and white photograph showing a courtroom scene. Several individuals are seated at long desks arranged in a U-shape. Some are looking towards the front of the room, while others are looking at documents or laptops. The setting appears to be a formal judicial proceeding.

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## EVALUATING SUCCESS

### Why Can't Children Go Home Today?

- Reduction of threats?
- Emergence of new threats?
- Status of protective capacity?
- Current information for answers?
- Why disputes?
  - Challenge parties to resolve.
- If no progress, why?
  - Demand information/perspective of parents.



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## CONSIDERATIONS FOR REUNIFICATION




- ✓ Changes to safety discussion sufficient to create in-home plan
  - Sustainable
- ✓ Evaluate parenting time
- ✓ Parent attitudes regarding threats and protective factors
- ✓ Information from treatment providers
- ✓ Preparation for care provider to support reunification
- ✓ Recommendation of social worker
  - Independent and supported
- ✎ Reunification is a plan, not an event

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## CONSIDERATIONS IN SUBSTANCE ABUSE CASES



Goal is...

✓ recovery




Goal is  
NOT...

- ⊘ Minimum number of clean days
- ⊘ Clean follicle/hair strand results
- ⊘ No missed counseling sessions or UAs

**RECOVERY is buy-in to treatment and an honest application of the tools required to remain clean and sober. No more evasion and deception.**

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## RULE 51

Review Of Temporary Custody


**Issues are whether removal was necessary and whether out-of-home-placement is necessary.**

**Rule after avowals?**



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## CONTESTED TEMPORARY CUSTODY HEARING



- ⚖️ **Petitioner presents evidence**
  - Is continued out-of-home placement pending the dependency trial clearly necessary to prevent abuse or neglect?
- ⚖️ **Burden of proof = probable cause**
- ⚖️ **Court's main consideration is child's health and safety. Have adequate safeguards to protect the child been implemented? Return the child.**

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## MEDIATION/SETTLEMENT CONFERENCE




- 📅 **Held approximately 4 to 5 weeks after the PPH if parent(s) contest the dependency petition.**
- ⚖️ **If parent(s) fail to attend, court may reschedule or proceed and can find a dependency based on DCS's evidence.**


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# How About a Consensual Title 8 Guardianship?

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 **DEPENDENCY ADJUDICATION  
HEARING**



- ⌘ Time to adjudication shall be completed within 90 days of service of the dependency petition
- ⌘ Petitioner has the burden of proving allegations in petition by a preponderance
- ⌘ Presentation of evidence as informal as the requirements of due process and fairness permit
- ⌘ Conducted in a manner similar to a civil bench trial



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 **DEPENDENT** 

The “catch-all” definition:


A dependent child is one who is *adjudicated* to be:

- i. In need of proper and effective parental care and control and who has no parent or guardian, or one who has no parent or guardian willing to exercise or capable of exercising such care and control.


**\*May include a child whose parent is unwilling or unable to parent due to child’s behavior.**

**A.R.S. § 8-201(21)**

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## MORE DEPENDENT CHILD DEFINITIONS



- (ii) Destitute or who is not provided with the necessities of life, including adequate food, clothing, shelter or medical care. ....
- (iii) A child whose home is unfit by reason of abuse, neglect, cruelty or depravity by a parent, a guardian or any other person having custody or care of the child.
- (iv) Under the age of eight years and who is found to have committed an act that would result in adjudication as a delinquent juvenile.

- Exceptions - use of Christian Science treatment, or a parent's refusal to administer psychiatric medications (ARS § 8-201.01)


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## DRUG LABS


A child may be taken into temporary custody for:

- neglect, if the child is present on premises where dangerous drugs or narcotics are manufactured;
- abuse, if the child is physically injured as a result of being present where dangerous drugs or narcotics are manufactured;
- being physically injured as a result of living where dangerous drugs or narcotics are manufactured.




**ARS § 8-201, ARS § 8-821**

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## DISPOSITION HEARING

- Can be done at the time of the Preliminary Protective Hearing if the dependency is adjudicated.
- Must be within 30 days of the dependency adjudication if not done in conjunction with the PPH, Initial, Mediation, Settlement or Pretrial Conference, or Adjudication.




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*Here's a*  
**Tip!**

💡 **Combine adjudication and disposition**

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## REVIEW HEARINGS



- ❖ Approximately every 6 months
- ❖ Right of participation by placement, relatives, care providers
- ❖ These hearings may be contested or uncontested


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*Here's a*  
**Tip!**

- Hold more frequent review hearings
- Every 3 months, if possible

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## OTHER CONTESTED HEARINGS



Placement Hearings

Parenting Time/  
Visitation Hearings

Mental Health Hearings

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## PERMANENCY HEARING

Jan Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec

**Within 12 months of removal if the child is 3 or older at the time of removal. Children under 3 at the time of removal have a 6 month permanency hearing.**


**Court options are:**


- ☒ **Extend period for reunification of the family**
- ☒ **Approve Termination of Parental Rights (TPR)**
- ☒ **Approve Permanent (Title 8) Guardianship (GA)**
- ☒ **Approve APPLA (Another/Alternative Planned Permanent Living Arrangement)**

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 **TERMINATION OF PARENTAL RIGHTS  
OR PERMANENT GUARDIANSHIP**



**If Court Approves TPR or GA:**

- ⌚ **Initial Hearing must be held within 30 days of Permanency Hearing.**
- ⌚ **If Motion is contested, trial will be scheduled within 90 days of Permanency Hearing.**

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## APPLA & RELATIVE PLACEMENT

What is APPLA?

- ⤴ Not Long Term Foster Care
- ⤴ Independent Living or Young Adult Program
- ⤴ Group Home or Residential Placement

Relative Placement




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*Here's a*  
**Tip!**


- 💡 **Set a Status/Settlement Conference**
- 💡 **Warn Parents of Failure to Appear**

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## INITIAL HEARING




- Rights advisement
- Consequences of failure to appear




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## SEVERANCE ADJUDICATION



- ⌘ Presumptively closed hearing
- ⌘ Findings of Fact and Conclusions of Law
- ⌘ When is the order final and appealable?




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Juvenile cases... More than just the Law

**LGBTQ**      **SUBSTANCE ABUSE**  
**BRAIN INJURY**      **CROSSOVER**  
**TRAFFICKING**  
**IMMIGRATION STATUS**  
**TRAUMA**      **MENTAL HEALTH**

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Attorney Standards

Standards of Representation for both children and parents have been adopted.

- ❏ AO 2011-16 (child)
- ❏ AO 2015-40 (parent)
- ❏ Required training for attorneys
- ❏ Dependent Children's Services Division/CIP provides required training
- ❏ Required meetings with clients
- ❏ Codify best practices

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## Operational Review

Every two years

- File review
- Courtroom observation

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## Time Standards

Measured every year

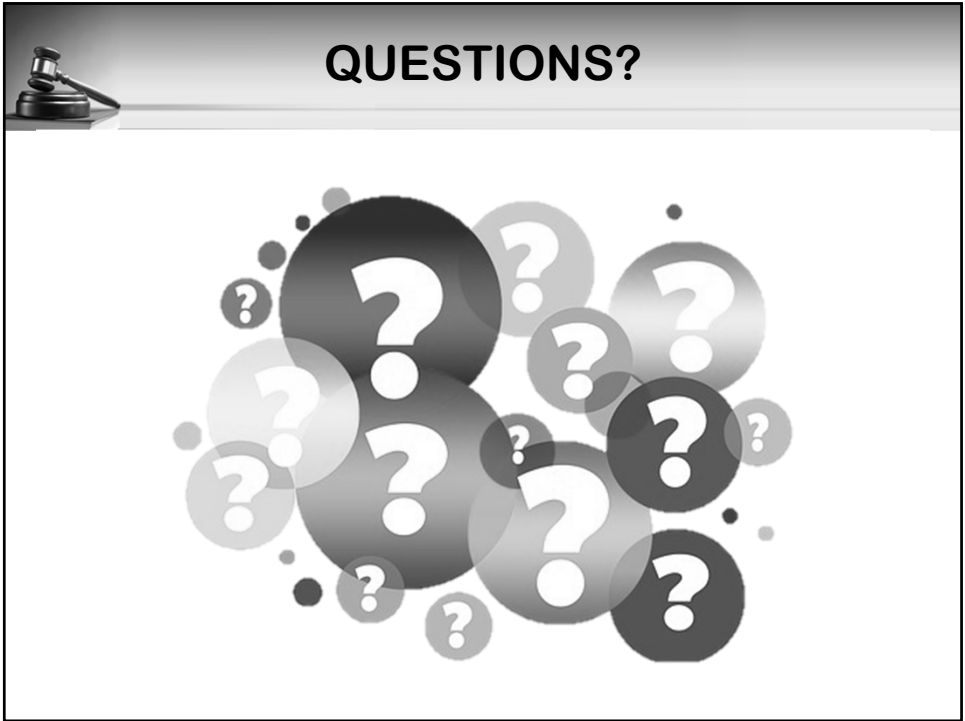
Permanency Hearing:

- 98% of children under 3 years of age within 180 days/6 months of removal
- 98% of all other cases within 360 days of removal

Termination of Parental Rights

- 90% within 120 days of filing of petition
- 98% within 180 days of filing of petition

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