

Continuing Jurisdiction

- Court maintains jurisdiction over parties after child enters foster care in all actions under FCA Article 10 and regarding a child voluntarily placed or surrendered
- No new petitions required
- FCA §§1062-1066, SSL §§358-a, 384-a

Continuous Calendaring

- Requires a court to calendar a Date Certain for each Permanency Hearing for a child placed under FCA Article 10, as well as a child voluntarily placed or surrendered, until all orders expire or all appeals are decided
- FCA §1088

Article 3 and Article 7 Proceedings

- Continuing jurisdiction, calendaring and Permanency Hearing provisions do NOT apply to Article 3 (JD) or Article 7 (PINS) proceedings
- **EXCEPTION:** Where a PINS or JD child is also completely freed for adoption, the Permanency Hearing provisions apply
- FCA §1088; SSL §358-a

New FCA Article 10-A

- Requires the first Permanency Hearing after a non-freed child is removed from the home to be commenced on the Date Certain set by the court – within 8 months of removal from the home
- Requires the hearing to be completed within 30 days of the Date Certain
- FCA §§1086 - 1090

When a Non-Freed Child Is Removed From Home

- Requires a court to set a Date Certain for the first Permanency Hearing at the removal hearing or the hearing approving the voluntary placement agreement or surrender of a child, if the child remains in foster care
- Requires the Date Certain to be included in the written order issued by the court and served upon the parents
- FCA §1089

Calculating the Date Certain Non-Freed Child

- Article 10 Removal or Voluntary Placement Initial Permanency Hearing:

Date child was physically removed from home
+ 60 days + 6 months
= DATE CERTAIN

- FCA §1089(a)(2)

**Calculating the Date Certain
Freed Child**

- Completely Freed Child:
Immediately upon TPR disposition or approval of surrender **or**
Date of approval of surrender/TPR disposition

+ 30 days

= DATE CERTAIN

- FCA §1089(a)(1)

New FCA Article10-A

- Requires subsequent Permanency Hearings at least every 6 months thereafter if the child remains in foster care (freed/non-freed), on a Date Certain set by the court upon completion of the previous Permanency Hearing
- Requires the hearing to be completed within 30 days of the Date Certain
- FCA §1089(a)(3)

Permanency Hearing Report

- Sworn Report submitted by LDSS
- Filed with the court and mailed:

14 days before the date certain

AND

Must include the following
Accurate and up-to-date information

Freed Child Notice of Permanency
Hearing and Report

- Mailed to:
 - Foster parent in whose home the child currently resides
 - Agency supervising child's care
 - Law Guardian
 - Pre-adoptive parent; and
 - Relative providing care for the child

Freed Child Notice of Permanency
Hearing
ONLY

- Former foster parent within whose home the child resided for a continuous period of 12 months

Permanency Hearing
Report Requirements

Freed Child's Current
Permanency Goal

- Placement for adoption
- Referral for legal guardianship
- Permanent placement with a fit and willing relative; or

Freed Child's Current
Permanency Goal Cont'd.

- Placement in another planned, permanent living arrangement that includes a significant connection to an adult willing to be a permanency resource for the child

Permanency Resource

- A caring committed adult with whom youth has a relationship and who has agreed to provide guidance and assistance as the youth transitions from foster care to self-sufficiency
- Examples: youth's mentor, former foster parent, teacher, parent or other staff person

**Child's Health, Well-Being
and Current Status**

- A description of a child's health and well-being
- Information regarding a child's current placement

**Child's Health, Well-Being
and Current Status, cont'd.**

- Education:
An update on the educational and other progress since a child's last Permanency Hearing including the steps taken by LDSS or other agency to:
 - Promptly enable or continue enrollment in an appropriate school or educational program

**Child's Health, Well-Being
and Current Status, cont.'d**

- Make any necessary referrals of a child
 - Early intervention
 - Pre-school special education or services;
or
 - Special education evaluations or services
as appropriate

OR

 - Assist child to become gainfully employed
or enrolled in a vocational program

**Child's Health, Well-Being
and Current Status, cont.'d**

- Visitation Plan Description:
 - Persons with whom the child visits, including siblings, if any; and
 - Frequency, duration, and quality of the visits
- Other Services

A description of any other services being provided to the child

**Reasonable Efforts Taken To
Achieve Permanency Plan**

- Adoption
 - Guardianship
 - Placement with a fit and willing relative; or
 - Another planned permanent living arrangement other than return to the parent that includes a significant connection to an adult willing to be a permanency resource for the child

Recommended Permanency Plan

- Child's Permanency Goal recommendation:
 - Whether the goal should be continued or changed
 - Reasons supporting the recommendation; and
 - Anticipated date for meeting that goal

Recommended Permanency Plan
cont'd.

- Child's Placement recommendation:
 - Whether the child's placement should be extended; and
 - Reasons supporting the recommendation, including whether a change in the level of care is recommended

Recommended Permanency Plan
cont'd.

- Proposed changes in placement:
 - Any proposed changes in the child's current placement, including:
 - Discharge to adoption that might occur before the next permanency hearing; and
 - Reasons supporting the recommendation

Recommended Permanency Plan
cont'd.

- Educational or Vocational services description:

Steps that will be taken by LDSS or other agency to enable the prompt delivery of such services to the child:

 - In his or her current placement
 - During any potential change in the child's placement
 - After discharge, if applicable

Recommended Permanency Plan
cont'd.

- Visitation Plan recommendation:
 - Any change to the visitation plan or plans; and
 - Reasons supporting the recommendation

Recommended Permanency Plan
cont'd.

- For a child 14 yrs of age or older, or a child who will turn 14 before the next Permanency Hearing:
 - A description of the services and assistance that will be provided to enable the child to learn independent living skills

Independent Living Skills

- All adolescents in foster care between the ages of 14 and 21 years of age regardless of the youth's permanency goal will receive services and supports that will assist them to make the transition to self-sufficiency

Adolescent Life Skills Assessment
In CONNECTIONS

- For all foster care youth 14 years of age or older, regardless of his or her permanency planning goal, assessment areas include:
 - Forming and Sustaining Positive Relationships
 - Problem Solving/Decision Making/Goal Planning
 - Preventive Health and Wellness
 - Education and Supports

Adolescent Life Skills Assessment
In CONNECTIONS Cont'd.

- Vocational/Career Planning
- Employment Skills
- Budgeting and Financial Management
- Housing
- Home Management
- Accessing Community Resources

Recommended Permanency Plan
cont'd.

- For a child placed outside New York State:
 - Whether the out-of-state placement continues to be appropriate, necessary and in the best interests of the child

Recommended Permanency Plan
cont'd.

- For a child who has been completely freed for adoption:
 - Information regarding the child’s eligibility for an adoption subsidy under SSL Article 6, Title 9
 - A description of services and assistance that will be provided to the child and the prospective adoptive parent to expedite the adoption of the child; and

Recommended Permanency Plan
cont'd.

- Information regarding efforts being made to find an adoptive family if the child is in residential placement or foster parents do not plan to adopt

Recommended Permanency Plan
cont'd.

- For a child over the age of 14 who has voluntarily withheld his or her consent to an adoption
 - The facts and circumstances regarding the child’s decision to withhold consent and the supporting reasons

Assessment, Case Planning and
Service Plan Reviews
For All Foster Care and Direct Placements

- Within 30 Days of Removal
- Requires a LDSS to assess a child and his or her family and develop a service plan; or
- Update an assessment and develop a service plan
- SSL §409-e

Aggravated Circumstances:

- Permits the LDSS to make a motion to a court for permission to cease efforts to reunify a child with his or her parent under FCA § 1039-b
- Currently: where a child has been either severely or repeatedly abused
- FCA §1012(j); SSL §358-a(12), 384-b(8)

New Aggravated Circumstances
Post-Placement Abuse

- A child has been found to have been abused within 5 years after being returned home from a foster care placement due to a neglect finding;
 - Limited to:
 - Actual abuse as defined in FCA §1012(e)(i) (physical injury) or FCA §1012 (e)(ii) (sexual abuse); and
 - Same Respondent(s) in both proceedings
- FCA §1012(j); SSL §358-a(12)

New Aggravated Circumstances
Abandonment of Newborn

- An infant five days old or less has been abandoned

Limited to:

- Court Finding that parent's intent was to wholly abandon the child and that the child be safe from physical injury and cared for in an appropriate manner
- FCA §1012(j); SSL §358-a(12)

New Aggravated Circumstances
Failure to Plan and Refusal to Cooperate

- Court must find by clear and convincing evidence that the parent of a child in foster care:
 - For at least 6 months after the child was removed from home, has failed and refused completely to engage in services, including failure to engage in services on his or her own; and

New Aggravated Circumstances
Failure to Plan and Refusal to Cooperate
Cont'd

- After being warned by the court that a refusal on the record could result in an application to no longer provide reasonable efforts to reunify the child and parent
- The parent states under oath that he or she will not engage in services necessary to eliminate the risk of abuse or neglect

New Aggravated Circumstances
Failure to Plan and Refusal to Cooperate
Cont'd

However

– The court must also find that there is no reasonable basis for the refusal such as barriers to engagement in services: lack of child care or transportation, or parent's work schedule

- FCA §1012(j); SSL §358-a(12)

Termination of Parental Rights (TPR)
Issues
Severe Abuse or Repeated Abuse Grounds

– Where a court determines that:

- A child was severely abused or repeatedly abused

AND

- Reasonable Efforts toward reunification of the child with his or her parent are no longer required (FCA §1039-b)

TPR Issues
Severe Abuse or Repeated Abuse Grounds
Cont'd.

- Eliminates requirement that a child remain in foster care for 12 consecutive months immediately preceding commencement of a TPR

And

- Allows the TPR hearing to commence immediately
- SSL §384-b(4)(e)

TPR Issues
Permanent Neglect Grounds

– Permits commencement of a Permanent Neglect TPR proceeding where a child has been in foster care either at least one year

Or

– 15 out of the most recent 22 months

- FCA §614(d); SSL§384-b(7)(a)

TPR Issues Cont.'d

- Requires the TPR petition to also be served on the respondent parent's attorney.
- SSL §384-b(3)(e)

Suspended Judgment-
Permanent Neglect
Order

- Maximum Suspended Judgment Period – 2 Years
- Initial period: Up to 1 year
- Extension: Only 1 extension of up to 1 year permitted
- FCA §633(b)

Suspended Judgment-
Permanent Neglect
Order Cont.'d

- Must set forth:
 - Duration
 - Terms and conditions of the suspended judgment; and
 - A Date Certain for court review no later than 30 days prior to the expiration period; and

Suspended Judgment-
Permanent Neglect
Order Cont.'d

- Must set forth in conspicuous print:
 - Failure to obey the order may lead to revocation of suspended judgment and an order terminating parental rights and committing the guardianship and custody of the child to an authorized agency for the purposes of adoption

Suspended Judgment-
Permanent Neglect
Order Cont.'d

- A copy of the order of suspended judgment and the current permanency plan must be given to the parent

Suspended Judgment Report

- No later than 60 days before the expiration of the suspended judgment period:
 - TPR petitioner must file a report with:
 - Family court
 - Respondent
 - Respondent’s attorney
 - Law guardian; and
 - All intervening parties, if any

Suspended Judgment Report, Cont’d

- Content: Parent’s compliance with the terms of the suspended judgment
- Court Review: Court must review the report on the scheduled court date

Possible Outcomes

- **Violation Of Suspended Judgment Alleged or Extension Requested**
Motion or Order to Show Cause MUST be filed:
 - Prior to the expiration of the Suspended Judgment Period
 - Filing of Motion or Order to Show Cause tolls the Suspended Judgment period

Possible Outcomes, Cont'd.

- If **NO** motion or an order to show cause filed prior to the expiration of period
 - Terms of the disposition of suspended judgment **MUST** be deemed satisfied, and no order committing the guardianship and custody of the child may be entered

Possible Outcomes, Cont'd.

- If violation is found, the court may:
 - Enter an order revoking the order of suspended judgment and terminating parental rights; or
 - Extend the period of suspended judgment for an additional period of up to one year **ONLY** where
 - To do so is in the child's best interests; **AND**
 - No prior extension has been granted

Suspended Judgment Permanency Hearing Requirements

- If parental rights are not terminated but the child remains in foster care; **OR**
- If parental rights are terminated
 - Permanency Hearing may be completed immediately following, but no more than 60 days after the court's order

Appeals
Preference

- Without requiring a motion, grants an automatic preference:
 - FCA Article 3 (juvenile delinquency)
 - Parts one and two of Article 6 (Permanent Neglect TPR, Adoption)
 - Article 7 (PINS)
 - Article 10 (child protective)
 - Article 10-A (permanency hearings)

Appeals
Preference Cont'd.

- Social Services Law (SSL) § 358-a (dependent children in foster care)
- SSL § 383-c (Surrender of child in foster care);
- SSL § 384 (Surrender of children not in foster care); and
- SSL § 384-b (TPR)

Notice of Appeal:

- Simplifies & Clarifies filing Notice of Appeal
 - No longer served on does not need to be served upon the NYC corporation counsel, or county attorney
 - Notice of Appeal must be served upon the Law Guardian
- FCA §1115

Appeals

Waiver of Fees - Poor Person Relief

- Without Necessity of Motion:
 - Appellate Division fees may be waived when a party has been represented by 18-b attorney or law guardian if attorney certifies still eligible; and
 - Appointment of counsel, Law Guardian and Poor Person Relief continues for the purpose of filing a notice of appeal or motion for leave to appeal to the Court of Appeals
- FCA §1118; CPLR §1101

Appeals

Waiver of Fees- Poor Person Relief
Cont'd.

- Simplifies terminating appointment of counsel; and
- After terminating appointment of counsel, requires appellate division to promptly appoint a new attorney
- FCA §§1118, 1120; CPLR §1101

Expediting The Appeals Process
Transcript

Sets 30 day time limit for production of transcript

- Requires Administrative judge of the judicial district to establish procedures to effectuate the timely preparation of transcripts

Expediting The Appeals Process
Extensions of Time

- Require appellate divisions to establish procedures to ensure expeditious filing of appellant's brief, the answering brief and any reply brief
- If an extension of time is granted, requires appellate division to issue new specific deadlines for filing and serving briefs

Conditional Surrenders

- Surrender conditioned upon the adoption of a child by a particular person.

SSL 383-c (2)(a), 384 (2)(a)

OR

- Surrender with Contact Agreement providing for communication or contact between the child and the child's birth parent(s) and/or siblings after the child has been surrendered or adopted.

SSL §§ 383-c (2)(b), 384 (2)(b)

Conditional Surrenders
Designation of A Particular Person

- Authorized agency must not accept a conditional surrender designating a particular person unless:
 - The permanency plan for a child is for the child to be adopted by a designated person, and
 - the designated person is **certified or approved** as a **foster parent**, or
 - the agency has **fully investigated and approved** the person as an **adoptive parent**

**Contact Agreements -
Conditional Surrender Designates
Particular Person**

- The following people need to sign the contact agreement:
 - Adoptive parent(s)
 - Birth parent(s)
 - Authorized agency having care and custody of the child, and
 - Law guardian

**Contact Agreement -
Child Surrendered Without Designating
Particular
Person To Adopt**

- The following people need to sign the contact agreement:
 - Birth parent(s)
 - Authorized agency having care and custody of the child, and
 - Law Guardian

Sibling Contact Agreement

–If the contact agreement provides for contact with a child's sibling who is over the age of 14:

»Sibling must sign (consent) or not enforceable as to that sibling

Court Approval of Contact Agreement

- Contact agreement must be presented to the court for approval with the surrender:
 - Court must approve **IF**
In child's Best Interests to approve

Court Approval of Contact Agreement Cont'd.

- If the court does not approve the contact agreement:
 - Court may still approve the surrender
 - Birth parent must be given the opportunity to withdraw the surrender
- SSL § 383-c (2)(b), 384 (2)(b)

Enforcement of Conditional Surrenders Prior to Adoption

Designation of a Particular Person to Adopt

- In the event of “substantial failure of a material condition of surrender”
 - Within 20 days the authorized agency must send NOTICE to:
 - Parent EXCEPT where parent waived notice in a written statement that has been attached to the surrender
 - Law Guardian; and
 - Court

**Enforcement of Conditional
Surrenders Prior to Adoption Cont'd.**

Designation of a Particular Person to Adopt

- In the event of "substantial failure of a material condition of surrender"
 - Within 30 days the authorized agency must FILE A PETITION ON NOTICE to:
 - Parent EXCEPT where parent waived notice in a written statement that has been attached to the surrender
 - Law Guardian

**Enforcement of Conditional
Surrenders Prior to Adoption Cont'd.**

Designation of a Particular Person to Adopt

- Petition may be filed by the parent or law guardian within 60 days of receiving notice of the "substantial failure"
- May NOT be filed after the child has been adopted
- FCA §1055-a

**Enforcement of Conditional
Surrenders Prior to Adoption Cont'd.**

Contact Agreement

- Any party to agreement may file a petition with the family court in the county where the agreement was approved
- Copy of the agreement must be attached to the petition
- Court shall not issue an order enforcing communication or contact pursuant to the terms of the agreement UNLESS
 - Enforcement in child's Best Interests

At the Adoption-
Contact Agreements

- If not previously approved under SSL §383-c or 384, Agreement must be:
 - In writing and signed by
 - Adoptive parent(s)
 - Birth parent(s)
 - Law guardian

At the Adoption-
Sibling Contact Agreements

- If agreement provides for contact with a child's sibling who is over the age of 14:
 - Sibling must sign (consent) or not enforceable as to that sibling

At the Adoption-
Contact Agreements

- If not previously approved under SSL §383-c or 384, Agreement must be:
 - Determined by the court to be in adoptive child's Best Interests
- DRL §112-b (2)

At the Adoption-
Contact Agreements

Court Order

- Must incorporate the agreement
- Copy of the order must be provided to everyone who signed the agreement
- DRL §112-b (2), (5)

After Adoption

- Failure to comply with the agreement is not grounds for:
 - Disrupting (setting aside) the Adoption; or
 - Revocation of a written consent to an adoption after court approval of such consent
- DRL §112-b (3)

Enforcement After Adoption

- Any person who signed the contact agreement or the law guardian may:
 - File a petition to enforce the agreement in the family court in the county where the adoption was approved
 - A copy of the contact agreement must be attached to the petition
- DRL §112-b(4)

Enforcement After Adoption

- A court shall not issue an order enforcing communication or contact pursuant to the terms of the agreement UNLESS:
 - Enforcement is in child’s Best Interests
- DRL § 112-b(4)

Confidential Substance Abuse
Records Pre-petition Application
Under Federal Law

- Provides for the confidentiality of substance abuse records and limited methods of disclosure of substance abuse records
- 42 USC §290dd-2 and 42 CFR §2.64

Confidential Substance Abuse Records
Application Cont’d.

- Application may be made to a court for an order authorizing disclosure of patient records by any person having legally recognized interest in the disclosure which is sought
- Application may be filed separately, or as part of a pending civil action

Confidential Substance Abuse Records
Application Cont'd.

- For the court to authorize disclosure:
 - Other ways of obtaining the information are not available or would not be effective; and
 - The public interest and need for disclosure outweigh the potential injury to the patient, the patient-physician relationship and treatment services

Concurrent Planning

- Requires a description of concurrent planning efforts to make an alternative permanency plan for a child where it is likely that the child will not return home
- FCA §1089(c)(4)(iii)

To E-mail Your Questions

- Send all questions to this account:
ocfs.sm.permanency.bill.implementation.
questions@ocfs.state.ny.us

(Intranet and Internet)
