PROTOCOLS RELATIVE TO ABUSE AND NEGLECT CASES AND PERMANENCY PLANNING

FOR USE IN THE NEW HAMPSHIRE CIRCUIT COURTS

DEVELOPED BY THE MODEL COURT PROJECT
IN COOPERATION WITH THE
NEW HAMPSHIRE COURT IMPROVEMENT PROJECT

DECEMBER 1, 2023

INTRODUCTION AND ACKNOWLEDGEMENTS

The *2023 Protocols Relative to Abuse and Neglect Cases and Permanency Planning* represent a culmination of more than twenty years of collaboration between the courts, the Division for Children, Youth and Families (DCYF), Court Appointed Special Advocates (CASA), Guardians ad Litem, and parent attorneys to ensure consistent statewide practice in RSA 169-C child protection and related cases and improve outcomes for families and children and youth. Such work is spearheaded by the New Hampshire Court Improvement Project (CIP), through a grant from the U.S. Department of Health and Human Services, Administration for Children and Families, and overseen by the Circuit Court. The original *Protocols* were issued in 2000, at a time prior to the existence of Circuit Court and when Family Division was only operating in two counties, and thus they were used in District and Probate courts. Now, all child protection matters are heard in the Circuit Court—Family Division, and these protocols are mandatory, through administrative order, to manage the case flow and ensure timely permanency.

Eight years following the original issuance of the 2000 protocols, the National Council of Juvenile and Family Court Judges selected New Hampshire to be a location for a Model Court, a grant program designed to promote innovative and positive change in child protection proceedings. Following the end of the grant, the Model Court continued to act as a laboratory, developing and implementing best practices to improve outcomes for children, youth and families. The Model Court, in conjunction with the CIP, developed unique protocols for children's participation in abuse and neglect proceedings, issuing the Children and Youth in Court Protocols in 2012. Next, in 2015, the Model Court published specific protocols to utilize when the court designated the permanency plan for an older youth as Another Planned Permanent Living Arrangement (APPLA), to include identifying a Primary Caring Adult for such youth before they leave State care.

In 2018, the protocol chapters relating to termination of parental rights, surrender of parental rights, voluntary mediated agreements and adoptions were significantly revised, in an effort to achieve timely permanency for children who were not able to reunify with their parents. Parental Fitness Hearing Protocols were issued in 2020, revising the previous chapter related to *In re: Bill F.*, to track the statutory rights of non-petitioned parents. At the same time, the Model Court and CIP created the Missing Parent Protocols, to ensure efforts are being made to locate and serve parents in child protection cases and engage them in resolving the child protection issues. Then, in 2022, based on a new statutory framework for permanency hearings, the Model Court and CIP revised the permanency chapter of the protocols, to track the statutory options and requirements for these important hearings.

Finally, in 2023, the Model Court and CIP completed revisions to the first ten chapters of the original protocols, through Review Hearings, adding some new protocols based on statutory or case law changes, and reorganizing the protocols. Significantly, all the protocols referenced above have now been incorporated into this one set of protocols—a single document with the relevant law and best practices in one place.

The protocols track statutory language in RSA 169-C, RSA 170-B and RSA 170-C, as well as other statutes that impact child protection matters. They are intended to be a comprehensive guide to procedures in child protection actions, by referencing statutory or case law requirements or describing best practices where there is no statutory guidance. Insofar as the protocols suggest any interpretation of the law, the reader should bear in mind that the interpretation of the law, as it applies to any given case, is within the sole province of the trial judge, subject to review by the New Hampshire Supreme Court. These protocols do not create substantive rights that do not currently exist and should not be considered as superseding any constitutional or statutory rights of parties to proceedings related to child protection.

The current Model Court and CIP include representatives from the court, DCYF, CASA, Guardians ad Litem, parent attorneys, the Judicial Council, the Office of the Child Advocate and the New Hampshire Department of Justice. Each group has provided valuable input from its workforce, in developing best practices and drafting protocols to ensure consistent statewide application of the law and procedures in these time-sensitive cases. Thanks are extended to all members of the Model Court/CIP Committee, but particularly to the members of the project's Executive Committee, listed below, who have given generously of their time and talents to bring these 2023 Protocols to all stakeholders in child protection cases:

Deanna Baker, Esq., Director of Legal Services, DCYF

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Marcia Sink, President/CEO, CASA of N.H.

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Hon. David D. King
Administrative Judge
N.H. Circuit Court

Hon. Susan W. Ashley
Deputy Administrative Judge
N.H. Circuit Court

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CASE LAW:

•*In re Juvenile 2006-674*, 156 N.H. 1, 931 A.2d 585 (2007), statutory neglect is not the actions taken or not taken by the parent(s), but the likelihood of or actual serious impairment of the child's physical, emotional, and mental well-being that are the conditions of neglect that must be repaired and corrected.

•*In re Gina D.,* 138 N.H. 697, 645 A.2d 61 (1994), requires that opinion evidence be material and relevant.

•*In re Melissa M.,* 127 N.H. 710, 506 A.2d 324 (1986), the court is entitled to the best information available in deciding whether and when a child should be returned to their parents.

•*In re Tracy M.,* 137 N.H. 119, 624 A.2d 963 (1993), relates to the standard of preponderance of the evidence.

•*The State of New Hampshire v. Harold J. Baird*, 133 N.H. 637, 581 A.2d 1313 (1990), relates to the confidentiality provision of RSA 169-C.

PART A PURPOSE OF CHILD PROTECTION ACT

PROTOCOL 1 PURPOSE

Pursuant to RSA 169-C:2, I, it is the primary purpose of the Child Protection Act, through the mandatory reporting of suspected instances of child abuse or neglect, to provide protection to children whose life, health or welfare is endangered. The best interest of the child shall be the primary consideration of the court in all proceedings under RSA 169-C.

It is a further purpose of the Child Protection Act, pursuant to RSA 169-C:2, II, to establish a judicial framework to protect the rights of all parties involved in the adjudication of child abuse or neglect cases. Each child coming within the provisions of this chapter shall receive, preferably in the child's own home, the care, emotional security, guidance, and control that will promote the child's best interest; and, if the child should be removed from the control of their parents, guardian, or custodian, adequate care shall be secured for the child. This chapter seeks to coordinate efforts by parents and state and local authorities, in cooperation with private agencies and organizations, citizens' groups, and concerned individuals, to:

- Protect the safety of the child.
- Take such action as may be necessary to prevent the abuse or neglect of children.
- Determine if the preservation of family unity is in the best interest of the child.
- Provide protection, treatment, and rehabilitation, as needed, to children placed in alternative care.
- Provide assistance to parents to deal with and correct problems in order to avoid removal of children from the family.

Pursuant to RSA 169-C:2, III, RSA 169-C shall be liberally construed to the end that its purpose may be carried out:

- To encourage the mental, emotional, and physical development of each child coming within the provisions of this chapter, by providing the child with the protection, care, treatment, counseling, supervision, and rehabilitative resources which the child needs and has a right to receive.
- To achieve the foregoing purposes and policies, whenever possible, by keeping a child in contact with their home community and in a family environment by preserving the unity of the family and separating the child from their parents only when the safety of the child is in danger or when it is clearly necessary for the child's welfare or the interests of the public safety and when it can be clearly shown that a change in custody and control will plainly better the child.

- To provide effective judicial procedures through which the provisions of this chapter are executed and enforced, and which recognize and enforce the constitutional and other rights of the parties and assures them a fair hearing.

PART B GENERAL PROVISIONS

PROTOCOL 2 DEFINITIONS

The court should consider the definitions below when handling RSA 169-C cases.

A. Abused Child

Pursuant to RSA 169-C:3, II, an "abused child" means any child who has been:

- Sexually abused;
- Intentionally physically injured;
- Psychologically injured so that said child exhibits symptoms of emotional problems generally recognized to result from consistent mistreatment or neglect;
- Physically injured by other than accidental means;
- Subjected, by any person, to human trafficking as defined in RSA 633:7; or
- Subjected to an act prohibited by RSA 632-A:10-d (Female Genital Mutilation).

B. Kin

Pursuant to RSA 170-E:25, X-a, "kin" means a child for whom there is a connection or history between a child or their parents and another responsible adult, including but not limited to related adults.

C. Legal Custody

Pursuant to RSA 169-C:3, XVII, "legal custody" means a status created by court order embodying the following rights and responsibilities unless otherwise modified by court order:

- The right to determine where and with whom the child shall live;
- The right to have the physical possession of the child;
- The right and the duty to protect and constructively discipline the child; and
- The responsibility to provide the child with food, clothing, shelter, education, emotional security and ordinary medical care provided that such rights and responsibilities shall be exercised subject to the power,

rights, duties and responsibilities of the guardian of the child and subject to residual parental rights and responsibilities if these have not been terminated by judicial decree.

D. Legal Supervision

Pursuant to RSA 169-C:3, XVIII, “legal supervision” means a legal status created by court order wherein the child is permitted to remain in their home under supervision of a child placing agency subject to further court order.

E. Neglected Child

Pursuant to RSA 169-C:3, XIX, a “neglected child” means a child:

- Who has been abandoned by his or her parents, guardian, or custodian; or
- Who is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, when it is established that the child's health has suffered or is likely to suffer serious impairment; and the deprivation is not due primarily to the lack of financial means of the parents, guardian, or custodian; or
- Whose parents, guardian or custodian are unable to discharge their responsibilities to and for the child because of incarceration, hospitalization or other physical or mental incapacity; Provided, that no child who is, in good faith, under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for that reason alone, be considered to be a neglected child under this chapter.

COMMENT

In *In re Juvenile 2006-674*, 156 N.H. 1, 931 A.2d 585 (2007), the supreme court agreed that the trial court’s interpretation of RSA 169-C:3, XIX(b) that statutory neglect is not the actions taken or not taken by the parent or parents, but rather “it is the likelihood of or actual serious impairment of the child’s physical, emotional, and mental well-being that are the conditions of neglect that must be repaired and corrected in the [family] court process.”

F. Out-Of-Home Placement

Pursuant to RSA 169-C:3, XX-a, an “out-of-home placement” means the placement of a child in substitute care with someone other than the child’s biological parent or parents, adoptive parent or parents, or legal guardian.

G. Parent

Pursuant to RSA 169-C:3, XXI, a “parent” means mother, father, adoptive parent, stepparent, but such term shall not include a parent as to whom the parent-child relationship has been terminated by judicial decree or voluntary relinquishment.

H. Protective Supervision

Pursuant to RSA 169-C:3, XXV, “protective supervision” means the status of a child who has been placed with a child placing agency pending the adjudicatory hearing.

I. Psychological Maltreatment

Pursuant to RSA 169-C:3, XXV-a, “psychological maltreatment” means pervasive and emotionally abusive behavior which shall include, but not be limited to, patterns of threatening, berating, or demeaning behavior.

J. Relative

Pursuant to RSA 169-C:3, XXVI, “relative” means parent, grandparent, brother, sister, stepparent, stepbrother, stepsister, uncle, aunt, nieces, nephews or first and second cousins.

K. Serious Impairment

“Serious impairment” referenced in RSA 169-C:3, XIX (b) (“neglected child”), as defined in RSA 169-C:3, XXVII-a, means a substantial weakening or diminishment of a child’s emotional, physical, or mental health or of a child’s safety and general well-being. The following circumstances shall be considered in determining the likelihood that a child may suffer serious impairment:

- The age and developmental level of the child.
- Any recognized mental, emotional, or physical disabilities.
- School attendance and performance.
- The child’s illegal use of controlled substances, or the child’s contact with other persons involved in the illegal use or sale of controlled substances or the abuse of alcohol.
- Exposure to incidents of domestic or sexual violence.
- Any documented failure to thrive.
- Any history of frequent illness or injury.
- Findings in other proceedings.

- The condition of the child's place of residence.
- Assessments or evaluations of the child conducted by qualified professionals.
- Such other factors that may be determined to be appropriate or relevant.

PROTOCOL 3 REFERENCED DAYS

Except where specifically noted, all referenced days in these protocols refer to calendar days.

PROTOCOL 4 CONTINUANCES

Continuances are strongly discouraged and should only be granted, consistent with RSA 169-C:26, for good cause shown, such as unforeseen circumstances. Requests for continuances should not be presumed to be granted, including continuances to which all parties have assented; to the contrary, they should be presumed to be denied absent a showing of good cause.

COMMENTS

With the exception of scheduling the first hearing, all subsequent hearings should be scheduled by the court, in the courtroom, with all parties in concurrence, and once scheduled, shall remain fixed except for good cause shown and due to unforeseen circumstances. Unforeseen circumstances would include such circumstances as illness or family emergency, and other events which could not possibly be foreseen at the time of scheduling the hearing.

By scheduling hearings in the courtroom with all parties present and committing to the date, there should be no need for continuances based upon a party's scheduling conflict. This avoids the need to file motions to continue and ensures that these important cases remain within the statutory timeframes.

PROTOCOL 5 COURTROOM AND HEARINGS NOT OPEN TO THE PUBLIC

RSA 169-C:14 provides that hearings, whenever possible, shall be held in rooms not used for criminal trials. In deciding whether to utilize a courtroom for such hearings, the judge should consider the availability of an electronic record, court security, accommodations of the parties and witnesses, the ability to limit access to the room during the conduct of such hearings, and other relevant considerations.

Pursuant to RSA 169-C:14, the general public shall be excluded from any hearing under RSA 169-C. Only the parties, their witnesses, counsel, and representatives of the agencies present to perform their duties shall be admitted. The court may exercise its discretion in determining whether to allow anyone other than the immediate parties, counsel, guardians ad litem, and representatives of the Division for Children, Youth and Families (DCYF) to remain in the courtroom at times, other than when their presence is needed for testimony. Additionally, the court may exercise its discretion in determining whether to allow other family members, friends, or residential

providers to attend the proceedings on a limited basis to provide support to the parents or child.

PROTOCOL 6 CONFIDENTIALITY

All parties, witnesses, and others present shall be advised by the court, pursuant to RSA 169-C:25, II, that it shall be unlawful to disclose information concerning the hearing that may identify a child or parent who is involved in the hearing without the permission of the court. Any person who knowingly violates this provision shall be guilty of a violation.

Pursuant to RSA 169-C:25, I (a), such records shall be withheld from public inspection but shall be open to inspection by the parties, child, parent, grandparent pursuant to subparagraph (b), guardian, custodian, attorney, or other authorized representative of the child. Access to such records is available at the courthouse.

Pursuant to RSA 169-C:25, I(b), a grandparent seeking access to court records shall file a request for access with the court clerk supported by an affidavit signed by the grandparent stating the reasons for requesting access and shall give notice of such request to all parties to the case and the minor's parents. Any party to the case or parent may object to the grandparent's request within 10 days of the filing of the request. If no objection is made, and for good cause shown, the grandparent's request may be granted by the court. If an objection is made, access may be granted only by court order.

Pursuant to RSA 169-C:25, III, all case records, as defined in RSA 170-G:8-a, relative to abuse and neglect, shall be confidential, and access shall be provided pursuant to RSA 170-G:8-a.

PROTOCOL 7 PRESENCE OF WITNESSES: SUBPOENA POWER

To ensure that parents, custodians, and other witnesses are present during court hearings, special efforts may be required. RSA 169-C:11 provides that a subpoena may be issued requiring the production of papers and the attendance of any person whose presence is required by the child, the parents or guardian, or any other person whose presence, in the opinion of the court, is necessary. A subpoena may be issued pursuant to RSA 516 upon application of a party or upon the motion of the court.

PROTOCOL 8 INDIAN CHILD WELFARE ACT

The Indian Child Welfare Act (ICWA) relates to the handling of abuse/neglect and adoption cases involving Indian children. ICWA provides federal standards for the removal and placement of such children.

PROTOCOL 9 INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

The Interstate Compact on the Placement of Children (ICPC) involves the placement of children from one state into another state. The ICPC requirements must be met before a child can be placed out-of-state.

PROTOCOL 10 CLINICAL ASSESSMENT FOR CHILD IN RESIDENTIAL TREATMENT PROGRAM

For any child placed in a licensed and certified placement that is a residential treatment program, the court shall order DCYF to have completed a written clinical assessment of the behavioral health and other treatment needs of the child, pursuant to RSA 170-G:4-e, RSA 169-C:19-f and 42 USC 675(a).

The clinical assessment shall be prepared by a qualified individual who is a trained professional or licensed clinician and who is not an employee of DCYF. **DCYF shall have the clinical assessment completed within thirty (30) days** of the placement and shall submit the written assessment to the court with a Motion for Judicial Determination Re: Residential Treatment Program (NHJB-3207).

The **court must issue an order within sixty (60) days** of the initial placement date, either approving the current residential treatment program or disapproving the current residential treatment program and approving a change in placement, pursuant to RSA 169-C:19-f and 42 USC 675(a).

PROTOCOL 11 OUT-OF-DISTRICT PLACEMENTS: NOTIFICATION TO DEPARTMENT OF EDUCATION AND NOTIFICATION/JOINDER OF LEGALLY LIABLE SCHOOL DISTRICT FOR LIMITED PURPOSES

In addition to considering the impact on a child's educational stability when placed in an out-of-district placement, the court should handle such placements as follows:

A. Court's Notice to Department of Education of Out-of-District Placement

Pursuant to RSA 169-C:19-a, the court must notify the department of education, on the date the court order is signed, whenever the court orders an out-of-district placement of a child. Such notification must include the initial length of time for which the placement is made, and is required:

- upon the initial out-of-district placement; and
- upon any modifications of such placement.

A modification includes a child who is no longer in an out-of-district placement or a child who remains in an out-of-district placement different from their prior out-of-district placement.

To ensure the court has the necessary information when a child's placement is out-of-district, **DCYF's practice is to file a Notice to Department of Education of Out-of-District Placement (NHJB-3217)**, reflecting both the sending school district and receiving school district for the child. This notice should be filed as a separate document from DCYF's proposed order for the relevant hearing at which DCYF is seeking placement (ex parte request, preliminary hearing, adjudicatory hearing, dispositional hearing, etc.).

If the court orders an out-of-district placement, **court staff will, on the same date the order is signed, scan the notice** to the department of education, under cover letter from the clerk. However, if an **emergency placement order is issued after-hours**, the notice form shall be scanned, on the next business day, by court staff to the department of education.

If an **out-of-district placement is modified thereafter**, DCYF's practice is to file another Notice to Department of Education of Out-of-District Placement (NHJB-3217). **Court staff shall, on the date received, scan such notice** to the department of education, under a cover letter from the clerk.

COMMENT

The confidential order in which the child is placed in an out-of-district placement (Ex Parte Order, Preliminary Order, Adjudicatory Order, Dispositional Order, etc.) shall not be sent to the department of education. Rather, only the notice form, NHJB-3217, shall be sent to the department notifying it of the out-of-district placement.

B. School District Joined as a Party for Limited Purposes, Pursuant to RSA 169-C:20, I

1. When to Join the School District

Pursuant to RSA 169-C:20, I, at **any point during the RSA 169-C proceedings**, the **court may, either on its own motion or that of any other person**, join the legally liable school district for the limited purposes as set forth below. Additionally, if the **court contemplates a residential placement**, including in an ex parte request, at a preliminary hearing or at any other RSA 169-C hearing, the court **shall immediately join the legally liable school district,** consistent with RSA 169-C:20, I.

2. Notice to School District of Hearings

Upon joinder, the court shall provide the school district with notice of upcoming hearings, **enabling the school district to send a representative to these hearings.** The court shall review any recommendations of the school district as it relates to a determination of disability, determining where the child's educational needs can be met, and placement outside the child's home school district, pursuant to RSA 169-C:18, V & VIII; RSA 169-C:19, VI.

3. Joinder for Limited Purposes

Pursuant to RSA 169-C:20, I, whenever the school district is joined, joinder is only for the **limited purposes of directing the school district to:**

- **review the services offered or provided under RSA 186-C** if the child had already been determined to be a child with a disability; or
- **determine whether the child is a child with a disability.**

The school district, pursuant to RSA 169-C:20, I-II, shall:

- **make this determination** by treating the order as the equivalent of a referral by the child's parent for special education, and shall conduct any team meetings or evaluations that are required under law when a school district receives a referral by a child's parent; and
- **report to the court** its determination of whether the child is a child with a disability, and the basis for such determination. If the child is determined to be a child with a disability, the school district shall make a recommendation to the court as to where the child's educational needs can be met in accordance with state and federal education laws.

COMMENTS

The school district should provide its written recommendations to the court by the next scheduled hearing.

Pursuant to RSA 169-C:20, VI, a “child with a disability” shall be as defined in RSA 186-C.

Pursuant to RSA 169-C:20, III, if the school district finds or has found that the child is a child with a disability, or if it is found that the child is a child with a disability on appeal from the school district’s decision in accordance with the due process procedures of RSA 186-C, the school district shall offer an appropriate educational program and placement in accordance with RSA 186-C. Financial liability for such education program shall be as determined in RSA 186-C:19-b.

4. Court Hearings and the Court’s Written Findings and Order

In cases where **immediate court action is required** to protect the health or safety of the child, the **court may act without providing for an appearance by the school district**, but shall make **reasonable efforts to solicit and consider input from the school district before making a placement decision that will require educational services outside the child’s home school district**, consistent with RSA 169-C:18, VIII.

When applicable pursuant to RSA 169-C:18, VIII or RSA 169-C:19, VI, the **court shall consider the recommendations of the school district** and, if

such an out-of-district placement is ordered, the court **shall make written findings** that describe the reasons for the placement.

In cases **where the court does not follow the legally liable school district's recommendation**, the court **shall issue written findings** explaining why the recommendation was not followed, pursuant to RSA 169-C:20, II.

Court staff shall send copies of the court's orders to a joined school district. Such **orders are confidential** and, pursuant to RSA 169-C:25, II, it is unlawful for any person present at a hearing to disclose any information about the hearing that may identify a child or parent without the prior permission of the court.

COMMENT

Although only required by RSA 169-C:19, VI related to a dispositional hearing, it is best practice for the court, if an out-of-district placement is ordered, to make written findings that describe the reasons for the placement.

5. Court Staff to Allow School District Access to Court Records

Once joined as a party for the limited purposes set forth above, court staff shall allow the school district, pursuant to RSA 169-C:20, II, full **access to all records** maintained by the court under RSA 169-C. Access to such records is available at the courthouse.

COMMENTS

Consistent with the school district being joined for limited purposes, best practice is for access to all records maintained by the court under RSA 169-C to similarly be for such limited purposes of either assessing if a child has a disability or, if a child does have a disability, reviewing the services offered or provided pursuant to RSA 186-C.

Additionally, because RSA 169-C proceedings are confidential, as set forth above in Protocol 6, and, pursuant to RSA 169-C:25, II, it is unlawful for any person present at a hearing to disclose any information about the hearing that may identify a child or parent without the prior permission of the court, access to court records **does not include** copying documents or further disseminating information contained therein, without further court order. If appropriate, the court may issue protective orders to this effect and/or limit who from the joined school district may access these records. For requests to copy or otherwise further disseminate information obtained in the court records, guidance can be found in RSA 169-C:20, IV-V.

All case records, as defined in RSA 170-G:8-a, relative to abuse and neglect, shall be confidential, and access shall be provided pursuant to RSA 170-G:8-a.

6. DCYF's Work with School District to Assure Child's Educational Stability and Transition Plan

The court should consider that DCYF's work with the school district to assure a child's educational stability and transition plan requires the following:

a. Educational Stability

If DCYF recommends or initiates an out-of-home placement or change in placement, whether within or out-of-district, DCYF shall notify the school district as soon as possible of the change in placement and shall work with the school district to determine**, consistent with the best interest of the child, how to assure the child's educational stability**, pursuant to RSA 169-C:20-a, I.

b. Transition Plan

When necessary to transition a child to a different school or school district, DCYF and the school district shall develop a **transition plan**, pursuant to RSA 169-C:20-a, II. Further, the objective of the plan shall be to minimize the number of placements for the child and to facilitate any change in placement or school assignment with the least disruption to the child's education. To the extent appropriate, the child may be involved in the formation of the transition plan.

PROTOCOL 12 EXTENSION OF FOSTER CARE FOR YOUTH 18 THROUGH 21 YEARS OF AGE

Pursuant to RSA 170-E:53, foster care may, for eligible youth, be extended beyond the age of 18 and until the age of 21. See Chapter 11, Part E, Extended Foster Care for Young Adults 18 to 21 (HOPE Program).

PART C NON-PARTIES ATTENDANCE AND/OR PARTICIPATION AT HEARINGS

PROTOCOL 13 CHILDREN AND YOUTH

Information about children and youth attending and or/otherwise participating in RSA 169-C court hearings is set forth in Chapter 8, Part B.

PROTOCOL 14 FOSTER PARENTS, RELATIVE CAREGIVERS AND KINSHIP CAREGIVERS – NOTICE AND REPORTS

Consistent with RSA 170-E:52, VI, foster parents shall be **notified of all court proceedings** and may **submit written reports**. Further, in the court's discretion, foster parents may provide oral reports of the child's behavior, progress and development, educational, and healthcare needs.

Circuit Court—Family Division Rule 4.4 requires that "foster parents, pre-adoptive parents and/or relatives providing care for a child are entitled to notice of all review hearings, permanency hearings and post-permanency hearings and shall be allowed to be heard at these hearings, but shall not be given party status unless otherwise granted by the Court." RSA 170-E:25, II, defining some types of out-of-home placements, includes kinship care home. Thus, in addition to the option of relative care or foster care, children may be placed with **kin, which is defined** in RSA 170-E:25, X-a as "a child or children who for which there is a connection or history between a child or their parents and **another responsible adult, including but not limited to related adults**." Because a kinship caregiver provides the same type of care for the child as does a foster parent or relative caregiver, best practice is for the court to provide notice of all court proceedings to foster parents, relative caregivers and kinship caregivers.

Court processing manuals instruct court staff to classify foster parents, relative caregivers, and kinship caregivers as **"participants" rather than "parties"** so that they will receive hearing notices but not court orders. Court staff should notify these individuals by using **Hearing Notice – Foster Parent, Relative Caregiver or Kinship Caregiver (NHJB-3188)**. Although vitally important, as "participants" these individuals do not have standing and are not entitled to counsel, may not file pleadings, and may not offer or cross-examine witnesses.

To ensure the court is able to provide proper notice to foster parents, relative caregivers and kinship caregivers, DCYF's practice is to promptly file a **Court Notification of Child's Placement Change** after any out-of-home placement into foster, relative or kinship care. This form notifies the court of the child's foster/relative/kinship placement, regardless of whether it is the child's initial placement or a subsequent change in placement.

Consistent with RSA 170-E:52 and Circuit Court—Family Division Rule 4.4, VI, foster parents, relative caregivers or kinship caregivers, all of whom are non-parties to a RSA 169-C case, **may submit written reports**. As contracted service providers, these reports should be sent directly to DCYF **at least fourteen (14) days** in advance of the scheduled hearing for DCYF to have sufficient time to include these written reports with its court report, which shall be sent to all parties, pursuant to RSA 169-C:12-b.

Pursuant to RSA 170-E:52, VI, such **reports may address** the child's:

- behavior;
- progress; and
- developmental, educational and healthcare needs.

The court is encouraged to seek input from foster parents, relative caregivers and kinship caregivers at hearings. These caregivers may share information about the child, as set forth above, as well as the status of the child, but should not advance a particular position or plan for the child, including their permanency plan. Additionally, they should not report to the court about the parents' compliance with dispositional orders.

PROTOCOL 15 FOSTER CARE CHILDREN'S BILL OF RIGHTS

RSA 170-G:21 provides that a child who is placed in a foster home or other out-of-home placement pursuant to a juvenile court proceeding under RSA 169-B, RSA 169-C, or RSA 169-D shall have the right or privilege, among other rights, to: develop a group of supportive adults, to be treated with courtesy and respect, to participate in "normal" activities, to receive notice of any meetings regarding the child's care and to have opportunities to resolve potential barriers to participation, such as a lack of transportation or conflict with the child's academic schedule, to receive timely information about decisions that affect the child's life, and to attend and participate in court hearings to the extent permitted by the court and appropriate given the age and experience of the child.

PART D ORDERS OF PROTECTION PURSUANT TO RSA 169-C:16 OR RSA 169-C:19

INTRODUCTION

In an open RSA 169-C case, RSA 169-C Orders of Protection (OOP) may be issued pursuant to RSA 169-C:16, I(d)(1) or RSA 169-C:19, II(a)(1). These protocols set forth when a party may request and, if appropriate, the court may issue orders of protection, commonly known as a "stay away order." Additionally, these protocols set forth the statutory requirements that the "subject" of such order be served and the order be entered into the statewide database so as to be visible to law enforcement. The process by which these orders are modified and vacated is also addressed.

A "stay away" order of protection pursuant to RSA 169-C:16 or RSA 169-C:19 is different from a protective order pursuant to RSA 169-C:7-a. The latter, known as "Jade's Law", permits a parent or guardian to file a petition for a protective order on behalf of a minor, alleging abuse of the minor by a member of the minor's family or household. Under RSA 169-C:7-a, the court shall not accept a petition that is filed by a child's parent against the other parent. Any order issued pursuant to RSA 169-C:7-a may be in addition to a RSA 173-B order and may be consolidated with a proceeding under RSA 173-B. A RSA 169-C:7-a filing is a new petition and case. A Jade's Law petition is a separate protective order case, and is not part of an open RSA 169-C case.

The following protocols relate to orders of protection issued within an open RSA 169-C case, pursuant to RSA 169-C:16, I(d)(1) or RSA 169-C:19, II(a)(1).

PROTOCOL 16 REQUEST FOR ORDERS OF PROTECTION IN AN OPEN RSA 169-C CASE

In an open RSA 169-C case, a request for orders of protection may be made as follows:

A. When and by Whom an OOP Request May be Made

Any party in an open RSA 169-C case may request, at a preliminary hearing, dispositional hearing or review hearing, orders of protection, consistent with RSA 169-C:16, I(d)(1) or RSA 169-C:19, II(a)(1).

COMMENT

When a request for orders of protection is made, best practice is for the request to be submitted, before a court hearing, as a proposed order using the court form Order of Protection Pursuant to RSA 169-C:16 or 169-C:19 (NHJB-2255). The "subject" against whom the request is made may be a party to the

open RSA 169-C case or a non-party. If the OOP is issued, the use of this form will ensure the "subject" will only receive information about the OOP, not any other confidential information in the open RSA 169-C case. Additionally, the form sets forth the consequences should there be a violation of the "stay away" orders.

B. What Relief a Party May Request in an OOP

A party to an open RSA 169-C case may request in an OOP that the parent, guardian, custodian, sibling, or household member, considered the "subject" of the request, "stay away" from the:

- Premises or curtilage where the protected person(s) resides, their place of employment or school;
- Another party to the RSA 169-C case ("protected party"); and/or
- Child named in the RSA 169-C case ("protected party").

COMMENTS

The "subject" of a request for orders of protection may be a party to the RSA 169-C case (parent or guardian) or a non-party (custodian, sibling or household member). There is a reference to "sibling" in RSA 169-C:19, II(a)(1) but not in RSA 169-C:16, I(d)(1). A "household member", pursuant to RSA 169-C:3, XIV-a, is defined as any person living with the parent, guardian, or custodian of the child from time to time or on a regular basis, who is involved occasionally or regularly with the care of the child.

RSA 169-C:16 or RSA 169-C:19 do not authorize the court to order the seizure of any firearms and ammunition in the control, ownership, or possession of the "subject" or any deadly weapons. Such seizure, however, is mandatory subsequent to an arrest of the "subject" for a violation of an OOP pursuant to RSA 169-C:16 or RSA 169-C:19.

C. When the "Subject" of the Request for an OOP Has an Obligation to Support the Child

When the "subject" of the request for an OOP has an **obligation to support the child**, the request may seek to have such person remain out of the residence of the child, consistent with RSA 169-C:16, VI or RSA 169-C;19, II(c).

If, however, the "subject" of the request **does not have a duty to support the child and solely owns or leases the residence of the child**, there may be a request to have the person remain out of the residence of the child for no more than thirty (30) days, consistent with RSA 169-C:16, VI or RSA 169-C;19, II(c).

PROTOCOL 17 ISSUANCE OF ORDERS OF PROTECTION

When the court issues orders of protection pursuant to RSA 169-C:16, I(d)(1) or RSA 169-C:19, II(a)(1), any relief allowable should be as set forth above in Protocol 16, Section B.

Additionally, when issuing orders of protection, the court should consider the following:

A. Use of Order of Protection Pursuant to RSA 169-C:16 or 169-C:19

When the court issues an OOP, the court should use the form Order of Protection Pursuant to RSA 169-C:16 or RSA 169-C:19 (NHJB-2255). Additionally, the court should:

- Issue **one order** if there are **multiple "protected" people and one "subject"** against whom the order is issued; or
- Issue an **order for each "subject"** if there are **multiple "subjects" against whom the order is issued**.

COMMENTS

The "subject" of the order may be a party to the open RSA 169-C case or a non-party so the use of this form will ensure the "subject" only receives information about the OOP, not any other confidential information about the open 169-C case. Additionally, the "subject" of the order will be informed of the consequences of the order should there be a violation.

When orders of protection are issued, best practice is for court staff to put an OOP sticker on the file to highlight the date the order was issued and its expiration date.

B. Expiration Date Required for Orders of Protection

The court shall include an **expiration date** in an OOP. This date is necessary for the order to be entered into the state database by the Administrative Office of the Courts (AOC), as required by RSA 169-C:16, I-a and RSA 169-C:19, II-a and set forth below in Section C. Best practice is for orders of protection to **expire in twelve (12) months**.

The court should remain aware of the expiration date of the OOP and should, as necessary, discuss the OOP and any requested modifications at subsequent hearings.

COMMENT

RSA 169-C is silent on the length of time an OOP is in effect, so these protocols recommend the 12-month timeframe used in RSA 173-B.

C. Court to Transmit OOP to the AOC for Entry into the State Database Visible to Law Enforcement

When an OOP is issued, the court shall, on the date of the order, transmit, electronically or by facsimile, a copy of the order to the AOC. Thereafter, the AOC shall enter the OOP into the state database, which shall be made available to the police and sheriffs' departments statewide, pursuant to RSA 169-C:16, I-a or RSA 169-C:19-II-a.

Additionally, when at a subsequent hearing an OOP is **modified**, **vacated**, or ordered to **remain in effect**, the court must, on the date of the order, transmit the updated order to the AOC. The AOC is required to update the database regarding an OOP, including the expiration date of the order. As set forth below in Protocol 3, in these cases the court should use the Order of Protection Pursuant to RSA 169-C:16 or 169-C:19, **Order to Modify, Vacate or Maintain** (NHJB-3145).

COMMENTS

There is a statutory exception to confidentiality pursuant to RSA 169-C:25 so an OOP may be visible to law enforcement.

Only the "stay away" provisions of RSA 169-C: 16 and RSA 169-C: 19, as set forth in RSA 169-C:16, I (d)(1) or RSA 169-C:19, II (a)(1), are "enforceable" and must be entered into the state database. The other sections of RSA 169-C:16, I(d) and RSA 169-C:19, II(a) are addressed elsewhere in standard RSA 169-C court orders; they are not "orders of protection", or "stay away" orders, as those terms are commonly used.

D. OOP and Confidentiality Exception

An OOP is confidential pursuant to RSA 169-C:25 except that, for practical and safety purposes, the court should permit the disclosure of the order to persons or entities connected with the child, such as the child's school, care provider, relative caregiver, foster parent, coach, employer, physician, or others.

Additionally, there is a statutory exception to confidentiality pursuant to RSA 169-C:25 so an OOP may be entered by the AOC into the state database and visible to law enforcement, as set forth above in Section C.

E. "Subject" of Order is at Court Hearing at Which OOP Order Requested

If the "subject" of the OOP is at the hearing at which the OOP is requested, that person will have an opportunity to be heard. **If the court grants the OOP, it must make a copy of the order before the conclusion of the hearing and provide the order to the "subject".** When providing the "subject" with the OOP, the court should explain the consequences of violating the order, as set forth below in Protocol 18.

F. "Subject" of Order not at Court Hearing at Which OOP Order Requested

If the "subject" of the OOP is not at the hearing at which the OOP is requested, that is the person is "not before the court", **the court shall ensure the order is served on that person by law enforcement**, as required by RSA 169-C:16, V or RSA 169-C:19, II(b). The "subject" of the orders of protection may be a party to the open RSA 169-C case or a non-party.

G. Request for Hearing to Challenge Order

Pursuant to RSA 169-C: 16, V or RSA 169-C:19, II(b), the "subject" of the OOP may request, in writing, a hearing to challenge the order. If done, the court shall hold a **hearing within five (5) days of the request**, as required by RSA 169-C:16, V or RSA 169-C:19, II(b). Further, a request for a hearing shall not stay the effect of the OOP.

After this hearing is held, the court should use the Order to Modify, Vacate or Maintain (NJHB-3145) to issue its ruling. There are no separate "Temporary" or "Final" Orders for OOP pursuant to 169-C:16 or 169-C:19.

PROTOCOL 18 VIOLATION OF ORDERS OF PROTECTION

Pursuant to RSA 169-C:21-a, it is a Class A misdemeanor criminal charge if the "subject" against whom an OOP is issued knowingly violates the order.

If there is a violation, the statute sets forth the following:

- Mandatory arrest and detention until arraignment;
- Mandatory seizure of firearms and ammunition in the control, ownership, or possession of the person;
- Seizure of any deadly weapons which may have been used, or were threatened to be used, during the violation of the order; and/or
- Enhanced penalties.

PROTOCOL 19 REQUEST TO MODIFY OR VACATE AN ORDER OF PROTECTION

The party that requested an OOP may also request it be modified or vacated. In such cases, best practice is for these requests to be submitted to the court prior to an already scheduled hearing.

If the "subject" of the OOP is a non-party to the RSA 169-C case, the party that requested the order shall timely notify the court in advance of the scheduled hearing about the request to modify or vacate the order. In so doing, the court will have time to send the "subject" of the OOP notice of the hearing at which the request will be discussed. If, however, the "subject" of the OOP is a party to the RSA 169-C case, that person will be sent notice of the hearing, along with the request the OOP be modified or vacated, with all other parties.

Thereafter, if the court orders that the OOP is to **remain in effect**, be **modified** or be **vacated**, the court should use the **Order to Modify, Vacate or Maintain (NHJB-3145)**. The form should be used in the following circumstances:

- When the "subject" of an OOP **requests a hearing** to challenge the OOP. There are no separate "Temporary" or "Final" Orders for OOP pursuant to 169-C:16 or 169-C:19;
- After a **hearing to extend the expiration date** of the order. If the date is extended, the court should include the new expiration date;
- To **otherwise modify** the OOP, such as removing one of several "protected" persons; and/or
- To **vacate** orders of protection.

Once issued, the court must, on the date of the order, transmit the **Order to Modify, Vacate or Maintain** to the AOC to be updated in the state database, as required by RSA 169-C:16, I-a or RSA 169-C:19, II-a and as set forth above in Protocol 17(C).

COMMENTS

The court should use the Order to Modify, Vacate or Maintain whenever it modifies, vacates or orders an OOP to remain in effect. The court should not order, in a Dispositional Hearing Order or Review Hearing Order, that the "former orders of protection are to remain in effect, be modified or be vacated".

When a RSA 169-C case closes and the OOP is still in effect, DCYF practice is to submit, with a Motion to Close, an Order to Modify, Vacate or Maintain, and request the OOP be vacated.

Revised 12/1/23

PART E RSA 463 GUARDIANSHIP PETITION FILED DURING OPEN RSA 169-C CASE

INTRODUCTION

When a RSA 463 guardianship petition is filed during an open RSA 169-C case in which DCYF has been awarded protective supervision or legal custody, the court is restricted to considering whether guardianship should be awarded for specific non-custodial powers and duties, as set forth in RSA 463:12, notwithstanding DCYF's involvement.

COMMENT

In the Guardianship of B.C., 174 N.H. 628, 273 A.2d 383 (2021) held that while the court can appoint a guardian during an open RSA 169-C case, the guardian shall not have the authority to take custody of the child when DCYF has been given that authority in the RSA 169-C case.

PROTOCOL 20 RSA 463 DEFINITION OF GUARDIAN

A guardian, pursuant to RSA 463:2, IV, is defined as the individual or entity appointed by the court as provided in RSA 463. The powers and duties of a guardian are set forth in RSA 463:12.

COMMENT

While there is a definition of a guardian in the Child Protection Act, at RSA 169-C:3, XIV, this definition can best be described as defining the inherent duties and authority of a parent. To the extent that there is a nonparent appointed by the court to be a child's guardian, this must occur through a petition pursuant to RSA 463, and thus the definition of a guardian and their powers and duties under RSA 463 controls.

PROTOCOL 21 FILING A RSA 463 GUARDIANSHIP PETITION AND REQUIREMENT PETITIONER DISCLOSE ANY OPEN RSA 169-C CASE

The petitioner filing for a RSA 463 guardianship must disclose, in the guardianship petition, any open RSA 169-C case, as required by RSA 463:5, IV(c). This disclosure will help inform the court of any existing placement and/or custodial orders for the child. Additionally, RSA 463:5, V requires that the petition shall include a statement describing specific facts concerning actions or omissions or actual occurrences involving the child which are claimed to demonstrate that the guardianship of the person is in the best interests of the child.

COMMENT

RSA 463:5, IV(c) further requires that the petitioner, as far as known, must set forth in the petition the existence of any pending adoption, juvenile proceedings, including those pursuant to RSA 169-B, RSA 169-C, RSA 169-D, or RSA 170-C, or other pending proceedings affecting the minor or the parents of the minor including, but not limited to, domestic violence, marriage dissolution, domestic relations, paternity, legitimation, custody, or other similar proceeding.

PROTOCOL 22 COURT STAFF REQUIREMENT TO SEARCH DATABASE FOR RSA 169-C CASES REGARDING THE CHILD

When initially processing a RSA 463 guardianship petition, court staff must search the court's database for RSA 169-C cases regarding the child and inform the judicial officer ruling on the matter about any such RSA 169-C orders. This will help ensure that any RSA 463 order will be consistent with any existing RSA 169-C order in which DCYF has been awarded protective supervision or legal custody.

PROTOCOL 23 REQUEST FOR EX PARTE GUARDIANSHIP RELIEF

If, during an open RSA 169-C case with protective supervision or legal custody, a guardianship petition is filed and the petitioner seeks ex parte (emergency) relief, pursuant to RSA 463:7, I(a), the court's consideration for emergency relief must be limited to whether the **child will or is likely to suffer immediate or irreparable harm or injury** if a guardian is not appointed to immediately exercise specific non-custodial powers and duties, pursuant to RSA 463:12, notwithstanding DCYF's involvement.

If the petitioner **does not meet its burden** for ex parte relief, as set forth above, the court should deny the ex parte motion and schedule a hearing on the merits, as set forth below in Protocol 24(A).

If the petitioner **does meet its burden** for ex parte relief, the court should issue an ex parte **Temporary Order for Limited Guardianship During Open RSA 169-C Case (NHJB-3219)**. It would not be consistent with the RSA 169-C custody and/or placement order for the court to grant a RSA 463 guardian the authority to take custody of the child and establish the child's place of abode. See RSA 463:12, III. Therefore, the authority of the proposed guardian, if appointed, would be limited to specific non-custodial parental powers and duties. Thus, the court's consideration of a guardianship petitioner's ex parte motion must necessarily be limited to the need for immediate exercise of such specific non-custodial powers and duties, as set forth in RSA 463:12, notwithstanding DCYF's involvement.

Because ex parte temporary orders generally expire within 30 days, pursuant to RSA 463:7, I(a)(2), the court will **schedule a hearing within 30 days of the order**, either on the ex parte temporary order or on the merits of the petition, as set forth below in Protocol 24(A). An ex parte temporary guardianship order may be extended pending notice on persons required to receive notice, pursuant to RSA 463:7, I(a)(2). Consistent with RSA 463:7, I(a)(1), a party against whom an ex parte temporary order is issued

may request an earlier hearing, and if so, the court must reschedule the hearing noted above to occur within five (5) business days after the request is received.

PROTOCOL 24 RSA 463 GUARDIANSHIP HEARING

When a RSA 463 guardianship petition is filed during an open RSA 169-C case in which DCYF has a RSA 169-C custody and/or placement order, the court should proceed as set forth below.

A. Scheduling the RSA 463 Hearing

If a RSA 463 guardianship petition is filed during an open RSA 169-C case **after adjudication** of the RSA 169-C petition(s), the court should schedule the RSA 463 **hearing on the merits within 30 days** of the ex parte temporary order or, if there is no such order, within 30 days of the filing of the guardianship petition.

If a RSA 463 guardianship petition is filed during an open RSA 169-C case **prior to adjudication** of the RSA 169-C petition(s), best practice is for the court to **conduct the RSA 169-C adjudicatory hearing first**, and, if the court makes a finding of abuse and/or neglect, thereafter schedule a **RSA 463 guardianship hearing on the merits within 30 days of the RSA 169-C Adjudicatory Hearing Order**, for the following reasons:

- RSA 463 does not delineate a timeline for a hearing on the merits of a guardianship petition;
- RSA 169-C requires tight timelines for hearings, including an adjudicatory hearing;
- The court should determine in the RSA 169-C case, filed first with the court, if the child is abused/neglected;
- The child has been removed from their parent(s) and placed in an out-of-home placement(s) in the RSA 169-C case; and
- Having a finding in the RSA 169-C case as to whether a child is abused/neglected will allow the court to determine if the RSA 169-C case will remain open or be closed and if a child will remain in an out-of-home placement or be returned to their parent(s). Thereafter, the court will be able to take this information into consideration when it conducts the RSA 463 hearing.

However, if **ex parte** relief was granted in a guardianship petition filed **prior to adjudication** of the RSA 169-C petition(s), the court will schedule a **hearing on the ex parte temporary guardianship order within 30 days**, as an ex parte temporary order generally will expire in 30 days. As the adjudicatory hearing in the RSA 169-C case must be scheduled within 30 days of the RSA 169-C petition being filed absent extraordinary circumstances, the RSA 463 ex parte hearing may be scheduled to

immediately follow the adjudicatory hearing in the RSA 169-C case, for convenience of the parties. Thereafter, the court should schedule a **RSA 463 guardianship hearing on the merits within 30 days of the RSA 169-C Adjudicatory Hearing Order**.

B. Notice for RSA 463 Guardianship Hearing

The orders of notice for the RSA 463 guardianship hearing shall be sent to the **parents** by certified mail, return receipt requested, pursuant to RSA 463:6, I.

Additionally, because DCYF has protective supervision or legal custody of the child over whom guardianship is sought, DCYF will be deemed a party to the guardianship case and sent notice, pursuant to RSA 463:6, I (orders of notice shall be sent to persons having care and custody of the child in the 60 days preceding the filing of the guardianship petition).

The court shall also send, by first class mail, notice of the guardianship hearing to the **petitioner** and to the **child**, **if aged 14 years or older**, pursuant to RSA 463:6, I(a).

C. Scheduling Interim RSA 169-C Hearing to Coincide with Guardianship Hearing

When the court schedules a guardianship hearing, it should also schedule an **interim review hearing in the RSA 169-C case**, **to occur on the same date and time as the guardianship hearing** (ex parte hearing on the guardianship petition and/or hearing on the merits). This will ensure that all relevant parties in the open RSA 169-C case are aware of any issues impacting the child.

D. Petitioner's Burden of Proof at Hearing on the Merits

The court should conduct the hearing on the merits as follows:

1. Parent Does Not Object to Guardianship

When a parent(s) does not object to a guardianship, pursuant to RSA 463:8, III(a), the burden of proof at a hearing on the merits shall be on the petitioner to establish, by a **preponderance of the evidence**, that it is in **the child's best interest** to have a guardian appointed to exercise specific non-custodial powers and duties, pursuant to RSA 463:12, notwithstanding DCYF's involvement.

2. Parent <u>Does</u> Object to Guardianship

When a parent(s) does object to a guardianship requested by a non-parent, pursuant to RSA 463:8, III(b), the burden of proof at a hearing

on the merits shall be on the petitioner to establish, by **clear and convincing evidence, that the best interests of the child** require, pursuant to RSA 463:12, substitution or supplementation of specific non-custodial parental care and supervision to provide for the essential physical and safety needs of the child or to prevent specific, significant psychological harm to the child, notwithstanding DCYF's involvement.

3. Grandparents Request Guardianship Due to Parent's Substance Abuse or Dependence

If the guardianship is sought by the **child's grandparents** as the result of the **parent's substance abuse or dependence**, the burden of proof shall be on the petitioner to establish, by a **preponderance of the evidence**, pursuant to RSA 463:8, III(b), that it is in **the child's best interest** to have a guardian appointed to exercise specific non-custodial powers and duties, pursuant to RSA 463:12, notwithstanding DCYF's involvement.

Based on the applicable burden of proof set forth above, the petitioner also must establish that the **proposed guardian is appropriate**, pursuant to RSA 463:8, VII(a) and RSA 463:10, I.

E. Court's Order Following Hearing on the Merits for RSA 463 Guardianship

If the court finds that the petitioner has not met its burden at a hearing on the merits, as set forth above, the guardianship petition should be dismissed.

If the court finds that the petitioner has met its burden at a hearing on the merits, as set forth above, the court should issue an **Order for Limited Guardianship During Open RSA 169-C Case (NHJB-3218)**. Pursuant to RSA 463:9, II, the **RSA 463 guardianship order is confidential** as it relates to the personal history or circumstances of the child and the child's family, including references to an open RSA 169-C case.

1. DCYF's RSA 169-C Custody and/or Placement Order Remains in Effect

Because DCYF has been awarded legal custody and/or protective supervision over the child in the RSA 169-C case, DCYF, and not the guardian, continues to have authority to determine the custody and/or placement of the child. This legal authority should be clearly stated in the RSA 463 limited guardianship order.

2. Specific Non-Custodial Powers and Duties Granted to Guardian

The court's order should set forth the specific non-custodial powers and duties to be granted to the guardian. Because the RSA 463

guardianship is being authorized during the pendency of a RSA 169-C case, and the permanency plan for the child is reunification with the child's parent(s), the court should limit the authority of the guardian to only those specific non-custodial powers and duties that were found to justify the guardianship, notwithstanding DCYF's involvement. For example, a guardianship petition may request medical or other professional care, counsel, treatment or service for the child for which DCYF has not been awarded the authority. DCYF, having been authorized to provide out-of-home placement for the child, already has the authority to provide **ordinary medical care** for the child, including behavioral, mental health, or developmental health services as provided in RSA 463:12-a. Thus, there would be no need to appoint a guardian to authorize ordinary medical care. However, there may be a need for a guardian to authorize **major medical care** for the child if the parents are not available/appropriate to make such decisions. This specific authority would be described in the court's limited guardianship order.

Further, RSA 463:12, IV, allows the court **to limit or restrict the powers** of the guardian or **impose additional duties** if it deems them desirable in the **best interests of the child**.

3. Appropriate Guardian

The court's order should set forth that the guardian is appropriate, pursuant to RSA 463:8, VII(a) and RSA 463:10, I.

4. Guardian a Party to the RSA 169-C Case and Access to RSA 169-C Court Records and Case Records

The RSA 463 limited guardian shall be a party to the RSA 169-C case. See RSA 169-C:3, XXI-a and Protocol 25(A) below. As such, the court's order should address the guardian's access to RSA 169-C court records and case records, as set forth below in Protocol 25(B).

5. Duration of Limited Guardianship Order

Consistent with RSA 463:12, IV, the court may limit the duration of the powers of the guardian as necessary, in the best interest of the child. Thus, because there is an open RSA 169-C case, best practice is for the court to exercise its discretion and limit the length of the guardianship in its order. In these cases, a limited guardianship should only remain in place until such time as the parent is capable of exercising the specific non-custodial powers and duties awarded.

In the RSA 169-C case, the court will regularly review the progress of a parent and, when there is also a limited guardianship, this review should include whether a parent is capable of resuming the limited

powers and duties awarded to the guardian. If a party in the RSA 169-C case believes a parent to be capable and wants to have the guardianship terminated, such party should file, in the RSA 463 case, a motion to terminate the limited guardianship, pursuant to RSA 463:15. Depending on the timing of the motion, the court should schedule the RSA 463 motion in conjunction with the next scheduled hearing in the RSA 169-C case, or schedule the RSA 463 motion hearing in conjunction with an interim review hearing in the RSA 169-C case.

PROTOCOL 25 IMPACT OF A RSA 463 LIMITED GUARDIANSHIP ON OPEN RSA 169-C CASE

The court should consider the following impact of a RSA 463 limited guardianship on an open RSA 169-C case.

A. Guardian a Party to the RSA 169-C Case

The RSA 463 limited guardian shall be a party to the RSA 169-C case. See RSA 169-C:3, XXI-a. As such, the court should send a guardian notice of all RSA 169-C hearings, which are confidential proceedings pursuant to RSA 169-C:25, II. The court may excuse the guardian from portions of the RSA 169-C hearings that are unrelated to the authority granted to the guardian.

B. Guardian's Access to RSA 169-C Court Records and Case Records

Pursuant to RSA 169-C:25, I(a), the guardian shall have access to **court records** of the RSA 169-C proceeding, unless the guardian's authority to access such records is limited by the court, pursuant to RSA 463:12, IV. The court should specify any limitations on access to RSA 169-C court records in its RSA 463 order.

All **department case records** shall be confidential, and access shall be provided by the department, pursuant to RSA 170-G:8-a.

Requests for **records** created by involved **third parties** may be made directly to the third party that created such record, pursuant to RSA 170-G:8-a, I(b).

C. RSA 169-C Permanency Plan

The appointment of a RSA 463 guardian during an open RSA 169-C case does not change the court-ordered permanency plan of reunification in the RSA 169-C case. DCYF, as required by state and federal law, will continue to make reasonable efforts to assist the parent(s) to reunify with their child.

If, following a permanency hearing, the court changes the permanency plan from reunification to adoption, the court should proceed as follows. If DCYF files a TPR petition and the court terminates parental rights and such termination results in a child becoming legally freed for adoption, the court

shall appoint the department of health and human services as guardian of the child and vest legal custody in the agency, as required by RSA 170-C:11, II. Thereafter, the court shall terminate the RSA 463 limited guardianship, consistent with RSA 463:15, I.

If, following a permanency hearing, the court changes the permanency plan from reunification to guardianship, a new RSA 463 guardianship petition should be filed, consistent with best practice to finalize guardianship as a child's permanency plan. Further, upon approval of the new RSA 463 guardianship petition, the court shall terminate the limited guardianship.

If, following a permanency hearing, the court changes the permanency plan from reunification to another planned permanent living arrangement, the RSA 463 limited guardianship may remain in place.

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•RSA 169-C:6-a, Emergency Interim Relief

•RSA 169-C:6-b, Child's Welfare and Findings Regarding Removal

•RSA 169-C:7, Petition

•RSA 169-C:12-g, Investigatory Interviews and Evaluations

•RSA 169-C:34, Duties of the Department of Health and Human Services

•RSA 169-C:34-a, Multidisciplinary Child Protection Teams

•RSA 169-C:38, Report to Law Enforcement Authority

•RSA 490:27-a, Validity of Faxed or Electronic Warrants and Orders

PART A DCYF REQUESTS OF COURT IN FURTHERANCE OF INVESTIGATION

INTRODUCTION

RSA 169-C:12-g and RSA 169-C:34 allow DCYF to seek orders from the court in furtherance of its abuse and/or neglect investigation. These orders are generally requested before a RSA 169-C petition is filed and, as such, these protocols reflect that practice.

PROTOCOL 1 RSA 169-C:12-G - MOTION BY DCYF, AND COURT ORDER, FOR PARENT(S), GUARDIAN(S), CUSTODIAN(S) OR OTHER CAREGIVER TO PRODUCE A CHILD FOR AN INTERVIEW OR EVALUATION FOR THE PURPOSE OF AN INVESTIGATION OF SUSPECTED ABUSE AND/OR NEGLECT

DCYF may file a motion for, and the court may order, a child's parent(s), guardian(s), custodian(s) or other caregiver, pursuant to RSA 169-C:12-g, to produce the child for the purpose of an investigatory interview, including a multidisciplinary team interview in accordance with RSA 169-C:34-a or an interview or evaluation by another expert necessary for the purpose of the investigation of suspected abuse and/or neglect.

To request such order, DCYF should file a Motion in Furtherance of a Child Protection Investigation Pursuant to RSA 169-C:12-g and/or RSA 169-C:34 (NHJB-2597). Since this is a multipurpose form, DCYF should indicate its requested relief pursuant to RSA 169-C:12-g, and the circumstances that support its request. DCYF's practice is to file the Motion with a proposed Order on Motion in Furtherance of a Child Protection Investigation Pursuant to RSA 169-C:12-g and/or RSA 169-C:34 (NHJB-2083), for the court to use if issuing an order.

The court, if granting the motion, should issue its ruling on the multipurpose form, Order on DCYF's Motion in Furtherance of a Child Protection Investigation (NHJB-2083), reflecting the specific statutory relief granted, pursuant to RSA 169-C:12-g. Any interview conducted of the child shall be done in accordance with the provisions of RSA 169-C:38, V. Specifically, the interview with the child shall be videotaped if possible. If the interview is videotaped, it shall be videotaped in its entirety. If the interview cannot be videotaped in its entirety, an audio recording of the entire interview shall be made.

COMMENT

As set forth in RSA 169-C:38, II, law enforcement and DCYF shall cooperate in limiting the number of interviews of a child victim and, when appropriate, shall conduct joint interviews of the child. Further, law enforcement and DCYF shall have the right to enter any public place, including but not limited to schools and child care agencies, to conduct an interview with a child, with or

without the consent or notification of the child's parents(s), if there is reason to believe the child has been sexually molested, sexually exploited, intentionally physically injured so as to cause serious bodily injury, physically injured by other than accidental means so as to cause serious bodily injury, a victim of a crime, abandoned or neglected, pursuant to RSA 169-C:38, IV.

PROTOCOL 2 RSA 169-C:34, IV AND/OR RSA 169-C:34, VII—MOTION BY DCYF, AND COURT ORDER, TO ENTER THE PLACE WHERE A CHILD IS LOCATED OR TO ENTER THE PREMISES OF A CHILD'S PARENT(S)

DCYF may file a motion for, and the court may order, pursuant to RSA 169-C:34, IV and/or RSA 169-C:34, VII, DCYF to enter the place where a child is located or to enter the premises of a child's parent(s), as follows:

A. Enter the Place where a Child is Located, Pursuant to RSA 169-C:34, IV

If DCYF believes the immediate safety or well-being of a child may be endangered, DCYF should file the Motion in Furtherance of a Child Protection Investigation, Pursuant to RSA 169-C:12-g and/or RSA 169-C:34 (NHJB-2597). Since this is a multipurpose form, DCYF should indicate its requested relief pursuant to RSA 169-C:34, IV, and the circumstances that support its request. DCYF's practice is to file the Motion with a proposed Order on DCYF's Motion in Furtherance of a Child Protection Investigation (NHJB-2083), for the court to use if issuing an order.

If the court finds probable cause to believe a child's immediate safety or well-being is endangered, the court **shall order** DCYF to **enter the place where the child is located**, in furtherance of a child protection investigation, pursuant to RSA 169-C:34, IV. The court should issue its ruling on the multipurpose order form, Order on DCYF's Motion in Furtherance of a Child Protection Investigation (NHJB-2083).

Further, the court **shall order law enforcement to accompany** any child protection service worker (CPSW) executing such order, **as required by RSA 169-C:34, IV**, and set forth in the court's order.

COMMENT

Although RSA 169-C:34, IV, permits the court to also order a police officer or juvenile probation and parole officer (JPPO) to enter the place where the child is located in furtherance of a child protection investigation, DCYF's practice, as reflected in policy, is to only request such order for a CPSW to enter the place where the child is located and, pursuant to RSA 169-C:34, IV, that the CPSW be accompanied by a police officer.

B. Enter the Premises of a Child's Parent(s), Pursuant to RSA 169-C:34, VII

If a parent has refused to allow a social worker or state employee on their premises as part of a DCYF investigation, and DCYF has probable cause to believe that a child has been abused or neglected, DCYF is required to seek a court order to enter the premises, pursuant to RSA 169-C:34, VII. In such cases, DCYF should file the Motion in Furtherance of a Child Protection Investigation, Pursuant to RSA 169-C:12-g and/or RSA 169-C:34 (NHJB-2597). Since this is a multipurpose form, DCYF should indicate its requested relief pursuant to RSA 169-C:34-VII, and the circumstances that support its request. DCYF's practice is to file the Motion with a proposed Order on DCYF's Motion in Furtherance of a Child Protection Investigation (NHJB-2083), for the court to use if issuing an order.

If the court finds probable cause to believe a child has been abused or neglected, the **court shall issue an order** for a CPSW to **enter the premises**, in furtherance of a child protection investigation and to assess the child's immediate safety and well-being, pursuant to RSA 169-C:34, VII. The court should issue its ruling on the multipurpose order form, Order on DCYF's Motion in Furtherance of a Child Protection Investigation (NHJB-2083).

Further, the court shall **order law enforcement to accompany** any CPSW executing such order, **as required by RSA 169-C:34, VII**, and set forth in the court's order.

COMMENT

Although RSA 169-C:34, VII, also permits the court to order a police officer or JPPO to enter the premises of a parent(s) property or premises in furtherance of a child protection investigation and to assess the child's immediate safety and well-being, DCYF's practice, as reflected in policy, is to only request such order for a CPSW to enter the property or premises of a parent(s). Pursuant to RSA 169-C:34, VII, any CPSW who serves or executes such motion shall be accompanied by a police officer.

PROTOCOL 3 COURT RECEIPT OF DCYF'S MOTION AND IMMEDIATE COURT RULING

Upon receipt of DCYF's motion, court staff shall promptly give the motion to the court for immediate ruling. Although there is nothing in the statute about such filing being done on an ex parte basis, given the nature of DCYF's request in these circumstances, the court should handle these motions as it handles other ex parte filings.

PROTOCOL 4 ORDER TO DCYF AND LAW ENFORCEMENT

If the motion is granted, court staff shall promptly provide DCYF with the order and transmit a copy of the order to local law enforcement.

As reflected in the court order, law enforcement shall accompany any CPSW to enter the place where the child is located, as required by RSA 169-C:34, IV, or the premises of a child's parent(s), as required by RSA 169-C:34, VII. Law enforcement shall serve the parent(s), guardian(s), custodian(s), caregivers or other persons/entity where the child is located.

COMMENTS

Although RSA 169-C:12-g, RSA 169-C:34, IV and RSA 169-C:34, VII, are silent on service of the order, it is best practice for law enforcement to serve these orders on the relevant parties.

In the unusual circumstance that DCYF, accompanied by law enforcement as required for orders pursuant to RSA 169-C:34, IV and/or VII, is unable to execute the order, DCYF may file a Motion for Contempt and show cause hearing, seeking appropriate relief on an expedited basis if necessary. As with any request for a show cause hearing, notice shall be served by law enforcement on the parent(s) and/or any other relevant person/entity named in connection with the contempt allegation. Following the show cause hearing, the court shall issue any necessary orders, pursuant to its contempt powers.

PART B EX PARTE REQUEST BY DCYF OR A POLICE OFFICER

INTRODUCTION

The Child Protection Act recognizes that in certain emergency situations it may be necessary to take immediate steps to protect a child, including immediately removing a child from their home or expelling from the home a parent who is alleged to have abused or neglected the child. The act counterbalances this recognition with the caution that while quick and decisive action is sometimes necessary for the protection of the child, removal can have a drastic impact upon the family. Precipitous and unplanned removal of the child from home or forcible removal of a parent is always traumatic. Once such action is taken, it is difficult to reverse.

The procedure established by statute and these protocols requires that the court:

- act quickly to ensure the protection of the child;
- provide prompt procedural protection for parents consistent with the safety of the child;
- move proceedings forward as quickly as possible; and
- make as careful and considered a decision as emergency circumstances allow.

PROTOCOL 5 REQUEST FOR EX PARTE ORDER BY DCYF OR A POLICE OFFICER

Pursuant to RSA 169-C:6-a, I, if a child is found by DCYF to be in imminent danger in such circumstances or surroundings and where immediate removal appears necessary to protect the child, DCYF must contact a court for an ex parte order to remove the child. Ex parte means that due to the emergency circumstances that a child is in, DCYF makes a request of the court to remove a child without the involvement of and/or notification to the child's parents.

Pursuant to RSA 169-C:6-a, V, if the court issues an ex parte order based upon oral testimony provided by DCYF, DCYF shall, on the next business day, submit a written affidavit supporting its request for ex parte relief.

A police officer may also petition the court for an ex parte order, pursuant to RSA 169-C:6-a, II.

COMMENT

Under RSA 490:27-a, ex parte placement orders, pursuant to RSA 169-C, may be applied for and granted by facsimile or electronic transmission and courts

are encouraged to accept such ex parte requests.

PROTOCOL 6 EVIDENCE REQUIRED TO BE PRESENTED WHEN EX PARTE ORDER REQUESTED

Pursuant to RSA 169-C:6-a, II (a) through (f), the DCYF caseworker or police officer seeking an ex parte order shall, to the extent known, present the following evidence to the court in writing with sworn signature or orally under oath:

- A statement of the specific danger requiring either immediate placement of the child or removal of the alleged perpetrator;
- The time, place, and manner in which the child was removed from danger, if relevant;
- If the child was removed only by law enforcement prior to the court order, a brief statement why it was not possible to obtain the order prior to removal;
- Why there is not sufficient time to notify the parents, guardian(s), or custodian(s) prior to the order;
- The names and addresses of custodial parents, non-custodial parents, legal custodians, other legal guardians of the child, and any other person responsible for the welfare of the child at the time of removal; and
- When removal of the child is requested, those alternatives to foster care which were considered, such as removal of the alleged perpetrator, or placement of the child with relatives or others with whom the child is familiar.

PROTOCOL 7 THE COURT'S EX PARTE ORDER

The court shall immediately issue an Ex Parte Order. This order may be issued orally by telephone during normal business hours or after-hours, in person or by facsimile or electronic transmission. The order should include the following:

- Whether there is/is not reasonable cause to believe that the circumstances or surroundings present an imminent danger to the child’s health or life, which require the immediate placement of the child or, alternatively, whether there is/is not reasonable cause to believe that the circumstances or surroundings present an imminent danger to the child’s health or life, which require the immediate removal of the alleged perpetrator from the home;
- Whether continuation in the home is/is not contrary to the welfare of the child, pursuant to RSA 169-C:6-b, I;
- Whether DCYF will be awarded protective supervision or legal supervision;
- A requirement that either DCYF or the police shall file a **petition** meeting the requirements of RSA 169-C:7, **within 72 hours of the issuance of the ex parte order**, excluding Saturdays, Sundays and holidays, pursuant to RSA 169-C:6-a, VI; and

- Set the date and time of the **preliminary hearing**, which shall be scheduled, pursuant to RSA 169-C:6-a, IV, **no later than five (5) days from the date of the ex parte order**, excluding Saturdays, Sundays and holidays.

COMMENTS

As required by RSA 169-C:6-b, I and federal law, the court shall, in its first ruling that sanctions, even temporarily, the removal of a child from the home, determine whether continuation in the home is **contrary to the child's welfare**. If the court does not satisfy this requirement by making this "contrary to the welfare" determination in its first court ruling, the child is ineligible for Title IV-E foster care maintenance payment for their ENTIRE STAY IN FOSTER CARE.

Additionally, the court may want to make a determination with regard to **reasonable efforts to prevent removal of a child from the home**. Pursuant to RSA 169-C:6-b, II and federal law, the court shall, **within 60 days** of a child's removal from the home, determine and issue written findings as to whether reasonable efforts were made or were not required to prevent the child's removal. In determining whether reasonable efforts were made to prevent the child's removal, the court shall consider whether services to the family have been accessible, available, and appropriate. If this determination is not made, the child is ineligible for Title IV-E foster care maintenance payments for their entire stay in foster care.

PART C PROTECTIVE CUSTODY BY THE POLICE AND THE 48-HOUR PROTECTIVE CUSTODY HEARING

INTRODUCTION

This chapter applies when police take protective custody of a child and thereafter contact a judge, pursuant to RSA 169-C:6, II (a), for continued protective custody pending a 48-hour protective custody hearing.

PROTOCOL 8 PROTECTIVE CUSTODY BY THE POLICE

RSA 169-C:6, I, provides that a child may be taken into protective custody by the police without the consent of the parents and without a court order, if:

- the child is in such circumstances or surroundings as would present imminent danger to the child's health or life unless immediate action is taken; and
- there is not enough time to petition the court for an ex parte order pursuant to RSA 169-C:6-a, II.

If a police officer removes a child, the police officer shall:

(1) inform the court immediately, whereupon continued protective custody pending a hearing may be ordered by the court, pursuant to RSA 169-C:6, II(a); and

(2) when the child is removed from an individual other than a parent, make every effort to inform the parents where the child has been taken, pursuant to RSA 169-C:6, II(d).

COMMENTS

Best practice is for police, at the beginning of the next business day, to fax to the court the officer's affidavit and/or copy of the police report.

Pursuant to RSA 169-C:6, III, an individual acting in good faith pursuant to this section, shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed as a result of such removal or placement.

PROTOCOL 9 REQUEST BY POLICE FOR COURT ORDER FOR CONTINUED PROTECTIVE CUSTODY

The court should handle a request by police for an order for continued protective custody as follows:

A. Request by Police for Court Order

When a police officer takes a child into protective custody, pursuant to RSA 169-C:6, the police officer must contact a judge immediately to request an order allowing the continued protective custody of the child. In most instances, this contact will be made by telephone and, if the request is granted, will result in the court issuing an oral protective custody order to the police officer.

At the beginning of the next business day, the police officer should fax to the court a copy of the officer's affidavit and/or police report.

B. Court's Order to Continue Protective Custody

If a judge allows for and orally orders the continued protective custody of a child, the judge shall, by **the beginning of the next business day**:

1. notify the clerk that a 48-hour protective custody hearing must be scheduled; and

2. issue a written Protective Custody Telephonic Ex Parte Order so that the court will have made a timely finding as to why continuation in the home is contrary to the child's welfare, as required by RSA 169-C:6-b, I.

If a judge makes an order for a court other than the judge's court, the written order (and the officer's affidavit and/or copy of the police report) shall be faxed or emailed to the court with jurisdiction the beginning of the next business day. Upon receipt, the clerk shall immediately transmit a copy of the judge's order (and the officer's affidavit, and/or copy of the police report) to the DCYF district office.

COMMENTS

As required by RSA 169-C:6-b, I and federal law, the court shall, in its first court ruling that sanctions, even temporarily, the removal of a child from the home, determine whether continuation in the home is contrary to the child's welfare. If the court does not satisfy this requirement by making this **"contrary to the welfare"** determination in its first court ruling, the child is ineligible for Title IV-E foster care maintenance payment for their ENTIRE STAY IN FOSTER CARE.

Federal authorities do not accept later-issued orders with "nunc pro tunc" language. Therefore, if the court does not date its order on the day removal is ordered, federal funds will not be available for that child, and DCYF will have to use New Hampshire General Funds to pay for all of the child's/family's treatment, services, placement costs, etc.

PROTOCOL 10 SCHEDULING THE 48-HOUR PROTECTIVE CUSTODY HEARING

When a child is taken into protective custody and the court orders the continued protective custody of the child, the court shall, pursuant to RSA 169-C:6, IV, schedule a hearing on the matter within 48 hours of taking the child into protective custody, Saturdays, Sundays, and holidays excluded.

PROTOCOL 11 NOTICE OF THE 48-HOUR PROTECTIVE CUSTODY HEARING

Pursuant to RSA 169-C:6, IV, notice of the 48-hour protective custody hearing shall be given to all parties designated by the petitioner or the court. The police officer shall notify the child's parents and DCYF about the hearing.

PROTOCOL 12 CONDUCTING THE 48-HOUR PROTECTIVE CUSTODY HEARING

The 48-hour protective custody hearing is the first opportunity that parents have to be in court following their child being taken into protective custody by the police. At this hearing, the court should consider its Protective Custody Telephonic Ex Parte Order, the police officer's affidavit and/or a copy of the police report supporting the reasons for removal and should make the following findings:

- Whether there does/does not continue to be reasonable cause to believe that the circumstances or surroundings present an imminent danger to the child's health or life, which require continued placement of the child; and
- Whether continuation in the home is/is not contrary to the welfare of the child, pursuant to RSA 169-C:6-b, I.

PROTOCOL 13 THE COURT'S PROTECTIVE CUSTODY HEARING ORDER

The court shall issue a 48-Hour Protective Custody Hearing Order. This order should include the following:

- Whether there does/does not continue to be reasonable cause to believe that the circumstances or surroundings present an imminent danger to the child's health or life, which require continued placement of the child;
- Whether continuation in the home is/is not contrary to the welfare of the child, pursuant to RSA 169-C:6-b, I;
- Whether DCYF will be awarded protective supervision or legal supervision;

- If a petition is to be filed, require that it be filed, pursuant to RSA 169-C:7, within 72 hours of the order, Saturdays, Sundays and holidays excluded; and
- Set the date and time of the preliminary hearing, which shall be scheduled, consistent with RSA 169-C:6-a, III, **no later than five (5) days from the date of the Protective Custody Telephonic Ex Parte Order**, excluding Saturdays, Sundays and holidays.

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•RSA 169-C:4, Jurisdiction, Continued Jurisdiction, Modification

•RSA 169-C:7, Petition

•RSA 169-C:7-a, Petition for Protective Order Filed on Behalf of Minor

•RSA 169-C:8, Issuance of Summons and Notice

•RSA 169-C:10, Attorneys and Guardians ad Litem

•RSA 169-C:15, Preliminary Hearing

•RSA 169-C:25, Confidentiality

25SA 490-D:2, Jurisdiction

PROTOCOL 1 JURISDICTION

The Circuit Court - Family Division shall have exclusive original jurisdiction over all proceedings alleging the abuse or neglect of a child, pursuant to RSA 169-C:4 and RSA 490-D:2, IV.

Pursuant to RSA 169-C:4, II, the court may, with the consent of the child, retain jurisdiction over any child, who, prior to their eighteenth birthday, was found to be neglected or abused and who is attending school until such child completes high school or until their twenty-first birthday, whichever occurs first. A child who has consented to the continued jurisdiction of the court pursuant to RSA 169-C:4, II-a, may revoke their consent and request that the case be closed.

When a custody award has been made pursuant to RSA69-C, said order shall not be modified or changed, nor shall another order affecting the status of the child be issued, pursuant to RSA 169-C:4, III.

PROTOCOL 2 PETITION

Pursuant to RSA 169-C:7, I, a child protection proceeding is originated by any person filing a petition alleging abuse or neglect, with a judge or clerk in the judicial district in which the child is found or resides. The petition shall be verified under oath by the petitioner.

A. Legally Sufficient Petition

Pursuant to RSA 169-C:7, III, to be legally sufficient, the petition shall set forth the facts alleged to constitute abuse or neglect, and the statutory grounds upon which the petition is based.

Additionally, the petition, pursuant to RSA 169-C:7, IV, shall include, to the extent known, the following:

- the name, birth date, and address of the child;
- the name and address of any custodial parent;
- the name and address of any non-custodial parent;
- the name and address of any other individual or agency having custody of the child; and
- the name of any household member who is subject to the order.

COMMENTS

A household member, pursuant to RSA 169-C:3, XIV-a, means any person living with the parent, guardian, or custodian of the child from time to time or on a regular basis, who is involved occasionally or regularly with the care of the child.

In addition to the child protection process that is covered by these protocols, there is a separate process, set forth in RSA 169-C:7-a and described in Chapter 1, Part D, Introduction. Known as "Jade's Law", RSA 169-C:7-a permits a parent or guardian to file a petition for a protective order on behalf of a minor, alleging abuse of the minor by a member of the minor's family or household. Under RSA 169-C:7-a, the court shall not accept a petition that is filed by a child's parent against the other parent. Any order issued pursuant to RSA 169-C:7-a may be in addition to a RSA 173-B order and may be consolidated with a proceeding under RSA 173-B. A RSA 169-C:7-a filing is a new petition and case. A "Jade's Law" petition is a separate protective order case and is not part of an open RSA 169-C case.

B. Paternity Testing Required

An **individual for whom DCYF believes paternity testing is required should NOT be named** as a **parent** on a RSA 169-C petition. When a parent is named on a RSA 169-C petition, that person is automatically made a party to the case and entitled to all confidential information. Instead, the court should expect DCYF to file a **Motion for Paternity Testing for Putative Father** (Section III of NHJB-3171) as set forth in Chapter 4, Part B, Protocol 6(C).

C. Ex Parte Orders and Filing of Petition

If the court issues ex parte orders, as set forth in Chapter 2, Part B, DCYF or the law enforcement officer shall file a petition meeting the requirements of RSA 169-C:7 within 72 hours of the issuance of the orders, excluding Saturday, Sunday and holidays, pursuant to RSA 169-C:6-a, VI.

PROTOCOL 3 PERSONAL SERVICE AND/OR SERVICE BY PUBLICATION

In the first instance, when a RSA 169-C petition is filed, the court should have all persons named in the petition served personally, as set forth below in Section A.

For cases in which the location of a parent(s) is(are) unknown when a RSA 169-C petition is filed and, if DCYF requests and the court grants service by publication, the court should proceed as set forth below in Section B. Such parent may be petitioned or non-petitioned.

In limited circumstances, when DCYF files a RSA 169-C petition, it may request and the court may grant that service be attempted concurrently through personal service and service by publication. If so, the court should proceed as set forth below in Sections A and B.

A. Personal Service

Pursuant to RSA 169-C:8, I, after a RSA 169-C petition has been filed, the court shall issue a summons to all persons named in the petition, to be **served by law enforcement personally**. Such summons shall be issued **by the end of the next business day**. The clerk shall:

1. complete the summons by inserting the selected date for the preliminary hearing (see Chapter 5 to determine appropriate date) in the "Order and Notice of Hearing" included at the bottom of the petition. In this section, the parents (or legal guardian of the child) are summoned to appear at the preliminary hearing;

2. prepare the service packet, to include the following:

    - Petition/Affidavit;
    - Applicable notice forms for parents (Notice to Petitioned Parent; Notice to Non-Petitioned, Household Member; and/or Notice to Non-Petitioned, Non-Household Parent);
    - A blank Acknowledgment of Possible Consequences to Parental Rights form;
    - Right to an Attorney/Request for Attorney/Waiver of Attorney form;
    - Financial Affidavit;
    - Notification of appointment of counsel if parent is either petitioned or, if non-petitioned, is a household member; and
    - Notification of appointment of guardian ad litem.

3. send to the appropriate law enforcement authority a request to serve personally those named in the petition. Additionally, request law enforcement to fax or deliver to the court the return of service immediately upon completion of service. If the return of service is faxed, the original should be subsequently mailed to the court;

4. send DCYF a copy of the entire service packet, and send notice of the preliminary hearing to all other parties in the RSA 169-C case; and

5. when the court receives the return of service document from law enforcement, the court shall promptly send a copy of such document to DCYF.

COMMENTS

Although RSA 169-C:8, I, permits personal service or, if not possible, service at the usual place of abode, the latter is typically

not done due to the confidential nature of a RSA 169-C case, pursuant to RSA 169-C:25.

If a legal guardian of a child is named in a RSA 169-C petition, the guardian must be served as set forth above.

B. Service By Publication

For cases in which the location of a parent(s) is(are) unknown when DCYF files a RSA 169-C petition, DCYF may, pursuant to RSA 169-C:8, I-a, request service by publication. This may be for a petitioned or non-petitioned parent. In such cases, DCYF's practice, as reflected in policy, is to file, **with its petition**, a **Motion for Service by Publication (NHJB-2722)**.

Pursuant to RSA 169-C:8, I-a, DCYF must also file an affidavit describing its efforts to locate the parent(s), and to do so, DCYF should use the form DCYF's Affidavit to Identify and/or Locate a Parent, Guardian or Putative Father (NHJB-3031).

The court shall promptly rule on DCYF's Motion for Service by Publication.

If the motion is granted regarding a **petitioned parent**, the clerk shall select a date and time for a **preliminary hearing**. To allow adequate time for service by publication to be completed and the hearing to be held on the noticed date and time and, as required by RSA 169-C:8, I-a, no sooner than seven (7) days from the last date of publication, best practice is for the court to schedule the preliminary hearing **at, or just before, forty days from the date of the filing of the petition**, pursuant to RSA 169-C:8, I-a. See Chapter 5, Protocol 3.

If the motion is granted regarding a **non-petitioned parent**, the clerk shall schedule a **Notification of Rights and Consequences Hearing**. To allow adequate time for service by publication to be completed and the hearing to be held on the noticed date and time, best practice is for the court to schedule the Notification of Rights and Consequences Hearing **at, or just before, forty days from the date of the granting of the Motion for Service by Publication**, consistent with RSA 169-C:8, I-a. See Chapter 4, Protocol 8.

Further, the clerk shall:

1. prepare, by the end of the next business day after the motion is granted, the Citation for Service by Publication—Abuse/Neglect of Child(ren). Service by publication is once a week for two consecutive weeks in a newspaper of general circulation where the parent(s) was(were) last domiciled, pursuant to RSA 169-C:8, I-a;
2. send DCYF the Citation for Service by Publication—Abuse/Neglect of Child(ren) for DCYF to promptly arrange for service by publication. DCYF is responsible for payment for such publication;

3. send a copy, to all other parties in the RSA 169-C case, of the court's order on DCYF's Motion for Service by Publication, with attached Affidavit, and notice of the preliminary hearing or, if applicable, the Notification of Rights and Consequences Hearing for a non-petitioned parent;
4. request, through the cover letter for the Citation for Service by Publication—Abuse/Neglect of Child(ren), that the publisher deliver directly to the court the return of service upon completion of service; and
5. when the court receives the return of service document from the publisher, the court shall promptly send a copy of such document to DCYF.

COMMENTS

If DCYF wants to request service by publication for a petitioned parent, that decision will be made before a petition is filed so that a Motion for Service by Publication may be included with the filing. This will allow sufficient time for such service to be accomplished and thereafter, if reasonable cause is found that a child is abused/neglected, an adjudicatory hearing and order to issue within 60 days of the filing of the petition, as required by RSA 169-C:15, III(d).

For cases in which DCYF does not file, with its petition, a Motion for Service by Publication for a petitioned parent and personal service on that parent is unsuccessful, DCYF's practice is to file a Notice of Withdrawal of the petition and refile, as reflected above, with a Motion for Service by Publication. This will be done to meet the requirements of RSA 169-C:15, III(d), that the adjudicatory hearing be held and completed, and written findings issued within 60 days of the filing of the petition.

DCYF may not know the identity of one parent, known as a missing parent, at the time a petition is filed against the other petitioned parent. **If DCYF only learns the identity of a missing parent after the petition is filed, and DCYF chooses not to petition such parent, DCYF may nevertheless file a Motion for Service by Publication on the now-identified non-petitioned parent.** If such a motion is filed and granted, the trigger for the forty-day timeframe to schedule the Notification of Rights and Consequences Hearing should be the date the motion is granted, rather than the date the original petition was filed.

In limited circumstances, DCYF may be interested in having personal service and service by publication done at the same time, including for cases in which DCYF believes it knows the general location of a parent(s) but does not have a physical address. In such circumstances, DCYF should request, in its Motion for Service by Publication, both personal service and

service by publication. Additionally, when personal service is not accomplished in such cases but a parent is served by publication, DCYF's practice, as reflected in policy, is to continue to make reasonable efforts to locate the parent who, once served by publication, is no longer a missing parent, as defined in Chapter 1 B, Part A, Protocol 1, but now a **disengaged parent. If such parent is ultimately located, DCYF will inform the court of the parent's current mailing address so the court can send the parent past court documents/orders and future court notices/orders**.

Although RSA 169-C:8, I-a, permits service by publication or certified mail when a parent's location is unknown, **DCYF's practice**, as reflected in policy**, is to request service by publication, not certified mail**, when a parent's location is unknown.

Pursuant to RSA 169-C:8, I-a, the **need for service by publication shall constitute extraordinary circumstances to extend the time for an adjudicatory hearing**, pursuant to RSA 169-C:15, III(d). The court must still, however, hold and complete the adjudicatory hearing, and issue written findings, within sixty days of the filing of the petition, pursuant to RSA 169-C:15, III(d).

C. DCYF to Arrange for Service by Publication

Upon receipt of the court's Citation for Service by Publication—Abuse/Neglect of Child(ren), it is essential that DCYF promptly arrange for service by publication to be completed timely so the preliminary hearing or, if applicable, the Notification of Rights and Consequences Hearing for a non-petitioned parent, may be held on the noticed date and time. In particular, DCYF should be sure to deliver the citation to the publisher, as reflected in policy, so that **the last date of publication is at least seven (7) days before the hearing**, consistent with RSA 169-C:8, I-a. DCYF is responsible for payment for such publication.

Service by publication is once a week for two (2) consecutive weeks in a newspaper of general circulation where the parent was last domiciled, pursuant to RSA 169-C:8, I-a.

A parent who is served by publication can, by contacting the court identified in the newspaper, receive a copy of the petition/affidavit and applicable notice forms (Notice to Petitioned Parent; Notice to Non-Petitioned, Household Member; and/or Notice to Non-Petitioned, Non-Household Parent), as well as other relevant documents in the case.

PROTOCOL 4 THE COURT'S APPOINTMENT OF COUNSEL FOR PARENTS

The court's appointment of counsel for parents should be determined as follows:

A. Mandatory Appointment of Counsel

The court shall appoint an attorney to represent an indigent parent alleged to have neglected or abused their child, pursuant to RSA 169-C:10, II (a).

B. Discretionary Appointment of Counsel

RSA 169-C:10, II(a), allows the court to appoint counsel to a non-petitioned parent who is a household member. Therefore, the court should appoint counsel for a non-petitioned, household member in order to protect the parent's fundamental liberty interest. The discretionary appointment is permitted only when 1) a non-petitioned parent is a household member and 2) such **independent legal representation is necessary** to protect the parent's interests.

Pursuant to RSA 169-C:10, II (a), the court may not appoint an attorney to represent any other persons involved in a case brought under RSA 169-C, including, but not limited to, a **non-petitioned, non-household parent**, or a **child's guardian** whether or not petitioned.

COMMENT

Pursuant to RSA 169-C:3, XIV-a, a **household member** means any person living with the parent, guardian, or custodian of the child from time to time or on a regular basis, who is involved occasionally or regularly with the care of the child.

PROTOCOL 5 THE COURT'S APPOINTMENT OF A COURT APPOINTED SPECIAL ADVOCATE (CASA GAL) OR GUARDIAN AD LITEM (GAL)

Pursuant to RSA 169-C:10, I, the court shall appoint a Court Appointed Special Advocate (CASA) or other approved program guardian ad litem.

If a CASA GAL or other approved program guardian ad litem is unavailable for appointment, the court may then appoint an attorney or other guardian ad litem as the guardian ad litem for the child. "Unavailable for appointment", pursuant to RSA 169-C:10, I, means that there is no CASA or other approved program guardian ad litem available for appointment by the court following a finding of reasonable cause at the preliminary hearing so that the child's interests may effectively be represented in preparation for and at an adjudicatory hearing.

COMMENT

Although RSA 169-C:15, III(a), calls for the appointment of a guardian ad litem for the child upon a finding at a preliminary hearing of reasonable cause that the child is abused or neglected, best practice is for a CASA GAL to be appointed immediately upon the filing of a RSA 169-C petition and for a non-CASA GAL to be appointed, if applicable, immediately after the preliminary hearing.

PROTOCOL 6 THE COURT'S APPOINTMENT OF COUNSEL FOR A CHILD

Pursuant to RSA 169-C:10, II(a), in cases involving an abused or neglected child, where the child's expressed interests conflict with the recommendation for dispositional orders of the CASA GAL/GAL, the court may appoint an attorney to represent the interests of the child.

TABLE OF CONTENTS
CHAPTER 4 MISSING PARENT AND PARENT SUBSEQUENTLY FOUND

STATUTORY REFERENCES:

•RSA 169-C:8, Issuance of Summons and Notice

•RSA 169-C:15, Preliminary Hearing

•RSA 196-C:18, Adjudicatory Hearing

•RSA 169-C:19-e, Custody Hearing for Parent Not Charged With Abuse or Neglect

•RSA 196-C:21, Final Order

•RSA 196-C:22, Modification of Dispositional Orders

•RSA 196-C:25, Confidentiality

•RSA 170-B:2, Definitions

•RSA 17-B:5, Persons Required to Execute a Surrender of Parental Rights

•RSA 170-B:6, Notice to Person Claiming Paternity and Hearing to Determine Right to Surrender

CASE LAW:

• *In re Bill F.*, 145 N.H. 267, 274 (2000)

PART A MISSING PARENT

INTRODUCTION

Delays in identifying and/or locating a missing parent often prolong a child's uncertainty about their future, which is inconsistent with a child's need for security and a sense of well-being. Consequently, it is extremely important that missing parents of children involved in RSA 169-C proceedings be identified and/or located as soon as possible after a petition is filed.

As set forth in the National Council of Juvenile and Family Court Judges' *Enhanced Guidelines*, early identification and location of a missing parent include the following benefits:

- the child being placed with their parent;
- strengthening the parent-child relationship;
- the parent connecting the child protection agency with relatives who are able and willing to provide support for the child, including placement;
- the parent's social security benefits aiding the child; and
- the parent providing health information which may be of value to foster parents, health care professionals and others who are assisting the child.

PROTOCOL 1 DEFINING A MISSING PARENT

For purposes of these protocols, the court and parties should construe a "missing parent" in a RSA 169-C case to mean:

- a parent who is **named** in a RSA 169-C petition involving their child(ren) but whose **address/location** is **unknown**. This parent may be a petitioned parent (alleged to have abused or neglected the child(ren)) or a non-petitioned parent (not alleged to have abused or neglected the child(ren));
- a parent who is **unnamed** in a RSA 169-C petition involving the petitioned parent and their child(ren); or
- a **putative father** who is known to DCYF when a RSA 169-C petition is filed or who becomes known to DCYF after a petition is filed.

COMMENTS

New Hampshire statutes, including RSA 169-C, do not specifically define the term "putative father." In considering who may be a putative father, the court may look to other statutory definitions, including RSA 170-B:2, III (Definitions, Birth Father),

RSA 170-B:5 (Persons Required to Execute a Surrender of Parental Rights), and RSA 170-B:6 (Notice to Person Claiming Paternity and Hearing to Determine Right to Surrender).

Additionally, the court may consider the following description of a "putative father", which "generally means a man whose legal relationship to a child has not been established but who is alleged to be or claims that he may be the biological father of a child who is born to a woman to whom he was not married at the child's birth."

An **individual for whom DCYF believes paternity testing is required should NOT be named** as a **parent** on a RSA 169-C petition. When a parent is named on a RSA 169-C petition, that person is automatically made a party to the case and entitled to all confidential information. Instead, DCYF should file a Motion for Paternity Testing for Putative Father as set forth below in Protocol 6, C.

When a parent is **served with a RSA 169-C petition** and subsequently **does not appear or participate in the case**, this parent is considered to be **"disengaged"** rather than "missing." This chapter is NOT intended to apply to a disengaged parent. DCYF will continue to make reasonable efforts to assist a disengaged parent in complying with the case plan, in hopes that such parent will ultimately participate in the case.

PROTOCOL 2 AFFIDAVIT TO IDENTIFY AND/OR LOCATE A PARENT, GUARDIAN OR PUTATIVE FATHER

When there is a missing parent in a RSA 169-C case, the court should expect that DCYF, consistent with its practice, will submit an **Affidavit to Identify and/or Locate a Parent, Guardian or Putative Father (NHJB-3031)** prior to every RSA 169-C hearing and with its court report and/or proposed order.

PROTOCOL 3 THE COURT'S OVERSIGHT ROLE WHEN THERE IS A MISSING PARENT

The court's oversight role when there is a missing parent in a RSA 169-C case is to ensure DCYF submits an Affidavit to Identify and/or Locate a Parent, Guardian or Putative Father prior to every RSA 169-C hearing and makes reasonable efforts to identify and/or locate a missing parent.

In carrying out this oversight role, the court should do the following:

A. Prior to Every RSA 169-C Hearing, Review the Affidavit to Identify and/or Locate a Parent, Guardian or Putative Father

When there is a missing parent in a RSA 169-C case, the court should, **prior to every RSA 169-C hearing**, review DCYF's Affidavit to Identify and/or Locate a Parent, Guardian or Putative Father.

COMMENT

The Fostering Connections Act (42 U.S.C. 1305) "requires due diligence to identify and provide notice to all relatives **within thirty (30) days** of removal. This includes non-resident, non-custodial fathers and paternal relatives. The court should ask what actions the social worker has taken to identify and locate the father." This requirement is "subject to exceptions due to family or domestic violence."

B. At Every Hearing, Conduct a Colloquy with DCYF about the Affidavit

When there is a missing parent in a RSA 169-C case, the court should**, at every RSA 169-C hearing**, conduct a **colloquy** with DCYF about the Affidavit. This colloquy should include, but not be limited to, the following:

- what **reasonable efforts** DCYF has made **to date**, as described in the Affidavit, to identify and/or locate the missing parent, including whether DCYF has, consistent with its practice, **asked the petitioned parent** for the missing parent's name and their address or last known address; and
- if **DCYF has not submitted an Affidavit** before the hearing, inquire about DCYF's reasonable efforts to date to locate/identify a missing parent, and require DCYF to submit the Affidavit describing these efforts to the court and all parties **within five (5) calendar days** of the hearing.

C. At Every Hearing, Ask Parties About the Missing Parent and/or Relatives of the Missing Parent

At every hearing, the court should ask the parties if anyone knows the name and/or address of the missing parent and their relatives. If known, the court should instruct the party or parties to provide this information to DCYF.

COMMENT

The **Notice to Petitioned Parent** informs a parent of the consequences of a missing parent being identified and/or located.

PROTOCOL 4 THE COURT'S ORDER WHEN THERE IS A MISSING PARENT

When there is a missing parent, the court's order should set forth:

- Whether DCYF **submitted**, prior to the hearing, an **Affidavit** to Identify and/or Locate a Parent, Guardian or Putative Father. If not, require DCYF to submit the Affidavit to the court and all parties **within five (5) calendar days** of the hearing; and
- Whether DCYF has made **reasonable efforts to date** to identify and/or locate the missing parent.

PART B MISSING PARENT SUBSEQUENTLY IDENTIFIED AND/OR LOCATED

PROTOCOL 5 MISSING PARENT SUBSEQUENTLY IDENTIFIED AND/OR LOCATED

When there is a missing parent who has been subsequently identified and/or located after a petition is filed:

- If the now-located parent was a petitioned parent (alleged to have abused or neglected the child(ren)), then DCYF will notify the court of the missing parent's address for service and the normal RSA 169-C process will occur and the subsequent protocols, with the exception of Protocol 7, A, 1, will not apply. Instead, the court will proceed according to RSA 169-C, beginning with the scheduling of a Preliminary Hearing on that parent's petition.

- If the now-located individual was not originally a petitioned parent (not alleged to have abused or neglected the child(ren)), DCYF will decide whether or not to file a RSA 169-C petition against the parent.

    - If DCYF files a RSA 169-C **petition** against the missing parent who is identified and/or located, the court will be notified of the parent's address in the newly filed petition and the normal RSA 169-C process beginning with the scheduling of a Preliminary Hearing on that parent's petition.

    - If DCYF **does not** file a RSA 169-C **petition** against the parent, the parent will be either a non-petitioned parent or putative father and the subsequent **protocols will apply**.

PROTOCOL 6 DCYF FILING NOTICE REGARDING MISSING PARENT OR GUARDIAN, MOTION TO JOIN MISSING PARENT OR MOTION FOR PATERNITY TESTING FOR PUTATIVE FATHER

When there is a missing parent, as defined above in Protocol 1, who has been identified and/or located, the court should expect that DCYF will file the 3-part form entitled **Notice Regarding Missing Parent or Guardian, Motion to Join Missing Parent or Motion for Paternity Testing for Putative Father (NHJB-3171).** Section 1 is a Notice Regarding Missing Parent or Guardian, Section II is a Motion to Join Missing Parent, and Section III is a Motion for Paternity Testing for Putative Father. DCYF will proceed as follows:

A. Petitioned or Non-Petitioned Parent Initially Named on the RSA 169-C Petition

If the individual identified and/or located was initially named as a petitioned or non-petitioned parent on the RSA 169-C petition, the court should expect that DCYF will promptly file a **Notice Regarding Missing Parent or Guardian** (Section I of NHJB-3171) for this parent, in order to provide the court with the parent's address for service. DCYF **does not need to include a request that the parent be joined** to the RSA 169-C case, as court staff will have already entered this parent as a party when the petition was initially filed.

B. Non-Petitioned Parent Not Initially Named on the RSA 169-C Petition and Paternity Testing Not Required

If the individual identified and/or located by DCYF was NOT initially named as the parent on the RSA 169-C petition, but after being identified and/or located DCYF has concluded that paternity testing is NOT required, the court should expect that DCYF will promptly file a **Motion to Join Missing Parent** (Section II of NHJB-3171) for this non-petitioned parent, to provide the court with the parent's name and address for service and to motion the court for the non-petitioned parent to be joined to the RSA 169-C case.

C. Individual Identified and/or Located is a Putative Father and Paternity Testing Requested

If the individual identified and/or located by DCYF is a putative father and DCYF believes paternity testing is required, the court should expect that DCYF will promptly file a **Motion for Paternity Testing for Putative Father** (Section III of NHJB-3171) to motion the court for paternity testing for this individual, consistent with DCYF's practice.

PROTOCOL 7 THE COURT'S ISSUANCE OF SUMMONS AND REQUESTS TO LAW ENFORCEMENT

The court's issuance of summons and requests to law enforcement should be handled as follows:

A. Parent Who is Either Initially Named on the RSA 169-C Petition or Not Initially Named on the RSA 169-C Petition but DCYF Has Concluded Paternity Testing Not Required

Upon receipt of the **Notice Regarding Missing Parent or Guardian (Section I of NHJB-3171)** for a parent who is either initially named on the RSA 169-C petition, or receipt of the **Motion to Join Missing Parent (Section II of NHJB-3171)** for a parent not initially named on the RSA 169-C petition but for whom DCYF has concluded paternity testing is not required, the court shall:

1. issue a summons, by the end of the next business day, to the parent, to be served by the appropriate law enforcement authority, consistent with RSA 169-C:8. The service packet should include the following:

    - Petition/Affidavit for Abuse/Neglect in the RSA 169-C case involving their child(ren);

    - All court orders mailed to date in the RSA 169-C case involving their child(ren). However, if orders are voluminous, court staff should only include the Adjudicatory Hearing Order/Consent in Lieu of Adjudicatory Hearing Order (if applicable) and the most recent court order in the service packet and all other orders may be mailed to the parent after service is accomplished; and

    - For now-located **Petitioned** Parent:
        - Notice to Petitioned Parent;
        - Notice of Preliminary hearing; and
        - Notice of the next scheduled hearing for any other petitioned parent; OR

    - For now-located **Non-Petitioned** Parent:
        - Notice Form (Notice to Non-Petitioned Parent Who is a Household Member or Notice to Non-Petitioned, Non-Household Member);
        - Notice of a Notification of Rights and Consequences Hearing; and
        - Notice of the next scheduled hearing for the petitioned parent.

2. send DCYF a copy of the entire service packet, and send notice of the hearing scheduled above to all other parties in the RSA 169-C case;

3. give instructions to the law enforcement authority to fax or deliver to the court the return of service immediately upon completion of service. If the return of service is faxed, the original should be subsequently mailed to the court; and

4. when the court receives the return of service document from law enforcement, or when the missing parent completes an acceptance of service document, the court shall promptly send a copy of such document to DCYF.

B. Individual Identified and/or Located is Putative Father and Paternity Testing Requested

When a putative father is identified/located, DCYF should request paternity testing by filing the **Motion for Paternity Testing for Putative Father (Section III of NHJB-3171)**.

- Court Order's granting Motion for Paternity Testing for Putative Father

  The court should promptly rule on the motion. Once granted, the court should add the putative father as a "participant" and proceed as set forth below. The putative father is NOT joined as a "party" to the RSA 169-C case until and unless paternity is established and DCYF requests the individual be joined to the RSA 169-C case. Therefore, the putative father WILL NOT be sent the petition/affidavit and all court orders to date in the RSA 169-C case, consistent with RSA 169-C:25 (Confidentiality). Instead, the court should send to the putative father a copy of the granted Motion for Paternity Testing for Putative Father (NHJB-3171), which sets forth following:

  - order the putative father to participate in paternity testing as arranged by DCYF;
  - order the person with physical custody to make the child(ren) available for paternity testing;
  - order DCYF to expeditiously schedule paternity testing; and
  - order DCYF to file**, within 45 calendar days** of the paternity order, the paternity results or, if the results are unavailable, an explanation as to why the results are pending and when it is projected they will be received by DCYF and filed with the court.

  The court shall**, within five (5) calendar days** of DCYF's motion requesting paternity testing, mail the paternity testing order to the putative father. Additionally, the court shall mail this order to all parties in the RSA 169-C case.

  COMMENT

  Requiring the results of paternity testing to be filed within 45 calendar days of the court's order for such testing is based on DCYF indicating paternity testing takes approximately thirty (30) days.

- Paternity Results Received by DCYF

  As ordered, DCYF should file, within 45 calendar days of the paternity order, the paternity testing results.

If the **paternity results do not indicate the putative father is the biological father**, the court should expect DCYF to file the paternity results with the court, requesting no further involvement of that individual in the RSA 169-C case.

If the **paternity results show that the putative father is the biological father**, the court should expect DCYF to file a Motion to Join Missing Parent (Section II of NHJB-3171), asking the court to join the now-identified father as a party to the RSA 169-C case. DCYF must attach the paternity results to the motion.

- Court Action Upon Receiving Paternity Results

  If the **paternity results do not indicate the putative father is the biological father**, the court will then remove the putative father as a participant in the case.

  If the **paternity results show that the putative father is the biological father**, the court shall promptly rule on the Motion to Join Missing Parent. Once the Motion to Join is granted, this individual will become a full party to the case as a non-petitioned parent. The court shall:

  1. issue a summons, by the end of the next business day, to be served by the appropriate law enforcement authority, consistent with RSA 169-C:8. The service packet should include the following:

     - **Petition/Affidavit** for Abuse/Neglect in the RSA 169-C case;
     - **Notice Form** (Notice to Non-Petitioned Parent Who is a Household Member or Notice to Non-Petitioned, Non-Household Member);
     - **Notice of a Notification of Rights and Consequences Hearing**, to be held within seven (7) calendar days of DCYF's filing of a motion with paternity results in which paternity is established;
     - **Notice for the next scheduled hearing for the petitioned parent**; and
     - **All court orders mailed to date** in the RSA 169-C case. However, if orders are voluminous, court staff should only include the Adjudicatory Hearing Order/Consent in Lieu of Adjudicatory Hearing Order (if applicable) and the most recent court order in the service packet and all other orders may be mailed to the non-petitioned parent after service is accomplished.

  2. send DCYF a copy of the entire service packet, and send notice of the Notification of Rights and Consequences Hearing for the non-petitioned parent to all parties to the RSA 169-C case;

  3. give instructions to the law enforcement authority to fax or deliver to the court the return of service immediately upon completion of service.

If the return of service is faxed, the original should be subsequently mailed to the court; and

4. when the court receives the return of service document from law enforcement, or when the missing parent completes an acceptance of service document, the court shall promptly send a copy of such document to DCYF.

PROTOCOL 8 SCHEDULING A NOTIFICATION OF RIGHTS AND CONSEQUENCES HEARING

The court should schedule a Notification of Rights and Consequences Hearing for 1) a previously missing, now identified and/or located non-petitioned parent or 2) a previously designated putative father for whom paternity has been established, as follows:

- **within seven (7) calendar days** of DCYF's filing either a **Notice Regarding Missing Parent or Guardian (Section I of NHJB-3171)** or a **Motion to Join Missing Parent (Section II of NHJB-3171)**, when the preliminary hearing was already held before the **non-petitioned parent** was identified and/or located and the parent is to be served by law enforcement; or
- If a non-petitioned parent is identified but their location is unknown, DCYF may file a motion for service by publication. To allow adequate time for service by publication to be completed and the hearing to be held on the noticed date and time, best practice is for the court to schedule the Notification of Rights and Consequences Hearing **at, or just before, forty days from the date of the granting of the Motion for Service by Publication**, consistent with RSA 169-C:8, I-a and Chapter 3, Protocol 3(B).

PROTOCOL 9 THE COURT CONDUCTING A NOTIFICATION OF RIGHTS AND CONSEQUENCES HEARING

At a Notification of Rights and Consequences Hearing for a non-petitioned parent, the court shall review the **Acknowledgement of Possible Consequences to Parental Rights in Abuse and Neglect Cases (NHJB-2209)** with the non-petitioned parent and:

- determine, pursuant to RSA 169-C:15, IV, whether the parent understands the possible consequences to their parental rights should the court find that the child(ren) is(are) abused and/or neglected, and have the parent sign the Acknowledgement form; and

- review the information about the parent's right to request a parental fitness hearing to obtain custody of their child(ren), pursuant to RSA 169-C:19-e and, pursuant to In re Bill F., 145 N.H. 267, 274, 761 A.2d 470 (2000), that a parental

fitness hearing addresses physical custody only, and that a court order in a RSA 169-C case vesting a fit parent with physical custody is not a permanent order of custody, and expires upon closure of the RSA 169-C case.

COMMENT

If, after reviewing the Acknowledgement form with the parent, the parent declines to sign the form, the court should complete the form itself indicating that the court has reviewed the information with the parent on the record.

The court should also, if applicable, discuss:

- **visitation** with the parent(s) and/or siblings;
- **evaluation**, **examination and treatment** for the child(ren), parent(s), guardian, custodian, and/or household member subject to the petition;
- **services** for the child(ren) and/or parent(s);
- **financial affidavit** for a parent(s);
- **social study, case plan**, and **dispositional order**, as set forth below in Protocol 10; and/or
- if previously scheduled in the RSA 169-C case, discuss the **permanency hearing**.

PROTOCOL 10 THE COURT'S NOTIFICATION OF RIGHTS AND CONSEQUENCES ORDER

After conducting a Notification of Rights and Consequences Hearing, the court should mail**, within fourteen (14) calendar days,** a **Notification of Rights and Consequences Hearing Order**. The order should be mailed to all parties to the RSA 169-C case, along with a copy of the signed Acknowledgement of Possible Consequences to Parental Rights in Abuse and Neglect Cases form.

The court order should include the following:

A. Findings of Fact

1. The **date of the RSA 169-C court order** in which the court 1) found reasonable cause to believe the child(ren) is(are) abused and/or neglected, or 2) found the child(ren) is(are) abused and/or neglected;

2. The **date of the last hearing convened** in the RSA 169-C case;

3. That the court reviewed with the parent, and the parent signed, the **Acknowledgement of Possible Consequences to Parental Rights In Abuse and Neglect Cases** and that the court has determined, pursuant

to RSA 169-C:15, IV, that the parent understands the possible consequences to their parental rights based on the above court finding(s) that their child(ren) is(are) abused and/or neglected;

4. That the court reviewed with the parent their **right to request a parental fitness hearing** to obtain custody of their child(ren), pursuant to RSA 169-C:19-e, and that a parental fitness hearing addresses physical custody only, pursuant to *In re Bill F.*, 145 N.H. 267, 274 (2000). A court order in a RSA 169-C case vesting a fit parent with physical custody is not a permanent order of custody, and expires upon closure of the RSA 169-C case; and

5. That the parent(s) indicated that DCYF, pursuant to RSA 169-C:19-e, notified them of their right to request a parental fitness hearing.

B. Orders

1. **Visitation** with the parent(s) and/or siblings; **evaluation**, **examination and treatment** for the child(ren), parent(s), guardian, custodian, and/or household member subject to the petition; **services** for the child(ren) and/or parent(s); and/or **financial affidavit** for a parent(s).

2. **Social Study** (Required if the RSA 169-C case is post-disposition.)

   That the parent shall participate in a social study if they have not already done so, which DCYF shall file **within thirty (30) calendar days** of this order. DCYF shall complete a social study, pursuant to RSA 169-C:18, V, consisting of, but not limited to, the home conditions, family background, and financial assessment, school record, mental, physical and social history of the family, including sibling relationships and residences for the appropriateness of preserving relationships between siblings who are separated as a result of court ordered placement, and submit it in writing to the court prior to the final disposition of the case.

3. **Case Plan** (Required if the RSA 169-C case is post-disposition.)

   That DCYF shall review the existing **case plan** and, if necessary, shall file **within thirty (30) calendar days** of this order an amended case plan. DCYF shall complete a specific case plan, pursuant to RSA 169-C:21, II, which shall include, but not be limited to, the services the child(ren) placing agency will provide to the child(ren) and family. The case plan should also include the conditions each parent shall need to meet before the child(ren) is/are returned home.

4. **Dispositional Order** (Required if the RSA 169-C case is post-disposition.)

   That DCYF shall review any existing **dispositional order** and, if

necessary, may file, pursuant to RSA 169-C:22, a motion for modification of the dispositional order, alleging a change in circumstances requiring a different disposition. If such a motion is filed, the court shall, pursuant to RSA 169-C:22, conduct a hearing on the motion to modify the dispositional order.

C. Other

If a parental fitness hearing has been requested by a parent who has not been charged with abuse or neglect, pursuant to RSA 169-C:19-e, **the date for such hearing** should be included in the court's order.

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CHAPTER 5 PRELIMINARY HEARING

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•RSA 169-C:3, Definitions

•RSA 169-C:7-a, Petition for a Protective order Filed on Behalf of Minor

•RSA 169-C:11, Subpoena

•RSA 169-C:12, Evidence

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•RSA 169-C:13, Burden of Proof

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•RSA 169-C:16, Preliminary Disposition

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PROTOCOL 1 SCHEDULING THE PRELIMINARY HEARING IN A REMOVAL CASE

In a **removal** case, **except as set forth below in Protocol 3 for a petitioned parent who is to be served only by publication**, the court shall schedule the preliminary hearing as follows:

A. When DCYF or the police request ex parte orders to remove a child or an alleged perpetrator from the home, pursuant to RSA 169-C:6-a, the court shall schedule a preliminary hearing **no later than five (5) days from the date of the ex parte orders**, excluding Saturdays, Sundays and holidays; or

B. When a child is taken into protective custody by the police, pursuant to RSA 169-C:6, and the court has conducted a 48-hour protective custody hearing, the court shall schedule a preliminary hearing **no later than five (5) days from the date of the 48-hour Protective Custody Hearing Order**, excluding Saturdays, Sundays and holidays.

COMMENT

In light of the fact that in these cases, a petition, pursuant to RSA 169-C:7, may not have been filed until 72 hours after the court's order, **best practice is to schedule the preliminary hearing near the end of the 5-day period**.

PROTOCOL 2 SCHEDULING THE PRELIMINARY HEARING IN A NON-REMOVAL CASE

In a non-removal case, except as set forth in Protocol 3 below for a petitioned parent who is to be served only by publication, the court should schedule the preliminary hearing **no later than seven (7) calendar days after the petition is filed**, Saturdays, Sundays and holidays excluded.

COMMENTS

This protocol is designed to encourage the speedy scheduling of preliminary hearings in non-removal cases. Under the current statute (RSA 169-C:8), the preliminary hearing is required to be set not less than 24 hours, nor more than 7 days, after **return of service of the petition**. Thus, the "clock" for scheduling the preliminary hearing in these cases does not begin to run until the date of **return of service**. Read literally, this would require the court to wait for the police to return service before scheduling the preliminary hearing in order to assure the time frames were met. Theoretically, under RSA 169-C:8, a non-removal petition once filed, if not acted upon by the clerk for a period of time, will have no impact on the statutory time frames. This protocol intentionally shifts the starting "clock" to the date of filing in order to be consistent with the overall goal of the speedy resolution of these matters.

The practice in the family division has been for the clerk to set the date for the preliminary hearing before delivering the petition to the police for service. Working cooperatively, the law enforcement community and the court have ensured that service is made in a timely manner.

It should also be noted that this protocol requires that law enforcement attempt service as quickly as possible after receipt of the petition and within 24 hours. It is intended that this speedy service of process will ensure parents attend the preliminary hearing. It is critical that all parents named in the petition be involved in the case and court hearings as early as possible.

PROTOCOL 3 SCHEDULING THE PRELIMINARY HEARING WHEN A PETITIONED PARENT IS TO BE SERVED ONLY BY PUBLICATION

A preliminary hearing for a **petitioned parent** who is to be served only by publication should, pursuant to RSA 169-C:8, I-a, be scheduled **at, or just before, forty days from the date of the filing of the petition**, to allow adequate time for service by publication to be completed and the hearing to be held on the noticed date and time. See Chapter 3, Protocol 3, B.

COMMENTS

This delayed preliminary hearing for the petitioned parent who is being served only by publication is separate from the preliminary hearing for the parent with a known address who is being served by personal service, which is to be scheduled as set forth in Protocols 1 or 2 above. Thus, there may be two preliminary hearing dates selected at the start of a case if parents are being served by different methods.

Also, in limited circumstances, DCYF may be interested in having personal service and service by publication done at the same time for a parent whose address is unknown, including for cases in which DCYF believes it knows the general location of a parent(s) but does not have a physical address. In such circumstances, DCYF should request, in its Motion for Service by Publication (NHJB-2722), both personal service and service by publication. If both types of service is to be attempted, the court will schedule two (2) separate preliminary hearing dates for the parent whose location is unknown: one date should coincide with the preliminary hearing for the other parent whose location is known and who is being served via personal service, as set forth in Protocol 1 or 2 above, and the second date should be scheduled at, or just before, forty days from the date of the filing of the petition, as set forth above, to allow time for publication of the notice. If personal service is accomplished in time for the first preliminary hearing date, the second preliminary hearing date (related to service by publication) becomes moot, and therefore would be cancelled.

PROTOCOL 4 SCHEDULING A NOTIFICATION OF RIGHTS AND CONSEQUENCES HEARING

The court should schedule a Notification of Rights and Consequences Hearing for a previously missing, now identified/located non-petitioned parent or putative father for whom paternity has been established. This hearing should be scheduled as set forth in Chapter 4, Part B, Protocol 8. See also Chapter 4, Part B, Protocol 7 (information about service packets for now identified/located non-petitioned parents) and Protocols 9 and 10 (information about the Notifications of Rights and Consequences Hearing and Court Order).

PROTOCOL 5 NOTICE

The court should send notice of the preliminary hearing to all parties.

For **parents who are incarcerated in New Hampshire**, the court should do a transport order to ensure the parent's attendance and participation at the hearing.

Additionally, **foster parents, relative caregivers and kinship caregivers**, while not parties to the case, should be sent notice of all court proceedings. See Chapter 1, Part C, Protocol 14.

PROTOCOL 6 IMPORTANT DETERMINATIONS FOR THE COURT TO MAKE AT THE START OF THE PRELIMINARY HEARING

At the beginning of the preliminary hearing, the court should determine the following about each parent:

A. Petitioned Parent with a Known Address

For a petitioned parent with a known address, the court should determine at the beginning of the preliminary hearing:

- If a **petitioned parent** was **served**, the preliminary hearing should be held whether or not that parent is present, regardless of whether the other parent was served;
- If a **petitioned parent** was **not served and is present**, the court should inquire about whether the parent will accept service by the court and go forward that day with the preliminary hearing or, alternatively, whether the parent wants to have the preliminary hearing rescheduled to have additional time to review the petition, affidavit and notice form; and/or
- If a **petitioned parent** was **not served and is not present**, the court should reschedule the preliminary hearing for that parent to allow additional time for service. Best practice is to reschedule the preliminary hearing for one week later.

B. Non-Petitioned Parent with a Known Address

For a non-petitioned parent with a known address, the court should determine at the beginning of the preliminary hearing:

- If a **non-petitioned parent** was **served** and the **petitioned parent** was also **served**, the preliminary hearing should be held, regardless of whether either parent is present;
- If a **non-petitioned parent** was **not served** and is **present**, the court should inquire about whether the parent will accept service by the court. If so, and if the **petitioned parent** was **served**, the court will conduct the preliminary hearing, including reviewing and having signed the Acknowledgment of Possible Consequences to Parental Rights in Abuse and Neglect Cases (NHJB-2209) form. If the **petitioned parent** was **not served**, the court will resend the service packet to law enforcement to be served, with a rescheduled date for the preliminary hearing. Nonetheless, the court, with the non-petitioned parent present in court, should review and have signed the Acknowledgment of Possible Consequences to Parental Rights in Abuse and Neglect Cases; and/or
- If a **non-petitioned parent** was **not served** and is **not present**, and the **petitioned parent** was **not served** and is **not present**, the court should reschedule the preliminary hearing. Best practice is to reschedule the preliminary hearing for one week later. If, however, the **petitioned** parent was **served** and is **not present**, the court will **conduct the preliminary** hearing to determine if reasonable cause exists to believe the child is abused and/or neglected, pursuant to RSA 169-C:15, and if so, will schedule an adjudicatory hearing. The court will also schedule a Notification of Rights and Consequences Hearing for the non-petitioned parent. The court will resend the service packet to law enforcement to be served on the non-petitioned parent, with a date for the Notification of Rights and Consequences Hearing. Best practice is to reschedule the Notification of Rights and Consequences Hearing for one week later.

C. Missing Parent, Guardian and/or Putative Father

At the beginning of the preliminary hearing, the court should determine whether there is a missing parent, guardian and/or putative father, as defined in in Chapter 4, Protocol 1, as follows:

- A parent who is **named** in a RSA 169-C petition involving their child(ren) but whose **address/location** is **unknown**. This parent may be a petitioned parent (alleged to have abused or neglected the child(ren)) or a non-petitioned parent (not alleged to have abused or neglected the child(ren));
- A parent who is **unnamed** in a RSA 169-C petition involving the petitioned parent and their child(ren); or

- A **putative father** who is known to DCYF when a RSA 169-C petition is filed or who becomes known to DCYF after a petition is filed.

When there is a missing parent or putative father in a RSA 169-C case, the court should proceed with respect to such parent as set forth in Chapter 4.

PROTOCOL 7 CONDUCTING THE PRELIMINARY HEARING

At the beginning of the preliminary hearing, the court should determine if it will go forward with the hearing or need to reschedule it, as set forth above in Protocols 6(A) and 6(B) with respect to a petitioned and non-petitioned parent with known addresses.

If the court conducts the preliminary hearing, the court shall review with petitioned and non-petitioned parents the **Acknowledgement of Possible Consequences to Parental Rights in Abuse and Neglect Cases (NHJB-2209)** and, pursuant to RSA 169-C:15, IV, the court shall determine whether each parent summoned understands the possible consequences to parental rights should the court find that the child is abused and/or neglected. Consistent with RSA 169-C:15, IV, each parent shall sign the Acknowledgement form stating that they understand the consequences to parental rights in abuse and/or neglect cases.

Additionally, the court will determine, based on offers of proof, whether reasonable cause exists to believe that the child is abused and/or neglected, pursuant to RSA 169-C:15, I.

PROTOCOL 8 THE COURT'S PRELIMINARY HEARING ORDER

The court shall timely issue a Preliminary Hearing Order following the preliminary hearing.

If the **court does not find reasonable cause**, it shall dismiss the petition, pursuant to RSA169-C:15, II. If a petition is dismissed, the court should include reasons for the dismissal in its order. Pursuant to RSA 169-C:28, an appeal in a RSA 169-C case may be taken to the supreme court within thirty (30) days of the dispositional order, which includes a dismissal of a petition for abuse or neglect by the court.

If the **court does find reasonable cause**, the court should consider the following findings and orders in the Preliminary Hearing Order:

- Basis of reasonable cause to believe that the child has been abused and/or neglected, pursuant to RSA 169-C:15, I;
- Contrary to the welfare determination;
- Reasonable cause determination;
- Review of non-petitioned parent’s right to request a parental fitness hearing to obtain custody of their child, pursuant to RSA 169-C:19-e, if applicable;
- Custody and placement;
- Visitation;

- Evaluation, Examination and Treatment;
- Services;
- Order for joinder of school district, pursuant to RSA 169-C:20 and Chapter 1, Part B, Protocol 11; and
- Affidavit to Identify and/or Locate a Parent, Guardian or Putative Father, if applicable.

COMMENTS

If at the preliminary hearing the court sanctions for the first time the removal of the child from their home, RSA 169-C:6-b, I and III and federal law require that the court's order must include a determination that continuation in the home would be **contrary to the welfare** of the child. If such a determination is not included in the court's first ruling that sanctions the removal of a child, the child is ineligible for Title IV-E foster care maintenance payments for their ENTIRE STAY IN FOSTER CARE. Additionally, the court may want to make a determination with regard to **reasonable efforts to prevent removal of a child from the home**. If such a determination is not made, the child is ineligible for Title IV-D foster care maintenance payment for their entire stay in foster care. A reasonable efforts determination must be made **within sixty (60) days of a child's removal from the home**, pursuant to RSA 169-C:6-b, II.

If the court orders at a preliminary hearing a child's initial removal from their home, the court order shall include specific written findings regarding the need for the out-of-home placement, pursuant to RSA 169-C:6-b, III. Additionally, the order shall briefly state the facts the court found to exist that justify ordering the placement.

Pursuant to 42 U.S.C. 671(a)(15) and 42 U.S.C. 672 (i)(2) under Part E. Federal Payments for Foster Care and Adoption Assistance, the court is required to make a determination that a child who remains in their home and receives preventative services is at "imminent risk of removal" absent such services. This determination is required every six (6) months.

Pursuant to RSA 169-C:12-c, a parent who is the subject of an abuse or neglect petition not involving sexual abuse shall be entitled to request a medical examination of each child involved by a licensed physician of the parent's choice at the parent's expense within 72 hours of the first official notice of the complaint received by the parent.

Pursuant to RSA 169-C:12-d, the court may order alcohol or drug testing at any stage of the proceedings where substance abuse is an ongoing issue in the case, where alcohol or drug use is a disputed issue of fact, or where there is reason to believe that alcohol or drug use may be substantially interfering with a parent's ability to adhere to the case plan. Unless otherwise ordered by the court, the frequency and type of such testing shall be at the discretion of DCYF.

PROTOCOL 9 SCHEDULING THE NEXT HEARING

Before concluding the preliminary hearing, the court should set the date for the adjudicatory hearing, as set forth in Chapter 7, Protocol 1. This date should be included in the court's order.

Where necessary, and if possible, the court should make every effort to provide for meaningful attendance and participation at hearings by all parties, including the use of conference calls and video conferencing if in-person attendance is not possible.

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CHAPTER 6 PARENTAL FITNESS HEARING

STATUTORY REFERENCES:

•RSA 169-C:3, Definitions

•RSA 169-C:7, Petition

•RSA 169-C:10, Attorneys and Guardians ad Litem

•RSA 169-C:15, Preliminary Hearing

•RSA 169-C:16, Preliminary Disposition

•RSA 196-C:17, Consent Orders

•RSA 169-C:18, Adjudicatory Hearing

•RSA 169-C:19, Dispositional Hearing

•RSA 169-C:19-e, Custody Hearing for Parent Not Charged With Abuse or Neglect

•RSA 169-C:21, Final Order

•RSA 169-C:22, Modification of Dispositional Orders

•RSA 169-C:24, Periodic Review Hearings

CASE LAW:

•*In re J.H.; In re A.H.;* 171 N.H. 40 (2018)

•*In re O.D.,* 171 N.H. 437, 442-43 (2018)

•*In Re Guardianship of Reena D*., 163 N.H. 107 (2011)

•*In the Matter of Jeffrey G. and Jannette P*., 153 N.H. 200 (2006)

•*In the Matter of R.A. and J.M.,* 153 N.H. 82 (2005)

•*In the Matter of Douglas Hoyt Nelson and Sylvia Horsley*, 149 N.H. 545 (2003)

•*In re Bill F*., 145 N.H. 267, 761 A.2d 470 (2000)

INTRODUCTION

A non-petitioned parent has a right to request a parental fitness hearing, pursuant to RSA 169-C:19-e. The request may be made orally at a RSA 169-C court hearing or by filing a written request, including the court form Request for a Parental Fitness Hearing Pursuant to RSA 169-C:19-e (NHJB-3169). Pursuant to RSA 169-C:19-e, I, a parent shall be awarded custody unless DCYF demonstrates, by a preponderance of the evidence, that the parent has abused or neglected the child or is otherwise unfit to perform their parental duties. Pursuant to *In re Bill F.,* 145 N.H. 267, 274 (2000), a parental fitness hearing addresses physical custody only. Pursuant to RSA 169-C:19-e, I, at a parental fitness hearing the parent shall be provided the opportunity to present evidence pertaining to their ability to provide care for the child. A court order in a RSA 169-C case vesting a fit parent with physical custody is not a permanent order of custody and will expire upon closure of the RSA 169-C case.

PROTOCOL 1 DEFINING A NON-PETITIONED PARENT AND APPOINTMENT OF COUNSEL

For purposes of these protocols, the court and parties should construe a "non-petitioned" parent in a RSA 169-C case to mean a parent against whom an **abuse or neglect petition has not been filed** or a parent against whom a **petition was filed** but was either **withdrawn** or **dismissed**. See *In re J.H.; In re A.H.,* 171 N.H. 40 (2018).

RSA 169-C:10, II(a), allows the court to appoint counsel to a non-petitioned parent who is a household member. Therefore, the court should appoint counsel for a non-petitioned, household member in order to protect that parent's fundamental liberty interest. This discretionary appointment is permitted when 1) a non-petitioned parent is a **household member** and 2) such **independent legal representation is necessary** to protect the parent's interests.

COMMENT

Pursuant to RSA 169-C:3, XIV-a, a **household member** "means any person living with the parent, guardian, or custodian of the child from time to time or on a regular basis, who is involved occasionally or regularly with the care of the child."

PROTOCOL 2 NON-PETITIONED PARENT NOTIFIED BY DCYF OF RIGHT TO A PARENTAL FITNESS HEARING

The court should expect that DCYF will, pursuant to RSA 169-C:19-e, II, notify a parent who has not been charged with abuse or neglect of their right to request a parental fitness hearing, pursuant to RSA 169-C:19-e.

COMMENTS

DCYF's practice is to notify, at the earliest available opportunity, a non-petitioned parent orally about their right to request a parental fitness hearing with the court. DCYF also provides the parent with a brochure that, in addition to the

parent's right to request this hearing, explains the purpose and nature of a parental fitness hearing. DCYF's practice is to provide this notification to a non-petitioned parent regardless of whether a child(ren) is in an out-of-home placement.

Although RSA 169-C:19-e refers to a parent who has "not been charged" with abuse or neglect, these protocols refer to this individual as a "non-petitioned" parent.

A non-petitioned parent who is requesting custody is deemed a "presumptively fit" parent. See *In re J.H.; In re A.H.,* 171 N.H. 40 (2018).

PROTOCOL 3 NON-PETITIONED PARENT'S REQUEST FOR A PARENTAL FITNESS HEARING

A non-petitioned parent has a right to request a parental fitness hearing, pursuant to RSA 169-C:19-e. The request may be made orally at a RSA 169-C court hearing or by filing a written request, including the court form **Request for a Parental Fitness Hearing Pursuant to RSA 169-C:19-e (NHJB-3169).**

PROTOCOL 4 SCHEDULING AND NOTICE OF A PARENTAL FITNESS HEARING

The court should handle the scheduling and notice of a parental fitness hearing as follows:

A. Court's Scheduling of a Parental Fitness Hearing

When a non-petitioned parent requests a parental fitness hearing, the parent shall be afforded a hearing, pursuant to RSA 169-C:19-e. Therefore, the court shall select a date and time for the parental fitness hearing to be held. Best practice is for the court to conduct this hearing **no later than thirty (30) calendar days** from the court receiving an oral or written request for a parental fitness hearing.

COMMENT

Between the time a non-petitioned parent requests a parental fitness hearing and the time the hearing is held, the court should expect that DCYF will, consistent with its practice, provide ongoing discovery to the parent and all parties to the RSA 169-C case. The petitioned parent and the CASA GAL/GAL are entitled to discovery as parties to the RSA 169-C case and may attend the parental fitness hearing to observe or, if called as a witness, to testify.

B. Continuances

A motion for a continuance of a parental fitness hearing should usually be denied, except for good cause shown.

C. Notice of a Parental Fitness Hearing

The court shall mail timely notice of a parental fitness hearing to all parties to the RSA 169-C case.

COMMENT

The petitioned parent and the CASA GAL/GAL are entitled to notice of this hearing as parties to the RSA 169-C case and may attend the parental fitness hearing to observe or, if called as a witness, to testify.

PROTOCOL 5 THE COURT CONDUCTING A PARENTAL FITNESS HEARING

When conducting a parental fitness hearing, the court should consider the following:

A. Non-Petitioned Parent Does Not Personally Appear

If the non-petitioned parent does not personally appear for the parental fitness hearing, the court may proceed as follows:

Option 1: Proceed with the parental fitness hearing and have DCYF make an offer of proof as to its assertion that the non-petitioned parent is unfit to perform their parental duties and issue an order accordingly.

Option 2: Reschedule the parental fitness hearing, if the court believes there is good cause to do so.

B. Legal Standard

Pursuant to 169-C:19-e, I, a parent shall be awarded custody unless DCYF demonstrates, by a **preponderance of the evidence**, that they have abused or neglected the child or are otherwise unfit to perform their parental duties. Pursuant to In re Bill F., a parental fitness hearing addresses **physical custody** only.

COMMENT

Neither New Hampshire case law nor statutory law provides a definitive or legally binding definition of “fit” or “unfit” parent. However, there are examples of both terms in New Hampshire case law. See e.g. *In the Matter of Douglas Hoyt Nelson and Sylvia Horsely*, 149 N.H. 545 (2003), citing *J. O’Connor in Troxel v. Granville*, 530 U.S. 57 (2000) (“…so long as a parent adequately cares for his or her children (i.e. is fit…”); and J. Nadeau and J. Galway, concurring in part and dissenting in part, in *In the Matter of R.A. and J.M.*, 153 N.H. 82 (2005) (“…a parent who significantly fails to accept his or her responsibilities is arguably unfit”…”). See also *In the Matter of Jeffrey G. and Janette*

P., 153 N.H. 200 (2006) ("...even though their parenting skills are less than ideal, biological and adoptive parents are presumed to be fit parents…", citing *Granville v. Troxel*, 530 U.S. at 58 (2000).

C. DCYF and the Non-Petitioned Parent Presenting Evidence

Notwithstanding the non-petitioned parent being the party who requested the hearing, DCYF should be the first to present evidence on a parent's fitness as, pursuant to RSA 169-C:19-e, DCYF has the burden of proof at this hearing. Thereafter, and if the non-petitioned parent chooses to do so, RSA 169-C:19-e, I, provides that at a parental fitness hearing the parent shall be provided the opportunity to present evidence pertaining to their ability to provide care for the child.

D. Additional Considerations for the Court When Conducting a Parental Fitness Hearing

When conducting a parental fitness hearing, the court should take into account the following additional considerations:

1. The court may hear from a RSA 169-C party who is called by DCYF or the non-petitioned parent as a witness to testify at a parental fitness hearing.

2. The court may hear as evidence **elements of abuse or neglect**, pursuant to RSA 169-C, and may consider this evidence when making a finding of parental fitness. However, best practice is for DCYF to file a RSA 169-C:7 petition, when sufficient grounds exist, and for the court to address allegations of abuse or neglect at an adjudicatory hearing pursuant to RSA 169-C:18 and not at a parental fitness hearing, notwithstanding RSA 169-C:19-e, I including abuse or neglect as a basis for the court denying a non-petitioned parent's request for custody.

3. The court may hear as evidence any plan that DCYF had proposed to the non-petitioned parent to gradually transition a child(ren) to the physical custody of the parent and whether the non-petitioned parent objected, in whole or in part, to the proposed plan.

4. If the court finds the parent fit, RSA 169-C:19-e mandates that the court award custody of the child(ren) to the non-petitioned parent. Therefore, **the court should NOT order a plan to transition a child(ren) to the physical custody of the fit parent unless that parent has agreed to a delayed award of custody through a gradual transition plan**. DCYF may offer such a gradual transition plan as alternative requested relief should the court find the parent fit.

PROTOCOL 6 THE COURT'S ORDER WHEN THE COURT FINDS A PARENT UNFIT TO PERFORM THEIR PARENTAL DUTIES

If the court finds, by a **preponderance of the evidence**, that DCYF met its burden and a parent is **UNFIT** to perform their parental duties, the court shall include written findings of fact supporting its decision, pursuant to RSA 169-C:19-e, I.

The court's order, **Parental Fitness Hearing Pursuant to RSA 169-C:19-e (NHJB-3170)**, should be mailed **within ten (10) calendar days** of the hearing. It should include the date for the **next scheduled hearing** in the RSA 169-C case, as set forth in the order.

Additionally, the court's order should include the following:

A. **Legal custody** of the child(ren) is(are) awarded to or is to remain with DCYF and the child(ren) is(are) to remain where placed;

B. The parent shall participate in a **social study** if they have not already done so, which DCYF shall file **within thirty (30) calendar days** of this order. DCYF shall complete a social study, pursuant to RSA 169-C:18, V, consisting of, but not limited to, the home conditions, family background, and financial assessment, school record, mental, physical and social history of the family, including sibling relationships and residences for appropriateness of preserving relationships between siblings who are separated as a result of court ordered placement, and submit it in writing to the court prior to the final disposition of the case.

C. DCYF shall review the existing **case plan** and, if necessary, shall file **within thirty (30) calendar days** of this order an amended case plan. DCYF shall complete a specific case plan, pursuant to RSA 169-C:21, II, which shall include, but not be limited to, the services the child placing agency will provide to the child(ren) and family. The case plan should also include the conditions each parent shall need to meet before the child(ren) is(are) reunified.

D. DCYF shall review any existing **dispositional order** and, if necessary, may file, pursuant to RSA 169-C:22, a motion for modification of the dispositional order, alleging a change in circumstances requiring a different disposition. If such a motion is filed, the **court shall, pursuant to RSA 169-C:22, conduct a hearing** on the motion to modify the dispositional order.

COMMENT

If the court subsequently receives a motion, pursuant to RSA 169-C:22, alleging a change in circumstances requiring a different disposition and a request to schedule a hearing to modify its dispositional order, the motion may be addressed in conjunction with

the next scheduled hearing in the RSA 169-C case, if that hearing is scheduled timely.

PROTOCOL 7 THE COURT'S ORDER WHEN THE COURT FINDS A PARENT FIT TO PERFORM THEIR PARENTAL DUTIES

If the court finds that DCYF did NOT prove, by a preponderance of the evidence, that the parent is unfit to perform their parental duties, the parent is therefore deemed to be a **FIT** parent as the presumption of parental fitness has not been overcome. The court shall make written findings of fact supporting its decision.

The court's order, **Parental Fitness Hearing Pursuant to RSA 169-C:19-e (NHJB-3170)**, should be mailed **within ten (10) calendar days** of the hearing. It should include the date for the **next scheduled hearing** in the RSA 169-C case.

Additionally, the court's order should include the following:

A. **Custody** of the child(ren) is(are) awarded to the fit parent, as required by RSA 169-C:19-e, I, and the child(ren) shall be placed in the **physical custody** of the fit parent, pursuant to In re Bill F., 145 N.H. 267, 274 (2000). **Legal supervision** is awarded to DCYF. This court order in the RSA 169-C case vesting the fit parent with physical custody is not a permanent order of custody, and expires upon closure of the RSA 169-C.

   OR

   The fit parent agreed to a plan, as set forth below, that will gradually transition the child(ren) to the physical custody of the fit parent, therefore, **legal custody** of the child(ren) is(are) awarded to or is to remain with DCYF and the child(ren) is(are) to remain where placed until a **specified date**. As of such date, custody of the child(ren) shall be awarded to the fit parent, pursuant to RSA 169-C:19-e, I, and the child(ren) shall immediately be placed in **the physical custody** of the fit parent. As of such date, **legal supervision** shall be awarded to DCYF. This court order in the RSA 169-C case vesting the fit parent with physical custody is not a permanent order of custody, and expires upon closure of the RSA 169-C case.

B. The parent shall participate in a **social study** if they have not already done so, which DCYF shall file **within thirty (30) calendar days** of this order. DCYF shall complete a social study, pursuant to RSA 169-C:18, V, consisting of, but not limited to, the home conditions, family background, and financial assessment, school record, mental, physical and social history of the family, including sibling relationships and residences for appropriateness of preserving relationships between siblings who are separated as a result of court ordered placement, and submit it in writing to the court prior to the final disposition of the case.

C. DCYF shall review the existing **case plan** and, if necessary, shall file **within thirty (30) calendar days** of this order an amended case plan. DCYF shall

complete a specific case plan, pursuant to RSA 169-C:21, II, which shall include, but not be limited to, the services the child placing agency will provide to the child(ren) and family. The case plan should also include the conditions each parent shall need to meet before the child(ren) is(are) returned home.

COMMENT

DCYF develops a "case plan" when a child is in out-of-home placement. A similar plan is developed when a child is in the care of a parent, but such plan is referred to by DCYF as a "prevention plan." Court orders and protocols use the term "case plan" for either a "case plan" or a "prevention plan."

D. DCYF shall review any existing **dispositional order** and, if necessary, may file, pursuant to RSA 169-C:22, a motion for modification of the dispositional order, alleging a change in circumstances requiring a different disposition. If such a motion is filed, the court shall, pursuant to RSA 169-C:22, conduct a hearing on the motion to modify the dispositional order.

E. The previously scheduled **permanency hearing** in the RSA 169-C case is cancelled, as the child(ren) is(are) no longer in an out-of-home placement because they are reunified when placed in the physical custody of the fit parent. RSA 169-C:3, XX-a defines an "out-of-home placement" as placement of a child in substitute care with someone other than the child's biological parent or parents, adoptive parent or parents, or guardian. The RSA 169-C case will proceed as an in-home case.

COMMENTS

Although the legal standard DCYF is required to meet at a parental fitness hearing is "unfit", a court finding that DCYF did not meet its burden of proof results in the parent being deemed "fit". See e.g. *In re Guardianship of Reena D.* ("…fit parents are those who have not been adjudicated unfit".)

If the court subsequently receives a motion, pursuant to RSA 169-C:22, alleging a change in circumstances requiring a different disposition and a request to schedule a hearing to modify its dispositional order, the motion may be addressed in conjunction with the next scheduled hearing in the RSA 169-C case for the petitioned parent, if that hearing is scheduled timely.

DCYF's practice is to file its **Court Notification of Child's Placement Change** form when a child is reunified with a parent after being in an out-of-home placement.

PROTOCOL 8 THE RSA 169-C CASE WHEN A PARENT IS DEEMED FIT

When the court makes a finding that DCYF has failed to prove a parent is unfit to perform their parental duties, and, therefore, the presumption of parental fitness has not been overcome and the parent is deemed to be a **FIT** parent, the court should proceed as set forth below:

A. Keep Open the RSA 169-C Case

The court should keep open the RSA 169-C case and:

1. If the RSA 169-C case is **pre-finding of abuse/neglect**, the court should proceed pursuant to RSA 169-C:15, RSA 169-C:16, RSA 169-C:17, RSA 169-C:18, RSA 169-C:19 and RSA 169-C:21; or

2. If the RSA 169-C case is **post-disposition**, the court should conduct, pursuant to RSA 169-C:24, **periodic review hearings**. These hearings should be held up to and until the case is closed. This will allow the court to continually assess the needs of the family and child(ren).

COMMENT

Neither *In re Bill F*. nor RSA 169-C:19-e provides for closure of the RSA 169-C case following the child(ren) being placed with a fit parent who has been awarded physical custody following a parental fitness hearing. Additionally, the New Hampshire Supreme Court in *In re Bill F*. noted that "[n]othing in this opinion should be read to prevent the State [DCYF] from…providing social services for the benefit of a child. This matter is remanded to the [circuit] court, which shall promptly hold a hearing to determine the placement of the child in accordance with this opinion."

B. The Court's Authority Concerning a Parent Deemed to be Fit

If the court deems a parent to be fit **prior to an adjudication** of abuse or neglect, but **following a finding at a preliminary hearing** of sufficient facts to sustain the petition against the petitioned parent, the fit parent is subject to orders under RSA 169-C:16, I(a) (child may remain with parent subject to such conditions and limitations as the court may prescribe). Thereafter and if the court makes a finding of abuse or neglect, the fit parent is subject to orders under RSA 169-C:19 (child may remain in physical custody of parent subject to parent participating in therapy, treatment, home visits, allowing visits with other parent, and/or refraining from conduct that could be deemed harmful to the child).

If the court deems a parent to be fit **after an adjudication and finding of abuse or neglect** concerning the petitioned parent, the court must set forth, pursuant to RSA 169-C:21, II, a specific plan that will include, but is not

limited to, the services DCYF will provide to the child and both parents. A parent who has been deemed fit and has gained physical custody of the child remains subject to dispositional orders under RSA 169-C:19 (child may remain in physical custody of parent subject to parent participating in therapy, treatment, home visits, allowing visits with other parent, and/or refraining from conduct that could be deemed harmful to the child). Both parents are required to correct the conditions of abuse or neglect, or risk termination of their parental rights, regardless of whether they were the petitioned parent in the RSA 169-C petition. *In re O.D*., 171 N.H. 437, 442-43 (2018) (return of child to physical custody of parent did not resolve ultimate question of whether original neglect conditions were corrected); See also *In re Tricia H*., 126 N.H 418, 422 (1985).

COMMENT

DCYF's practice is to file a motion requesting the court, pursuant to RSA 169-C:22, modify its dispositional orders in a RSA 169-C case to include orders for the fit parent. If applicable, DCYF may request additional orders regarding the petitioned parent.

C. Closure of the RSA 169-C Case

A RSA 169-C court order that legal supervision is awarded to DCYF with the child(ren) placed in the physical custody of the fit parent is not a permanent order of custody, and expires upon closure of the RSA 169-C case. Therefore, prior to the court closing a RSA 169-C case in which there had been **no prior parenting orders** for the child(ren), best practice is for one or both of the parents to file a **parenting petition** so the court may issue, before closing a RSA 169-C case, appropriate temporary orders pursuant to RSA 461-A, Parental Rights and Responsibilities.

Similarly, if there is a **prior parenting order** that differs from the order in the RSA 169-C case, best practice is for one or both parents to file a request to change the prior parenting orders, so that the court may modify the previous parenting orders before closing the RSA 169-C case.

Before a RSA 169-C case is closed, DCYF should file with the court and all parties a **Motion to Close Juvenile Abuse/Neglect Case (NHJB-2708)**.

COMMENT

DCYF's practice in these cases is to file a Motion to Close Juvenile Abuse/Neglect Case when the provision of services to a family and child(ren) is no longer needed.

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STATUTORY REFERENCES:

•RSA 169-C:3, Definitions

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•RSA 169-C:8, Issuance of Summons and Notice

•RSA 169-C:12, Evidence

•RSA 169-C:12-a, Testimony During Abuse and Neglect Proceedings

•RSA 169-C:12-f, Rebuttable Presumption of Harm

•RSA 169-C:13, Burden of Proof

•RSA 169-C:15, Preliminary Hearing

•RSA 169-C:16, Preliminary Disposition

•RSA 169-C:17, Consent Order

•RSA 169-C:18, Adjudicatory Hearing

•RSA 169-C:19, Dispositional Hearing

•RSA 169-C:20, Disposition of a Child with a Disability

•RSA 169-C:23, Standard for Return of Child in Placement

•RSA 169-C:26, Continuances

•RSA 169-C:28, Appeals

CASE LAW:

•*In re Ethan H*., 135 N.H. 681, 609 A.2d 1222 (1992), children's bruises may in future cases be by nature prima facie evidence of harm or threatened harm in child abuse cases.

•*In re Gina D.,* 138 N.H. 697, 645 A.2d 61 (1994), requires that opinion evidence be material and relevant.

•*Petition of Jane Doe*, 132 N.H. 270, 564 A.2d 433 (1989), proper finding of child abuse must include a determination of whether the alleged abusive act was committed under circumstances indicating harm or threatened harm to the child's life, health or welfare.

•*In re Melissa M.,* 127 N.H. 710, 506 A.2d 324 (1986), there is no constitutional right to a stay of a civil proceeding pending disposition of a related criminal case.

•*In re Tricia and Trixie H*., 126 N.H. 418, 493 A.2d 1146 (1985), petition to terminate parental rights based on a failure to correct does not require that a parent has been the named respondent in an RSA 169-C neglect proceeding before that parent's rights can be terminated so long as there is ample evidence of the non-respondent parent's failure to correct the conditions which led to the abuse and/or neglect finding.

•*The State of New Hampshire v. Harold J. Baird*, 133 N.H. 637, 581 A.2d 1313 (1990), relates to the confidentiality provision of RSA 169-C.

•*Petition of Kerry D.,* 144 N.H. 146, 737 A.2d 662 (1999), all parents, whether named or unnamed in the petition, need to be informed and need to acknowledge that they understand the consequences of the consent order, including, but not limited to, the loss of physical and/or legal custody of their child and/or the termination of their parental rights.

In re N. T., No. 2021-0437, slip op. (2022), circuit court retains jurisdiction in RSA 169-C case even if adjudicatory order is issued beyond 60-day time limit in RSA 169-C:15, III(d), as dismissal would thwart statutory purpose of protecting children and would undermine interests of all parties; parent may be entitled to relief for court’s non-compliance with deadline if parent shows prejudice.

PART A ADJUDICATORY HEARING

INTRODUCTION

The adjudicatory hearing, or trial, is the stage at which the court determines, by a preponderance of the evidence, whether or not the allegations in the petition that a child has been abused and/or neglected are sustained by the evidence. The importance of assuring the presence of all necessary parties cannot be overstated.

A finding of true is the legal basis for continued court and DCYF intervention. Such intervention may include placement of the child, service provision to the child and parents and ongoing judicial and DCYF oversight of the case progress.

PROTOCOL 1 SCHEDULING AND NOTICE OF THE ADJUDICATORY HEARING

The court should handle scheduling and notice of the adjudicatory hearing as follows:

A. Scheduling

If a **child is in an out-of-home placement**, the adjudicatory hearing shall be held and completed **within thirty (30) days from the date the petition was filed** with the court, unless the court makes a written finding of extraordinary circumstances (Order on Extraordinary Circumstances (NHJB-2439)) when the adjudicatory hearing cannot be held and completed within the statutory timeframe, as set forth in RSA 169-C:15, III(d). When the location of a parent is unknown such that service by publication is necessary, RSA 169-C:8, I-a provides that such service by publication constitutes extraordinary circumstances to schedule the adjudicatory hearing beyond thirty (30) days.

Note, however, that in **all cases** the adjudicatory hearing shall be **held** and **completed,** and **written findings issued within sixty (60) days from the date that the petition was filed** with the court, pursuant to RSA 169-C:15, III(d). It is best practice to avoid scheduling the adjudicatory hearing too close to the 60th day, to allow time for the court to issue its **written findings within sixty (60) days**.

B. Notice to Parties and Non-Parties

The court's notice to RSA 169-C parties and non-parties of an adjudicatory hearing should be handled as follows:

The court shall send notice of the adjudicatory hearing to all parties to the RSA 169-C case.

For **parents who are incarcerated in New Hampshire**, the court should do a transport order to ensure the parent's attendance and participation at the hearing.

Additionally, **foster parents, relative caregivers and kinship caregivers**, while not parties to the case, should be sent notice of all court proceedings. See Chapter 1, Part C, Protocol 14.

COMMENT

Notwithstanding the statutory requirement to issue written findings within sixty (60) days, failure to issue written findings within 60 days does not automatically result in dismissal of the petition, as the circuit court still retains jurisdiction over the case. See *In re N.T.*, 175 N.H. 300, 309-310 (2022). The Supreme Court ruled that a loss of jurisdiction in such circumstances would thwart the statutory purpose of protecting children and would undermine the interests of all parties. The Court further held that a parent may be entitled to relief for a court's non-compliance with the 60-day deadline if the parent demonstrates they were prejudiced by the court's delay. Finally, the Court noted that its decision should not diminish the importance of the 60-day deadline, as the important and fundamental interests at stake in abuse and/or neglect proceedings benefit from the punctual administration of justice.

When a child is not in an out-of-home placement, best practice is for the adjudicatory hearing to be **held** and completed **within thirty (30) days from the date the petition was filed with the court**.

COMMENT

The adjudicatory hearing shall be scheduled and held within thirty (30) calendar days of the filing of the petition, even if there is a related pending criminal proceeding arising from the same facts. RSA 169-C:12-a provides that testimony by parents, who are the subject of an abuse or neglect petition and who are alleged to have an abused or neglected child, which is given during proceedings under RSA 169-C, shall not be admissible in criminal proceedings relating to the abuse or neglect allegations. There shall be no constitutional right to a stay of a civil proceeding pending disposition of a related criminal case. *In re Melissa M.*, 127 N.H. 710, 506 A.2d 324 (1986).

PROTOCOL 2 CONDUCTING THE ADJUDICATORY HEARING

When conducting the adjudicatory hearing, the court should consider the following:

A. Evidence

Pursuant to RSA 169-C:12, the court is not bound by the technical rules of evidence in any hearing under RSA 169-C and may admit any evidence that it considers relevant and material. Although there is a relaxed evidentiary standard in neglect and abuse proceedings under RSA 169-C:12, and even though the evidence is considered by the court as opposed to a jury, opinion evidence nevertheless must be material and relevant. *In re Gina D*., 138 N.H. 697, 645 A.2d 61 (1994).

Evidence of prior founded or unfounded reports of abuse or neglect shall be admissible in proceedings under RSA 169-C in order to establish a relevant pattern or course of conduct.

RSA 169-C:12-a provides that testimony by parents who are the subject of an abuse or neglect petition and who are alleged to have abused or neglected a child shall not be admissible against them in criminal proceedings relating to the abuse or neglect allegation. However, the court should carefully advise unrepresented parents, on the record, that any testimony they offer can be used in the course of the abuse and/or neglect proceedings themselves.

B. Burden of Proof

Pursuant to RSA 169-C:13, the petitioner in an abuse or neglect proceeding has the burden of proving the allegations by a preponderance of the evidence.

COMMENT

The supreme court found no constitutional error in the legislature's decision to adopt the preponderance of the evidence standard as the burden of proof in child abuse and neglect cases. *In re Tracy M.,* 137 N.H. 119, 624 A.2d 963 (1993).

C. Rebuttable Presumption

Pursuant to RSA 169-C:12-f, I-III **(Repealed by operation of law July 1, 2024)**, there shall be a rebuttable presumption that a child's health has suffered or is likely to suffer serious impairment by exposure to any of the following conduct:

- Evidence of a parent's, guardian's, or custodian's substance misuse that is adversely affecting a child's care or supervision, when that parent, guardian, or custodian is not actively engaged in treatment;

- Evidence of a parent's, guardian's, or custodian's impaired driving or operating of a motor vehicle while a child is in the vehicle; or

- Evidence of a parent's, guardian's, or custodian's exposure of a child to:
    - Physical violence directed at a sibling, the other parent, or another person living in the home; or
    - Psychological maltreatment directed at the child, a sibling, the other parent, or another person living in the home.

The rebuttable presumption of harm established in RSA 169-C:12-f, III shall not apply to victims of domestic violence who are subject to an abuse or neglect petition filed pursuant to this chapter as a result of an incident or incidents in which that parent, guardian, or caregiver was the victim, pursuant to RSA 169-C:12-f, IV.

D. Witnesses

Pursuant to RSA 169-C:18, III, the petitioner shall present witnesses to testify in support of the petition and any other evidence necessary to support the petition. The parent shall have the right to present evidence and witnesses on their own behalf and to cross-examine adverse witnesses.

COMMENT

Pursuant to *In re G.G.*, 166 N.H. 193, 92 A.3d 648 (2014), the court has the discretion to determine whether a child can be called as a witness and should consider the following factors:

- the child's age;
- the specific potential harm to the child from testifying;
- the indicia of reliability surrounding any admitted out-of-court statements describing the child's allegations;
- evidence that may lend credibility to the allegations of abuse or neglect, such as consistency of the child's and responding parent's accounts, or evidence of prior injury;
- the incremental probative value of the child's potential in-court testimony; and
- whether there are alternatives to in-court testimony that would enable meaningful examination of the child without jeopardizing the child's well-being, See *Maryland v. Craig*, 497 U.S. 836, 855, 110 S.Ct. 3157, 111 L.Ed. 2d 666 (1990) (noting that special procedures for child testimony in criminal abuse proceedings may be appropriate).

PROTOCOL 3 THE COURT'S ADJUDICATORY HEARING ORDER

Following the adjudicatory hearing, the court should issue the Adjudicatory Hearing Order **within five (5) business days of concluding the hearing**. However, the court may have less time to issue its order if there was an Order of Extraordinary Circumstances and the adjudicatory hearing was rescheduled and concluded close to sixty (60) days from the date of the petition was filed.

In **all cases** (placement and non-placement) written findings shall be issued by the court **within sixty (60) days from the date that the petition** was filed, pursuant to RSA 169-C:15, III(d).

A. Petition Dismissed

If the court does not find, by a preponderance of the evidence, that a child has been abused or neglected, it shall dismiss the petition. Whenever a petition is dismissed, the court shall include reasons for this in its order.

Pursuant to RSA 169-C:28, an appeal under RSA 169-C may be taken to the supreme court within thirty (30) days of the final dispositional order, which includes a dismissal of a petition for abuse or neglect by the court.

B. Finding of Abuse or Neglect

If the court does find, by a preponderance of the evidence, that a child has been abused or neglected, it shall make a finding of true.

The court's Adjudicatory Hearing Order should include the following findings and orders:

- Basis of abuse/neglect;
- Contrary to the welfare determination;
- Reasonable efforts determination;
- Custody and placement orders;
- Visitation orders;
- Evaluation, examination and treatment orders;
- Orders for services for child(ren) and parents;
- Order for social study;
- Order for case plan;
- Order for joinder of school district, pursuant to RSA 169-C:20 and Chapter 1, Part B, Protocol 11; and
- Order for Affidavit to Identify and/or Locate a Parent, Guardian or Putative Father, if applicable.

COMMENTS

Pursuant to RSA 169-C:6-b, I, the court shall, in its first court ruling that sanctions, even temporarily, the removal of a child from the home, determine whether continuation in the home is contrary to the child's welfare.

Pursuant to RSA 169-C:6-b, II, the court shall, within sixty (60) days of a child's removal from the home, determine and issue written findings as to whether reasonable efforts were made or were not required to prevent the child's removal. Further, in determining whether reasonable efforts were made to prevent the child's removal, the court shall consider whether services to the family have been accessible, available, and appropriate.

Pursuant to RSA 169-C:6-b, III, if the court orders that a child be removed from their home at the adjudicatory hearing under RSA 169-C:18, the court order for removal shall include specific written findings regarding the need for the out-of-home placement. The order shall briefly state the facts the court found to exist that justify ordering the placement.

PROTOCOL 4 SCHEDULING SUBSEQUENT HEARINGS: DISPOSITIONAL HEARING AND PERMANENCY HEARING

In all cases and before concluding the adjudicatory hearing, the court should set the date for the **dispositional hearing within thirty (30) calendar days of the adjudicatory/consent order**. This date should be included in the court's order. See Chapter 8, Protocol 1.

Additionally, if the child is in an out-of-home placement, pursuant to RSA 169-C:3, XX-a, the court should set the date for the **12-month permanency hearing**. This date should be included in the court's order. See Chapter 11, Protocol 4.

Where necessary, and if possible, the court should make every effort to provide for meaningful attendance and participation at hearings by all parties, including the use of conference calls and video conferencing if in-person attendance is not possible.

COMMENT

If the court does not rule on the merits from the bench but takes the matter under advisement, the court should nevertheless select a potential date for a dispositional hearing and, if the child is in an out-of-home placement, a potential date for a 12-month permanency hearing, before concluding the adjudicatory hearing. These dates will be utilized by the court if it finds that DCYF has proven its petition(s). This practice allows all parties to confirm their availability for both hearings, if such hearings become necessary.

Revised 12/1/23

PART B CONSENT AGREEMENT

INTRODUCTION

An adjudicatory hearing, or trial, may be waived, pursuant to RSA 169-C:17, I, and a consent agreement filed with the court. The court's approval of a consent agreement that includes a finding of true will have the same force and effect as if the court had determined at an adjudicatory hearing that a child had been abused and/or neglected and had entered a finding of true.

PROTOCOL 5 SUBMISSION OF A CONSENT AGREEMENT AND REQUIREMENTS OF THE COURT BEFORE APPROVING AN AGREEMENT

Pursuant to RSA 169-C:17, I, at any time after the filing of the petition and prior to an order of adjudication, the court may suspend the proceedings and consider a consent agreement entered into among and between the parties and submitted to the court.

Before approving a consent agreement, the court should ensure the agreement:

A. Is set forth in writing and signed by all parties, including the petitioned parent and their attorney, the non-petitioned parent, if present, DCYF and the CASA GAL/GAL on behalf of the child;

COMMENT

If a proposed consent agreement is signed by one parent and the other parent is present in court but unwilling to sign it, the consent agreement should not be approved by the court. Instead, the court should conduct an adjudicatory hearing, which may be abbreviated and based on offers of proof. At that hearing, the other parent should have an opportunity to challenge the evidence presented.

B. Accurately record the reasons for State intervention, including a finding of abuse and/or neglect and, wherever appropriate to provide protection or services to the child, name the individual responsible for the abuse and neglect;

C. Includes a provision, pursuant to RSA 169-C:18, V, that DCYF will conduct a social study;

D. Includes a copy of The Effect of a Consent Order on Your Constitutionally and Statutorily Protected Rights, Including Your Parental Rights (NHJB-2270), signed by the petitioned parent and their attorney and the non-petitioned parent, if present in court. By signing this form, parents acknowledge, that a

finding in a consent agreement shall have the same force and effect as an adjudicatory finding and that, pursuant to RSA 169-C:17, II, they are informed of the consequences of the consent order and that they voluntarily and intelligently consent to the terms and conditions of the order;

E. Orders DCYF to conduct a social study, pursuant to RSA 169-C:18, V.

COMMENTS

Whenever possible, DCYF should send any proposed consent agreement to all parties in advance of the adjudicatory hearing.

This protocol favors the identification of the perpetrator responsible for the abuse and neglect. There are extraordinary circumstances, however, where that identification will not be possible. In those cases, a consent order is not precluded as the identification of the perpetrator is not a requirement for a finding that a child has been abused and/or neglected.

RSA 169-C:17, II allows that a consent order "may" include a finding of abuse and/or neglect as long as the child is not in an out-of-home placement. However, courts are strongly discouraged from approving consent agreements without a finding, even in cases in which a child is not in an out-of-home placement. A consent order that does not include a finding creates difficulties. Without a finding, the court may not authorize a child's removal from their home without a new petition and finding. Thus, for a child to be removed from their home, there would need to be new allegations of abuse and/or neglect against a parent and a new petition filed.

The court should review the consent order and engage in a colloquy with the guardian or custodian and the child, the latter through the CASA GAL/GAL, and inform them of the consequences of the order. The court must also determine, pursuant to RSA 169-C:17, II, that the child, through the CASA GAL/GAL, has voluntarily and intelligently consented to the terms and conditions of the order.

PROTOCOL 6 THE COURT'S CONSENT IN LIEU OF ADJUDICATORY HEARING ORDER

After the consent agreement is reviewed by the court and approved, the court should issue a Consent in Lieu of Adjudicatory Hearing Order, which includes the following findings and orders:

- Finding of abuse and neglect;
- Contrary to the welfare determination;
- Reasonable efforts determination;
- Custody and placement orders;
- Visitation orders;

- Evaluation, examination and treatment orders;
- Orders for services for child(ren) and parents;
- Order for social study;
- Order for case plan;
- Order for joinder of school district, pursuant to RSA 169-C:20 and Chapter 1, Part B, Protocol 11; and
- Order for Affidavit to Identify and/or Locate a Parent, Guardian or Putative Father, if applicable.

PROTOCOL 7 SCHEDULING SUBSEQUENT HEARINGS: DISPOSITIONAL HEARING AND PERMANENCY HEARING

Before concluding the hearing, the court should set the date for the **dispositional hearing within thirty (30) calendar days of the consent order**. This date should be included in the court's order. See Chapter 8, Protocol 1.

Additionally, if the child is in an out-of-home placement, pursuant to RSA 169-C:3, XX-a, the court shall schedule a **permanency hearing**, pursuant to RSA 169-C:17, III. This date should be included in the court's order. See Chapter 11, Protocol 4.

Where necessary, and if possible, the court should make every effort to provide for meaningful attendance and participation at hearings by all parties, including the use of conference calls and video conferencing if in-person attendance is not possible.

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•RSA 169-C:3, Definitions

•RSA 169-C:10, Attorneys and Guardians ad Litem

•RSA 169-C:12-b, Filing Reports, Evaluations and Other Records

•RSA 169-C:12-d, Court-Ordered Alcohol and Drug Testing

•RSA 169-C:17, Consent Order

•RSA 169-C:18, Adjudicatory Hearing

•RSA 169-C:19, Dispositional Hearing

•RSA 169-C:19-b, Presumption in Favor of In- State Placements

•RSA 169-C:19-c, Court Order for Services, Placements, and Programs Required for Minors from Certain Providers Qualified for Third-Party Payment

•RSA 169-C:19-d, Visitation with Siblings

•RSA 169-C:20, Disposition of Educationally Disabled Child

•RSA 169-C:21, Final Order

•RSA 169-C:22, Modification of Dispositional Orders

•RSA 169-C:24, Periodic Review Hearings

•RSA 169-C:28, Appeals

•RSA 170-A, Interstate Compact on the Placement of Children

•RSA 170-G:4, XVIII, Department; Powers, and Duties

•RSA 186-C, Special Education

CASE LAW:

•*In re Melissa M.,* 127 N.H. 710, 506 A.2d 324 (1986), when no conditions exist under which reunification can safely occur, the court is not required to attempt to specify conditions under which a parent and child may be reunited.

•*In re Ryan G*., 142 N.H. 643, 707 A.2d 134 (1998), if the court's order includes a non-certified placement for a child, DCYF must undertake the certification review process giving "proper weight" to the court's placement order. DCYF, however, has the exclusive power to certify placement facilities.

•*In re Thomas M. and Michael M*., 141 N.H. 55, 676 A.2d 113 (1996), superior court must hear both the adjudicatory and dispositional aspects of the neglect case de novo.

•*In re Tricia and Trixie H.,* 126 N.H. 418, 493 A.2d 1146 (1985), petition to terminate parental rights based on a failure to correct does not require that a parent have been the named respondent in an RSA 169-C neglect proceeding before that parent's rights can be terminated so long as there is ample evidence of the non-respondent parent's failure to correct the conditions which led to the abuse and neglect finding.

PART A DISPOSITIONAL HEARING

INTRODUCTION

If the court finds that a child has been abused/neglected or there is a consent agreement that includes such a finding, it will conduct a dispositional hearing. The purpose of this hearing is to review the social study submitted by DCYF and to identify a specific plan which will outline what each parent must do to correct the conditions that led to the finding of abuse/neglect. Prior to the issuance of a final dispositional order, DCYF must submit its recommendations for the plan, which the court may use in whole or in part.

PROTOCOL 1 SCHEDULING AND NOTICE OF THE DISPOSITIONAL HEARING

The court should handle scheduling and notice of the dispositional hearing as follows:

A. Scheduling

A dispositional hearing must be held, pursuant to RSA 169-C:18, VII, **within thirty (30) calendar days of a finding of abuse and neglect**. The finding may be a court finding or a consent order that includes a finding.

Based on national guidelines, the approximate length of time for a dispositional hearing is 30 minutes.

B. Notice to Parties and Non-Parties

The court's notice to RSA 169-C parties and non-parties of a dispositional hearing should be handled as follows:

The court shall send notice of the dispositional hearing to all parties to the RSA 169-C case.

For **parents who are incarcerated in New Hampshire**, the court should do a transport order to ensure the parent's attendance and participation at the hearing.

Additionally, **foster parents, relative caregivers and kinship caregivers**, while not parties to the case, should be sent notice of all court proceedings. See Chapter 1, Part C, Protocol 14.

PROTOCOL 2 COURT NOTIFICATION/JOINDER OF THE LEGALLY LIABLE SCHOOL DISTRICT

The court's notification/joinder of the legally liable school district is set forth in Chapter 1, Part B, Protocol 11.

PROTOCOL 3 SUBMISSION OF COURT REPORTS

Pursuant to RSA 169-C:12-b, all reports, evaluations, and other records of DCYF, counselors and the CASA GAL/GAL shall be filed with the court and all other parties **at least five (5) business days prior to any hearing**. See Chapter 1, Part C, Protocol 14.

PROTOCOL 4 DCYF'S SUBMISSIONS BEFORE DISPOSITIONAL HEARING: CASE PLAN, SOCIAL STUDY AND DISPOSITIONAL REPORT

Prior to the dispositional hearing, the court should expect, consistent with DCYF's practice, that DCYF will submit a case plan, social study and dispositional report, as set forth below.

A. Case Plan

Consistent with RSA 169-C:21, II, DCYF shall submit its recommendation for the case plan, which the court may use in whole or in part. A specific plan shall include, but not be limited to, the services DCYF will provide to the child and family.

COMMENT

DCYF develops a "case plan" when a child is in out-of-home placement. A similar plan is developed when a child is in the care of a parent, but such plan is referred to by DCYF as a "prevention plan." Court orders and protocols use the term "case plan" for either a "case plan" or a "prevention plan."

B. Social Study

DCYF shall make an investigation and a social study consisting of, but not limited to, the home conditions, family background, and financial assessment, school record, mental, physical and social history of the family, including sibling relationships and residences for appropriateness of preserving relationships between siblings who are separated as a result of court ordered placement, and submit it in writing to the court prior to the final disposition of the case, pursuant to RSA 169-C:18, V.

COMMENT

Pursuant to RSA 169-C:18, V, if the court makes a finding that a child has been abused or neglected, the court shall order DCYF to

make an investigation and a social study, as set forth above.

C. DCYF's Dispositional Report

The requirements of DCYF's dispositional report are set forth in RSA 169-C:18, V-b. The report includes, but is not limited to, the following:

1. identifying information about the child, including the child's age, their overall length in placement, whether the child is expected to remain in the current placement, and the total number of placements to date. The number and nature of contacts between the child and their parents, siblings, and the CPSW should also be outlined;

2. summary of the events leading to the petition;

3. recommendations for a case plan, which shall include, but will not be limited to, the following:

   (a) identification of the problem(s) leading to a finding of abuse and/or neglect;

   (b) identification of the services that DCYF will provide to the child;

   (c) identification of the services that DCYF will provide to each parent;

   (d) a statement of actions that are needed by each parent to correct the conditions that led to a finding of abuse and neglect, with timetables for accomplishing them;

   (e) a statement of what each parent cannot do;

   (f) a description of the outcomes that each parent must achieve to correct the conditions that led to a finding of abuse and/or neglect, before the child may be returned home;

   (g) a proposed concurrent plan, as defined in RSA 169-C:3, VII-a and required pursuant to RSA 169-C:19, III(a), for the child, if reunification cannot be safely achieved in a timely manner; and

   (h) the date of the 12-month permanency hearing.

   COMMENT

   When no conditions exist under which reunification can safely occur, the court is not required to attempt to specify conditions under which a parent and child may be reunited. *In re Melissa M.*, 127 N.H. 710, 506 A.2d 324 (1986).

4. when DCYF recommends an out-of-home placement for a child, the report should also address some additional key elements, including:

   (a) pursuant to RSA 169-C:18, V-a, a description of efforts made by DCYF to avoid the need for placement and an explanation why

these efforts were unsuccessful; and an explanation why the child cannot be protected from the identified problems in the home even if services are provided to the child and family;

(b) a summary of the efforts made to identify and contact relatives about providing placement for the child;

(c) a description of the type of placement, its distance from the child's parents, and if it is the least disruptive and most family-like setting that meets the needs of the child;

(d) the placements of the child's siblings and, if they are to be apart, proposed arrangements for visitation;

COMMENT

Pursuant to RSA 169-C:19-d, the court shall, whenever reasonable and practical and based on a determination of the best interests of the child, ensure that children who have an existing relationship with a sibling and who are separated from their siblings have access to and visitation rights with their siblings throughout the duration of their placement.

(e) the proposed arrangements for visitation between each parent and the child;

(f) any special needs of the child; and

5. a summary of the current circumstances of the child and each parent;

6. a summary of cost projections; and

7. any recommendations.

PROTOCOL 5 CONDUCTING THE DISPOSITIONAL HEARING

If the court finds that a child has been abused and/or neglected, the inquiry at the dispositional hearing should include the following:

A. Does DCYF's proposed case plan address the problems and needs of the child and parent(s)?

A key decision for the court to make at the dispositional hearing is whether to approve, disapprove, or modify the case plan proposed by DCYF. The case plan is designed to inform a parent of what they must do; and, thus, the court should actively review the case plan and determine:

(a) whether the plan is comprehensive in identifying all the problems that need to be addressed to meet the needs of the child and their parents;

(b) whether the plan defines clear objectives and measurable changes to be achieved by each parent, and conditions each parent must meet before the child is returned home; and

(c) the services DCYF will provide to the child and family.

The court should take time in reviewing the plan to ensure that all parties understand the plan and what is expected of them.

If the judge, pursuant to RSA 169-C:19, V, orders services, placements, or programs different from the recommendations of DCYF, the judge shall include a statement of the costs of the services, placements, and programs that are ordered and why they are being ordered.

COMMENTS

Pursuant to RSA 169-C:19-c, the court, whenever possible, shall order services, placements, and programs by providers certified pursuant to RSA 170-G:4, XVIII, who qualify for third-party payment under insurance covering the minor.

If the court's order includes a non-certified placement for a child, DCYF must undertake the certification review process giving "proper weight" to the court's placement order. DCYF, however, has the exclusive power to certify placement facilities. *In re Ryan G.,* 142 N.H. 643, 707 A.2d 134 (1998).

B. Will DCYF be awarded legal supervision or legal custody of the child?

Pursuant to RSA 169-C:19, III (a), legal custody may be transferred to a child placing agency or relative provided, however, that **no child shall be placed with a relative until a written social study of the relative's home**, conducted by a child placing agency, is **submitted to the court**. Notwithstanding RSA 169-C:19, III (a), which allows the court to award legal custody to a relative and requires DCYF to complete a social study of the relative, DCYF’s practice is to request legal custody be awarded to DCYF, not a relative.

COMMENT

Pursuant to RSA 169-C:18, V-c, if a preliminary order provided for an out-of-home placement of the child, the child shall not be returned to the home unless the court finds that there is no threat of imminent harm to the child and the parent or parents are actively engaged in remedial efforts to address the circumstances surrounding the underlying petition.

Where a child is in an out-of-home placement, the court shall include in its order the concurrent plan for the child, pursuant to RSA 169-C:19, III (a). A

concurrent plan means an alternate permanency plan in the event that a child cannot be safely reunified with their parents, pursuant to RSA 169-C:3, VII-a.

If an out-of-home placement is recommended, the court must decide whether the type of placement proposed by DCYF is the least disruptive and most family-like setting and whether it meets the needs of the child. Pursuant to RSA 169-C:19-b, there shall be a presumption that an in-state placement is the least restrictive and most appropriate placement. Additionally, an out-of-state placement may only be ordered by the court upon an express written finding that there is no appropriate in-state placement available.

Factors that should be considered when assessing the suitability of an out-of-home placement are as follows:

(a) the potential for the placement to facilitate timely reunification;

(b) the geographic proximity to the parent and other family members, schools, and friends;

(c) the maintenance of sibling groups in a single placement; and

(d) the primary language spoken by the child.

C. Has DCYF made reasonable efforts to prevent the child's removal and placement?

Reasonable efforts should be documented by the court at every stage of the process and at each court hearing.

At the dispositional hearing, the court should determine whether DCYF has made reasonable efforts to keep the family intact and prevent the child's removal and placement.

COMMENT

A judicial determination with regard to **reasonable efforts to prevent the child's removal and placement** must be made within sixty (60) days of a child's removal. If such a determination is not made, the child is ineligible for Title IV-E foster care maintenance payments for their entire stay in foster care. All findings with respect to reasonable efforts must be explicit, specific, and made on a case-by-case basis.

D. In addition to the parties to the case, are there others who should receive notice of the 3-month review hearing, including, but not limited to, foster parents, relative caregivers and kinship caregivers?

E. Do the child’s expressed interests conflict with the recommendation for dispositional orders of the CASA GAL/GAL?

Pursuant to RSA 169-C:10, II(a), in cases involving an abused or neglected child, where the child's expressed interests conflict with the recommendation for dispositional orders of the CASA GAL/GAL, the court may appoint an attorney to represent the interests of the child.

F. Will the child require educational services outside the child's home school district? See Chapter 1, Part B, Protocol 11.

PROTOCOL 6 THE COURT'S DISPOSITIONAL HEARING ORDER

The court should issue the Dispositional Hearing Order to the parties **within fourteen (14) calendar days** of the dispositional hearing.

The court's dispositional order shall include the following:

- Finding that the child has been abused and/or neglected, pursuant to RSA 169-C:21;
- The conditions the parents shall meet before the child is returned home, pursuant to RSA 169-C:21;
- A specific plan that shall include, but not be limited to, the services DCYF will provide to the child and family. DCYF shall submit, prior to the issuance of the dispositional order, its recommendation for the plan, which the court may use in whole or in part, pursuant to RSA 169-C:21;
- If the judge orders services, placements, or programs different from the recommendations of the department, the judge shall include a statement of the costs of the services, placements and programs so ordered, pursuant to RSA 169-C:19, V;
- When a child is in an out-of-home placement, the court shall designate the **concurrent plan** for the child, pursuant to RSA 169-C:19, III(a). The court should expect DCYF to make efforts to implement the concurrent plan at the same time DCYF is making efforts to finalize the permanency plan. A concurrent plan means an alternate permanency plan in the event that a child cannot be safely reunified with their parents, pursuant to RSA 169-C:3, VII-a;
- Contrary to the welfare determination;
- Reasonable efforts determination;
- Custody and placement orders;
- Visitation orders;
- Treatment orders;
- Order for joinder of school district, pursuant to RSA 169-C:20 and Chapter 1, Part B, Protocol 11; and/or

- Order for Affidavit to Identify and/or Locate a Parent, Guardian or Putative Father, if applicable.

COMMENTS

No dispositional order shall be made by a court without first reviewing the social study and without first reviewing the school district recommendations required under RSA 169-C:18-V.

Pursuant to 42 U.S.C. 671(a)(15) and 42 U.S.C. 672 (i)(2) under Part E. Federal Payments for Foster Care and Adoption Assistance, the court is required to make a determination that a child who remains in their home and receives preventative services is at "imminent risk of removal" absent such services. This determination is required every six (6) months.

Pursuant to RSA 169-C:12-d, the court may order alcohol or drug testing at any stage of the proceedings where substance abuse is an ongoing issue in the case, where alcohol or drug use is a disputed issue of fact, or where there is reason to believe that alcohol or drug use may be substantially interfering with a parent's ability to adhere to the case plan. Unless otherwise ordered by the court, the frequency and type of such testing shall be at the discretion of DCYF.

PROTOCOL 7 SCHEDULING THE 3-MONTH REVIEW HEARING AND 12-MONTH PERMANENCY HEARING

Prior to concluding the dispositional hearing, the court shall schedule an initial 3-month review hearing **within three (3) months of the dispositional hearing** to review the status of all dispositional orders issued, pursuant to RSA 169-C:24, I. See Chapter 10, Protocol 1.

Further, where there is a finding of abuse and/or neglect and an out-of-home placement of a child, the order should ensure that a date for the 12-month permanency hearing has been set and include this date in its Dispositional Hearing Order. If not already selected, the court should include a date for the 12-month permanency hearing, pursuant to RSA 169-C18, V-a, that is 12 months from the date of the finding of abuse and/or neglect pursuant to RSA 169-C:17 and/or RSA 169-C:18. See Chapter 11, Protocol 4.

Where necessary, and if possible, the court should make every effort to provide for meaningful attendance and participation at hearings by all parties, including the use of conference calls and video conferencing if in-person attendance is not possible.

PROTOCOL 8 MODIFICATION OF OR ADDITIONS TO THE DISPOSITIONAL ORDERS

Pursuant to RSA 169-C:22, upon the motion of a child, parent, custodian, guardian, or DCYF alleging a change of circumstances requiring a different disposition,

the court shall conduct a hearing and, pursuant to RSA 169-C:19, may modify a dispositional order, provided that the court may dismiss the motion if the allegations are not substantiated in the hearing.

A change of circumstances requiring a different or additional disposition contemplates substantive changes to the child's or a parent's circumstances.

PART B CHILDREN AND YOUTH IN COURT

INTRODUCTION

By strongly supporting interested children and youth to attend and "otherwise participate" at RSA 169-C post-adjudicatory court hearings, New Hampshire joins a growing number of states that recognize that the long-standing practice of shielding children and youth from court proceedings, however well-intended, often does not benefit them or the judges who make critical life decisions about them. Moreover, research appears to largely dispel concerns about children and youth being traumatized by appearing in court.[1]

Instead, by attending court hearings, beginning with the dispositional hearing, judges are often "de-mystified" in the eyes of children and youth and judges become real people who are interested in the well-being of them and their families. Additionally, there is restorative benefit to children and youth hearing first-hand from the judge that they are not responsible or at fault for the case before the court, what their parents are required to do or why they cannot live with their parents. For older children and youth, the opportunity to speak with a judge also offers a potentially powerful antidote to feelings of helplessness and having no say in their lives. By having children and youth attend court hearings, judges obtain a better understanding of them by virtue of being able to see them and, with the exception of very young children, talk with them.

Thus, the goals of these protocols are to enhance:

- a child's/youth's feelings of being acknowledged, valued and heard by having the opportunity to talk with the judge at RSA 169-C court hearings, and/or communicating with the judge by submitting a letter, drawing and/or photograph; and
- a judge's understanding of the children and youth about whom the judge makes significant life decisions.

Additionally, pursuant to RSA 170-G:21, XII, a child who is placed in a foster home or other out-of-home placement pursuant to a juvenile court proceeding under RSA 169-C shall have the right or privilege to attend and participate in court hearings to the extent permitted by the court and appropriate given the age and experience of the child. These protocols set forth best practice for such attendance and participation at RSA 169-C court hearings.

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[1] See, e.g., V. Weisz et al, "Children and Procedural Justice," 44 *Court Review: The Journal of the American Judges' Association* at 36 (2007-2008). See also Hon. William G. Jones (ret.), "Making Youth a Meaningful Part of the Court Process," *Juvenile and Family Justice Today* at 20 (Fall 2006).

PROTOCOL 9 THE COURT, PARTIES AND ADULT CAREGIVERS TO ENCOURAGE CHILDREN AND YOUTH TO PARTICIPATE IN COURT HEARINGS

The court, parents, CASA GAL/GAL, DCYF, and adult caregivers, including foster parents, relative caregivers and kinship caregivers, should encourage and support all interested children and youth, **whether residing at home or in an out-of-home placement**, to attend and/or "otherwise participate" in post-adjudicatory court hearings, beginning with the dispositional hearing.

At the option of a child/youth, and not ordered by the court against a child/youth's wishes, a child/youth may participate in court hearings by:

- Attending all or part of the hearing;
- Speaking, on the record, with the judge in the presence of all parties or outside the presence of all parties with the judge and a member of the court staff;
- Observing the court hearing; and/or
- "Otherwise participating" in the court hearing and communicating with the judge by submitting a letter, drawing and/or photograph to the judge, and all parties, through a CASA GAL/GAL.

PROTOCOL 10 SPECIFIED RSA 169-C COURT HEARINGS IN WHICH CHILDREN, YOUTH AND PRE-SCHOOLERS ATTEND AND/OR OTHERWISE PARTICIPATE"

Children and youth, **at their option**, and preschoolers may attend and/or "otherwise participate" in the following court hearings.

A. Youth (14-20 Years of Age)

- Dispositional Hearing;
- All Review Hearings;
- Permanency Hearing; and
- Post-Permanency Hearings.

B. Children (5-13 Years of Age)

- Dispositional Hearing;
- All Review Hearings;
- Permanency Hearing on a **case-by-case basis**; and
- Post-Permanency Hearings.

Permanency hearings, at times, can be contentious and stressful, thereby warranting a case-by-case determination by the court whether a child 5-13 years of age should be invited to attend all or part of a permanency hearing. If it is determined by the court at the 9-month review hearing that the child will be excluded from the entire permanency hearing, the court should:

- encourage an interested child to "otherwise participate" and communicate with the judge by submitting a letter, drawing and/or photograph to the judge, and all parties, through a CASA GAL/GAL; and
- via the child's CASA GAL/GAL, have the child convey any views the child has of the proposed permanency plan, pursuant to Family Division Rule 4.5, and/or any thoughts or feelings they may want the court to know.

C. Preschoolers (0-4 Years of Age)

Preschoolers should attend the following court hearings:

- 3-Month Review Hearing;
- 9-Month Review Hearing; and
- Initial RSA 169-C Post-Permanency Hearing.

1. Arranging Transportation for Court Hearings

DCYF shall discuss transportation arrangements with parents, foster parents, relative caregivers and kinship caregivers so that preschoolers are able to appear at the 3-month and 9-month review hearings and initial post-permanency hearing. Whenever possible, the preschooler will be transported by the adult with whom they are residing. In the event the adult with whom the preschooler is residing is unable to transport them to these hearings, best practice is for DCYF to collaborate with the CASA GAL/GAL to identify another adult the child/youth knows and with whom the child/youth is comfortable who is able to provide transportation.

2. Preschoolers Attending Court Hearings

Best practice is for the court to spend a few minutes at the outset of a 3-month and 9-month review hearing and initial post-permanency hearing **welcoming and engaging** with the preschooler and observing any interaction the preschooler has with their parents and/or adult caregivers.

Thereafter, and absent the preschooler being unduly distracting or a party objection sustained by the court, the preschooler should be allowed to stay for the remainder of the hearing. This practice has the added benefit of the adult who transported the preschooler, be it parent, foster parent, relative caregiver or kinship caregiver, being able to remain for the entire hearing.

If the court sustains a party objection or the preschooler is unduly distracting, the court should (a) ensure that the preschooler has been acknowledged and thanked for coming to court, and (b) speak with the adult (if present in the courtroom, such as a foster parent, relative caregiver or kinship caregiver) who transported the preschooler about the preschooler's status, and then excuse the adult and the preschooler from the hearing.

COMMENTS

Preschoolers are distinguished from children and youth by their general inability to make an informed decision about whether to attend a hearing. This protocol makes the substituted judgment that the court should see preschoolers at the 3-month and 9-month review hearings and initial post-permanency hearing. The purpose of preschoolers being present at these hearings is to ensure the court sees them at least once every six months and has an opportunity to consider their well-being while they are in court.

In both removal and non-removal cases, best practice is for the adult who transports the preschooler, be it parent, foster parent, relative caregiver or kinship caregiver, to arrange for another adult known to the preschooler to accompany them to court hearings. In this way, if a preschooler is unable to remain for the entire hearing, the parent, foster parent, relative caregiver or kinship caregiver can remain at the hearing while the other adult waits with the preschooler outside the courtroom until the hearing concludes.

PROTOCOL 11 EXPECTATIONS OF CHILDREN AND YOUTH

Children and youth, in removal and non-removal cases, should have the following expectations about their opportunity to attend and/or "otherwise participate" in court hearings:

- **Letter from the Judge**: A child/youth's CASA GAL/GAL will give them a letter from the judge inviting the child/youth to attend and/or "otherwise participate" in court hearings.

- **Option to Attend Court Hearings and "Otherwise Participate":** At the option of a child/youth and not ordered by a judge, a child/youth may attend post-adjudicatory court hearings, beginning with the dispositional hearing. Either in addition to attending a court hearing or as an alternative to attending, a child/youth may "otherwise participate" by submitting a letter, drawing and/or photograph to the judge through the child/youth's CASA GAL/GAL. All parties will also receive a copy of what a child/youth submits. A child/youth may receive assistance from the CASA GAL/GAL to "otherwise participate".

- **Preparation for a Court Hearing:** A CASA GAL/GAL will prepare a child/youth interested in attending a court hearing, including giving the child/youth general information about an upcoming hearing and the opportunity to watch the **video "Court . . . I'm Going"**.

- **Transportation**: DCYF will discuss transportation arrangements with parents, foster parents, relative caregivers and kinship caregivers so that an interested child/youth will be able to attend the upcoming court hearing. Whenever possible, a child/youth will be transported by the adult with whom they are residing. In the event this adult is unable to transport, best practice is for DCYF to collaborate with the CASA GAL/GAL to identify another adult the child/youth knows and with whom the child/youth is comfortable who is able to provide transportation.

- **Court Security**: Court Security Officers will make a child/youth feel welcome and as comfortable as possible upon entering the court building. There is court security at a courthouse to ensure everyone stays safe.

- **Waiting for and Sitting in a Court Hearing**: A child/youth may sit with whomever they would like while waiting for a hearing to be called. When in the courtroom, a child/youth may sit with any individual, including their parent(s), CASA GAL/GAL, or with their foster parent, relative caregiver or kinship caregiver.

  If there are RSA 169-C Orders of Protection involving a child/youth and their parent(s), or other no contact orders or circumstances that warrant it, the CASA GAL/GAL will make prior arrangements with the court staff for the child/youth to wait in a separate room before going into the court hearing.

- **Attending a Court Hearing:** The judge will spend a few minutes at the outset of the court hearing making the child/youth feel welcome and as comfortable as possible.

  Unless otherwise determined by the court, a child/youth will attend the entirety of a hearing. If a child/youth will not stay for the entire hearing, the judge will give the child/youth an opportunity to speak with the judge before leaving.

- **Speaking in Court:** If a child/youth chooses to speak to the judge, on the record, in the courtroom in the presence of all parties or, alternatively, with the judge and a member of the court staff, the child/youth will be treated with respect and not interrupted while speaking.

- **De-briefing about the Court Hearing:** Within 48 hours of a court hearing, the CASA GAL/GAL will contact the child/youth in person or by telephone. The CASA GAL/GAL will talk to the child/youth about their experience attending the court hearing, whether it was a positive one and if they would like to fill out a court survey about the experience.

PROTOCOL 12 THE COURT STAFF'S ROLE

Court staff shall support children and youth attending court hearings and/or "otherwise participating" as follows:

- Scheduling hearings when children/youth and adult caregivers are available.
- Issuing notice of hearings to foster parents, relative caregivers and kinship caregivers.
- Informing Court Security Officers (CSOs) about children/youth being invited to attend, at their option, court hearings and the importance of welcoming children/youth upon their arrival at the courthouse and making them feel as comfortable as possible during their time at court.

A. Scheduling Hearings When Children/Youth and Adult Caregivers Are Available

When scheduling a court hearing and to the extent possible, court staff should take into account the following:

1. Availability of the Child/Youth

The court staff should select a date and time that least conflicts with a child/youth's school schedule and any important activities, **as provided to the court by the CASA GAL/GAL in the cover sheet** attached to the court report.

2. Availability of Foster Parent, Relative Caregiver or Kinship Caregiver

In removal cases, the court staff should select a date and time that least conflicts with the schedule of a foster parent, relative caregiver or kinship caregiver who, typically, plays a vital role in transporting a child/youth to and from court hearings and in reporting to the court on the status of the child/youth in their care.

B. Issuing Notice of Hearings to Foster Parents, Relative Caregivers and Kinship Caregivers

In removal cases and, consistent with Family Division Rule 4.4, court staff shall provide notice to foster parents, relative caregivers and kinship caregivers of all review hearings, permanency hearings, and post-permanency hearings. Best practice is for court staff to also provide these individuals with notice of dispositional hearings. Additionally, Family Division Rule 4.4 provides caregivers an opportunity to submit a letter or report to the court. See Chapter 1, Part C, Protocol 14.

So that the court is able to provide this notice, DCYF shall:

- In removal cases, provide to the court at the **adjudicatory hearing** the name and address of the individual with whom the child/youth is

residing. If removal occurs after the adjudicatory hearing, DCYF should notify the court and parties about the placement and provide all contact information.

- If there is a **subsequent change in placement**, promptly notify the court and parties about the placement and provide the name and address of the individual with whom the child/youth is residing.

C. Informing Court Security Officers about Invitation and Welcoming Children and Youth to Court

Best practice is for court staff to inform Court Security Officers about the judge's letter inviting children/youth, at their option, to attend RSA 169-C court hearings and the special importance of children and youth being made to feel welcomed and as comfortable as possible, including when they first enter the courthouse, while waiting outside the courtroom or in a separate area for a hearing to be called and during a hearing.

Additionally, court staff should inform Court Security Officers that a CASA GAL/GAL, upon their arrival at the courthouse, may inform the CSO about a child/youth who would prefer to speak to the judge in front of the parties or, alternatively, only with the judge. This information will allow the court time to prepare and consider how to structure the hearing. For example, the court may have the child/youth come into the courtroom for a brief conversation before convening the hearing or, instead, the court may convene the hearing and then ask the parties to briefly step outside the courtroom to allow the judge a chance to speak with the child/youth.

PROTOCOL 13 THE COURT'S EXPECTATIONS OF THE CASA GAL/GAL AND THEIR ROLE

The court's expectations of the CASA GAL/GAL is to carry out the following responsibilities pertaining to children and youth attending and/or "otherwise participating" in court hearings:

- Ensure the child/youth receives and understands the judge's letter inviting the child/youth to attend court hearings.
- Request a separate waiting area when there are RSA 169-C Orders of Protection, or other such orders or circumstances, which warrant it.
- Prepare the child/youth for attending RSA 169-C hearings, including watching the video "Court . . . I'm Going".
- Assist the child/youth to "otherwise participate".
- Complete a standard Cover Sheet and submit it with the CASA GAL's/GAL's court report. The Cover Sheet should include if a child/youth would like to speak with the judge and if so, if the child/youth would prefer to speak to the judge in front of the parties or, alternatively, only with the judge. Additionally,

upon arrival at the courthouse, notify the Court Security Officer about the preference of the child/youth and how they would like to speak with the judge.

- De-Brief the child/youth after court hearings attended by the child/youth.

Notwithstanding the CASA GAL/GAL being the party the court expects to carry out these responsibilities, it is recognized that in the course of DCYF's ongoing casework and discussions with children and youth, DCYF may need to provide supplemental information about attending court hearings and/or "otherwise participating". This may include DCYF responding to a question a child/youth may have based on discussions with the CASA GAL/GAL, such as preparing for attending a court hearing or "otherwise participating" by submitting a letter, drawing and/or photograph.

If a DCYF visit with a child/youth occurs prior to the CASA GAL/GAL presenting the judge's letter inviting the child/youth to attend court hearings, DCYF should, to the extent possible, have a limited discussion with the child/youth and let them know the CASA GAL/GAL will present and discuss the judge's letter and, if interested, prepare the child/youth to attend court hearings. In such circumstances, DCYF should notify the CASA GAL/GAL when a child/youth asks questions about the judge's letter and court hearing and the nature of any discussion with them.

A. Ensure the Child/Youth Receives and Understands the Judge's Letter Inviting the Child/Youth to Attend Court Hearings

The court shall expect the CASA GAL/GAL to ensure the child/youth, in **removal and non-removal cases**, receives and understands the judge's letter inviting the child/youth to participate in court hearings by:

- Discussing the judge's letter with the child/youth, and answering any questions the child/youth may have, consistent with a child's/youth's age and developmental status.
- Emphasizing that attending a court hearing to which the child/youth has been invited is at the child/youth's option, and that the child/youth may "otherwise participate", either in addition to attending a hearing and/or as an alternative to attending a hearing. A child/youth may "otherwise participate" by submitting a letter, drawing and/or photograph to the judge, and all parties, through their CASA GAL/GAL.
- Encouraging a child/youth who expresses interest in attending a court hearing and/or "otherwise participating" in such a hearing.
- Inquiring of a child/youth who does not want to attend a court hearing or "otherwise participate" as to their reason(s), and, thereafter, including any stated reason(s) in the standard cover sheet attached to the CASA GAL's/GAL's court report, and reassuring the child/youth that there are no negative consequences for not participating.

- In some instances, there may be discussion about ways to improve a child/youth's experience in court, such as the child/youth preparing "reminder notes".

COMMENT

The CASA GAL/GAL should request that whomever the child/youth is residing with provide the CASA GAL/GAL with **a school calendar** to facilitate the court's scheduling of future hearings at a date and time that least conflict with the child/youth's schooling.

B. Request a Separate Waiting Area When There are RSA 169-C Orders of Protection or Other Circumstances that Warrant it

In cases where there are Orders of Protection for a parent to stay away from a child/youth, the CASA GAL/GAL shall contact a court staff member the day before a scheduled post-dispositional hearing to request that a separate room within the courthouse be made available, apart from the parent(s) against whom there are Orders of Protection, where the child/youth and any accompanying adult(s) can wait until the hearing is called.

COMMENTS

In cases where there is a criminal no contact order involving a child/youth and their parent(s), the CASA GAL/GAL should inform the court about the order in the standard cover sheet submitted to the court with their court report. DCYF should also inform the court and parties about such an order in its court report.

There may be other circumstances warranting a child/youth waiting in a separate room in the courthouse, such as a no contact provision in a RSA 173-B domestic violence order, a stay away provision in RSA 169-C Orders of Protection or a child/youth being unable to come to a court hearing if it means waiting in close proximity to a parent or other family member. In such circumstances, the CASA GAL/GAL should inform the court about these circumstances in its standard cover sheet and DCYF should inform the court and parties about it in its court report.

C. Prepare the Child/Youth for Attending RSA 169-C Hearings, Including Watching the Video "Court . . . I'm Going"

The court shall expect the CASA GAL/GAL to prepare a child/youth who expresses an interest in attending a court hearing by discussing the following with the child/youth:

- **When** the hearing will be held, who will be at the hearing, and the purpose of the hearing.

- **The person who will transport** the child/youth to the hearing. Typically, the adult with whom the child/youth resides will provide transportation. In the event this adult is unable to transport, best practice is for DCYF to collaborate with the CASA GAL/GAL to identify an adult the child/youth knows and with whom the child/youth is comfortable who is able to provide transportation.
- The court **security process** when entering the courthouse.
- **Where and with whom the child/youth may wait** before and during the hearing. Typically, the child/youth may sit with whomever they would like while waiting for the hearing to be called and, when they are in the courtroom, any party or foster parent, relative caregiver or kinship caregiver.
- In removal cases, **whether the child/youth will be able to see and/or speak with their parent(s)** before and/or after the hearing. Typically, the child/youth will be able to speak with their parent(s) in the courthouse before and/or after the hearing unless the court has issued Orders of Protection that prohibit contact between a child/youth and one or both of their parent(s) or there are other no contact orders or circumstances that warrant it.
- The opportunity to watch the video **"Court . . . I'm Going."**
- The option of the child/youth **speaking with the judge, which will be on the record, in the courtroom** in the presence of all parties or, alternatively, with the judge and a member of the court's staff, with the understanding the judge may not be able to do what the child/youth wants. This conversation will not be confidential.
- The option of simply **observing** all or part of a hearing.
- The opportunity of the child/youth to **"otherwise participate"** by submitting a letter, drawing and/or photograph to the judge and all parties through their CASA GAL/GAL.

  In cases where the court's adjudicatory order is not issued until after the adjudicatory hearing and a child/youth wants to attend the dispositional hearing, there may be insufficient time for the CASA GAL/GAL to comprehensively prepare the child/youth. In such cases, the CASA GAL/GAL's preparation of a child/youth may necessarily be summary in nature but should be sufficient to allow the child/youth to attend the dispositional hearing with a general understanding of what to expect at the courthouse and in the courtroom.

  Following the initial preparation of a child/youth who attends an RSA 169-C court hearing and thereafter wants to attend another court hearing, the CASA GAL/GAL should **re-visit preparation basics** to ensure the child/youth remembers/knows what to expect at the courthouse and in the courtroom. In some instances, a subsequent preparation may also

include discussion about ways to improve a child/youth's experience in court, such as the child/youth preparing "reminder notes" if the child/youth forgot to tell the judge everything they wanted to say at a prior hearing.

COMMENT

Best practice is for the CASA GAL/GAL to let the child/youth know that a standard **cover sheet** will be attached to the court report submitted to the judge and all parties, including their parent(s).

D. Assist the Child/Youth to "Otherwise Participate"

In cases where the child/youth would like to "otherwise participate" in a court hearing by submitting a letter, drawing and/or photograph to the judge, the court's expectation is that the CASA GAL/GAL shall:

- Assist the child/youth in preparing the letter, drawing and/or photograph as requested by the child/youth or, for preschoolers, as determined by the CASA GAL/GAL.
- Explain to the child/youth that copies of any such submissions to the judge must be provided to all parties, including the child/youth's parent(s).
- Include any letter, drawing and/or photograph with the CASA GAL's/GAL's court report, and ensure that any letter, drawing and/or photograph is submitted to the court and other parties at least five (5) calendar days prior to the hearing.

E. Complete a Standard Cover Sheet and Submit it with the CASA GAL's/ GAL's Court Report

- The court's expectation is that the CASA GAL/GAL shall complete and submit a standard cover sheet with the CASA GAL/GAL court report. The cover sheet will support the judge in welcoming and engaging a child/youth attending a RSA court hearing by including information such as a child/youth's preferred name or nickname, any recent achievements and/or special interests/activities the child/youth may have or is engaged in.

  Additionally, the cover sheet should reflect if the child/youth plans to speak with the judge, which will be on the record, and if so if their preference is to speak in the presence of the parties or, alternatively, with the judge and a member of the court's staff. The CASA GAL/GAL could be present to support the child/youth during these conversations with the judge.

If the child/youth does not plan to attend, the cover sheet should include any known reasons for the child/youth deciding not to attend the hearing, such as a conflict with school or another activity.

COMMENTS

In cases where there is a criminal no contact order involving a child/youth and their parent(s), the CASA GAL/GAL should inform the court about the order in its standard cover sheet. DCYF should also inform the court and parties about such an order in its court report.

There may be other circumstances warranting a child/youth waiting in a separate room in the courthouse, such as a no contact provision in an RSA 173-B domestic violence order or a child/youth being unable to come to a court hearing if it means waiting in close proximity to a parent or other family member. In such circumstances, the CASA GAL/GAL should inform the court about these circumstances in its standard cover sheet and DCYF should inform the court and parties about it in its court report.

F. De-Brief the Child/Youth after Court Hearings Attended by the Child/Youth

The court's expectation is that the CASA GAL/GAL will de-brief with the child/youth **within 48 hours of a court hearing** at which the child/youth attends. This contact with the child/youth may be in person or by telephone.

The de-briefing may include, but not be limited to, the following:

- The child/youth's **understanding** of what took place at the hearing and any decision the judge may have made.
- The child/youth's **thoughts and/or feelings** about the hearing and whether attending the hearing was a positive/negative experience and reasons for it.
- The child/youth's suggestions about anything the CASA GAL/GAL, DCYF or the court could do to **make the child/youth feel more comfortable** about attending future hearings and/or "otherwise participating".
- In some instances, there may be discussion about ways to improve a child/youth's experience in court, such as the child/youth preparing "reminder notes" if the child/youth forgot to tell the judge everything they wanted to say at a prior hearing.
- Whether the child/youth would like to fill out a court survey about their experience at the hearing.

PROTOCOL 14 THE COURT'S EXPECTATIONS OF DCYF AND ITS ROLE

The court's expectation of DCYF is to carry out the following responsibilities pertaining to parents, foster parents, relative caregivers and kinship caregivers so that

parents and adult caregivers will be supportive of children and youth interested in attending and/or "otherwise participating" in court hearings:

- Inform parents, foster parents, relative caregivers and kinship caregivers about the judge's letter inviting children/youth to attend specified RSA 169-C court hearings.
- Encourage parents, foster parents, relative caregivers and kinship caregivers to be supportive of children and youth interested in attending RSA 169-C court hearings.
- Prepare parents, foster parents, relative caregivers and kinship caregivers when a child/youth wants to attend an RSA 169-C court hearing.
- Inquire of parents, foster parents, relative caregivers and kinship caregivers about transporting a child/youth to an RSA 169-C court hearings.
- Provide the court with contact information for parents, foster parents, relative caregivers and kinship caregivers.
- De-Brief parents, foster parents, relative caregivers and kinship caregivers.

Notwithstanding DCYF being the party the court expects to carry out these responsibilities, it is recognized that in the course of the CASA GAL's/GAL's discussions with parents, foster parents, relative caregivers and kinship caregivers, the CASA GAL/ GAL may be asked to provide supplemental information about children and youth attending court hearings and/or "otherwise participating" and/or parents or adult caregivers attending these hearings. This may include the CASA GAL/GAL responding to a question from any of these adults based on discussions with DCYF.

If a CASA GAL/GAL visit with a child/youth occurs prior to DCYF discussing with parents or adult caregivers the letter from the judge inviting children and youth to attend court hearings and "otherwise participate", the CASA GAL/GAL should, to the extent possible, have a limited discussion and let the parents and/or adult caregivers know that DCYF will soon discuss the judge's letter inviting the child/youth to attend court hearings. In such circumstances, the CASA GAL/GAL should notify DCYF when a parent and/or adult caregiver asks questions about the judge's invitation and court hearing and the nature of any discussion with these adults.

A. Inform Parents, Foster Parents, Relative Caregivers and Kinship Caregivers about the Judge's Letter Inviting Children/Youth to Attend Court Hearings

The court's expectation is that DCYF shall inform parents and, in removal cases, foster parents, relative caregivers and kinship caregivers about the judge's letter inviting children/youth to attend court hearings. DCYF shall also inform parents, foster parents, relative caregivers and kinship caregivers about the reasons for the court inviting children and youth to participate in court hearings and that they may "otherwise participate" by submitting a letter,

drawing and/or photograph to the judge and all parties through the child/youth's CASA GAL/GAL.

DCYF should discuss with parents and, if applicable, adult caregivers that the decision to attend a court hearing and/or "otherwise participate" should be at the option of the child/youth, as reflected in the judge's letter, and will not be ordered by the judge.

B. Encourage Parents, Foster Parents, Relative Caregivers and Kinship Caregivers to be Supportive of Children and Youth Interested in Attending Court Hearings

The court's expectation is that DCYF shall encourage parents and, in removal cases, foster parents, relative caregivers and kinship caregivers to be supportive of children/youth who express interest in attending court hearings and/or to "otherwise participate" by submitting a letter, drawing and/or photograph to the judge and all parties through the child/youth's CASA GAL/ GAL.

COMMENT

In the event the adult with whom DCYF is speaking is opposed to the child/youth attending a court hearing, best practice is for the child/youth to go to the courthouse the day of the hearing and for court, at the outset of the hearing, to address whether the child/youth will attend all or any part of the hearing.

C. Prepare Parents, Foster Parents, Relative Caregivers and Kinship Caregivers When the Child/Youth Wants to Attend a Court Hearing

When a child/youth wants to attend a court hearing, the court's expectation is that DCYF shall discuss the following with the parent(s) and, in removal cases, whomever the child/youth is residing with, be it foster parent, relative caregiver or kinship caregiver:

- **When** the hearing will be held, who will be at the hearing, and the purpose of the hearing.
- **Who will transport** the child/youth to the hearing? Typically, the adult with whom the child/youth resides will provide transportation.
- The **court security process** when entering the courthouse in cases where a parent, foster parents, relative caregivers and kinship caregivers has not previously attended a court hearing.
- **Where and with whom the child/youth may wait/sit** before and during the hearing. Typically, the child/youth may sit with whomever they would like while waiting for the hearing to be called and, when they are in the courtroom, any party, including a parent(s), DCYF,

CASA GAL/GAL, or foster parent, relative caregiver or kinship caregiver.

- In removal cases, **whether the parents will be able to see and/or speak with the child/youth before and/or after the hearing** (typically, parents will be able to speak with the child/youth in the courthouse before and after the hearing unless the court has issued Orders of Protection that prohibit contact between a child/youth and their parent(s).
- In cases where there is a criminal no contact order involving a child and their parent(s), DCYF should inform the court and parties about such an order in its court report. The CASA GAL/GAL should also inform the court about the order in its standard cover sheet. There may be other circumstances warranting a child/youth waiting in a separate room in the courthouse, such as a no contact provision in a RSA 173-B domestic violence order or a child/youth being unable to come to a court hearing if it means waiting in close proximity to a parent or other family member. In such circumstances, DCYF should inform the court and parties about it in its court report and the CASA GAL/GAL should inform the court about these circumstances in its standard cover sheet.
- In non-removal cases, **whether there is a relative or adult known to a preschooler who can accompany the parent and preschooler** in the event the preschooler is unable to remain for the entire hearing and needs to be attended to outside the courtroom until the hearing concludes.
- **Which adult will be the support person** (a party, foster parent, relative caregiver or kinship caregiver) in the courtroom for younger children if they become disruptive or upset.
- The option of the child/youth **speaking, on the record, with the judge in the presence of the parties or, alternatively, with the judge and a member of the court's staff** with the understanding the judge may not be able to do what the child/youth wants.
- The option of the child/youth simply **observing** all or part of a specified hearing.
- The opportunity of the child/youth to **"otherwise participate"** by submitting a letter, drawing and/or photograph to the judge and all parties, including parents, through the child/youth's CASA GAL/GAL.
- In removal cases, the foster parents, relative caregivers and kinship caregivers, consistent with Family Division Rule 4.4, will be **invited to attend/speak at court hearings and/or submit a letter/report** focusing on the child/youth's status (vs. advancing a particular position or plan). See Chapter 1, Part C, Protocol 14.

In cases where the court's adjudicatory order is not issued until after the adjudicatory hearing and a child/youth wants to attend the dispositional hearing, there may be insufficient time for DCYF to comprehensively prepare the parent(s) and, in removal cases, foster parents, relative caregivers and kinship caregivers. In such cases, DCYF's preparation of a parent and, as applicable, foster parents, relative caregivers and kinship caregivers may necessarily be summary in nature but should be sufficient to provide these adults with a general understanding of what to expect at the courthouse and in the courtroom when a child/youth attends a dispositional hearing.

Following the initial preparation of a parent(s) and, in removal cases, foster parents, relative caregivers and kinship caregivers when a child/youth wants to attend a hearing, DCYF, as deemed warranted by DCYF, should **revisit preparation basics** with a parent(s) and, as applicable, foster parents, relative caregivers and kinship caregivers whenever a child/youth expresses interest in making additional appearances at RSA 169-C court hearings.

D. Inquire of Parents, Foster Parents, Relative Caregivers or Kinship Caregivers about Transporting a Child/Youth to Court Hearings

The court's expectation is that DCYF shall discuss transportation arrangements with parents and, in removal cases, foster parents, relative caregivers and kinship caregivers for children and youth who want to attend a court hearing. Whenever possible, the child/youth will be transported by the adult with whom the child/youth is residing.

In the event this adult is unable to transport, best practice is for DCYF to collaborate with the CASA GAL/GAL to identify an adult the child/youth knows and with whom the child/youth is comfortable who is able to provide transportation.

E. Provide the Court with Contact Information for Foster Parents, Relative Caregivers and Kinship Caregivers

In removal cases and, consistent with Family Division Rule 4.4, court staff shall provide notice to foster parents, relative caregivers and kinship caregivers of all review hearings, permanency hearings, and post-permanency hearings. Best practice is for court staff to also provide these individuals with notice of dispositional hearings. Family Division Rule 4.4 also provides caregivers an opportunity to submit a letter or report to the court. See Chapter 1, Part C, Protocol 14.

So that the court is able to provide this notice, DCYF shall:

- In removal cases, provide to the court at the **adjudicatory hearing** the name and address of the individual with whom the child/youth is residing. If removal occurs after the adjudicatory hearing, DCYF should notify the court, and parties, about the placement and provide all contact information.
- If there is a subsequent change in placement, promptly notify the court, and parties, about the placement and provide the name and address of the individual with whom the child/youth is residing.

F. De-Brief Parents, Foster Parents, Relative Caregivers and Kinship Caregivers

Following all court hearings attended by a child/youth and prior to the next hearing, the court's expectation is that DCYF will de-brief with the parent(s) and, in removal cases, the adult with whom the child/youth is residing, be it foster parent, relative caregiver or kinship caregiver, by:

- Inquiring about the **adult's view of the child/youth's thoughts and/or feelings** about the hearing and whether attending the hearing was a positive/negative experience for the child/youth and reasons for it.
- Inviting the **adult's thoughts about anything DCYF, the CASA GAL/GAL or the court** could do to make the child/youth feel more comfortable about attending future hearings and/or "otherwise participating".
- **Reminding** foster parents, relative caregivers and kinship caregivers **of their continuing opportunity to attend review hearings, permanency hearings and post-permanency hearings** and/or to submit a letter or report focusing on the child/youth's status (vs. advancing a particular position or plan), pursuant to Family Division Rule 4.4. See Chapter 1, Part C, Protocol 14.

PROTOCOL 15 THE COURT'S ROLE

The court's role as it pertains to children and youth attending and/or "otherwise participating" in court hearings is as follows:

- General Considerations.
- The Court's Interaction with Children and Youth Who Attend Court Hearings.
- The Court's Orders.

A. General Considerations

1. Review the Standard Cover Sheet to the CASA GAL's/GAL's Court Report

Prior to conducting a hearing, the court should review the cover sheet to the CASA GAL/GAL court report pertaining to the appearance or non-appearance of the child/youth at the hearing.

For a child/youth who will attend, the cover sheet will include, for example, a child/youth's preferred name to be called or nickname, any recent achievements, and any special interests/activities the child/youth may have. Additionally, the cover sheet should reflect if the child/youth plans to speak with the judge, which will be on the record, and if so if their preference is to speak in the presence of the parties or, alternatively, with the judge and a member of the court's staff. The CASA GAL/GAL could be present to support the child/youth during these conversations with the judge.

If the child/youth does not plan to attend, the cover sheet should include any known reasons for the child/youth deciding not to attend the hearing, such as a conflict with school or another activity.

2. Review Any Letter, Drawing and/or Photograph Submitted by a Child/Youth

Prior to conducting a hearing, the court should review any letter, drawing and/or photograph submitted by a child/youth. During the hearing, the court should ensure that all parties received a copy of any letter, drawing and/or photograph, and should comment on the letter, drawing and/or photograph. If the child/youth is not in attendance, the court should ask the CASA GAL/ GAL to thank the child/youth for "otherwise participating", and inquire of the parties whether there is anything the court or the parties can do that would enable a child/youth to attend future RSA 169-C court hearings.

3. Presume that Children and Youth Who Appear at Specified RSA 169-C Hearings Will Remain for the Entire Hearing

The court should presume that children and youth who appear at specified RSA 169-C hearings will remain for the entire hearing. This best practice has the added value in removal cases of allowing the adult who transports the child/youth to and from the hearing, be it the foster parent, relative caregiver or kinship caregiver, to be present for the entirety of the hearing.

In the event the court and/or a party has an objection about a child/youth attending the entirety of an RSA 169-C hearing, the court should first reassure the child/youth and any adult caregiver in removal cases who transported the child/youth that the adult is entitled to be heard, pursuant to Family Division Rule 4.4, and that regardless of the court's ruling, the child/youth and adult caregiver will have an opportunity to speak with the court prior to the hearing concluding. In weighing any objection, best

practice is for the court to give maximum consideration to youth remaining for the entirety of a hearing, given that youth typically know why the child protection system is involved with their family.

COMMENTS

In the event a parent, foster parent, relative caregiver or kinship caregiver has concerns about a child/youth attending an RSA 169-C court hearing, best practice is for the child/youth to go to the courthouse the day of the hearing and for the court, at the outset of the hearing, to address whether the child/youth will attend all or any part of the hearing.

In both removal and non-removal cases, best practice is for the adult who transports the child/youth, be it parent, foster parent, relative caregiver or kinship caregiver, to arrange for another adult known to the child/youth to accompany them to the RSA 169-C court hearings. In this way, if a child/youth is unable to remain for the entire hearing, the foster parent, relative caregiver or kinship caregiver can remain at the hearing while the other adult waits with the child/youth outside the courtroom until the hearing concludes.

A CASA GAL/GAL, as a party, should be included in any discussions, whether pre- or post-dispositional, about a child/youth remaining/not remaining for the entirety of a hearing, and should also be included in all chamber conferences at which the other parties or their representatives are present. If a child/youth will not remain for the entirety of a hearing, the court should not ask any party, including the CASA GAL/GAL, to leave the hearing to wait outside the courtroom with the child/youth.

B. The Court's Interaction with Children and Youth Who Attend Court Hearings

When a child/youth attends a court hearing and is interested in speaking with the judge, there are two options for how this brief conversation can occur. A child/youth can talk to the judge in front of the parties at the hearing or, alternatively, they can talk with only the judge, in the presence of a court staff person, in the courtroom. Both conversations will be recorded and are not confidential. Additionally, if the child/youth is interested, their CASA GAL/GAL can join them for these conversations.

If there are RSA 169-C Orders of Protection requiring one parent or both parents to stay away from the child/youth, or another such order, the court should presume that when a child/youth attends a court hearing and is interested in speaking with the judge, that conversation will occur outside the presence of the parties, as set forth above.

COMMENTS

Children and youth interested in speaking with the judge should do so at a scheduled court hearing rather than at a separately requested meeting.

When a child/youth wants to only speak with the judge, the CASA GAL/GAL should include, in the cover sheet submitted to the court with their court report, if the child/youth would prefer to speak to the judge in front of the parties or, alternatively, only with the judge. Additionally, the CASA GALGAL may want to notify the Court Security Officer about this preference upon their arrival at the courthouse for the scheduled hearing. This will allow the court time to prepare and consider how to structure the hearing. For example, the court may have the child/youth come into the courtroom for a brief conversation before convening the hearing or, instead, the court may convene the hearing and then ask the parties to briefly step outside the courtroom to allow the judge a chance to speak with the child/youth.

1. Welcoming the Child/Youth and Making the Child/Youth Comfortable

The court should spend a few minutes at the outset of the RSA 169-C hearing making the child/youth feel welcomed and comfortable by:

- Acknowledging the child/youth by their preferred name or nickname, as noted in the CASA GAL's/GAL's cover sheet, and thanking him/her for coming to the hearing as well as for any letter, drawing and/or photograph the child/youth may have submitted to the court.
- Referencing a child/youth's recent achievement and/or special interests/activities, as noted in the CASA GAL's/GAL's cover sheet.
- Telling the child/youth that they are not required to speak at the hearing but if the child/youth wishes to they may do so either in the presence of the parties or, alternatively, with the judge and a member of the court staff present and, if they want, their CASA GAL/GAL. These conversations will be on the record and will not be confidential.
- Telling the child/youth that they may leave the hearing at any point if the child/youth is not comfortable remaining or would like to leave for some other reason.

COMMENT

The court's welcoming of the child/youth typically takes place in the presence of the parties at the outset of a

hearing and plays a key role in terms of whether a child/youth will feel comfortable and valued by the court as the hearing progresses.

2. Engaging Interested Children/Youth in Discussion

Immediately following the court establishing a welcoming environment for the child/youth or at a later point in the hearing or as soon after the hearing as possible, the court should spend additional time engaging with a child/youth who wishes to speak with the court by:

- Assuring the child/youth that they are not at fault for the case being in the court system.
- Inviting the child/youth to ask the judge any questions the child/youth may have.
- Encouraging the child/youth to share any information the child/youth would like.

3. Concluding the Court's Discussion with the Child/Youth

- Encouraging the child/youth in any areas where the child/youth may be experiencing difficulty.
- Encouraging the child/youth, if interested, to attend future RSA 169-C hearings and/or "otherwise participate" by submitting a letter, drawing and/or photograph.
- Asking the child/youth if there is anything else the child/youth would like to tell the judge or ask the judge.
- Thanking the child/youth for coming to court.

COMMENT

Concluding the court's discussion with the child/youth in a thoughtful manner contributes to a child/youth's feelings that they were truly heard and valued by the judge.

C. The Court's Orders

The court shall include the following in its orders for dispositional, review, permanency and post-permanency hearings:

- Whether the child/youth attended the court hearing to which they were invited and/or chose to "otherwise participate" by submitting a letter, drawing and/or photograph.
- If the child/youth attended the hearing and spoke with the judge, on the record, and whether this brief conversation occurred in the courtroom

in the presence of the parties or, alternatively, with the judge and a court staff member.

- If the child/youth did not attend the hearing, the reasons for this, if known.

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CHAPTER 9 APPEAL

STATUTORY REFERENCE:

•RSA 169-C:28, Appeals

CASE LAW:

•*In re Thomas M. and Michael M.*, 141 N.H. 55, 676 A.2d 113 (1996), the two references to “court” in the first sentence of RSA 169-C:28, I are to the [family division] court.

•*In re J.H., In re A.H.*, 171 N.H. 40, 46, 188 A.3d 1030 (2018), the term ‘final dispositional order’ is a term of art referring to the order of the [court] following its dispositional hearing, which occurs after the court has made an adjudicatory finding of abuse and neglect.

PROTOCOL 1 TIMING OF APPEAL AND FINAL DISPOSITIONAL ORDER

Pursuant to RSA 169-C:28, I, an appeal from the court may be taken to the supreme court **within thirty (30) days of the final dispositional order**.

Pursuant to the New Hampshire Supreme Court, "the term 'final dispositional order' is a term of art referring to the order of the [court] following its dispositional hearing," *In re J.H., In re A.H*., 171 N.H. 40, 46, 188 A.3d 1030 (2018), which occurs after the court has made an adjudicatory finding of abuse and neglect.

RSA 169-C:28, I also defines a final dispositional order as:

- a dismissal of a petition for abuse and/or neglect by the court; or
- any ruling or order arising from an administrative hearing held or initiated by any administrative agency, including the department, in which a finding of child abuse or neglect is made.

PROTOCOL 2 WHO MAY APPEAL

An appeal, pursuant to RSA 169-C:28, may be made by:

- the child or the child's authorized representative;
- any party having an interest, including the state; or
- any person subject to any administrative decision pursuant to RSA 169-C.

PROTOCOL 3 EFFECT OF APPEAL ON ORDERS OF THE COURT AND THE 12-MONTH PERMANENCY HEARING

An appeal shall not suspend the order or decision of the trial court, pursuant to RSA 169-C:28, I, unless the trial court so orders.

During the pendency of an appeal, the trial court should continue to conduct hearings in the RSA 169-C case(s). Additionally, an appeal does not stay the 12-month permanency hearing, which shall be held twelve (12) months from the court's finding of abuse and/or neglect. See Chapter 11, Protocol 4.

COMMENT

The Supreme Court in *In re Thomas M. and Michael M.,* 141 N.H. 55, 676 Ad.2d.113 (1996) indicated the two references to "court" in the first sentence of RSA 169-C:28, I are to the [family division] court.

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CHAPTER 10 REVIEW HEARINGS

STATUTORY REFERENCES:

•RSA 169-C:12-b, Filing Reports, Evaluations, and Other Records

•RSA 169-C:18, Adjudicatory Hearing

•RSA 169-C:19, Dispositional Hearing

•RSA 169-C:19-d, Visitation with Siblings

•RSA 169-C:20, Disposition of a Child with a Disability

•RSA 169-C:23, Standard for Return of Child in Placement

•RSA 169-C:24, Court Review of the Disposition

•RSA 169-C:24-a, Petition for Termination of Parental Rights Required; Reasonable Efforts to Reunify

•RSA 186-C, Special Education

INTRODUCTION

Review hearings are for the purpose of the court reviewing the status of a case, including services provided by DCYF and progress made by each parent since the dispositional hearing or last review hearing. As necessary, the court will adjust and update case plans.

Judicial review helps a case progress by requiring the parties to set time tables, take specific action, and make decisions. The terms of the case plan must be specified so that all parties understand their obligations, and the court can assess progress and create a valuable record of the actions of each parent and DCYF.

Review hearings are also an opportunity for the court to maintain contact not only with the parents and other parties to the case, but also with children and youth and, if applicable, their foster parents, relative caregivers or kinship caregivers.

PROTOCOL 1 SCHEDULING AND NOTICE OF 3-MONTH, 6-MONTH AND 9-MONTH REVIEW HEARINGS

The court should handle the scheduling and notice of review hearings as follows:

A. Scheduling

Pursuant to RSA 169-C:24, I, the court shall conduct **an initial 3-month review hearing within three (3) months** of the dispositional hearing to review the status of all dispositional orders issued by the court.

Thereafter, best practice is for the court, after holding a 3-month review hearing, to schedule a **6-month review hearing** and a **9-month review hearing**. This will allow the court to assess each parent's progress on the case plan, the services available to the family, and whether DCYF is making reasonable efforts to finalize the permanency plan that is in effect.

At a **9-month review hearing**, the court should restate in its order, if applicable, the date/time of the previously scheduled permanency hearing. Additionally, if there is a finding of abuse and/or neglect and the child is in an out-of-home placement, the court should select a date for a 60-day post-permanency hearing.

Additionally, the court may conduct **other review hearings** upon its own motion or upon the request of any party at any time, pursuant to RSA 169-C:24, I.

Based on national guidelines, the approximate length of time for a review hearing is 30 minutes.

COMMENT

The reason for scheduling a 60-day post-permanency hearing is

so that if, at a permanency hearing, the court identifies adoption as the permanency plan, the TPR preliminary hearing will be scheduled for the same date and time as previously selected for the 60-day post-permanency hearing. See Chapter 12, Protocol 5.

B. Notice to Parties and Non-Parties

The court should send notice of the review hearing to all parties in the RSA 169-C case.

For **parents who are incarcerated** in New Hampshire, the court should do a transport order to ensure the parent's attendance and participation at the hearing.

Additionally, **foster parents, relative caregivers and kinship caregivers**, while not parties to the case, should be sent notice of all court proceedings. See Chapter 1, Part C, Protocol 14.

The court's notification/joinder of the legally liable school district is set forth in Chapter 1, Part B, Protocol 11.

PROTOCOL 2 SUBMISSION OF COURT REPORTS

The submission of court reports is set forth in Chapter 1, Part C, Protocol 14 and Chapter 8, Part A, Protocol 3.

PROTOCOL 3 DCYF'S AFFIDAVIT AND THE CONTENT OF THE DCYF REPORT

DCYF's Affidavit and the content of its court report are as follows:

A. DCYF'S Affidavit to Identify and/or Locate a Parent, Guardian or Putative Father

When there is a missing parent in a RSA 169-C case, the court should expect that DCYF, consistent with its practice, will submit an **Affidavit to Identify and/or Locate a Parent, Guardian or Putative Father (NHJB-3031)** prior to every RSA 169-C hearing and with its court report and/or proposed order. See Chapter 4, Part A, Protocol 2.

B. Content of the DCYF Report

Pursuant to RSA 169-C:12-b, DCYF shall file its court hearing report, evaluations and other records with the court and all other parties **at least five (5) business days** prior to any hearing, which includes a review hearing.

DCYF's report should include copies of reports in their entirety from all service providers with whom DCYF has contracted for services for the child and family. This includes, but is not limited to, counselors, residential service providers, treating psychologists or therapists, foster parents, relative

caregivers, kinship caregivers and others rendering services to the family under contract with DCYF. It is DCYF's responsibility to obtain such reports sufficiently in advance so that the five (5) business day deadline, pursuant to RSA 169-C:12-b, may be met.

The court should expect that DCYF's review hearing court report will include the following:

1. identifying information about the child, including the child's age, their cumulative length of time in placement, and the total number of placements to date. The current placement status of the child should also be included in this information;

2. a description of the reasonable efforts made to date by DCYF to make it possible for the child to return to the home of a parent(s);

3. with respect to the outstanding dispositional orders and case plan, as well as compliance with RSA 169-C:23, the progress to date of each parent and whether each parent is in compliance (full, substantial, partial or not in compliance) with the outstanding dispositional orders, including but not limited to, what action each parent has taken in response to each dispositional order, and whether there has been meaningful participation by each parent with respect to each dispositional order;

4. whether the services set forth in the case plan and the responsibilities of the parties need to be clarified or modified due to the availability of additional information or changed circumstances;

5. whether there is a need for continued placement of the child. Before a child in an out-of-home placement may be reunified with a parent(s), the parent(s), pursuant to RSA169-C:23, shall demonstrate to the court that:

    - they are in compliance with the outstanding dispositional order;
    - the child will not be endangered in the manner adjudicated on the initial petition, if returned home; and
    - return of custody is in the best interests of the child. Upon showing the ability to provide proper parental care, it shall be presumed that a return of custody is in the child’s best interests.

6. whether the child is in an appropriate placement which adequately meets all physical, emotional, and educational needs. The information should include the type of placement, its distance from the child's home, and how restrictive it is. Also, what specific services are being provided to meet the child's physical, emotional, and educational needs;

7. a description of visitation between a child and each parent and between a child and their sibling(s) and whether the terms of visitation need to be modified;

8. whether any additional court orders need to be made to move the case toward successful completion;

9. a cost analysis, including each parent's ability to contribute to the care and support of the child; and

10. any recommendations.

PROTOCOL 4 CONDUCTING THE REVIEW HEARING

The inquiry at the review hearing should include the court's consideration of the following:

A. Is there a missing parent, as defined in Chapter 4, Protocol 1?

If there is a missing parent, the court should proceed as set forth in Chapter 4.

B. To date, what reasonable efforts and services has DCYF provided to the child and to each parent?

C. If there is a finding of abuse and/or neglect and a child is in an out-of-home placement, has each parent satisfied the standard for return of a child in placement, pursuant to RSA 169-C:23? In making this determination, the court should determine:

(1) whether the parents are in compliance with the outstanding dispositional order, pursuant to RSA 169-C:23, I;

(2) whether the child will not be endangered in the manner adjudicated on the initial petition, if returned home, pursuant to RSA 169-C:23, II; and

(3) whether return of custody is in the best interests of the child. Upon showing the ability to provide proper parental care, it shall be presumed that a return of custody is in the child's best interests, pursuant to RSA 169-C:23, III.

COMMENT

Each parent should be reminded of the prior orders and the time that remains until the previously scheduled 12-month permanency hearing.

D. Do services set forth in the case plan and the responsibilities of the parties need to be clarified or modified due to the availability of additional information or changed circumstances?

It often becomes clear at a review hearing that the case plan should be revised to reflect changed circumstances or new information. Additional or different services may be needed from those identified in the original case plan.

E. Is the child in an appropriate placement which adequately meets all physical, emotional, and educational needs?

The court should review information on the behavior and overall adjustment of a child to their placement and school. The information should include the type of placement, its distance from the child's home, and how restrictive it is. The court should also be informed of the specific services being provided to meet a child's physical, emotional, and educational needs.

F. Do the terms of visitation between a child and each parent and between a child and their sibling(s) need to be modified?

G. Are any additional court orders necessary to move the case toward successful completion?

H. In addition to the reasonable efforts made by DCYF to finalize the permanency plan, what efforts to date has DCYF made to implement the concurrent plan? Additionally, to date what are the barriers DCYF has identified to implement the concurrent plan?

I. At the 9-month review hearing for a case involving an out-of-home placement, the court should emphasize to the parents that at the next scheduled hearing, which will be the 12-month permanency hearing, the parent(s) will have the burden to demonstrate to the court that they have met the standard for return of their child in placement, as required by RSA169-C:23.

PROTOCOL 5 THE COURT'S REVIEW HEARING ORDER

The court should timely issue its Review Hearing Order, which shall be mailed **within fourteen (14) calendar days of the review hearing**.

The court's Review Hearing Order includes the following findings of fact and orders:

- Contrary to the welfare determination, including when the court orders removal at a review hearing;
- Reasonable efforts determination;
- With respect to outstanding dispositional orders, the case plan and each parent's compliance (full, substantial, partial, not in compliance);
- When a child is in an out-of-home placement, the **concurrent plan** for the child, as required by RSA 169-C:19, III (a), and DCYF's efforts to date to implement it and identification of barriers to implement it;
- Custody and placement orders;
- Visitation orders;
- Orders for services;

- Order for joinder of school district, pursuant to RSA 169-C:20 and Chapter 1, Part B, Protocol 11; and/or
- Order for Affidavit to Identify and/or Locate a Parent, Guardian or Putative Father, if applicable.

COMMENTS

Pursuant to RSA 169-C:24, II, at a review hearing the court shall determine whether DCYF has made reasonable efforts to finalize the permanency plan that is in effect. Further, where reunification is the permanency plan that is in effect, the court shall consider whether services to the family have been accessible, available, and appropriate.

Pursuant to RSA 169-C:18, V-c, if a Preliminary Hearing Order provided for an out-of-home placement of the child, the child shall not be returned to the home unless the court finds that there is no threat of imminent harm to the child and the parent or parents are actively engaged in remedial efforts to address the circumstances surrounding the underlying petition. The court order shall include the facts supporting the placement.

Pursuant to 42 U.S.C. 671(a)(15) and 42 U.S.C. 672 (i)(2) under Part E. Federal Payments for Foster Care and Adoption Assistance, the court is required to make a determination that a child who remains in their home and receives preventative services is at "imminent risk of removal" absent such services. This determination is required every six (6) months.

PROTOCOL 6 SCHEDULING SUBSEQUENT HEARINGS: 6-MONTH AND 9-MONTH REVIEW HEARINGS AND, AS APPLICABLE, 12-MONTH PERMANENCY HEARING AND 60-DAY POST-PERMANENCY HEARING

While RSA 169-C:24, states that the court may conduct additional review hearings, best practice is for the court, **after holding a 3-month review hearing**, to schedule a **6-month review hearing** and a **9-month review hearing**.

At a **9-month review hearing**, the court should restate in its order, if applicable when a child is in an out-of-home placement, the date/time of the previously scheduled 12-month permanency hearing. Additionally, if there is a finding of abuse and/or neglect and the child is in an out-of-home placement, the court should select a date for **a 60-day post-permanency hearing**.

COMMENTS

The reason for scheduling a 60-day post-permanency hearing is so that if, at a permanency hearing, the court identifies adoption as the permanency plan, the TPR preliminary hearing will be scheduled for the same date and time as

previously selected for the 60-day post-permanency hearing. See Chapter 12, Protocol 5.

Where necessary, and if possible, the court should make every effort to provide for meaningful attendance and participation at hearings by all parties, including the use of conference calls and video conferencing if in-person attendance is not possible.

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PART A PERMANENCY HEARINGS

INTRODUCTION

Timely permanency is critical for children in RSA 169-C cases, as supported by the National Council of Juvenile and Family Court Judges' *Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases*. "A child's sense of time requires timely permanency decisions. Research supports that a child's development of trust and security can be severely damaged by prolonged uncertainty in not knowing or understanding if they will be removed from the home, or when and whether they will return home. The shorter the time a child spends in foster care, separated from his or her family, the less likely there will be prolonged damage to the child's development of trust and security." *Enhanced Resource Guidelines*, at 15-16; See also American Academy of Pediatrics, "Developmental Issues for Young Children in Foster Care", Pediatrics, Vol. 106, No. 5 (Nov. 1, 2000) ("Every effort should be made to rapidly establish a permanent placement...").

Today, "timely permanency" for children and families is seen in New Hampshire and federal law, most notably the Adoption and Safe Families Act of 1997 and RSA 169-C:3, XXI-c, and has also been acknowledged in New Hampshire case law. See *In re Juvenile 2006-674*, 156 N.H. 1, 931 A.2d 585 (2007) (J. Dalianis, concurring specially, citing the unfairness of delayed resolution of abuse and neglect cases, not only to the child, but also to parents and foster parents).

The concept of a permanency hearing originates with the Adoption and Safe Families Act which requires two types of permanency hearings: the permanency hearing at 12 months to determine a child's permanency plan and whether the child protection agency has made reasonable efforts to finalize the permanency plan that is in effect, and a subsequent annual permanency hearing to again make a reasonable efforts determination for children who remain in an out-of-home placement. As the New Hampshire Supreme Court has noted in *Petition of New Hampshire Division for Children, Youth and Families*,170 New Hampshire 633, 182 A.3d 1266 (2018):

"Congress enacted ASFA, in part, to speed critical decision-making for all children in foster care. *In re Juvenile 2005-426*, 154 N.H. 336, 337 (2006) (quotation omitted). The ASFA promotes stability and permanence for abused and neglected children by requiring timely decision-making in proceedings to determine whether children can safely return to their families or whether they should be moved into safe and stable adoptive homes or other permanent family arrangements outside the foster care system. See *Pub. L. No. 106-314*, § 2(3), 114 Stat. 1266 (2000)."

The New Hampshire legislature expressly intended that the statutory scheme set forth in RSA 169-C and 170-C comply with the Adoption and Safe Families Act. See *N.H.S. Jour*. 1157 (1999) (stating that the purpose of amendments to RSA chapters

169-C and 170-C are 'to initiate New Hampshire's compliance with' the ASFA, which is 'designed and intended to . . . promote the safety, permanency and well-being of children in out-of-home placements'); *N.H.S. Jour*. 650 (2007) (stating that amendments to RSA chapter 169-C are intended to move children 'faster from foster care to permanent placement' and bring 'the state laws in line with' the ASFA).

Permanency hearings are fundamentally different from review hearings. Review hearings are for the purpose of adjusting and updating case plans and providing the court with an opportunity to oversee case progress. Notwithstanding the mandatory and discretionary permanency hearings arising out of different circumstances, all the permanency hearings share the same objective: to move a child from the uncertainty of foster care to a permanent home as expeditiously as possible, consistent with the intent of the Adoption and Safe Families Act and RSA 169-C:2,I, while at the same time according parents an opportunity to demonstrate to the court that they have met the standard for return of their child, pursuant to RSA 169-C:23.

New Hampshire law provides for six (6) categories of permanency hearings, as follows:

- **12-month permanency hearing** (mandatory permanency hearing, pursuant to RSA 169-C:24-b, I(a)). See Protocol 4.
- **Early permanency hearing** (discretionary permanency hearing when the parent(s) are making no effort or only negligible efforts to comply with the court's dispositional order or based on another compelling reason, pursuant to RSA 169-C:24-b, I (f)). See Protocols 4 and 13.
- **Court, at a 12-month permanency hearing, grants an extension** (mandatory subsequent permanency hearing held no later than 90 days from the 12-month permanency hearing, pursuant to 169-C:24-b, IV). See Protocols 4 and 10.
- **Unique needs of child** (discretionary permanency hearing, pursuant to RSA 169-C:24-b, I (e), subsequent to the parent(s) satisfying RSA 169-C:23 at the 12-month permanency hearing but due to the unique needs of the child, the child is not returned to the parent). See Protocols 4 and 11.
- **Child reunified at or following a 12-month permanency hearing and is thereafter re-removed prior to case closure** (discretionary subsequent permanency hearing, pursuant to RSA 169-C:24-b, I (d)). See Protocol 4.
- **TPR petition is withdrawn or dismissed** (mandatory subsequent permanency hearing, pursuant to RSA 169-C:24-b, I (c)). See Protocol 4.

PROTOCOL 1 DEFINITIONS: PERMANENCY HEARING, CONCURRENT PLAN, PERMANENCY PLAN AND OUT-OF-HOME PLACEMENT

A **"permanency hearing"** is a court hearing for a child in an out-of-home placement to review, modify, and/or implement the permanency plan or to adopt the concurrent plan, pursuant to RSA 169-C:3, XXI-b. A **"concurrent plan"**, defined in RSA 169-C:3, VII-a, is an alternate permanency plan in the event that a child cannot be safely reunified with their parents.

Consistent with RSA 169-C:3, XXI-c, **"permanency plan"** is defined as a plan for a child in an out-of-home placement that is approved by the court and provides for timely:

- Reunification;
- Adoption through termination of parental rights or parental surrender;
- Guardianship with a fit and willing relative or another appropriate party; or
- Another planned permanent living arrangement (APPLA).

An **"out-of-home placement"** is defined as the placement of a child in substitute care with someone other than the child's biological parent(s), adoptive parent(s), or legal guardian, pursuant to RSA 169-C:3, XX-a.

PROTOCOL 2 THE COURT'S NOTICE TO PARTIES AND NON-PARTIES

The court's notice to RSA 169-C parties and non-parties of a permanency hearing should be handled as follows:

The court shall send notice for a permanency hearing to all parties to the RSA 169-C case.

For **parents who are incarcerated in New Hampshire**, the court should do a transport order to ensure the parent's attendance and participation at the hearing.

Additionally, **foster parents, relative caregivers and kinship caregivers**, while not parties to the case, should be sent notice of all court proceedings. See Chapter 1, Part C, Protocol 14.

The court's notification/joinder of the legally liable school district is set forth in Chapter 1, Part B, Protocol 11.

PROTOCOL 3 LENGTH OF PERMANENCY HEARING, CONTINUANCE, AND CASES PENDING APPEAL TO SUPREME COURT

The court should consider the following with respect to the length of a permanency hearing, continuance of a permanency hearing, and cases pending appeal to the supreme court:

A. 60-Minute Permanency Hearing

Best practice is for the court to schedule **60 minutes** for all permanency hearings.

If a party believes there are special or unusual circumstances that warrant additional time for a permanency hearing, the party should timely raise that issue in a motion to the court so the court is able to hold and complete a permanency hearing on the day it is scheduled, consistent with RSA 169-C:24-b, I. Additionally, this will ensure timely permanency for children, consistent with RSA 169-C:2, I.

COMMENTS

The NCJFCJ's *Enhanced Resource Guidelines* recommend adequate time be scheduled for a permanency hearing to be completed in "one sitting", and that it is recommended routine permanency hearings be held for 60 minutes.

Further, timely permanency is critical for children in RSA 169-C cases, as supported by the *Enhanced Resource Guidelines*. "A child's sense of time requires timely permanency decisions. Research supports that a child's development of trust and security can be severely damaged by prolonged uncertainty in not knowing or understanding if they will be removed from the home, or when and whether they will return home. The shorter the time a child spends in foster care, separated from his or her family, the less likely there will be prolonged damage to the child's development of trust and security." *Enhanced Resource Guidelines*, at 15-16.

B. Continuance and Cases Pending Appeal to Supreme Court

Pursuant to N.H. Fam. Div. R. 1.27, except for the initial hearing in a case or for an emergency hearing, hearing dates are generally selected by agreement of the parties and the court. Therefore, motions to continue all categories of permanency hearings will usually be denied, except for good cause shown, consistent with RSA 169-C:26. The court may condition the granting of a motion to continue on a requirement that the moving party obtain a date and time agreeable to all other parties and the court.

A continuance of a 12-month permanency hearing should not be necessary and should be denied since the court will have previously scheduled the hearing in its Adjudicatory Hearing Order/Consent in Lieu of Adjudicatory Hearing Order and Dispositional Hearing Order for cases in which the court makes a finding of abuse and/or neglect AND a child is in an out-of-home placement. See Chapter 7, Protocols 4 and 7 and Chapter 8, Protocol 7.

When a RSA 169-C case has been **appealed to the supreme court** within 30 days of the final dispositional order, the appeal shall not suspend the order or decision of the court, unless the court so orders, pursuant to RSA 169-C:28. Thus, in such cases the 12-month permanency hearing should be held as previously scheduled.

PROTOCOL 4 PERMANENCY HEARINGS PURSUANT TO STATE LAW: DIFFERENT CATEGORIES OF PERMANENCY HEARINGS, THREE (3) MANDATORY AND THREE (3) DISCRETIONARY

New Hampshire law, pursuant to RSA 169-C:24-b, I (a) through (f), provides for six (6) categories of permanency hearings, as follows:

A. **12-month permanency hearing** (mandatory permanency hearing, pursuant to RSA 169-C:24-b, I(a))

1. When **Child in Placement 12 or More Months from the Finding** of Abuse and/or Neglect (RSA 169-C:24-b, I(a))

   Pursuant to RSA 169-C:24-b, I(a), for a child who has been in an out-of-home placement for 12 or more months, the court shall hold a permanency hearing 12 months from the finding pursuant to RSA 169-C:17 and/or RSA 169-C:18. The 12-month permanency hearing date shall be included in the court's Adjudicatory Hearing Order/Consent in Lieu of Adjudicatory Hearing Order, pursuant to RSA 169-C:17, III and RSA 169-C:18, V-a.

   For information about a 12-month permanency hearing for each parent (Parent 1/Parent 2) when a case involves parents identified/located at different points in a RSA 169-C case, See Protocol 12.

   For cases in which there is a missing parent who is never located during the RSA 169-C case, permanency should not be delayed for the child. In such cases, the court shall hold the 12-month permanency hearing, pursuant to RSA 169-C:24-b, I(a), and proceed accordingly. DCYF may, in these circumstances, file a TPR petition, based on abandonment, with a motion for service by publication, as permitted by RSA 170-C:7.

2. When **Child Enters Placement Subsequent to Finding** of Abuse and/or Neglect (RSA 169-C:24-b, I(a))

   For a child who enters an out-of-home placement subsequent to a finding pursuant to RSA 169-C:17 and/or RSA 169-C:18, the court shall hold a permanency hearing 12 months from the date the child enters the out-of-home placement.

COMMENT

For a child in an out-of-home placement following the 12-month permanency hearing, RSA 169-C:24-c, I, requires the court to hold and complete a post-permanency hearing within 12 months of the 12-month permanency hearing and every 12 months thereafter as long as the child remains in an out-of-home placement.

B. **Early permanency hearing** (discretionary permanency hearing when the parent(s) are making no effort or only negligible efforts to comply with the court's dispositional order or based on another compelling reason, pursuant to RSA 169-C:24-b, I (f)). See Protocol 13.

C. **Court, at a 12-month permanency hearing, grants an extension** (mandatory subsequent permanency hearing held no later than 90 days from the 12-month permanency hearing, pursuant to 169-C:24-b, IV). See Protocol 10.

D. **Unique needs of child** (discretionary permanency hearing, pursuant to RSA 169-C:24-b, I (e), subsequent to the parent(s) satisfying RSA 169-C:23 at the 12-month permanency hearing but due to the unique needs of the child, the child is not returned to the parent). See Protocol 11.

E. **Child reunified at or following a 12-month permanency hearing and is thereafter re-removed prior to case closure** (discretionary subsequent permanency hearing, pursuant to RSA 169-C:24-b, I (d)).

If a child has been reunified at or following a 12-month permanency hearing and is thereafter removed from a parent's care prior to closure of the RSA 169-C case, the court may hold a subsequent permanency hearing, consistent with RSA 169-C:24-b, I(d). If the court decides to schedule a subsequent permanency hearing pursuant to RSA 169-C:24-b, I (d), best practice is to schedule such hearings within 90 days from the child's removal.

COMMENT

A change of permanency plan, rather than filing of new petitions, is appropriate if a child was reunified but later re-removed from parental care before the child protection case closed. See *In re O.D. et al*, 171 N.H. 437, 197 A.3d 646 (2018) (rejecting parents' claim that trial court violated their due process rights by not requiring DCYF to file new neglect petitions when the children were removed from their home after parents had re-gained physical custody, noting ultimate question of whether original conditions had been fully corrected was not resolved by return of custody to parents).

F. **TPR petition is withdrawn or dismissed/denied** (mandatory subsequent permanency hearing, pursuant to RSA 169-C:24-b, I (c)).

Consistent with RSA 169-C:24-b, I(c), if a TPR petition is withdrawn or dismissed/denied (and the parent has not surrendered their parental rights), the

court shall hold a subsequent permanency hearing no later than 90 days from the withdrawal or dismissal/denial of the TPR petition.

For additional guidance, the court should refer to Chapter 12, Termination of Parental Rights.

COMMENT

This subsequent permanency hearing codifies the New Hampshire Supreme Court case of *Petition of New Hampshire Division for Children Youth and Families*, 170 N.H. 633, 182 A.3d 1266 (2018) in which the Court held that when a child's permanency plan under RSA 169-C:24-b, II, is adoption and termination of parental rights, and when the court denies the termination petition under RSA 170-C:11, IV, a subsequent permanency hearing must be held to "review, modify, and/or implement the permanency plan or to adopt the concurrent plan."

PROTOCOL 5 ATTENDANCE AT PERMANENCY HEARING OF PARTIES AND NON-PARTIES

The court should consider the following with respect to the attendance at a permanency hearing of parties and non-parties to a RSA 169-C case.

A. Attendance by Parties

Where necessary, and if possible, the court should make every effort to provide for meaningful attendance and participation at a permanency hearing by all parties, including the use of conference calls and video conferencing if in-person attendance is not possible.

B. Attendance by Non-Parties

1. Children and Youth

For guidance on the attendance of children and youth at a permanency hearing, see Chapter 8, Part B. Pursuant to those protocols, youth (14-20 years), at their option, may attend or otherwise participate at a permanency hearing. Children (5-13 years) may attend a permanency hearing on a case-by-case basis.

2. Foster Parents, Relative Caregivers and Kinship Caregivers

Foster parents, relative caregivers and kinship caregivers, while not parties to the case, should be sent notice of all court proceedings, and may provide input for the court as set forth in Chapter 1, Part C, Protocol 14.

PROTOCOL 6 CONDUCTING A PERMANENCY HEARING

At all permanency hearings, except an early permanency hearing as set forth in Protocol 13, RSA 169-C:24-b, II (a) provides that the court shall:

- As set forth below in Protocol 7, determine if the parent(s) has(have) **demonstrated to the court that they have met the standard for return of a child in placement**, pursuant to RSA 169-C:23;
- As set forth below in Protocol 8, if a parent does not meet the RSA 169-C:23 standard for return of a child in placement and does not meet the requirements for an extension pursuant to RSA 169-C:24-b, IV, identify a **permanency plan other than reunification for the child**, pursuant to RSA 169-C:24-b, II; and
- As set forth below in Protocol 9, determine whether DCYF has made **reasonable efforts** to finalize the permanency plan that is in effect, pursuant to RSA 169-C:24-b, III.

Additionally, pursuant to RSA 169-C:2, I, the best interest of the child shall be the primary consideration of the court in all RSA 169-C proceedings, including a permanency hearing.

When conducting a permanency hearing, the court should consider the following:

A. Evidentiary Considerations

The court shall not be bound by the technical rules of evidence at a permanency hearing (or any hearing under RSA 169-C) and may admit evidence which it considers relevant and material, pursuant to RSA 169-C:12.

Additionally, the court, except when limited by statute, court rule, or constitutional fiat, may conduct any hearing in a RSA 169-C proceeding, including a permanency hearing, pursuant to judicial discretion. See *In re G.G.,*166 N.H. 193, 92 A.3d 648 (2014).

Best practice is for a permanency hearing to be based on offers of proof, and the court has the discretion to limit offers of proof to the timeframe between the last court hearing and the permanency hearing. Prior to this timeframe, the court will have made findings about DCYF's reasonable efforts and each parent's compliance to date with respect to the outstanding dispositional orders and the case plan as well as compliance with RSA 169-C:23.

If there are special or unusual circumstances, the court, pursuant to its judicial discretion, may conduct an evidentiary hearing, either in whole or in part, provided that the permanency hearing is held and completed within the timelines prescribed by RSA 169-C:24-b, I. However, unlike an adjudicatory hearing held pursuant to RSA 169-C:18, there is no established right, in either New Hampshire due process case law or RSA 169-C, for a parent to have the court conduct an evidentiary permanency hearing.

COMMENTS

In re G.G., 166 N.H. 193, 92 A.3d 648 (2014) ("…a trial judge has the authority to determine the manner and procedure by which a case will be tried, except when limited by statute, court rule, or constitutional fiat…given the plain language of the pertinent statutes and the court's inherent authority to control the proceedings before it, trial courts have the discretion in abuse and neglect proceedings to determine whether any witness, including the child, should be compelled to testify"). The court in exercising its discretion is guided by RSA 169-C:2, I. which provides that the best interest of the child shall be the primary consideration of the court in all proceedings under RSA 169-C.

The National Council of Juvenile and Family Court Judges' *Enhanced Resource Guidelines* recommend adequate time be scheduled for a permanency hearing to be completed in "one sitting", and that it is recommended routine permanency hearings be held for 60 minutes. For additional information about the recommended length of a permanency hearing, see Protocol 3.

B. Burden of Proof at Permanency Hearing

At all permanency hearings, except an early permanency hearing, a **parent has the burden** to demonstrate, by a **preponderance of the evidence**, that they have met the standard for return of a child in placement, pursuant to RSA 169-C:23. For this reason, the court should hear first from a parent or parents. Thereafter, the court should hear from DCYF, the CASA GAL/GAL and any other parties to the RSA 169-C case.

In contrast, at an early permanency hearing, as set forth in Protocol 13, **DCYF has the burden** to prove, by clear and convincing evidence, that both parents, or only one parent if the other parent is deceased or not identified:

- Cannot currently satisfy the standard of return of the child under RSA 169-C:23; and
- Would be highly unlikely to satisfy such standard at the time of a 12-month permanency hearing based on parents making no effort or only negligible efforts to comply with dispositional orders or based on another compelling reason, as defined in RSA 169-C:3, VII-a.

Thus, at an early permanency hearing, the court should hear first from DCYF and then from a parent(s), the CASA GAL/GAL and any other parties to the RSA 169-C case.

COMMENT

When a RSA 169-C case involves parents, hereinafter referred to as Parent 1 and Parent 2, who are identified/located at different points in the RSA 169-C case, and when the court conducts a 12-month permanency hearing for Parent 1 and determines they do not meet the standard for return of a child in placement pursuant to RSA 169-C:23, DCYF may consider requesting an early permanency hearing for Parent 2, if appropriate, as set forth in Protocol 12.

PROTCOL 7 COURT FINDING - RSA 169-C:23 STANDARD FOR RETURN OF A CHILD IN PLACEMENT

At all permanency hearings, RSA 169-C:24-b, II (a), provides that the court shall determine if the parent(s) has(have) demonstrated to the court that they have met the standard for return of a child in placement, pursuant to RSA 169-C:23.

RSA 169-C:23 provides that when a child is in out-of-home placement, before the child can be returned to parental custody, a parent must demonstrate that:

- They are in compliance with the outstanding dispositional order;
- The child will not be endangered in the manner adjudicated on the initial petition, if returned home; and
- Return of custody is in the best interests of the child. Upon showing the ability to provide proper parental care, it shall be presumed that a return of custody is in the child's best interests.

A. Parent(s) Meets RSA 169-C:23 Standard for Return of a Child in Placement

If the court determines that a parent(s) has(have) demonstrated to the court that they have met the standard for return of a child in placement, pursuant to RSA 169-C:23, the court shall **maintain reunification as the permanency plan** and determine, pursuant to RSA 169-C:24-b, II, when the child will be returned to the parent(s). Retaining physical custody of their child following reunification is contingent upon a parent's continued compliance with court orders, the case plan and/or discharge plan, until case closure of a RSA 169-C case.

In cases in which the parents are living apart, best practice is for the court to require parents, before case closure, to **file a parenting petition under RSA 461-A or a divorce/legal separation petition under RSA 458, or a modification of an existing order under RSA 461-A or RSA 458**. This will provide parents with ongoing court orders describing their parental rights and responsibilities, in conjunction with closure of the RSA 169-C case.

There is **one statutory exception**, set forth below in Protocol 11, for cases in which the RSA 169-C:23 standard is met by a parent(s) for return of their

child but, due to the unique needs of a child, the child is not returned to the custody of the parent(s). In such cases, the court may maintain reunification as the permanency plan.

B. Parent(s) Does(Do) Not Meet RSA 169-C:23 Standard for Return of a Child in Placement

If the court determines that a parent(s) has(have) not demonstrated to the court that they have met the standard for return of a child in placement, pursuant to RSA 169-C:23, the court shall identify a **permanency plan other than reunification for a child**, pursuant to RSA 169-C:24-b, II, unless one of two exceptions apply.

There are **two exceptions** to the requirement that the court identify a permanency plan other than reunification for the child, which are set forth in Protocols 10 and 12. Protocol 10 addresses when a parent meets the requirements for a one-time 90-day extension. Protocol 12 addresses cases in which Parent 1 and Parent 2 are identified/located at different points in a RSA 169-C case.

PROTOCOL 8 COURT ORDERS – IDENTIFICATION OF A PERMANENCY PLAN OTHER THAN REUNIFICATION FOR A CHILD

If the court determines that a parent(s) has(have) not demonstrated to the court that they have met the standard for return of a child in placement, pursuant to RSA 169-C:23, and neither of the exceptions in Protocols 10 or 12 is met, the court shall identify a permanency plan other than reunification for a child, pursuant to RSA 169-C:24-b, II. The options for a permanency plan include:

- Adoption through termination of parental rights or surrender;
- Guardianship with a fit and willing relative or another appropriate party; or
- Another planned permanent living arrangement.

COMMENTS

The New Hampshire Supreme discussed these permanency options in *Petition of N.H. Division for Children, Youth and Families*, 170 N.H. 633, 182 A.3d 1266 (2018):

Like the ASFA, RSA 169-C:24-b lists, in order of preference, four nonexclusive options for a permanency plan: (1) reunification with the parent or parents; (2) termination of parental rights when an adoption is contemplated; (3) legal guardianship; or (4) another planned permanent living arrangement. RSA 169-C:24-b, II; See 42 U.S.C. § 675(5)(C). "Thus, the first option is reunification with the parents. If reunification is not appropriate, then the second option is adoption and a petition for termination of parental rights. If neither option is appropriate, the court must next consider referral for legal guardianship." *In re*

Juvenile 2005-426, 154 N.H. at 338. "With respect to the fourth and least preferable option," another planned permanent living arrangement, "the court may order such a plan only in cases where the state agency has documented a compelling reason for determining that it would not be in the best interests of the child to order any of the other three permanency options." Id.; See *42 U.S.C*. § 675(5)(C) (stating that where "the State agency has documented to the State court a compelling reason for determining that it would not be in the best interests of the child to return home, be referred for termination of parental rights, or be placed for adoption, with a fit and willing relative, or with a legal guardian," the child's permanency plan is placement "in another planned permanent living arrangement").

A. Adoption Through Termination of Parental Rights or Surrender

In determining whether adoption through termination of parental rights or surrender is the most appropriate permanency plan for a child, the court should consider the following:

- What are the facts and circumstances that support the grounds for termination of parental rights;
- Whether surrender and voluntary mediated adoption has been discussed with the parents, and the outcome of the discussion; and
- What is the plan for adoption of the child, including any interim placement if the child is not already placed with a pre-adoptive family.

B. Guardianship with a Fit and Willing Relative or Another Appropriate Party

In determining whether guardianship is the most appropriate permanency plan for a child, the court should consider the following:

- Why adoption, which is the most permanent plan for a child, is not in the child's best interest;
- What facts and circumstances demonstrate that guardianship will provide for the needs of the child, including the child's medical, therapeutic and educational needs;
- What is the fitness and suitability of the proposed guardian(s) to care for the child, including their commitment to the long-term care and stability of the child;
- Whether the child will be placed with a relative or non-relative; and
- To what extent there will continue to be contact between the parent and child and between the child and siblings?

COMMENTS

Pursuant to ASFA, 45 C.F.R. 1355.20, “legal guardianship” means a judicially-created relationship between child and caregiver, which is intended to be permanent and self-sustaining as evidenced by the transfer to the caregiver of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision-making. The term ‘legal guardian’ means the caretaker in such a relationship.”

Guardianship is established in New Hampshire pursuant to RSA 463:1, to “secure for a minor an environment of stability and security by providing for the appointment of a guardian of the person when such appointment is in the best interests of the minor.” The guardianship statute recognizes that “the interests of a minor are generally best promoted in the minor's own home unless the best interests of the minor require substitution or supplementation of parental care and supervision.”

A guardianship is intended to create a home in which the child can grow and maintain a life-long relationship with their caregiver and should transfer to the guardian certain parental rights with respect to the child, including protection, education, care and control of the child, custody of the child and decision making.

C. Another Planned Permanent Living Arrangement

In determining whether APPLA is the most appropriate permanency plan for a child, the court should consider the following:

- Is the child sixteen (16) years of age or older? APPLA as a permanency plan is permitted only for youth 16 years of age and older, pursuant to the Preventing Sex Trafficking and Strengthening Families Act of 2014; and
- Has DCYF, pursuant to ASFA, documented to the court a compelling reason for determining that it would not be in the best interests of the child to approve one of the more permanent permanency plan options?

For additional guidance on APPLA as a permanency plan, see Part D below.

PROTOCOL 9 COURT FINDING - DCYF’S REASONABLE EFFORTS TO FINALIZE THE PERMANENCY PLAN IN EFFECT

At all permanency hearings, the court shall determine whether DCYF has made **reasonable efforts** to finalize the permanency plan that is in effect, pursuant to RSA 169-C:24-b, III, and, where reunification is the permanency plan that is in effect, the court shall consider whether services to the family have been accessible, available, and appropriate.

The court should expect the report from DCYF, and parents and their attorneys, will address DCYF's reasonable efforts to date to finalize the permanency plan that is in effect, pursuant to RSA 169-C:24-b, III, and whether services to the family have been accessible, available and appropriate. The court should not, however, expect the CASA GAL/GAL report to address these matters as it is not the role of a CASA GAL/GAL to report to the court about whether DCYF has made reasonable efforts or whether the services to the family have been accessible, available and appropriate.

COMMENTS

In most RSA 169-C cases, reunification is the permanency plan that is in effect for a child in an out-of-home placement up through and including the 12-month permanency hearing. This permanency plan is identified in DCYF's case plan and the court's orders.

"In assessing the State's efforts to assist the parent in rectifying the conditions, the trial court must consider whether the services provided have been accessible, available, and appropriate. However, we have recognized that the State's ability to provide adequate services is constrained by its staff and financial limitations." *In re Michael E.*, 162 N.H. 520, 524 (2011) citing *In re Juvenile 2006-833*, 156 N.H. 482, 486 (2007). "Thus, the State must put forth reasonable efforts given its available staff and financial resources to maintain the legal bond between parent and child." Id. (quotation omitted). "The word reasonable is the linchpin on which [DCYF's] efforts in a particular set of circumstances are to be adjudged." Id. at 524-25 (quotation omitted). DCYF's role in neglect cases is not to assume the full weight of the parent's responsibilities, but to provide the parent assistance to deal with and correct problems. Id. at 525. "Reasonable efforts means doing everything reasonable, not everything possible. *Juvenile 2006-833*, 156 N.H. at 487 (quotation omitted).

PROTOCOL 10 ONE-TIME 90-DAY EXTENSION AT 12-MONTH PERMANENCY HEARING

At a 12-month permanency hearing, parents may request, and the court may grant, a one-time 90-day extension, as set forth below.

A. Parent's Request for a One-Time 90-Day Extension

At a 12-month permanency hearing for both parents, or only one parent if the other parent is deceased or not identified, the parents may request a one-time extension that shall not exceed 90 days, pursuant to RSA 169-C:24-b, IV.

For cases in which Parent 1 and Parent 2 are identified/located at different points in a RSA 169-C case, and when the court conducts a 12-month permanency hearing for Parent 1 and determines they do not meet the standard for return of a child in placement pursuant to RSA 169-C:23, Parent 1 may request a one-time 90-day extension, as set forth in Protocol 12.

B. Court Findings Required to Grant One-Time 90-Day Extension

At a 12-month permanency hearing, the court may grant **one extension of time**, pursuant to RSA 169-C:24-b, IV, not to exceed 90 days, if the court finds:

1. A parent is in **substantial compliance with the outstanding dispositional orders**; and

2. The parent establishes, by clear and convincing evidence, that;

   a. The parent is **diligently working toward reunification, which is expected to occur within 90 days**;

   b. It is **probable the parent will be able to demonstrate**, after the extension and at a subsequent permanency hearing held pursuant to RSA 169-C:24-b, I(b), that the parent has met the three (3) requirements of RSA 169-C:23; and

   c. The **extension is in the best interest** of the child.

C. If Requirements Met for One-Time 90-Day Extension: Permanency Plan to Remain Reunification and Subsequent Permanency Hearing Scheduled

If the court, at a 12-month permanency hearing, determines that a parent has met the requirements for a one-time extension to complete correcting the conditions of abuse or neglect, the:

- Court's 12-month **permanency order shall maintain reunification** as the child's permanency plan, consistent with RSA 169-C:24-b, II(a) and the Adoption and Safe Families Act, 42 U.S.C. 675 (5) (C); and
- Court shall hold and complete a **subsequent permanency hearing no later than 90 days** from the 12-month permanency hearing, pursuant to RSA 169-C:24-b, I(b), to determine whether the parent is able to meet the standard for return of the child, pursuant to RSA 169-C:23.

PROTOCOL 11 RSA 169-C:23 STANDARD FOR RETURN MET BUT DUE TO A CHILD'S UNIQUE NEEDS, CHILD IS NOT REUNIFIED

If the court determines that a parent(s) has(have) demonstrated to the court that they have met the standard for return of a child in placement, pursuant to RSA 169-C:23, the court shall maintain reunification as the permanency plan and determine, pursuant to RSA 169-C:24-b, II, when a child will be returned to the parent(s).

There is **one statutory exception** to this: if the **standard for return of the child is met**, pursuant to RSA 169-C:23 but, due to the **unique needs of a child**, the child is not returned to the custody of their parent(s) at this time, the court may maintain reunification as the permanency plan, and the court **shall provide a written**

explanation as to what circumstances warrant the continued out-of-home placement for the child, pursuant to RSA 169-C:24-b, V.

The parent(s) shall maintain readiness for return of the child to their custody, until the child is able to return home.

When a child is not returned to their parent(s) in such cases, subsequent post-permanency hearings shall be held by the court and subsequent permanency hearings may be held by the court, as set forth below.

A. Subsequent <u>Post-Permanency</u> Hearings Shall Be Held

In such cases, the **court shall** schedule subsequent post-permanency hearings pursuant to RSA 169-C:24-c, I, until the child may be returned to the custody of the parent(s). See Protocol 21.

B. Subsequent <u>Permanency</u> Hearings May Be Held

Any time thereafter, and upon the request of any party based on a material change in circumstances, the court **may schedule** another permanency hearing at which the court may review, modify, and/or implement the permanency plan, or adopt the concurrent plan.

As with any permanency hearing, at this subsequent permanency hearing the parent must establish whether they can satisfy the standard for return of the child, pursuant to RSA 169-C:23, and if not, the court shall select another permanency plan, pursuant to RSA 169-C:24-b, II.

PROTOCOL 12 12-MONTH PERMANENCY HEARINGS FOR PARENTS IDENTIFIED/LOCATED AT DIFFERENT POINTS IN A RSA 169-C CASE (PARENT 1/PARENT 2)

When a RSA 169-C case involves Parent 1 and Parent 2 who are identified/located at different points in the case, the court should schedule and hold a **12-month permanency hearing for each parent**, as set forth below.

For parents who are not residing together, there are different case plan goals, reunification with Parent 1 OR reunification with Parent 2. Thus, in cases when reunification is the permanency plan the court has identified for a child, reunification may be with either Parent 1 OR Parent 2.

COMMENTS

This practice of having the court schedule and hold a 12-month permanency hearing for each parent comports with federal and State laws which mandate a permanency hearing for all children who have resided in an out-of-home placement for 12 months. ASFA, for example, provides that "…with respect to each such child, (i) procedural safeguards will be applied, among other things to assure each child in foster care under the supervision of the State of a permanency hearing to be held…no later than 12 months after the child is

considered to have entered foster care… .” 42 U.S.C. 675 (5) (C). This federal requirement is also reflected in the federal Children’s Bureau’s data requirements which include whether a 12-month permanency hearing was held at the 12-month mark, and a permanency order was issued.

Similarly, RSA 169-C:24-b, I (a) provides no exceptions to the requirement that, for a child who has been in an out-of-home placement for 12 or more months, the court shall hold a permanency hearing 12 months from the finding pursuant to RSA 169-C:17 and/or RSA 169-C:18. The court has no discretion in this regard.

Additionally, holding a 12-month permanency hearing at the 12-month mark for each parent is in the child’s best interests which, pursuant to RSA 169-C:2, I, is the primary consideration of the court in all RSA 169-C proceedings. For example, scheduling and holding a timely 12-month permanency hearing is in a child’s best interest if Parent 1, at a 12-month permanency hearing, satisfies the RSA 169-C:23 standard for return and the child is reunified at the time of or soon after the 12-month permanency hearing.

A. Definitions of Parent 1 and Parent 2

For purposes of this protocol, the court should use the following definitions for Parent 1 and Parent 2:

1. Definition of Parent 1

Parent 1 is an individual **named as a petitioned parent** in a RSA 169-C petition and **served** with the **petition before the court’s issuance of a finding of abuse/neglect**, and the other parent, Parent 2, is defined below.

2. Definition of Parent 2

Parent 2, who may be **petitioned** or **non-petitioned**, is an individual who is:

- A **missing parent when the RSA 169-C petition is filed**; and
- **Identified/located and served after the court’s issuance of a finding** of abuse and/or neglect made pursuant to RSA 169-C:17 and/or RSA 169-C:18.

COMMENT

At times, DCYF may file a RSA 169-C petition against a child's legal guardian and subsequent to this filing, one or both parents may be identified and/or located. In such cases, the parent(s) would fit the definition of Parent 2 and these protocols would apply.

B. Holding and Completing a 12-Month Permanency Hearing for Parent 1

When a child is in an out-of-home placement, a 12-month permanency hearing for Parent 1 shall be held and completed by the court, pursuant to RSA 169-C:24-b, I, twelve months from the finding made pursuant to RSA 169-C:17 and/or RSA 169-C:18.

C. Conducting a 12-Month Permanency Hearing for Parent 1

When the court, pursuant to RSA 169-C:24-b, II, conducts a 12-month permanency hearing for Parent 1, the court should proceed as follows:

1. Parent 1 <u>Does Meet</u> the Standard for Return Pursuant to RSA 169-C:23

If the court finds that Parent 1 does meet the standard for return of a child in placement pursuant to RSA 169-C:23, the court should identify reunification with Parent 1 as the permanency plan and shall, pursuant to RSA 169-C:24-b, II, determine when the child will be returned to Parent 1 (unless the child will not be returned to the custody of their parent due to the unique needs of the child, pursuant to RSA 169-C:24-b, V). In such cases, DCYF will no longer be required to make reasonable efforts to assist Parent 1 or Parent 2 to reunify, as the reasonable efforts requirement is limited to cases in which the child is in an out-of-home placement. Reunification with either parent ends a child's out-of-home placement. However, following reunification, parents have a continuing obligation to comply with any outstanding orders of the court. See *In re O.D.; In re B.D*.; *In re G.D.,* 171 N.H. 437, 197 A.3d 646 (2018). Protocol 1 sets forth the definitions of a permanency plan and out-of-home placement.

COMMENTS

Although DCYF is no longer mandated by federal and State law to make reasonable efforts following a child being reunified with their parent(s), DCYF provides post-reunification services to families to support reunification.

Neither ASFA nor RSA 169-C provides specific criteria for case closure following a child's reunification with their parent(s). In Parent 1 and Parent 2 cases in which the parents are living apart

and Parent 1 does meet the standard for return pursuant to RSA 169-C:23, best practice is for the court to require parents, before case closure, to file a parenting petition under RSA 461-A or a divorce/legal separation petition under RSA 458, or a modification of an existing order under RSA 461-A or RSA 458. This will provide parents with ongoing court orders describing their parental rights and responsibilities, in conjunction with closure of the RSA 169-C case.

2. Parent 1 <u>Does Not</u> Meet the Standard for Return Pursuant to RSA 169-C:23

If the court finds that Parent 1 does not meet the standard for return of a child in placement pursuant to RSA 169-C:23, the child's permanency plan of reunification with Parent 1 ends. Thereafter, the court should identify reunification with Parent 2 as the child's remaining permanency plan, UNLESS Parent 1 meets the RSA 169-C:24-b, IV, standard for a one-time 90-day extension. For additional guidance on a one-time 90-day extension. See Protocol 10.

If the court finds that Parent 1 has not met the standard for return of a child in placement pursuant to RSA 169-C:23 and the permanency plan of reunification with Parent 2 has been identified by the court, DCYF will no longer be required by federal and State law to provide reasonable efforts to Parent 1. However, even though DCYF is no longer obligated to make reasonable efforts and provide court-ordered services to Parent 1, Parent 1 should continue to be engaged with DCYF following Parent 1's 12-month permanency hearing. DCYF will continue to be required to provide reasonable efforts to finalize the permanency plan of reunification with Parent 2.

Additionally, Parent 1 retains their parental rights and therefore remains a party to the ongoing RSA 169-C case and, as such, should attend Parent 2's 12-month permanency hearing (and all other RSA 169-C hearings involving Parent 2), consistent with RSA 169-C:2, I.

COMMENT

However, if RSA 169-C:24-b, I(f) regarding an early permanency hearing applies, DCYF can seek an early permanency hearing for Parent 2. Additionally, DCYF has the discretion, at the time of Parent 1's 12-month permanency hearing, to file a TPR petition for Parent 2 if there are alternate grounds to terminate Parent 2's parental rights, such as abandonment.

D. Holding and Completing a 12-Month Permanency Hearing for Parent 2

When a child is in an out-of-home placement, a 12-month permanency hearing for Parent 2 will be held and completed by the court after Parent 2 has been provided 12 months' notice of the abuse and/or neglect finding, pursuant to RSA 169-C:17 and/or RSA 169-C:18, and was informed about the impact **on parental rights of a failure to correct the conditions of abuse or neglect.** The court's Notice to a Non-Petitioned, Non-Household Parent, included in the service packet, informs this parent about the impact on parental rights of a failure to correct the conditions of abuse or neglect.

In contrast, for a **petitioned** Parent 2, if a finding is made against Parent 2, pursuant to RSA 169-C:17 and/or RSA 169-C:18, Parent 2 will have twelve months from the finding to correct the conditions of abuse or neglect.

COMMENTS

In a RSA 169-C case that involves Parent 1 and Parent 2, Parent 2 will have been sent notice/served AFTER the start of Parent 1's 12-month opportunity to correct so that Parent 2's 12-month permanency hearing will necessarily be held and completed after Parent 1's 12-month permanency hearing (unless an early permanency hearing is requested for Parent 1 and Parent 2, pursuant to RSA 169-C:24-b, I (f)).

As set forth in Chapter 4, Protocol 7, when Parent 2 is identified/located, the court shall prepare a service packet to be served by the appropriate law enforcement authority, consistent with RSA 169-C:8.

For purposes of determining when a non-petitioned, non-custodial Parent 2 has had 12 months to correct, *In re R.H.,* 174 N.H 332, 262 A.3d 358 (2021) instructs "…before terminating a non-accused, non-custodial parent's rights under RSA 170-C:5, III, a circuit court must find that DCYF carried its burden of proving beyond a reasonable doubt that:

> the parent was provided a minimum of 12 months' notice of the abuse or neglect finding and was informed about the impact on parental rights of a failure to correct the conditions of abuse or neglect, including the possibility of termination; and the parent failed to correct the conditions of abuse or neglect during the 12-month time period.
>
> In making the finding as to the adequacy of notice, the circuit court must determine whether and when the non-accused, non-custodial parent was provided constitutionally-adequate notice of both the abuse or neglect finding and the effect on parental

rights of a failure to correct the conditions leading to that finding…We leave for another day the question of whether, when there is evidence of a parent's intentional evasion of service, some means of notice other than personal service - such as publication - is sufficient to start the 12-month clock. Nor do we decide the specific information that the notice must contain in order to satisfy due process requirements."

E. Conducting a 12-Month Permanency Hearing for Parent 2

When the court, pursuant to RSA 169-C:24-b, II, conducts a 12-month permanency hearing for Parent 2, the court should proceed as follows:

1. Parent 2 <u>Does Meet</u> the Standard for Return Pursuant to RSA 169-C:23

If the court finds Parent 2 does meet the standard for return of a child in placement pursuant to RSA 169-C:23, the court should identify reunification with Parent 2 as the permanency plan and shall, pursuant to RSA 169-C:24-b, II, determine when the child will be returned to Parent 2 (unless the child will not be returned to the custody of their parent due to the unique needs of the child, pursuant to RSA 169-C:24-b, V).

2. Parent 2 <u>Does Not Meet</u> the Standard for Return Pursuant to RSA 169-C:23

If the court finds that Parent 2 does not meet the standard for return of a child in placement pursuant to RSA 169-C:23, the court will identify a permanency plan other than reunification for the child, pursuant to RSA 169-C:24-b, II, UNLESS Parent 2 meets the RSA 169-C:24-b, IV, standard for a one-time 90-day extension. Other options for a permanency plan include:

- Adoption through termination of parental rights or surrender;
- Guardianship with a fit and willing relative or another appropriate party; or
- Another planned permanent living arrangement.

3. Parent 1 at Parent 2's 12-Month Permanency Hearing

In these cases, the court will have previously held a 12-month permanency hearing for Parent 1 and made a finding that the parent does not meet the standard for return of a child in placement pursuant to RSA 169-C:23 and identified a permanency plan of reunification with Parent 2. Nonetheless, Parent 1 retains their parental rights and therefore remains a party to the ongoing RSA 169-C case and, as

such, may attend Parent 2's 12-month permanency hearing (and all other RSA 169-C hearings involving Parent 2).

When Parent 1 attends Parent 2's 12-month permanency hearing, the court may, after hearing from Parent 2 regarding the standard for return of a child in placement pursuant to RSA 169-C:23, hear from Parent 1. While there is no statutory authority for Parent 1 to request a second 12-month permanency hearing, should the court find that Parent 2 does not meet the RSA 169-C standard, the best interest of the child may prompt the court to consider if Parent 1 now meets the standard pursuant to RSA 169-C:23 such that Parent 1 may be reunified with their child. Ultimately, and pursuant to RSA 169-C:2, I, the best interest of the child shall be the primary consideration of the court in all RSA 169-C proceedings, including a permanency hearing.

PROTOCOL 13 EARLY PERMANENCY HEARING FOR BOTH PARENTS

An early permanency hearing should only occur in a limited number of cases in which both parents are making no effort or only negligible efforts to comply with dispositional orders or based on another compelling reason.

A. DCYF's Motion for an Early Permanency Hearing and Scheduling an Early Permanency Hearing for Both Parents

To justify an early permanency hearing being scheduled for **both parents, DCYF**, in its motion to the court, must allege sufficient facts to satisfy, by **clear and convincing evidence**, the standard set forth in RSA 169-C:24-b, II(b) which includes, but is not limited to:

- The parents are making no effort or only negligible efforts to comply with dispositional orders; or
- Based on another compelling reason.

In RSA 169-C cases, parents shall have at least six months after a finding of abuse or neglect to receive services and have an opportunity to make efforts to comply with the court's dispositional orders. Therefore, and pursuant to RSA 169-C:24-b, I (f), **DCYF shall not request** an early permanency hearing for both parents **sooner than 14 days prior to the 6-month review hearing**.

COMMENTS

For cases in which Parent 1 and Parent 2 are identified/located at different points in a RSA 169-C case, and when the court conducts a 12-month permanency hearing for Parent 1 and determines they do not meet the standard for return of a child in placement pursuant to RSA 169-C:23, DCYF may consider

requesting an early permanency hearing for Parent 2, if appropriate, as set forth in Protocol 12.

Pursuant to RSA 169-C:3, VII-a, a "compelling reason" includes circumstances where:

- Both parents, or only one parent if the other parent is deceased or not identified, have made no effort or only negligible efforts to comply with the dispositional orders;
- A ground exists for termination of parental rights for both parents, or for only one parent if the other parent is deceased or not identified, under one or more paragraphs of RSA 170-C:5; or
- There is another compelling reason to assess the permanency plan of reunification earlier than the 12-month permanency hearing.

The protocols in Chapter 12 regarding the filing of termination of parental rights petitions are applicable in cases involving an early permanency hearing, including but not limited to the requirements in Chapter 12, Protocol 3 for when the court identifies adoption as the permanency plan and DCYF files TPR petitions. RSA 170-C:5, III-a sets forth a ground for termination of parental rights, as follows: "Subsequent to a finding of child neglect or abuse under RSA 169-C, the parents have failed to correct the conditions leading to such a finding prior to an early permanency hearing held pursuant to RSA 169-C:24-b, II(b) at which the court changed the child's permanency plan, despite reasonable efforts under the direction of the court to rectify the conditions."

B. Court Scheduling an Early Permanency Hearing

If DCYF files a Motion for Early Permanency Hearing **within 14 days but more than 10 days from the 6-month review hearing**, the court should wait to rule on the Motion until after the 6-month review hearing, notwithstanding that parents should file any written objection to the Motion **within 10 days**. By waiting to rule, the parents will, at the 6-month review hearing, have the opportunity to supplement any written objection with oral argument about the Motion.

If the court grants a Motion for Early Permanency Hearing, the court should schedule the early permanency hearing to occur **approximately 30 days from granting the motion**, to ensure sufficient notice to all parties.

C. Court Conducting an Early Permanency Hearing and Court Findings

At an early permanency hearing, pursuant to RSA 169-C:24-b, II(b), the court shall determine whether **DCYF** has proven, **by clear and convincing**

evidence, that both parents, or only one parent if the other parent is deceased or not identified:

- Cannot currently satisfy the standard of return of the child under RSA 169-C:23; and
- Would be highly unlikely to satisfy such standard at the time of a 12-month permanency hearing based on the parents making no effort or only negligible efforts to comply with dispositional orders or based on another compelling reason, as defined in RSA 169-C:3, VII-a.

D. DCYF Does Not Meet Its Burden at an Early Permanency Hearing and the Next Scheduled Hearing

If DCYF does not meet its burden at an early permanency hearing, the court shall maintain reunification as the permanency plan. The next hearing should be the one the court would have otherwise held if the early permanency hearing had not been requested. That is, either a **9-month review hearing**, pursuant to RSA 169-C:24, or a previously scheduled **12-month permanency hearing**, pursuant to RSA 169-C:24-b.

E. DCYF Does Meet Its Burden at an Early Permanency Hearing, the Court's Findings and the Next Scheduled Hearing

If DCYF does meet its burden at an early permanency hearing, the court shall determine, pursuant to RSA 169-C:24-b, II(b), whether it is in the child's best interest to:

- Maintain reunification as the permanency plan, providing parent(s) additional time to meet the requirements of RSA 169-C:23, and hold, within 90 days, **another early permanency hearing** or a previously-scheduled **12-month permanency hearing**, pursuant to RSA 169-C:24-b; or
- Identify a permanency plan other than reunification for the child, as set forth in RSA 169-C:24-b, II(a), and hold a **post-permanency hearing** within 60 days.

PROTOCOL 14 THE COURT'S WRITTEN ORDER FOLLOWING A PERMANENCY HEARING

When the court, after completing a permanency hearing, takes the permanency plan under advisement, the court will have **five (5) business days** to issue an order.

The court should refer to the Permanency Hearing Court Order for specific findings and orders and, for additional guidance, Chapter 12, Termination of Parental Rights, Chapter 13, Surrender of Parental Rights, Chapter 14, Voluntary Mediation and Chapter 15, Adoption.

Revised 12/1/23

PART B COURT REPORTS, EVALUATIONS AND OTHER RECORDS

PROTOCOL 15 SUBMISSION OF REPORTS, EVALUATIONS, AND OTHER RECORDS

Pursuant to RSA 169-C:12-b, all reports, evaluations, and other records from DCYF, counselors, and GALs shall be filed with the court and all other parties **at least five (5) business days** prior to any hearing. See

Reports from service providers should be sent directly to DCYF in sufficient time for DCYF to include these reports with its court report.

While not statutorily required, parents may choose to file their own hearing court report, evaluations and other records, as set forth below in Protocol 18.

COMMENTS

Normally only DCYF counsel of record, parents and the CASA GAL/GAL should have access to documents such as psychological evaluations. There may, however, be circumstances where it is appropriate for the joined school district to have access to assist with educational programming.

If a particular service provider is not available to attend the hearing, the court should ensure that the DCYF caseworker has obtained detailed information on the participation and progress of the parents in that service.

PROTOCOL 16 DCYF'S COURT REPORT

Pursuant to RSA 169-C:12-b, DCYF shall file its permanency hearing court report, evaluations and other records with the court and all other parties **at least five (5) business days** prior to any hearing, which includes a permanency hearing.

DCYF's report should include copies of reports in their entirety from all service providers with whom DCYF has contracted for services for the child and family. This includes, but is not limited to, counselors, residential service providers, treating psychologists, or therapists, foster parents, relative caregivers and others rendering services to the family under contract with DCYF. It is DCYF's responsibility to obtain such reports sufficiently in advance so that the five (5) business day deadline, pursuant to RSA 169-C:12-b, may be met.

The court should expect that DCYF's permanency hearing court report will address the following:

A. If the parent(s) has(have) **met the standard for return of a child in placement**, pursuant to RSA 169-C:23, as follows:

- If the parent(s) is(are) in compliance with the outstanding dispositional order;
- If the child will not be endangered in the manner adjudicated on the initial petition, if returned home; and
- If return of custody is in the best interests of the child. Upon showing the ability to provide proper parental care, it shall be presumed that a return of custody is in the child's best interests.

B. **Recommendation for a permanency plan** for the child, pursuant to RSA 169-C:24-b; and

C. **DCYF's reasonable efforts to date to finalize the permanency plan** that is in effect, pursuant to RSA 169-C:24-b, III. When reunification is the permanency plan that is in effect, an explanation as to the services to the family and whether they have been accessible, available and appropriate.

COMMENT

In most RSA 169-C cases, reunification is the permanency plan that is in effect for a child in an out-of-home placement up through and including the 12-month permanency hearing. This permanency plan is identified in DCYF's case plan and the court's orders.

PROTOCOL 17 CASA GAL/GAL COURT REPORT AND CONSULTATION WITH A CHILD

The CASA GAL's/GAL's permanency hearing court report, and consultation with a child about the proposed permanency plan and/or transition plan, will be as follows:

A. CASA GAL/GAL COURT REPORT

Pursuant to RSA 169-C:12-b, all reports from a CASA GAL/GAL shall be filed with the court and all other parties **at least five (5) business days** prior to any hearing, which includes a permanency hearing.

The court should expect that the CASA GAL/GAL permanency hearing court report will address the following:

1. If the parent(s) has(have) **met the standard for return of a child in placement,** pursuant to RSA 169-C:23, as follows:

   - If the parent(s) is(are) in compliance with the outstanding dispositional order;
   - If the child will not be endangered in the manner adjudicated on the initial petition, if returned home; and

- If return of custody is in the best interests of the child. Upon showing the ability to provide proper parental care, it shall be presumed that a return of custody is in the child's best interests.

2. Recommendation for a permanency plan for the child, pursuant to RSA 169-C:24-b, II;

3. Child's best interest; and

4. Consultation with the child, as set forth below in Section B.

COMMENTS

The court should not expect the report from a CASA GAL/GAL to address DCYF's reasonable efforts to date to finalize the permanency plan that is in effect, pursuant to RSA 169-C:24-b, III. Further, it is not the role of a CASA GAL/GAL to report to the court, when reunification is the permanency plan that is in effect, an explanation as to the services to the family and whether they have been accessible, available and appropriate. Instead, the court should expect DCYF and a parent and their attorney will provide the court information about DCYF's reasonable efforts and whether services to the family have been accessible, available and appropriate.

In most RSA 169-C cases, reunification is the permanency plan that is in effect for a child in an out-of-home placement up through and including the 12-month permanency hearing. This permanency plan is identified in DCYF's case plan and the court's orders.

B. CASA GAL/GAL CONSULTATION WITH THE CHILD

Pursuant to New Hampshire Circuit Court - Family Division Rule 4.5, a child's CASA GAL/GAL (and/or attorney) shall consult in an age-appropriate manner with the child about the child's views of DCYF's proposed permanency plan and/or transition plan and, if applicable, the CASA GAL's/GAL's proposed permanency plan.

The CASA GAL/GAL (and/or attorney) shall report about the consultation to the court in writing and/or orally at a permanency hearing. The Rule further indicates that such consultation shall not preclude the child, at the child's own request or the request of the court, from attending and/or being heard at a permanency hearing, pursuant to Circuit Court - Family Division Rule 4.5.

For additional guidance on the attendance of children and youth at a permanency hearing, the court should refer to Chapter 8, Part B, Children and Youth in Court.

PROTOCOL 18 REPORTS, EVALUATIONS AND OTHER RECORDS FROM OTHER PARTIES, INCLUDING PARENTS

Other parties to a RSA 169-C case, including parents, may file reports, evaluations, and other records with the court and all other parties. Pursuant to RSA 169-C:12-b, all reports, evaluations and other records shall be filed with the court and all other parties **at least five (5) business days** prior to any hearing, which includes a permanency hearing.

While not statutorily required, parents may choose to file their own permanency hearing court report, evaluations and other records, to address the following:

A. If the parent(s) has(have) **met the standard for return of a child in placement,** pursuant to RSA 169-C:23, as follows:

- If the parent(s) is(are) in compliance with the outstanding dispositional order;
- If the child will not be endangered in the manner adjudicated on the initial petition, if returned home; and
- If return of custody is in the best interests of the child. Upon showing the ability to provide proper parental care, it shall be presumed that a return of custody is in the child's best interests.

B. Recommendation for a **permanency plan for the child**, pursuant to RSA 169-C:24-b, II; and

DCYF's **reasonable efforts** to date to finalize the permanency plan that is in effect, pursuant to RSA 169-C:24-b, III. When reunification is the permanency plan that is in effect, an explanation as to the services to the family and whether they have been accessible, available and appropriate.

COMMENT

In most RSA 169-C cases, reunification is the permanency plan that is in effect for a child in an out-of-home placement up through and including the 12-month permanency hearing. This permanency plan is identified in DCYF's case plan and the court's orders.

PROTOCOL 19 REPORTS FROM FOSTER PARENTS, RELATIVE CAREGIVERS AND KINSHIP CAREGIVERS

Information about reports from foster parents, relative caregivers and kinship caregivers is set forth in Chapter 1, Part C, Protocol 14.

PART C POST-PERMANENCY HEARINGS

PROTOCOL 20 DEFINITION OF POST-PERMANENCY HEARING

A post-permanency hearing refers to different types of RSA 169-C hearings that the court schedules and holds **after** a permanency hearing for a child in an out-of-home placement, **UNLESS** a subsequent permanency hearing is mandated by RSA 169-C.

When the court conducts a post-permanency hearing, pursuant to RSA 169-C:24-c, it is to finalize the permanency plan that is in effect, as identified by the court at the permanency hearing, and to determine whether DCYF has made reasonable efforts to finalize the permanency plan.

COMMENTS

For placement cases, the court should not schedule a review hearing after a permanency hearing (unless the permanency hearing was an early permanency hearing, as set forth in Protocol 13).

In contrast, for non-placement cases, all hearings scheduled and held after a dispositional hearing, and until case closure, should be review hearings. State and federal law does not require a permanency hearing when a child has not been removed from a parent(s) and is not in an out-of-home placement. In placement cases where reunification occurs prior to the permanency hearing, the permanency hearing shall be converted to a review hearing and all subsequent hearings will be review hearings (not post-permanency hearings).

PROTOCOL 21 THE COURT SCHEDULING POST-PERMANENCY HEARINGS

The court should consider the following about the two mandatory and five discretionary post-permanency hearings that are scheduled and held after a permanency hearing.

A. Two (2) Mandatory Post-Permanency Hearings

1. Annual Post-Permanency Hearing

For a child who remains in an out-of-home placement following the 12-month permanency hearing, an annual post-permanency hearing should be held:

- One year from a 12-month permanency hearing; and
- Every 12 months thereafter as long as a child remains in an out-of-home placement, pursuant to RSA 169-C:24-c, I.

2. Subsequent Post-Permanency Hearings When Child Has Unique Needs and Unable to be Reunified

As set forth in Protocol 11, subsequent post-permanency hearings shall be scheduled for a child whose parent(s) has(have) **met the RSA 169-C:23 standard** for return of custody but the child is unable to be reunified with their parent(s) due to the **unique needs of the child**, pursuant to RSA 169-C:24-b, V.

In such cases, the court shall schedule subsequent post-permanency hearings, pursuant to RSA 169-C:24-c, I, until the child may be returned to the custody of the parent(s), pursuant to RSA 169-C:24-b, V.

B. Five (5) Discretionary Post-Permanency Hearings

1. Post-Permanency Hearing Following Reunification and Until Case Closure

Following timely reunification after a permanency hearing, the court shall schedule periodic post-permanency hearings until case closure.

In cases in which the parents are living apart, best practice is for the court to require parents, before case closure, to file a **parenting petition under RSA 461-A** or a **divorce/legal separation petition under RSA 458**, or a modification of an existing order under RSA 461-A or RSA 458. This will provide parents with ongoing court orders describing their parental rights and responsibilities, in conjunction with closure of the RSA 169-C case.

2. Post-Permanency Hearing after Early Permanency Hearing

If DCYF meets its burden at an early permanency hearing and the court, pursuant to RSA 169-C:24-b, II(b), determines it is in the child's best interest to identify a permanency plan other than reunification for the child, as set forth in RSA 169-C:24-b, II(a), a post-permanency hearing should be scheduled and held within 60 days. See Protocol 13.

3. The protocols in Chapter 12 regarding the filing of termination of parental rights petitions are applicable in cases involving an early permanency hearing, including but not limited to the requirements in Chapter 12, Protocol 3 for when the court identifies adoption as the permanency plan and DCYF files TPR petitions. **Post-Permanency Hearing When TPR Granted and Adoption is Pending**

For additional guidance, the court and parties should refer to Chapter 12, Termination of Parental Rights.

When the court grants a TPR petition(s), Protocol 16(A) of those protocols sets forth that the court should schedule a post-permanency hearing,

pursuant to RSA 169-C:24-c, and that the post-permanency hearing should be held within forty-five (45) calendar days of the court's final TPR order. Those protocols further state that conducting these post-permanency hearings satisfies the requirement of RSA 170-C:11, VI, and more specifically focuses the post-permanency hearings on finalizing the permanency plan of adoption, as required by federal and State law, including a judicial determination of whether DCYF is making reasonable efforts to finalize the permanency plan. The court's notice of these post-permanency hearings shall not be provided to parents whose parental rights have been terminated. This, court staff will change the parent(s) status in the RSA 169-C case so that such parent(s) no longer receives hearing notices or other mail in these cases.

For cases in which a **child is not living in a prospective adoptive home**, the court should consider these cases a **high priority**, and the purpose of the RSA 169-C post-permanency hearing is for the court to determine whether DCYF has made reasonable efforts to finalize the permanency plan of adoption, foremost being efforts to identify, recruit and approve a qualified family for adoption, pursuant to RSA 169-C:24-a, II, so that an adoption may be finalized. This finding is required, by the AFSA and RSA 169-C:24-c, every 12 months from a permanency hearing if the child is to be eligible for Title IV-E foster care maintenance funds. If this finding is not made, these federal funds may be at risk. Thereafter, the court should conduct a RSA 169-C post-permanency hearing every ninety (90) calendar days, or more frequently at the court's discretion until the child is placed in a prospective adoptive home. Upon the child being placed in a prospective adoptive home, the court should continue to conduct RSA 169-C post-permanency hearings as the court deems necessary or as requested by a party until such time as DCYF files an adoption petition(s), and an adoption hearing can be scheduled and held, pursuant to Chapter 15.

The court and parties should refer to Chapter 12, Protocol 16(A)(2) and (3) for additional guidance when a child has lived in a prospective adoptive home for at least six months and when a child has lived in a prospective adoptive home for less than six months.

4. Post-Permanency Hearings

If the court changes the permanency plan to Another Planned Permanent Living Arrangement (APPLA), the court should schedule a 60-day post-permanency hearing, to be held within 45 days of the permanency hearing.

For guidance on a 60-day post-permanency hearing and additional types and timing of post-permanency hearings, the court should refer to Chapter 11, Part D, APPLA as a Permanency Plan for Older Youth.

5. Court's Motion or Request for Post-Permanency Hearings

The court may conduct post-permanency hearings upon its own motion, or upon the request of any party at any time, pursuant to RSA 169-C:24-c, I.

PROTOCOL 22 THE COURT'S NOTICE TO PARTIES AND NON-PARTIES

The court's notice to RSA 169-C parties and non-parties of a post-permanency hearing should be handled as follows:

The court shall send notice for a post-permanency hearing to all parties to the RSA 169-C case.

Note that a parent whose rights have been terminated is no longer a party to the RSA 169-C case and as such, the court's notice of these post-permanency hearings shall not be provided to parents whose parental rights have been terminated. Thus, court staff will change the parent(s) status in the RSA 169-C case so that such parent(s) no longer receives hearing notices or other mail in these cases. See Chapter 12, Termination of Parental Rights.

For **parents who are incarcerated in New Hampshire**, the court should do a transport order to ensure the parent's attendance and participation at the hearing.

Additionally, **foster parents, relative caregivers and kinship caregivers**, while not parties to the case, should be sent notice of all court proceedings. See Chapter 1, Part C, Protocol 14.

The court's notification/joinder of the legally liable school district is set forth in Chapter 1, Part B, Protocol 11.

PROTOCOL 23 SUBMISSION OF REPORTS, EVALUATIONS, AND OTHER RECORDS

Pursuant to RSA 169-C:12-b, all reports, evaluations, and other records from DCYF, counselors, and CASA GALs/GALs and all other parties, including parents and their attorneys, shall be filed with the court **at least five (5) business days prior** to any hearing, which includes a post-permanency hearing.

COMMENT

The court should expect that DCYF and a parent and their attorney will provide the court information about DCYF's reasonable efforts to finalize the permanency plan that is in effect, and, where reunification is the permanency plan, whether services to the family have been accessible, available and appropriate, pursuant to RSA 169-C:24-c, II. In contrast, the court should not expect the report from a CASA GAL/GAL to address DCYF's reasonable efforts. Further, it is not the role of a CASA GAL/GAL to report to the court, where reunification is the permanency plan, an explanation as to whether services to the family have been accessible, available and appropriate.

PROTOCOL 24 REPORTS FROM FOSTER PARENTS, RELATIVE CAREGIVERS AND KINSHIP CAREGIVERS

Information about reports from foster parents, relative caregivers and kinship caregivers is set forth in Chapter 1, Part C, Protocol 14.

PROTOCOL 25 CONDUCTING POST-PERMANENCY HEARINGS

Pursuant to RSA 169-C:24-c, II, when conducting a post-permanency hearing, the court:

- **Shall** determine whether DCYF has made reasonable efforts to finalize the permanency plan that is in effect, pursuant to RSA 169-C:24-c, II;
- Where reunification is the permanency plan, **shall** consider whether the **services** to the family have been accessible, available, and appropriate; and
- **May**, upon agreement of the parties, modify the permanency plan. In such cases, a permanency hearing is not required, pursuant to RSA 169-C:24-c, III.

Additionally, pursuant to RSA 169-C:2, I, the best interest of the child shall be the primary consideration of the court in all RSA 169-C proceedings, including a post-permanency hearing.

COMMENT

Notwithstanding ASFA's requirement the court make an annual determination of the agency's reasonable efforts to finalize the permanency plan in effect, RSA 169-C:24-c, II, provides that at any post-permanency hearing the court shall determine whether DCYF has made reasonable efforts to finalize the permanency plan that is in effect.

PROTOCOL 26 THE COURT'S WRITTEN ORDER FOLLOWING POST-PERMANENCY HEARINGS

The court should timely issue its written order and mail it to all parties.

Pursuant to RSA 169-C:24-c, the following findings shall be included in the court's post-permanency order:

- Whether DCYF has made **reasonable efforts** to finalize the permanency plan that is in effect, pursuant to RSA 169-C:24-c, II; and
- Where reunification is the permanency plan, whether the **services** to the family have been accessible, available, and appropriate.

Additionally, pursuant to RSA 169-C:24-c, III, if the parties agree to modification of the permanency plan, the court **may modify** such **permanency plan** at a **post-permanency hearing**. A separate permanency hearing is not required.

In cases in which the parents are living apart, best practice is for the court to require parents, before case closure, to file a **parenting petition under RSA 461-A** or a **divorce/legal separation petition under RSA 458**, or a modification of an existing order under RSA 461-A or RSA 458. This will provide parents with ongoing court orders describing their parental rights and responsibilities, in conjunction with closure of the RSA 169-C case.

PART D APPLA AS A PERMANENCY PLAN FOR OLDER YOUTH

INTRODUCTION

Despite the best efforts of all involved in RSA 169-C cases, there will always be some older youth for whom it may not be possible to provide a more permanent permanency plan of reunification, adoption or guardianship. The reasons for this are well-known including, for example, parents' continuing inability or unwillingness to correct the conditions of abuse and neglect, the uncertainties associated with some guardianships, some youth remaining adamantly opposed to being adopted, and the extraordinary financial weight associated with a youth's major disability that often precludes adoption by caring foster parents or relatives who would otherwise make a legal commitment to the youth and with whom the youth is bonded.

Given these realities, these protocols provide a definition of Another Planned Permanent Living Arrangement (APPLA) as a permanency plan for older youth that includes the youth's foremost needs and that focuses the efforts of all parties and the court at post-permanency hearings. Moreover, in view of the Strengthening Families Act and the Adoption and Safe Families Act that limit APPLA to youth 16 and older, and require a "compelling reason" finding by the court that another permanency plan is not in a youth's best interest, a substantive APPLA permanency plan as described in these protocols should not be considered a "default" permanency plan but as the most appropriate permanency plan under the circumstances for the youth.

APPLA as a permanency plan features a Primary Caring Adult (PCA) with whom the youth may or may not live upon case closure. These protocols emphasize the importance of APPLA youth, before case closure, having a court-approved primary caring. Additionally, the protocols set forth other supportive relationships and realistic, post-case closure plans concerning key areas of well-being including a safe, stable place for the youth to live.

A Primary Caring Adult, as set forth below in Protocol 28, is someone:

- the youth wants to be their Primary Caring Adult (with whom the youth may or may not live);
- who is fit to serve as the youth's Primary Caring Adult;
- who makes a lifelong commitment to be the youth's primary source of guidance and encouragement;
- who understands the youth's current and future needs; and
- who is an adult other than a youth's parent.

PROTOCOL 27 APPLICABILITY OF PROTOCOLS

The court should use these protocols when conducting RSA 169-C post-permanency hearings for youth with Another Planned Permanent Living Arrangement as their permanency plan. At these hearings, the court and youth should discuss finalizing APPLA as their permanency plan so that the youth will have, before case closure, a **court-approved Primary Caring Adult** with whom the youth may or may not live upon case closure. A Primary Caring Adult is defined below in Protocol 28.

COMMENTS

Although these protocols were developed for use in RSA 169-C cases when the court changes a youth's permanency plan from reunification to APPLA and conducts post-permanency hearings, they should also be used when the court changes a youth's permanency plan from adoption to APPLA. This may occur when a TPR petition is denied, dismissed, or withdrawn or when parental rights are terminated or surrendered and an adoption is not finalized.

The court is only permitted to order APPLA as a permanency plan **for youth 16 years of age and older**, pursuant to the Preventing Sex Trafficking and Strengthening Families Act. Additionally, the court is required to make a **"compelling reason" finding** that another permanency plan is not in the youth's best interest, pursuant to the Adoption and Safe Families Act.

For a youth 16 years of age at the time the court orders APPLA as their permanency plan, the court only has up to two years, unless jurisdiction is extended pursuant to RSA 169-C:4, II, to finalize the permanency plan and have a court-approved Primary Caring Adult. For a youth 17 years of age or older, the court only has one year or less to finalize APPLA as the permanency plan. Consequently, time is of the essence in these cases and the court's oversight essential.

PROTOCOL 28 DEFINING A PRIMARY CARING ADULT

For purposes of these protocols, the court and parties should construe a "Primary Caring Adult", or PCA, as defined as someone:

- the **youth wants** to be their Primary Caring Adult (with whom the youth may or may not live);
- who is **fit to serve** as the youth's Primary Caring Adult;
- who **makes a lifelong commitment** to be the youth's primary source of guidance and encouragement;
- who **understands the youth's** current and future needs; and
- who is an **adult other than a youth's parent**.

COMMENTS

A primary caring adult is usually someone known to the youth, and may be a biological or step-family member (e.g. older sibling, aunt/uncle, grandparent) or non-family member (e.g. current or former foster parent, a high school teacher, counselor, coach, former social worker or residential staff member, former CASA GAL/GAL, or neighbor). In addition, a couple such as an aunt/uncle or grandparents may jointly serve as a youth's Primary Caring Adult.

Parents should never be identified as a Primary Caring Adult. Parents who otherwise meet the criteria for a Primary Caring Adult should be considered within a reunification, not APPLA, context. When considered in a reunification context, parents need to satisfy the "Standard for Return of Child in Placement", pursuant to RSA 169-C:23, for reunification to occur.

PROTOCOL 29 SCHEDULING POST-PERMANENCY HEARINGS

When the court orders APPLA as a youth's permanency plan, the court should thereafter **schedule regular post-permanency hearings**. Best practice is to schedule these hearings for 30 minutes.

If **APPLA was ordered at a permanency hearing**, the court will have already scheduled a 60-day post-permanency hearing and that hearing should be the first post-permanency hearing held. Thereafter, the court should schedule a post-permanency hearing every three months.

If **APPLA was ordered subsequent to a permanency hearing**, the court should schedule a post-permanency hearing to be held in three months and every three months thereafter.

When a **youth is nearing their 18th birthday** and has not determined whether they are interested in extending jurisdiction or enrolling, if eligible, in DCYF's HOPE program, the court should schedule a post-permanency hearing within 30 days of the youth's birthday.

Additionally, when a **youth will turn 18 within a few months** and still does not have a court-approved Primary Caring Adult, the court may want to hold more frequent hearings in an intensified effort to provide the youth with permanency prior to case closure as well as to simultaneously ensure that the youth has a safe and stable place to live upon case closure in the event the youth does not have a PCA at the time of case closure.

In cases where the court, at the permanency hearing, either keeps reunification as the permanency plan or identifies a new plan of adoption or guardianship and **subsequently changes the youth's permanency plan to APPLA**, the court should schedule post-permanency hearings as set forth above.

PROTOCOL 30 COURT REPORTS

Consistent with RSA 169-C:12-b, the court should expect DCYF and the CASA GAL/GAL to file a post-permanency hearing report **at least five (5) business days prior to each post-permanency hearing**. The report should primarily and specifically address the four (4) parts of an APPLA permanency plan, as set forth in Protocol 31(B).

PROTOCOL 31 CONDUCTING POST-PERMANENCY HEARINGS

These post-permanency hearings are intended to be held with and about the youth, and the court, therefore, **should anticipate the youth will be present** at all post-permanency hearings. Further, the court should expect that the CASA GAL/GAL will encourage and **support the youth to attend and participate** at all post-permanency hearings and that **DCYF will arrange transportation**, if needed.

These hearings, unlike other post-permanency hearings, should be **discussion-based between the court and youth and about the youth and their post-case closure future**, rather than reporting-based between the court and parties. Thus, the **court should establish an informal courtroom**, and should engage a youth, consistent with their abilities, to be an active participant. See Protocol 32.

COMMENT

If the youth does not plan to attend the post-permanency hearing, which the parties may bring to the court's attention prior to the scheduled hearing, or if a youth is not present at the post-permanency hearing, the court may want to reschedule the hearing. It is essential that the youth be present to hear and participate in the discussion about the four parts of APPLA as their permanency plan and to be able to ask the court questions, including about anything that is unclear to the youth. Additionally, having the youth present allows the court to convey that "time is of the essence" to finalize APPLA and that the court strongly supports the youth and encourages the youth to attend and be active at all post-permanency hearings.

A. Purpose of Post-Permanency Hearings

The purpose of post-permanency hearings is to primarily have the court and youth focus on the four parts of APPLA as a permanency plan, as follows:

- A Primary Caring Adult (with whom the youth may or may not live upon case closure) (Part 1)
- Important Family Members (Part 2)
- Other Supportive Persons (Part 3)
- The Youth's Current and Post-Case Closure Plans (Part 4)

As set forth below, a youth having a **court-approved Primary Caring Adult** prior to case closure is the court's main focus at the post-permanency

hearings and the sole basis for a youth having **APPLA finalized as a permanency plan**. **Additionally**, youth significantly benefit from having **additional relationships and connections** (Part 2, Important Family Members and Part 3, Other Supportive Persons), currently and following case closure. In addition, youth need to learn about making current and post-case closure plans in **especially important areas of personal well-being** (Part 4, The Youth's Current Status and Post-Case Closure Plans).

1. **Primary Caring Adult (with whom the youth may or may not live upon case closure)**

   The court should, consistent with RSA 169-C:24-c, II, proceed on the basis that **ensuring that a youth's permanency plan is finalized** prior to the court's jurisdiction ending is the desired outcome and legally mandated focus of the post-permanency phase in all RSA 169-C cases. In APPLA cases in New Hampshire, a youth's permanency plan is **finalized** when there is a **court-approved Primary Caring Adult**.

   When determining whether to approve a request made by the youth, DCYF, CASA GAL/GAL, and/or the youth's engaged parent(s) that a person be a youth's court-approved Primary Caring Adult, the court should first verify that the youth wants the potential person to be their Primary Caring Adult, and, if so, to thereafter determine whether the potential PCA meets the definition of a Primary Caring Adult, as set forth in Protocols 28 and 31, D.

   COMMENTS

   A youth may request of the court that an adult be the youth's court-approved Primary Caring Adult notwithstanding DCYF, the CASA GAL/GAL and/or the youth's engaged parent(s) not recommending the adult as the youth's court-approved Primary Caring Adult.

   Any party may request that an adult be approved by the court as the youth's court-approved Primary Caring Adult provided the youth wants the adult to be their court-approved Primary Caring Adult.

2. **Important Family Members**

   The court should discuss with the youth **important family members** and whether the youth has identified any relationships with family members that the youth would like to **maintain, develop, re-establish and/or strengthen**. If so, the court should discuss whether DCYF, and/or the CASA GAL/GAL, engaged parents and, as applicable, a youth's Primary Caring Adult, are assisting the youth with these relationships.

COMMENTS

Siblings (older and younger) often have special importance and provide youth with a sense of belonging. Additionally, RSA 169-C:19-d requires the court, whenever reasonable and practical and based on the best interests of the child/youth, to ensure that a child/youth with an existing relationship with a sibling (who is also subject to the court's RSA 169-C jurisdiction) has visitation rights with their sibling(s).

A family member other than a youth's parent can serve as a youth's Primary Caring Adult if the family member meets the definition of a PCA as set forth in Protocols 28 and 31, D.

3. Other Supportive Persons

The court should discuss with the youth **other supportive persons** and whether the youth, DCYF, the CASA GAL/GAL, engaged parents and, as applicable, a youth's Primary Caring Adult, have identified any such persons, especially in connection with their providing assistance to the youth upon case closure, such as assisting with one or more of the Part 4 Current and Post-Case Closure Plans outlined below in Section IV.

COMMENT

Other Supportive Persons can and should include healthy peers the youth has a relationship with or with whom the youth would like to develop a relationship.

4. The Youth's Current and Post-Case Closure Plans

The court should discuss with the youth their current and post-case closure plans, including their interest in enrolling, after case closure, in DCYF's HOPE program. See Part E below. These plans should be developed by the youth with the encouragement and support of the court and parties, and should include the following:

a. Plan for Safe and Stable Place to Live Upon Case Closure

In cases involving a **youth who will be 18 within six-months or less** and who will not live with their court-approved Primary Caring Adult or does not yet have a Primary Caring Adult, the court should consider a **high priority** the youth having a safe and stable place to live upon case closure. This work should be done along with, as applicable, DCYF, the CASA GAL/GAL and engaged parents.

A place to live is considered "**safe**" if it does not appear to present any significant risks to a youth's physical and emotional well-being. A place to live is considered "**stable**" if it appears that it will not likely disrupt soon after the youth begins to live at the place.

b. Plan for Education

In all APPLA cases, the court should consider a youth's education a **high priority** and should encourage DCYF, the CASA GAL/GAL, engaged parents, and, as applicable, a youth's Primary Caring Adult to support the youth making realistic educational plans with specific educational goals and objectives, consistent with the youth's abilities. These goals should include the youth graduating from high school, obtaining a high school equivalency (HiSET) or completing high school. These goals may also include the youth exploring any post-secondary educational interests. When a PCA is finalized by the court, they should be included in these discussions with the youth, DCYF, the CASA GAL/GAL, and engaged parents.

For **youth 17 years of age**, the court should discuss with the youth their option of requesting that the **court extend its jurisdiction**, pursuant to RSA 169-C:4, II, beyond the youth's 18th birthday, provided the youth is attending high school. Extended jurisdiction may continue until such time as the youth completes high school or until their twenty-first birthday, whichever occurs first. Pursuant to RSA 169-C:4, II, the court is authorized to make such orders relative to the support and maintenance of the youth during the period after the youth's eighteenth birthday as justice may require.

For **youth 17 years of age who are not interested in extending the court's jurisdiction**, the court should discuss with the youth the option of the youth enrolling, after case closure, in DCYF's HOPE program. Pursuant to RSA 170-E:53, foster care may, for eligible youth, be extended beyond the age of 18 and until the age of 21. See Part E below.

c. Plan for Employment/Job Training

In APPLA cases, the court should consider a youth having an employment and/or job training plan, consistent with their abilities and vocational interests. The court should encourage the youth to work with DCYF, the CASA GAL/GAL, and, as applicable, the youth's Primary Caring Adult, to identify vocational interests and develop a realistic plan, including the youth having a part-time job prior to case closure as well as the youth's post- case closure plans regarding employment and/or job training.

In addition, the court should inquire of the youth whether the youth has Important Family Members or Other Supportive Persons who can assist the youth in pursuing any current and/or post-case closure employment and/or job training goals.

COMMENT

Youth who will not be living with a court-approved Primary Caring Adult upon case closure face significant economic challenges that need to be part of the court's discussions with the youth and the parties at the post-permanency hearings.

d. Plan for Health

In APPLA cases, the court should consider a youth having a realistic health plan, including how the youth, post-case closure, will access health care services (medical, dental, mental health, and, as applicable, substance abuse), who will provide these services, and how these services will be paid for. The court's discussion with the youth should include ensuring that the youth understands the work being done by DCYF related to the youth's health care needs, both current and post-case closure. When a PCA is finalized by the court, they should be included in these discussions with the youth, DCYF, the CASA GAL/GAL, and engaged parents.

As set forth below in section e, the Preventing Sex Trafficking and Strengthening Families Act of 2014 **requires DCYF to provide youth aging out of care** with various documents, including their health insurance information and medical records, all of which the court should discuss with DCYF and ensure the youth receives before case closure.

Additionally, if a youth has any issues (e.g. **trauma and loss, major developmental disability**) that significantly interfere with a youth having a Primary Caring Adult, graduating from high school, obtaining a high school equivalency (HiSET) or completing high school, securing employment, and/or meeting essential health care needs post-case closure, the court should ensure that these issues are being adequately addressed by DCYF. This includes, but is not limited to, the following being done by the court:

- inquiring whether a youth will likely require a guardian following case closure; and/or
- inquiring whether a youth will require significant involvement with Adult Services.

If so, the court should ensure that DCYF is doing the necessary work so that the youth, to the extent reasonable and possible, is adequately provided for post-case closure.

Ordinarily, DCYF will provide status updates about a youth's current health in its court report, and, therefore, the court should not

use limited time at post-permanency hearings to discuss the status of a youth's health and related issues except in cases where the youth will likely require a post-case closure guardian and/or significant involvement with Adult Services. This status update should include, if applicable, whether the Primary Caring Adult is taking a youth to medical, dental, mental health and/or other health related appointments.

e. Documents DCYF is Required to Provide Youth Before Case Closure

The Preventing Sex Trafficking and Strengthening Families Act of 2014 **requires DCYF to provide youth aging out of care** with the following documents:

- Birth certificate;
- Social Security card;
- Driver's license or state identification card;
- Health insurance information; and
- Medical records.

Therefore, the court should expect that DCYF will include in its post-permanency hearing court report the following information:

- Explanation of DCYF's efforts to date to obtain each document, including any pending requests, and if the document is an original and/or copy;
- Whether the document is in the DCYF file;
- Whether the document has been provided to the youth and if so, where the youth is safely keeping the document.

COMMENT

Some youth who are 16 years of age may have difficulty engaging in making post-case closure plans due to case closure appearing to be in the distant future. In contrast, youth who are 17 years of age or older are closer to aging out, and, therefore, are more likely to engage in making both current and post-case closure plans. Nonetheless, time is of the essence until such time as a youth has a court-approved Primary Caring Adult.

B. The Court's Reasonable Efforts Finding

The court, consistent with RSA 169-C:24-c, II, shall at all post-permanency hearings determine whether DCYF has made "reasonable efforts to finalize the permanency plan in effect". In APPLA cases in New Hampshire, these

reasonable efforts concern a youth's Primary Caring Adult and, thus, APPLA as a permanency plan is "finalized" when the youth, as set forth above in Protocol 28, has a court-approved Primary Caring Adult.

When APPLA is the court-ordered permanency plan, the court should base its reasonable efforts finding on DCYF's efforts to assist the youth in having a court-approved Primary Caring Adult prior to case closure. The court, in its Post-Permanency Hearing Court Order, should set forth with specificity DCYF's efforts to assist the youth in having a court-approved Primary Caring Adult and to finalize APPLA as a permanency plan prior to case closure.

The court should, consistent with RSA 169-C:24-c, II, require **DCYF to continue to make reasonable efforts** to finalize APPLA as a permanency plan until the plan is finalized and a youth has a court-approved Primary Caring Adult and a Motion to Close a Case is filed with and approved by the court.

A reasonable efforts finding should **not** be based on the outcome of DCYF's efforts to assist a youth in having a court-approved Primary Caring Adult and whether the youth has a PCA.

COMMENTS

Important Family Members (Part 2), Other Supportive Persons (Part 3) and a Youth's Current and Post-Case Closure Plans (Part 4), while significant and related to a youth's well-being and future, are not required as part of the court's finding related to DCYF's reasonable efforts to finalize APPLA as a permanency plan.

In cases where over time a youth has mainly wanted a person to be their court-approved Primary Caring Adult, the court may find that a youth wants this person to be their Primary Caring Adult despite periodic ups-and-downs in the relationship, and that the APPLA permanency plan has been finalized.

Because there is no authority for the court to create a legal relationship between a youth and their court-approved Primary Caring Adult, this necessitates APPLA cases that are "finalized" needing to remain open until the youth turns 18 or graduates from high school. Thus, in cases where **the court finalizes APPLA as a permanency plan when it approves a Primary Caring Adult prior to a youth turning 18 or, as applicable 21**, the court should continue to conduct post-permanency hearings until case closure and for purposes of addressing any significant issues bearing on the Primary Caring Adult's relationship with the youth; and discussing with the youth and parties Important Family Members (Part 2), Other Supportive Persons (Part 3) and a Youth's Current

and Post-Case Closure Plans (Part 4). In such instances, the court should encourage attendance of the court-approved Primary Caring Adult at all post-permanency hearings.

C. The Court's Determination Whether to Approve a Potential Primary Caring Adult

Upon receiving a request from the youth, DCYF, the CASA GAL/GAL and/or an engaged parent(s) that the court approve an adult the youth wants as their Primary Caring Adult, the court should consider the following definition of a Primary Caring Adult as someone:

- the youth wants to be their Primary Caring Adult;
- is fit to serve as the youth's Primary Caring Adult;
- makes a lifelong commitment to be the youth's primary source of guidance and encouragement;
- understands the youth's current and future needs; and
- is an adult other than a youth's parent.

The court should expect DCYF and the CASA GAL/GAL to submit written assessments of the adult's fitness to serve as the PCA, lifelong commitment to the youth and understanding of the youth's current and future needs. These assessments should be submitted to the court **at least five (5) business days prior to any hearing at which the court will be asked to determine whether a potential Primary Caring Adult will be approved by the court.**

If a youth wants an individual to be their Primary Caring Adult but **DCYF is not in support of this adult**, the court should expect that DCYF will promptly file a motion for an **expedited hearing** to address the matter, except in cases where a post-permanency hearing is already scheduled and will be held within ten (10) calendar days. In connection with this expedited hearing, the court should expect that DCYF and the CASA GAL/GAL will file with the court their completed initial assessments of the adult under consideration. However, the court should not expect DCYF to conduct a further assessment of the adult's commitment to the youth until and unless the court, the youth and the parties have an opportunity to discuss the matter, and the court determines that a further assessment of the adult's commitment is needed.

The court should encourage a court-approved Primary Caring Adult to attend post-permanency hearings. At a minimum, the court should meet, at least once before case closure, the court-approved Primary Caring Adult. Additionally, the court should advise the parties whether the court wants a potential PCA to attend or not attend a post-permanency hearing at which the court will make a determination whether to approve the person as the youth's Primary Caring Adult.

In the event the court is advised that a court-approved Primary Caring Adult no longer wants to be a youth's PCA, and the PCA's decision is final, the court should conduct frequent post-permanency hearings in a renewed effort to provide the youth with another court-approved Primary Caring Adult prior to case closure.

PROTOCOL 32 ESTABLISHING AN INFORMAL COURTROOM AND ENGAGING YOUTH AT POST-PERMANENCY HEARINGS

As set forth above in Protocol 31, the court should anticipate that the youth will be present at all post-permanency hearings, especially since these hearings should involve discussions between the court and youth and with the youth's input. Thus, the court should establish an **informal courtroom**, and should **engage a youth**, consistent with their abilities, to be an **active participant**. To do so, the court may want to:

- sit with the youth and parties as the courtroom may allow for, including sitting at a table with the youth and a limited number of adults;
- welcome the youth at the outset of every post-permanency hearing and ask the youth which of the four (4) parts of their APPLA post-permanency plan they would like to start with;
- allow and inform DCYF and the CASA GAL/GAL to defer to the youth rather than speaking for the youth;
- emphasize the need for the youth to take control of planning for their future, that it will take a lot of hard work and that the youth can do it;
- make post-permanency hearings discussion-based rather than, as required at review hearings, reporting-based;
- limit, whenever possible, the hearing discussion to the youth and a small number of adults to avoid the youth feeling overwhelmed or talked about rather than with;
- let parents know they have the right to attend all post-permanency hearings, but they and their attorneys do not have to, but if they do attend, it will be to support their child and to finalize APPLA as their permanency plan by having a court-approved Primary Caring Adult; and
- before concluding the hearing, ask a youth whether there is anything the court can do to make subsequent post-permanency hearings more comfortable for the youth.

COMMENTS

It is the practice of the CASA GAL/GAL, as well as DCYF, to encourage older youth, consistent with their ability, to be an active participant in developing the four (4) parts of an APPLA permanency plan, thereby allowing these youth to take ownership of the four (4) parts. Absent this practice, the work that is done is unlikely to have lasting value for the youth. The court reinforces this practice by having

youth speak for themselves, and by talking with these youth about the importance of their taking increasing responsibility for their lives through their active involvement in developing the four (4) parts.

Additionally, the CASA GALGAL, after every post-permanency hearing attended by a youth, will encourage the youth to complete an online survey about their court experience, including if they plan to attend the next post-permanency hearing.

DCYF has the primary responsibility for preparing parents and court-approved Primary Caring Adults to attend and participate at post-permanency hearings, and the CASA GAL/GAL has the primary responsibility for preparing the youth.

Courts, nationally, are increasingly recognizing the value of specialized courts that depart from the formality of traditional courts. Examples include drug courts, mental health courts, and, most germane to these protocols, trauma informed dependency courts. See Protocol 33, A. An informal courtroom is especially appropriate at these post-permanency hearings which principally focus on court discussions with older youth about a Primary Caring Adult, additional relationships, and their current and especially post-case closure plans and well-being. (See New Hampshire Circuit Court Rule 1.5, “Any person addressing the Court or questioning a witness shall stand, unless excused by the court.”)

PROTOCOL 33 ADDITIONAL CONSIDERATIONS AT POST-PERMANENCY HEARINGS

When conducting these post-permanency hearings, the court should consider the following:

A. YOUTH TRAUMA AND LOSS

In overseeing the efforts to finalize APPLA as a youth’s permanency plan, consideration should be given to the youth having experienced trauma stemming from their abuse and/or neglect and placement and associated losses, **all of which can and often does result in significant challenges to a youth having healthy, supportive relationships**.

Thus, for example, a youth may initially be unwilling to explore or sustain a promising relationship with a potential or court-approved Primary Caring Adult, no matter how ideal the relationship appears in the eyes of the court, DCYF, the CASA GAL/GAL and others. Rather than being indifferent or non-appreciative, these youth are typically struggling with feelings of anger, sorrow and apprehension that are associated with prior failed relationships involving a caregiver, and that need to be addressed concurrently with other

efforts to assist the youth in being able to commit to a new type of relationship that is healthy, caring and supportive.

It is also important for the court to recognize that youth deal with trauma and resultant painful feelings in different ways. Some youth "internalize" these feelings, and often are quiet at court hearings at which there is discussion about important issues, have frequent illnesses, and/or a history of suicide gestures or attempts as well as other types of self-harm. These youth, in particular, are apt to need encouragement to express their hopes and desires. In contrast, other youth "externalize" their painful feelings, and often project anger, mistrust, and an "I don't care" attitude towards those who are trying to assist them. In both instances, however, a youth is typically resorting to a learned way of coping with trauma rather than intentionally being uncooperative or disrespectful of the court.

Although the court will primarily rely on DCYF, DCYF service providers and the CASA GAL/GAL to assist a youth in addressing their trauma and loss, the court is able to support these efforts by being trauma-informed, as described above, and by:

- encouraging all court staff to welcome the youth;
- speaking in a caring way with a youth; and
- conveying the court's hope that a youth, in addition to addressing any trauma- related challenges to finalizing their permanency plan of APPLA, will also acknowledge their strengths and right to a healthy, productive future, including the safety and support that derive from having a court-approved Primary Caring Adult and other healthy relationships.

COMMENT

DCYF staff has been trained in using a "trauma lens" in its child welfare practices and policies. Additionally, CASA GALs assigned to cases with older youth must take a CASA training that includes the trauma factor and talking with youth about their "possible selves".

B. CHANGE IN A YOUTH'S PERMANENCY PLAN FROM ADOPTION TO APPLA

Although these protocols were developed for use in RSA 169-C cases when the court changes a youth's permanency plan from reunification to APPLA and conducts post-permanency hearings, they should also be used when the court changes a youth's permanency plan from adoption to APPLA. This may occur when a TPR petition is denied, dismissed, or withdrawn or when parental rights are terminated or surrendered, and an adoption is not finalized. For youth whose parents' rights have been terminated or surrendered, when they age out, they **leave the system without a legal**

relationship to an adult. For them, finalizing APPLA and having a court-approved Primary Caring Adult before case closure is especially critical.

When a TPR petition is denied, dismissed, or withdrawn or a TPR petition is granted/parents surrender but an adoption does not occur, the court should proceed according to Chapter 11, Part A, Protocol 4 and Chapter 12, Protocol 16. At this subsequent permanency hearing, the parties should recommend, and the court should identify a new permanency plan for the youth. If APPLA is recommended at this hearing as the youth's permanency plan, the court should engage the youth, in particular, about the permanency plan, and, thereafter, determine whether the youth's desires constitute a "compelling" reason why the youth's permanency plan should be changed from adoption to APPLA.

COMMENTS

A youth who has experienced a termination of parental rights process may be greatly in need of emotional safety that can only be derived from the youth having greater control over their future, which an APPLA permanency provides for. In other cases, however, a youth, although opposed to renewed adoption efforts, may be open to exploring their feelings about adoption with a counselor, thereby warranting adoption continuing as the youth's permanency plan.

In view of the Strengthening Families Act and the Adoption and Safe Families Act limiting APPLA to youth 16 and older, and requiring a "compelling reason" finding by the court that another permanency plan is not in a youth's best interest, upon finding a compelling reason for changing a youth's permanency plan from adoption to APPLA, the court will need to be mindful that some youth who have experienced a termination of parental rights process may be especially cautious about or even strongly opposed to having a close relationship with any parental figure, including a Primary Caring Adult. On the other hand, such youth are apt to be particularly vulnerable to post-case closure risks, including homelessness, pregnancy, substance misuse and criminal activity, if they do not have the guidance and encouragement of a Primary Caring Adult, and the absence of a legal relationship with a Primary Caring Adult may, in time, make it possible for these youth to see the value in having such a relationship.

C. PARENTS

Unless parental rights have been terminated or surrendered, parents remain a party in these cases and retain important constitutional rights in the post-permanency phase of a RSA 169-C case. Notice shall be sent to parents for all post-permanency hearings.

The court should ensure that DCYF has explained to parents that once the permanency plan is changed from reunification to APPLA in a court order, the focus of post-permanency hearings shifts to the youth and discussions about the four (4) parts of the APPLA post-permanency hearing, including a court-approved Primary Caring Adult. Parents have the option of attending or not attending the post-permanency hearings, depending on their preference, but should consult with their attorney, as applicable, prior to making a decision. When a parent(s) attends a post-permanency hearing, the court should invite parents, if interested, to participate in the discussion about the youth and finalizing the youth's permanency plan of APPLA. In addition, the court should advise parents, as applicable, about the purpose of their child having a court-approved Primary Caring Adult, as defined in Protocol 28, and that having a PCA is not to eliminate a youth's relationship with their parents.

Parents may continue to work on correcting the conditions that led to the court's finding of abuse and/or neglect although DCYF is no longer required to make reasonable efforts to reunify as these efforts are now required to finalize the permanency plan of APPLA and have a court-approved Primary Caring Adult prior to case closure.

D. PARENTS' COUNSEL

The court should expect that parents' counsel will be knowledgeable about these protocols so as to be able to properly advise their client. Whenever possible and consistent with counsel's ethical obligations to their client, counsel can play an especially valuable role in APPLA cases by encouraging a parent-client to support their child in having a court-approved Primary Caring Adult prior to case closure and helping a parent-client understand that doing so does not result in legal termination of the parent-child relationship or eliminate a youth's relationship with their parents. Counsel can also explain to a parent-client that the focus of post-permanency hearings shifts to the youth and the four (4) parts of the APPLA post-permanency hearing, as set forth in Protocol 31.

E. OTHER PERMANENCY OPTIONS OF REUNIFICATION, ADOPTION AND GUARDIANSHIP

Notwithstanding that the court's focus at post-permanency hearings, pursuant to RSA 169-C:24-c, II, is to finalize the permanency plan that is in effect, consistent with the Strengthening Families Act the court should consider other permanency options to be potentially "on the table", especially if a youth expresses an interest in a different permanency plan, either in connection with a Primary Caring Adult, parent(s) or other adult. In cases where a youth expresses an interest in a different permanency plan, the court should consider the alternative plan while at the same time **continue to require DCYF to make reasonable efforts to finalize the permanency plan of APPLA** as required by RSA 169-C:24-c, II.

Whenever it is proposed that the court change a youth's permanency plan from APPLA to an alternative plan, the court should consider any practical and/or legal limitations to making such a change before a youth becomes 18, as set forth below. Additionally, a youth's permanency plan should not be changed from APPLA to an alternative plan unless and until the court authorizes the change and the new permanency plan is documented in a post-permanency court order.

- **Reunification**: RSA 169-C:23 "Standard for Return of Child in Placement", must be satisfied by a parent for reunification to occur and if not, reunification would be contrary to law. This is the case even when an APPLA youth who is nearing their 18th birthday requests to be reunified and/or plans to live with their parent(s) once the RSA 169-C case closes. If a parent is unable to satisfy RSA 169-C:23, the court may, nonetheless, approve DCYF providing services to support the youth's plan to live with a parent(s) upon case closure while, at the same time, continue to require DCYF to make reasonable efforts to finalize the permanency plan of APPLA. Retaining APPLA as the youth's permanency plan comports with law, and a court-approved Primary Caring Adult is a protection for the youth in the event the youth returns home after case closure and soon thereafter is unable or unwilling to remain at home.
- **Adoption**: Adoption may not be feasible in some cases prior to case closure simply due to the length of time it takes to process a termination of parental rights action, or when a youth remains adamant that they do not want to be adopted and will not assent, as required by RSA 170-B:3, I, despite therapeutic efforts to assist the youth in exploring their opposition to being adopted. In other cases, however, parental rights may have already been terminated or both parents are willing to surrender their parental, thereby making possible an adoption prior to case closure.
- **Guardianship**: If there is a fit and willing person identified as a potential guardian for a youth, the court should expect that a careful assessment of the potential guardian will be done by DCYF, including whether the commitment to the youth will extend beyond the expiration of the guardianship decree. Thereafter and if appropriate, a RSA 463 guardianship petition may be filed and, if granted, DCYF will file a Motion to Close the RSA 169-C case.

F. CONCURRENT ABUSE AND/OR NEGLECT CASE AND DELINQUENCY CASE

Where an abused/neglected youth has a permanency plan of APPLA pursuant to RSA 169-C:24-b, and the youth has also been found to be delinquent pursuant to the court's RSA 169-B jurisdiction, the court should discuss with the youth, their RSA 169-B counsel, DCYF and the CASA GAL/GAL whether it is feasible to combine all future hearings in the delinquency case with the post-permanency hearings in the RSA 169-C case.

If not, the court, whenever possible, should schedule back-to-back hearings to be held on the same day.

PROTOCOL 34 THE COURT'S POST-PERMANENCY HEARING ORDER

After conducting a post-permanency hearing, the court should timely issue the Post-Permanency Hearing Order. That order includes a section for the court to make a finding as to whether DCYF has made reasonable efforts to finalize the permanency plan, as required by RSA 169-C:24-c, II. APPLA is finalized as a permanency plan when there is a court-approved Primary Caring Adult for the youth.

COMMENT

In its proposed order to the court, DCYF will include the specific reasonable efforts that directly relate to DCYF assisting the youth in having a court-approved Primary Caring Adult prior to case closure as well as any efforts of note made by the CASA GAL/GAL, an engaged parent(s) or other interested persons.

PROTOCOL 35 SCHEDULING THE NEXT POST-PERMANENCY HEARING

Prior to concluding the post-permanency hearing, the court shall schedule the next post-permanency hearing, as set forth above in Protocol 29.

PROTOCOL 36 THE COURT'S JURISDICTION AND DCYF FILING A MOTION TO CLOSE

Pursuant to RSA 169-C:4, II, the court's jurisdiction generally ends when a youth turns 18, unless they have not yet completed high school.

For youth who have completed high school before turning 18, the court's jurisdiction will terminate upon their 18th birthday, and DCYF will file a motion to close their case. Eligible youth have the option of extended foster care through enrolling in the HOPE program, as set forth below in Part E.

For youth who have not completed high school before turning 18, there are three options:

i. The youth may **consent to extended jurisdiction** pursuant to RSA 169-C:4, II. If a youth consents to extended jurisdiction, their case will remain open until they complete high school or turn 21, whichever occurs first. At that point, **DCYF** will file a motion to close the case, but such youth will still have the option of extended foster care through the HOPE program, as set forth below in Part E;

ii. The youth may choose not to extend jurisdiction under RSA 169-C:4, II, but instead may, if eligible, decide **to enroll in the HOPE program**, as set forth below in Part E. **DCYF** will file a motion to close the RSA 169-C case when the youth turns 18; or

iii. The youth may **decline to extend jurisdiction** and **decline** further involvement with DCYF through the **HOPE program**. DCYF will file a motion to close the RSA 169-C case when the youth turns 18. Despite this decision, such youth, if eligible, will still have the opportunity to enroll in the HOPE program at any time up to their 21st birthday, as set forth below in Part E.

The court should not close an abuse and/or neglect case without receiving from DCYF a Motion to Close Juvenile Abuse/Neglect Case (NHJB-2708). In the Motion to Close, the **court should specify** whether the court-ordered permanency plan of APPLA was or was not finalized. APPLA as a permanency plan is "finalized" when the youth has a court-approved Primary Caring Adult. The Motion to Close should reflect the following:

- If APPLA as a permanency plan **was finalized**, the Motion to Close should indicate the date on which the court approved the youth's Primary Caring Adult and the name of the Primary Caring Adult (who meets the criteria set forth in Protocol 28, C); or
- If APPLA as a permanency plan **was not finalized**, the Motion to Close should indicate this as well as the reason for case closure (youth reached the age of majority; youth completed high school after continued jurisdiction; youth reached their 21st birthday after continued jurisdiction; or youth revoked their consent to continued jurisdiction). The court may also set out with specificity the youth's status upon case closure, including if the youth has been in a residential program.

COMMENT

The absence of a legal relationship created by the court between a youth and their Primary Caring Adult, necessitates APPLA cases that are finalized needing to remain open until a youth becomes 18 or, if jurisdiction is extended, completes high school or turns 21, whichever occurs first.

PART E EXTENDED FOSTER CARE FOR YOUNG ADULTS 18 TO 21 (HOPE PROGRAM)

INTRODUCTION

In 2019, RSA 170-E was amended to allow for extended foster care beyond the age of 18 until the age of 21. To implement this significant statutory change, DCYF launched the Housing and Opportunities to Personally Excel (HOPE) program, a voluntary program that extends foster care for eligible young adults and provides them with ongoing support, guidance, and access to housing and other resources as they make their way toward adulthood. Interested, eligible young adults enroll in the program by completing a Voluntary Placement Agreement (VPA) with DCYF. Participation in the program also involves attendance at an annual court hearing at which the court ensures a required finding is made so that federal funding remains available. For youth who are approaching 18, the court should discuss the option to enroll in the HOPE program.

RSA 170-E:53 provides that youth who turn 18 while in DCYF custody may request to remain or return to DCYF foster care until the age of 21, provided they meet certain eligibility criteria. Specifically, youth must be:

- completing high school or equivalent;
- enrolled in an institution that provides post-secondary or vocational education for a minimum of six (6) hours (credits) per semester;
- participating in a program or activity designed to promote or remove barriers to employment, for a minimum of 15 hours per week;
- employed for at least 80 hours per month; or
- incapable of participating in any of the activities above due to a medical or mental health condition.

These statutory requirements are reflected in the eligibility requirements of the HOPE program for all youth as they turn 18 in DCYF custody, up until they turn 21. Eligibility for the HOPE program also extends to young adults who previously declined this option while in care and at the time of their 18th birthday or enrolled in the HOPE program and discontinued participation.

For all youth approaching 18 while in DCYF custody, one of the following scenarios will exist:

1. The youth may be eligible for and may consent to **extended jurisdiction pursuant to RSA 169-C:4, II**, because they have not yet finished high school. If a youth consents to extended jurisdiction, their RSA 169-C case will remain open until they complete high school or turn 21, whichever occurs first. For young adults who thereafter complete high school before reaching 21, **DCYF must file a** Motion to Close **the RSA 169-C case upon such school completion, because extended jurisdiction will end pursuant to RSA 169-C:4, II**. Then, such young adult will have the option to enroll in the HOPE program, at that point or at any time up to age 21, based on eligibility requirement set forth in the protocols below;
2. The youth who has not yet finished high school may nevertheless decide **not to extend jurisdiction pursuant to RSA 169-C:4, II**, but instead may, if eligible, seek **to promptly enroll in the HOPE program** when they turn 18, based on eligibility requirement set forth in the protocols below. In such circumstances, **DCYF** must file a Motion to Close the RSA 169-C case when the youth turns 18;
3. A youth who has finished high school before turning 18 may wish to participate in the HOPE program when turning 18. **DCYF** must file a Motion to Close the RSA 169-C case when such youth turns 18; or
4. The youth may **decline to extend jurisdiction** and **decline** further involvement with DCYF through the **HOPE program**. DCYF must file a Motion to Close the RSA 169-C case when the youth turns 18. Such youth, if eligible, will still have the opportunity to enroll in the HOPE program at any time up to age 21, as set forth below.

Under any of these scenarios, a youth who turns 18 in DCYF custody will have the option to enroll in the HOPE program, if eligible, up to the age of 21.

To enroll in the HOPE program, the youth must first sign a Voluntary Placement Agreement with DCYF. This typically occurs after the RSA 169-C case is closed. The young adult's initial involvement in the HOPE program will be independent of the court, as state and federal law authorize DCYF to initially provide foster care payments and services for youth without any court involvement or orders.

In the VPA, the young adult agrees to:

- maintain at least one of the HOPE program eligibility requirements;
- work collaboratively with DCYF to develop and implement their Extended Foster Care Case Plan, to include tasks and services in support of their future goals;
- meet monthly with DCYF;
- complete any authorizations and paperwork required by DCYF, including record checks;
- complete a financial statement;

- notify their CPSW of any change in address or eligibility within 72 hours, or immediately of any arrest;
- comply with rules and expectation of placement provider; and
- attend meetings and court when necessary.

DCYF signs the VPA, agreeing to:

- provide placement services and document such services;
- assist with developing a case plan;
- assist the young adult in achieving short- and long-range goals as set forth in the case plan;
- assist the young adult with building life-long relationships with supportive family, siblings, and other caring adults, including a primary caring adult; and
- meet at least monthly with the young adult, half of the time where the young adult is residing.

For a young adult who enrolls in the HOPE program and for whom DCYF believes will remain in the program, DCYF will request, and the court will need to reopen, the RSA 169-C case involving the young adult, as set forth below.

PROTOCOL 37 DCYF'S MOTION TO REOPEN RSA 169-C CASE

DCYF will file a motion to reopen a RSA 169-C case for a young adult who has enrolled in the HOPE program. To avoid requesting cases be reopened prematurely and courts scheduling hearings for youth who have terminated their enrollment in the HOPE program, **DCYF's practice is to file its Motion to Reopen Case (NHJB-3167) no later than forty-five (45) days after the VPA is signed**. The motion to reopen triggers the court to schedule an Extended Foster Care—Best Interest Hearing with sufficient time to make the best interest finding within 180 days of the signed VPA, pursuant to 475(5)(C)(i) of the Social Security Act.

DCYF must attach a copy of the signed VPA to its Motion to Reopen, so that the court will know the triggering date for the best interest finding.

Upon receipt of this motion, court staff should promptly have the Motion to Reopen ruled upon by the court. Once granted, court staff will reopen the case, now considered the young adult's case, and should schedule the Extended Foster Care-Best Interest Hearing, as set forth below.

COMMENTS

The court needs to reopen the RSA 169-C case as a best interest court finding must be made within 180 days from the date the youth signs the VPA. However, as the HOPE program is voluntary, the young adult who enrolled in the

program may have terminated their involvement and may no longer be in foster care 180 days after signing the VPA. In such circumstances, a best interest finding would not be necessary.

The closure of the RSA 169-C case allows Title IV-E reimbursement to be calculated based solely on the young adult's financial need, income and resources, without regard to those of their parents/guardians. Given the typically significant need of such young adults, case closure maximizes the Title IV-E funds available to DCYF to support extended foster care services.

The Motion to Reopen Case form (NHJB-3167) will also be submitted in HOPE cases involving delinquency and CHINs.

PROTOCOL 38 PARTIES TO REOPENED CASE AND REQUESTED PARTICIPANTS

The only parties to the reopened RSA 169-C case are DCYF and the young adult. As the young adult is now 18 or older and the RSA 169-C case is being reopened solely based on the young adult's VPA with DCYF, the young adult's parents, the parents' attorneys, the CASA GAL/GAL and any joined school districts will no longer be parties to the reopened case and, as such, will not receive pleadings or orders.

Generally, former parties to the RSA 169-C case will also not receive court notices, unless the young adult wants to have them attend their hearings for support. Therefore, DCYF should consult with the young adult prior to filing the Motion to Reopen, so that the young adult can let DCYF know if they would like to have anyone else attend the hearing. If so, the young adult will need to provide any name(s) and address(es) of any requested participants. Such participants could include parent(s), foster parent(s), relative caregiver(s), kinship caregiver(s), the young adult's Primary Caring Adult, the former CASA GAL/GAL, or other family, friends or service providers. If the young adult wishes to have such individuals participate, DCYF will list these individuals and their names/addresses, as well as their connection to the young adult, in the appropriate section of the Motion to Reopen.

Court staff shall enter these individuals as participants in the reopened case so that they will receive hearing notices. Such participants will not have party status and will not receive court orders or pleadings.

COMMENT

If a former CASA GAL/GAL is identified by a young adult as someone they want to have attend their hearing, the court should keep in mind the CASA GAL/GAL will attend as a support person rather than in their previous role as a party to the RSA 169-C case and the young adult's advocate. As such, the former CASA GALGAL may choose to attend the hearing as a participant but is

not required to do so, even though they will be sent notice of the hearing by the court.

PROTOCOL 39 SCHEDULING AND CONDUCTING THE EXTENDED FOSTER CARE—BEST INTEREST HEARING

When a Motion to Reopen is granted, the court shall schedule an Extended Foster Care—Best Interest Hearing **within sixty (60) days from the filing of the Motion to Reopen Case**, so that the court can make the required best interests **finding within 180 days** of the signed VPA, as required by 475(5)(C)(i) of the Social Security Act.

The court should expect the young adult and DCYF to appear at the Extended Foster Care—Best Interest Hearing, together with any participants requested by the young adult. DCYF's practice is to submit a proposed **Juvenile Order for Abuse/Neglect/CHINS/Delinquency Extended Foster Care—Best Interest Hearing, Annual Hearing (NHJB-3168)** for the court's review and approval. DCYF may also submit a report describing the young adult's progress in the HOPE program.

At the hearing, the court should ask the young adult about their current status and understanding of the requirements of the HOPE program. The court should ask any participants if they have input to share about the young adult.

COMMENT

The **Juvenile Order for Abuse/Neglect/CHINS/Delinquency Extended Foster Care—Best Interest Hearing, Annual Hearing (NHJB-3168)** will also be submitted in HOPE cases involving delinquency and CHINs.

PROTOCOL 40 THE COURT'S ORDER FOLLOWING THE EXTENDED FOSTER CARE—BEST INTEREST HEARING

If the young adult is in compliance with their VPA and the requirements of the HOPE program, the court should find that it is in the young adult's best interest to extend foster care and continue in the program. The court will make such finding on the **Juvenile Order for Abuse/Neglect/CHINS/Delinquency Extended Foster Care—Best Interest Hearing, Annual Hearing (NHJB-3168)** form.

COMMENT

The **Juvenile Order for Abuse/Neglect/CHINS/Delinquency Extended Foster Care—Best Interest Hearing, Annual Hearing (NHJB-3168)** will also be submitted in HOPE cases involving delinquency and CHINs.

PROTOCOL 41 SCHEDULING AND CONDUCTING ANNUAL HEARINGS AND ORDER

The court should schedule an annual hearing, pursuant to RSA 169-C:24-c, following the Extended Foster Care—Best Interest Hearing, and every 12 months thereafter until the young adult turns 21. If the young adult will be turning 21 within the subsequent 12 months, no further hearings need to be scheduled.

At this annual hearing, the court shall determine whether DCYF has made reasonable efforts to finalize the permanency plan that is in effect, pursuant to RSA 169-C:24-c. Additionally, the court may be asked to make a finding as to whether or not it is in the young adult's best interest to remain in foster care.

Before this hearing, DCYF's practice is to submit a proposed **Juvenile Order for Abuse/Neglect/CHINS/Delinquency Extended Foster Care—Best Interest Hearing, Annual Hearing (NHJB-3168)**. After conducting this hearing, the court should promptly issue this order and include a date for the next annual hearing, pursuant to RSA 169-C:24-c.

COMMENT

Given the growing independence of the young adult and their need to focus on education and/or work commitments, it is not recommended that the court schedule interim post-permanency hearings, unless such hearings are requested by the young adult.

PROTOCOL 42 CLOSING THE REOPENED RSA 169-C CASE

The court should close the reopened RSA 169-C case as follows:

A. When the young adult turns 21, the statutory authorization for extended foster care services ends. DCYF shall file a Motion to Close (NHJB-2708) reflecting this reason for terminating the VPA;

B. If the young adult no longer wishes to participate in the HOPE program, they should provide written notice to DCYF. DCYF will end their VPA within 3 days, and file a Motion to Close (NHJB-2708) reflecting this reason for terminating the VPA;

C. If the young adult no longer meets eligibility requirements, DCYF will provide the young adult with 30-days' notice of DCYF's intention to terminate their participation in the HOPE program. DCYF will make efforts to assist the young adult in maintaining eligibility. However, if not successful, DCYF will file a Motion to Close (NHJB-2708) and set forth this reason for terminating the VPA; or

D. If the young adult is not in compliance with their case plan or has violated the terms of their VPA, DCYF will file a Motion to Close (NHJB-2708), requesting

the VPA be terminated. DCYF will indicate in its motion whether the young adult does or does not object, and whether or not a hearing is requested. If the young adult requests a hearing, the court should schedule a prompt hearing on the motion, and thereafter rule on the Motion to Close.

COMMENT

DCYF recognizes that there will be breaks in participation, such as the loss of employment or changes in school enrollment. DCYF will provide a 60-day grace period if a young adult loses eligibility, so that the young adult may make efforts to regain eligibility requirements before DCYF requests termination from the program.

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CHAPTER 12 TERMINATION OF PARENTAL RIGHTS (TPR)

STATUTORY REFERENCES:

•RSA 169-C:3, Definitions

•RSA 169-C:19, Dispositional Hearing

•RSA 169-C:24-a, Petition for Termination of Parental Rights; Reasonable Efforts to Reunify

•RSA 169-C:24-b, Permanency Hearings

•RSA 190-C:24-c, Post-Permanency Hearings

•RSA 170-B:5, Persons Required to Execute a Surrender of Parental Rights

•RSA 170-B:10, Content of Surrender

•RSA 170-B:11, Consequences of Surrender

•RSA 170-B:12, Withdrawal of Surrender

•RSA 170-B:14, Arrangements Between Adoptive and Birth Parents

•RSA 170-C:2, Purpose

•RSA 170-C:5, Grounds for Termination of the Parent-Child Relationship

•RSA 170-C:7, Notice

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•RSA 170-C:11, Decree

•RSA 170-C:15, Appeals

•RSA 458-A:1, Definitions

•RSA 490-D:2, Jurisdiction

CASE LAW:

•*Douglas v. Douglas, 143 N.H. 419 (1999)*

•*In re Juvenile 2006-674, 156 N.H. 1, 931 A.2d 585 (2007)*

•*In re: C.M. & a., 166 N.H. 764, 103 A.3d 1192 (2014)*

•*In re K.H., 167 N.H. 766, 118 A.3d 1032 (2015)*

•*In re Matthew G. and Christopher G., 124 N.H. 414, 469 A.2d 1365 (1983)*

•*In re Taryn D. & a., 141 N.H. 376, 684 A.2d 63 (1996)*

INTRODUCTION

"Timely permanency" is rooted in child welfare literature detailing the potential and actual harms to foster children kept in prolonged uncertainty about their future. See e.g. American Academy of Pediatrics, "Developmental Issues for Young Children in Foster Care", Pediatrics, Vol. 106, No. 5 (Nov. 1, 2000) ("Every effort should be made to rapidly establish a permanent placement…").

Today, "timely permanency" for children and families is seen in New Hampshire and federal law, most notably the Adoption and Safe Families Act (ASFA) and RSA 169-C:3, XXI-c, and has also been acknowledged in New Hampshire case law. See *In re Juvenile* 2006-674, 156 N.H. 1, 931 A.2d 585 (2007) (J. Dalianis, concurring specially, citing the unfairness of delayed resolution of abuse and neglect cases, not only to the child, but also to parents and foster parents). Therefore, **the court's goal is the timely disposition of TPR cases and, if a child is legally freed for adoption, finalizing the permanency plan of adoption within 12 months of a permanency order**.

Consequently, the main emphasis of these protocols is the timelines for the court to **hold and complete** the TPR preliminary hearing **within sixty (60) calendar days** of the permanency hearing, and to hold and complete the TPR final hearing **within sixty (60) calendar days** of the TPR preliminary hearing. These timelines were extensively considered over several years by the New Hampshire Model Court and Court Improvement Project and are generally consistent with the timelines established by the National Council of Juvenile and Family Court Judges' *Adoption and Permanency Guidelines* (2000) and in the *Enhanced Guidelines* (2016).

These protocols provide that DCYF should file TPR petitions even if the parties have agreed to surrender their parental rights or to mediate and mediation has been scheduled or is expected to be scheduled. In this way, if a parent subsequently decides not to surrender or mediation is not held or is unsuccessful, resolution of the TPR petitions is not delayed. Additionally, the TPR petitions will be filed whether or not a pre-adoptive parent(s) has been identified.

If parents were identified/located at different points in the RSA 169-C case and therefore have different 12-month permanency hearings, see Chapter 11, Part A, Protocol 12.

PROTOCOL 1 JURISDICTION

Pursuant to RSA 490-D:2, IX, the family division shall have exclusive original jurisdiction over TPR petitions.

Pursuant to Circuit Court Family Division Rule 8.1, the family division has jurisdiction in termination of parental rights actions brought pursuant to RSA 170-C.

PROTOCOL 2 JUDGE

The judge who presided in the related RSA 169-C abuse and/or neglect cases should preside in all hearings for the termination of parental rights cases.

COMMENTS

In the absence of any allegation that the record demonstrates a particularized deep-seated bias that would make it impossible for a judge to render fair judgment in the termination case, a judge is not required to disqualify himself merely because he was the presiding judge in the neglect case*. In re: C.M. & a*., 166 N.H. 764, 103 A.3d 1192 (2014).

"It is strongly preferred that the same judge or judicially supervised magistrate presides over the entire child welfare case from the preliminary protective hearing through permanency, including adoption." National Council of Juvenile and Family Court Judges, *Adoption and Permanency Guidelines* (2000) at 5; and re-stated in the NCJFCJ's *Enhanced Resource Guidelines* (2016) at 34 which also provides that this practice "encourages judges to take ownership in and maintain active oversight of their cases."

In the event the judge in the RSA 169-C cases does not preside in the RSA 170-C cases, the judge who is assigned to the RSA 170-C cases should preside at the TPR preliminary hearing and TPR final hearing. Thereafter, the RSA 169-C judge should preside in any future hearings until the RSA 169-C and RSA 170-C cases are closed.

PROTOCOL 3 COURT IDENTIFIES ADOPTION AS THE PERMANENCY PLAN AND DCYF FILES TPR PETITIONS

When the court, following a permanency hearing, identifies adoption as the permanency plan, DCYF will file TPR petitions as follows:

A. Court, From the Bench at a Permanency Hearing, Identifies Adoption as the Permanency Plan

When the court, from the bench at a permanency hearing, identifies adoption as the permanency plan, after DCYF recommends adoption as the child's permanency plan in its permanency hearing report and proposed permanency orders, the court should expect that **DCYF will file TPR petitions the day of the permanency hearing**.

These TPR petitions will be filed even if:

- the parties have agreed to surrender their parental rights or to mediate and a mediation has been scheduled or is expected to be scheduled; or
- a pre-adoptive parent(s) has (have) not been identified.

COMMENT

Although facts may be alleged in summary form in a TPR petition due to the breadth of material at issue, the allegations must be sufficiently precise to give the parties notice of the issue at stake. NCJFCJ's *Enhanced Resource Guidelines* (2016) at 344.

B. Court, After Completing a Permanency Hearing, Takes the Matter Under Advisement and Subsequently Identifies Adoption as the Permanency Plan in its Permanency Order

When the court, after completing a permanency hearing, takes the permanency plan under advisement, **the court will have five (5) business days to issue an order**. If, subsequently, the court identifies adoption as a child's permanency plan in its Permanency, the court should expect that **DCYF will file** TPR petitions **within two (2) business days of receiving the court's Permanency Hearing Order**.

C. TPR Petitions Filed by DCYF in Other Instances

In other instances, the court should expect that:

- when DCYF recommends a permanency plan other than adoption and the court identifies adoption as the permanency plan, DCYF will advise the court and the other parties within two (2) business days of receiving the court's permanency order whether the Division will file termination of parental rights petitions; and
- **when an RSA 169-C:24-a, I (a), (b) or (c) circumstance is present**, DCYF will promptly file a termination of parental rights petition(s) or a motion with copies to the other parties explaining why DCYF should not be required to file a termination of parental rights petition(s).

COMMENT

If in the court's permanency order DCYF is ordered to file a TPR petition and DCYF does not believe it can proceed, DCYF should file a motion for reconsideration, citing the reason(s) why DCYF does not believe it can go forward with the petition. Motions for reconsideration, pursuant to Circuit Court-Family Division Rule 1.26F, shall be filed within ten (10) days of the Clerk's written notice of the order or decision.

PROTOCOL 4 DOCUMENTS DCYF FILES WITH TPR PETITIONS

The documents DCYF files with TPR petitions include the following:

A. Social Study

Pursuant to RSA 170-C:9, DCYF is required to submit a social study to the court prior to the TPR final hearing. The social study shall include the circumstances of the petition, the social history, the present condition of the child and parents, proposed plans for the child, and such other facts as may be pertinent to the parent-child relationship. DCYF meets this requirement by filing the RSA 169-C social study previously submitted to the court for the RSA 169-C:19 dispositional hearing and DCYF's permanency hearing report submitted to the court for the RSA 169-C:24-b permanency hearing. DCYF will no longer use form 2208.

COMMENT

Although RSA 170-C:9, I, requires the court, upon the filing of TPR petitions, to direct that a social study be submitted, it is best practice to have DCYF file the social study documents, as set forth above, at the same time it files a TPR petition. Pursuant to RSA 170-C:9, I, the purpose of the social study is to aid the court in making disposition of the petition and shall be considered by the court prior to rendering its decision in the case.

B. Motion for Publication

Although RSA 170-C:7 allows service by certified mail to the parent's last known address when it shall appear impractical to personally serve a parent or serve the parent by publication, best practice in these cases is for the court to require notice for service by publication. Consequently, if DCYF believes it appears impractical to personally serve a parent, DCYF should file with the TPR petition a motion for service by publication.

COMMENTS

By the time a TPR petition is filed, DCYF should have made significant and ongoing efforts throughout the RSA 169-C abuse and/or neglect proceedings to locate a missing parent, as evidenced by DCYF's filing of an **Affidavit to Identify and/or Locate a Parent, Legal Guardian or Putative Father** at each RSA 169-C hearing.

Pursuant to RSA 170-C:7, in granting the motion, the court shall order service by publication once a week for two consecutive weeks in a newspaper of general circulation in the area where the person was last domiciled.

C. Military Service and Affidavit as to Military Service

The Service Member Civil Relief Act, 50 U.S.C., Sec. 3931, applies to any civil action or proceeding, including any child custody proceeding in which the

defendant does not make an appearance. Under the Act, **the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit** stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or, if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service. If it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. In such cases, the court shall grant a stay of the proceedings for a minimum of 90 days in certain circumstances.

D. Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) Form

Pursuant to New Hampshire's Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), RSA 458-A:1, IV, termination of parental rights is classified as a "child custody proceeding" in which legal custody of a child is determined. Therefore, DCYF shall file a **UCCJEA Affidavit** to provide information under oath regarding prior residences of the child(ren), current and prior custodians/guardians of child(ren), current and prior court actions related to the child(ren) and identifying all other individuals who may have custodial rights/interests with regard to the child(ren).

E. Motion for Mental Health Evaluation

In the event a mental health evaluation is needed in a RSA 170-C case, DCYF should include a motion for mental health evaluation with the petitions for termination of parental rights so that, in the event the court grants the motion, the evaluation can be completed without causing the TPR final hearing to be delayed or continued.

COMMENT

Mental health evaluations should seldom be necessary in RSA 170-C cases as ordinarily these evaluations, when needed, will have been conducted during the RSA 169-C abuse and/or neglect case.

PROTOCOL 5 SCHEDULING THE TPR PRELIMINARY HEARING

The court should schedule the TPR preliminary hearing to be **held and completed within sixty (60) calendar days of the RSA 169-C permanency hearing**. Pursuant to Protocol 2, the judge who presided in the related RSA 169-C abuse and/or neglect cases should preside in all hearings for the termination of parental rights cases.

The court and parties at the **RSA 169-C 9-month review hearing** will have selected a date for a **post-permanency hearing**. Upon the court identifying adoption as the permanency plan, **the TPR preliminary hearing shall be scheduled for the same date and time as was selected for the 60-day RSA 169-C post-permanency**

hearing. Thereafter, the court shall cancel the 60-day post-permanency hearing. The RSA 169-C case(s) will remain open until the permanency plan for the child is finalized, but no hearings shall be scheduled until the TPR case is resolved.

The date, time and place will be re-stated in the court's orders of notice for the TPR preliminary hearing.

COMMENT

Consistent with RSA 170-C:7, the TPR preliminary hearing shall take place no sooner than twenty (20) days after personal service of notice, except that if notice is by publication, the hearing shall take place no sooner than seven (7) days after the last date of publication.

PROTOCOL 6 APPOINTMENT OF RSA 170-C COUNSEL, CASA GAL/GAL, AND GAL FOR ALLEGED INCOMPETENT PARENT

The appointment of a RSA 170-C counsel, CASA GAL/GAL and, if applicable, GAL for an alleged incompetent parent should be handled by the court as follows:

A. Appointment of RSA 170-C Counsel

Upon DCYF filing TPR petitions against both parents, after the court identified adoption as a child's permanency plan, the court should promptly:

- **appoint** the 169-C counsel or other counsel, pursuant to RSA 170-C:10, to serve in the RSA 170-C case;
- if counsel was not appointed in the RSA 169-C case, determine eligibility for court-appointed counsel in the RSA 170-C case, and, if eligible, appoint counsel;
- if counsel was not present at the RSA 169-C 9-month review hearing when the 60-day post-permanency hearing date was selected (this hearing date is used for the TPR preliminary hearing), court staff shall contact potential counsel prior to appointment to **ensure counsel's availability** to attend the TPR preliminary hearing on the date pre-scheduled at the RSA 169-C 9-month review hearing; and
- **inform** the parent of counsel's name, address and telephone number by including the appointment of counsel order with the court's orders of notice.

The court should expect appointed counsel to promptly file an appearance with the court upon receipt of the court's RSA 170-C notice of appointment.

COMMENTS

The **parent's financial affidavit from the RSA 169-C case is sufficient** to determine eligibility.

Consistent with the same legal advocates representing the parties in all related matters, whenever possible and in the absence of a parent's timely request for new counsel or counsel in the RSA 169-C case not wanting to serve in the RSA 170-C case, the court should appoint the same attorney that represented the parent in the underlying abuse and/or neglect case.

The appointment of the RSA 169-C counsel in the RSA 170-C case is best practice because of counsel's knowledge of the RSA 169-C case, and counsel having participated at the RSA 169-C 9-month review hearing in selecting the date that will be used for the TPR preliminary hearing.

B. Appointment of RSA 170-C CASA GAL/GAL

The RSA 170-C CASA GAL/GAL is appointed to represent the best interests of the child, and, therefore, the RSA 170-C CASA GAL/GAL's role and written report are limited to the "best interest" phase of a termination of parental rights proceedings.

Upon DCYF filing TPR petitions and pursuant to RSA 170-C:8, the court should promptly appoint the RSA 169-C CASA GAL/GAL as the RSA 170-C CASA GAL/GAL.

If the RSA 169-C CASA GAL/GAL is unable to serve in the RSA 170-C case, the CASA GAL/GAL should promptly advise the court, and the court should make every effort to appoint a guardian ad litem who is available at the same date/time as has been scheduled and noticed for the TPR preliminary hearing. In such cases, best practice is for the successor guardian ad litem to contact the RSA 169-C CASA GAL/GAL to obtain a copy of and review the permanency report of the RSA 169-C CASA GAL/GAL.

Upon being appointed, an RSA 170-C CASA GAL/GAL shall promptly file an appearance with the court. The name and telephone number of the CASA GAL/GAL will be included in the notice of appointment, which should be included with the court's orders of notice in the TPR case.

COMMENT

The court's appointment of the CASA GAL should be to the "CASA-New Hampshire program" and not the CASA GAL who the CASA program assigned to serve in the RSA 169-C cases. All references elsewhere in these protocols are to the "CASA GAL".

C. Guardian ad Litem for Alleged Incompetent Parent

When a ground for DCYF's termination of parental rights petition is mental deficiency or mental illness (RSA 170-C:5, IV), the court shall appoint a guardian ad litem for the alleged incompetent parent, pursuant to RSA 170-C:8. This appointment is in addition to the parent's right to appointed counsel pursuant to RSA 170-C:10.

PROTOCOL 7 THE COURT'S ORDERS OF NOTICE TO DCYF

The court should prepare and mail orders of notice as follows:

A. Prepare and Mail Orders of Notice

1. Court Issues Permanency Order from the Bench at a Permanency Hearing

   Consistent with RSA 170-C:7 and Protocol 3, above, when the court issues a permanency order for adoption from the bench at a permanency hearing, DCYF will file TPR petitions immediately following the hearing. The court shall then prepare and mail orders of notice for the RSA 170-C TPR preliminary hearing **within two (2) business days of the TPR petitions being filed**.

2. Court, after Conducting a Permanency Hearing, Takes Permanency Order under Advisement

   Consistent with RSA 170-C:7 and Protocol 3, if the court, after conducting a permanency hearing, takes the permanency order under advisement, and subsequently issues a permanency order identifying adoption as the child's permanency plan, DCYF will file TPR petitions **within two (2) business days of receiving the court's permanency order**.

   The court, in turn, shall prepare and mail orders of notice for the RSA 170-C TPR preliminary hearing **within two (2) business days of receiving DCYF's TPR petitions**.

B. Motions for Publication

Pursuant to Protocol 4 and as applicable, DCYF should file a **motion to serve by publication** at the same time the TPR petitions are filed.

Upon receipt of a motion to serve by publication, the court should promptly approve the motion so that the court can prepare and mail orders of notice as set forth in Protocol 7 above.

C. The Court's Service Packet

In addition to the **Orders of Notice**, the court's **service packet** should include:

- pursuant to RSA 170-C:7, a copy of DCYF's TPR petitions;
- a copy of **DCYF's RSA 169-C social study and permanency hearing report**, which serve as the social study, pursuant to RSA 170-C:9;
- a copy of the **order on appointment of counsel**;
- a copy of the **order on appointment of CASA GAL/GAL**; and
- a copy of the **RSA 170-C Notice to Accused Parent** which provides an overview of the RSA 170-C process, including the TPR preliminary hearing and TPR final hearing (a parent who is served by publication shall be provided with a copy of this Notice through their attorney or, if self-represented, by contacting the court).

PROTOCOL 8 DCYF'S/PETITIONER'S SERVICE OF THE COURT'S ORDERS OF NOTICE

Upon receipt of the court's orders of notice, it is essential that the DCYF/petitioner make every effort to promptly serve parents with DCYF's TPR petitions and the court's orders of notice so that the TPR preliminary hearing may be held on the noticed date and time. If not served timely, the court will need to reschedule the TPR preliminary hearing and issue new orders of notice to be served on the parents.

Once a parent has been properly served, DCYF should promptly file the Return of Service with the court.

A. Parents

1. Personal Service

Pursuant to RSA 170-C:7, DCYF should arrange for personal service to be made on the parents, and, in these cases, the hearing shall take place no sooner than **20 days after service of notice**.

2. Service by Publication

Pursuant to RSA 170-C:7, where it shall appear impractical to personally serve the parent and the court has granted a motion to serve by publication, DCYF should arrange for service by publication once a week for two (2) consecutive weeks in a newspaper of general circulation in the area where that person was last domiciled. A parent who is served by publication shall be provided with a copy of the **RSA 170-C Notice to Accused Parent** by their attorney or, if self-represented, by contacting the court.

3. Indian Child Welfare Act (ICWA)

Section 1912a of the Indian Child Welfare Act (ICWA) requires that notice to the child's parent(s) and the Indian child's tribe be made by **registered**

mail return receipt requested. However, concerning the parents, the better practice in ICWA cases, if possible, is to have them **personally served**.

Failure to adhere to ICWA's notice requirements can result in a subsequent invalidation of a termination of parental rights order against an Indian parent and subsequent adoption of an Indian child. Consequently, it is essential that DCYF make ongoing efforts to establish with certainty the applicability or non-applicability of ICWA. The CASA GAL/GAL should assist in these efforts by making periodic inquiries of DCYF concerning whether the child has Native American heritage.

B. CASA GAL/GAL and Guardian of the Person

Notwithstanding RSA 170-C:7, the court rather than DCYF will provide notice by regular mail to the CASA GAL/GAL and, as applicable, the guardian of the person.

C. Parent(s) or Guardian of a Minor Parent

Pursuant to RSA 170-C:7, when the child's parent is a minor, notice shall also be given to the minor's parents or guardian of the person unless the court is satisfied, in its discretion, that such notice is not in the best interest of the minor and that it would serve no useful purpose.

COMMENT

Ordinarily, by the time DCYF files TPR petitions, the court will know whether providing notice to a minor parent's parents or guardian is in the minor parent's best interest. In the event the court is unfamiliar with the parent(s) of a minor parent, the court should expect DCYF and/or the CASA GAL/GAL to file a motion with the court if there are concerns about a parent(s) or guardian of a minor parent being provided notice of the TPR proceedings.

PROTOCOL 9 CONTINUANCES

Pursuant to Circuit Court - Family Division Rule 1.27, hearings are generally selected by agreement of the parties and the court, and, therefore, a motion for a continuance should usually be denied, except for good cause shown.

Absent death or serious illness, best practice is for the court to only consider a motion to continue a TPR preliminary or TPR final hearing when a motion to continue **directly bears on prosecuting or defending** against DCYF's TPR petitions, and the basis for the motion is of a major and substantive nature. The timely processing of termination of parental rights cases is a high priority because of the significant implications for children and parents and the particular stresses involved in termination proceedings.

COMMENT

At a 9-month RSA 169-C review hearing for out-of-home placement cases, courts and parties will select a date for a 60-day post-permanency hearing. The court should already have the permanency hearing date on its calendar, as a permanency hearing is to be scheduled at the time of the adjudicatory finding, for a child in out-of-home placement. Therefore, at the 9-month review hearing, the court will re-affirm the scheduled permanency hearing, and will also select a post-permanency hearing date to occur 60 calendar days after the permanency hearing. This will block a hearing slot in the court's calendar, 60 days following the permanency hearing. If, after the permanency hearing, the court identifies adoption as the permanency plan, that hearing slot will be used for the TPR preliminary hearing, and the post-permanency hearing will be cancelled. This practice will facilitate the TPR preliminary hearing being held and completed within sixty (60) calendar days of the permanency hearing.

PROTOCOL 10 THE COURT CONDUCTING THE TPR PRELIMINARY HEARING

Pursuant to Chapter 8, Part B, no child or youth should attend any RSA 170-C hearing. The CASA GAL/GAL shall inform the child or youth that a TPR preliminary hearing is not a hearing that they will attend.

At the TPR preliminary hearing, the court should address the following issues:

A. Service of Notice

The court should ensure at the outset of the TPR preliminary hearing that parents have been timely and properly served by the petitioner/DCYF with the court's Orders of Notice.

B. Respondent/Parent Fails to Appear

Pursuant to the court's **Order of Notice - Termination of Parental Rights**, a respondent-parent who has been timely served with notice of the TPR preliminary hearing must **personally** appear at this hearing, **regardless of whether respondent/parent is represented by counsel who files an appearance and/or appears** at the hearing. If the parent fails to personally appear, the court may proceed at the TPR preliminary hearing as follows:

In such cases, the court may proceed at the TPR preliminary hearing as follows:

Option 1: Default the parent and proceed to hear the merits of DCYF's TPR petition, including the recommendation of the CASA GAL/GAL, and, as warranted, terminate parental rights.

Option 2: Default the parent, subject to the court's further consideration at the TPR final hearing if the parent personally appears at the TPR final hearing.

COMMENTS

Before a court can enter a default judgment in a RSA 170-C termination of parental rights case against a respondent who fails to appear, DCYF is required to submit an Affidavit As to Military Service (NHJB-2200), pursuant to the Servicemember Civil Relief Act (SCRA). See Protocol 4, as set forth above.

Although the personal appearance of a party at a hearing is generally not required if that party is represented by counsel and has not been subpoenaed, a party **is required to personally appear** at a hearing **when the court's notice specifically requires the presence of a party** and counsel. A party's failure to personally appear in this circumstance warrants the court holding the party in default, and proceeding to the merits of a case in a defaulted party's absence. *Douglas v. Douglas*, 143 N.H. 419 (1999)

The court may not lawfully terminate a defaulting party's parental rights without making specific factual findings that statutory grounds for termination were established, and that termination is in the child's best interest. *In re Taryn D. & a.,* 141 N.H. 376, 684 A.2d 63 (1996)

At the court's discretion, the court may prefer to default the parent, subject to the court's further consideration at a default hearing within thirty (30) calendar days of the TPR preliminary hearing. If the defaulted parent fails to appear again, the court should proceed to issue a final order on the merits as set forth in Option 1. If the defaulted parent personally appears at the default hearing, the court may decide to strike the default. Any such default hearing, however, should not result in the TPR final hearing being delayed or continued. Thus, if the court decides to schedule a default hearing, it should also still schedule a final, evidentiary hearing on the merits to occur within sixty (60) calendar days of the TPR preliminary hearing, so that if the default is stricken the case will already be docketed for a timely trial.

C. Voluntary Mediated Agreement (VMA) at TPR Preliminary Hearing

If DCYF, one or both birth parents and the prospective adoptive parent(s) have entered into a voluntary mediated agreement, the court at the TPR preliminary hearing should review and, as warranted, unconditionally approve the VMA in accordance with RSA 170-B:14 and Chapter 14 on voluntary mediation.

In view of concurrent planning and parents having had ample time in the RSA 169-C case to consider the VMA option, best practice is for the court to

review a VMA at a TPR preliminary hearing. Notwithstanding this best practice, if the court receives a request for mediation following a TPR preliminary hearing, the court may schedule a mediation session but should do so only when the parties agree that the mediation will not delay the completion of the TPR final hearing—which is to occur within 60 days of the TPR preliminary hearing—if mediation is not successful or if the VMA is not approved or if the parent does not ultimately surrender their parental rights. See Chapter 14.

COMMENTS

Commencing the mediation process following the TPR preliminary hearing is not best practice for several reasons, including potential delays in the court conducting and completing the TPR final hearing within sixty (60) calendar days of the TPR preliminary hearing should mediation fail or should the parent change their mind about surrendering at the last minute.

Prospective adoptive parents must personally appear at the TPR preliminary hearing if the court is to review and, if appropriate, approve a VMA. Consequently, DCYF should ensure the pre-adoptive parent(s) are advised of the date, time and place of any TPR preliminary hearing at which a VMA will be reviewed by the court.

Parental surrenders in connection with a VMA are typically reviewed by the court immediately following court review and approval of a VMA.

D. Parental Surrenders at TPR Preliminary Hearing (or TPR Final Hearing)

If one or both parents request that the court review and approve a parental surrender, with or without a VMA, the court should review the parental surrender(s) in accordance with RSA 170-B:5-12 and the protocols for Surrender of Parental Rights, either at the **TPR preliminary hearing** or **TPR final hearing.**

RSA 170-B does not provide for conditional surrenders, and, therefore, the court should not approve them. More specifically, RSA 170-B:10, I, provides that upon the court's approval of a surrender, the parent's rights over the child will cease, and, pursuant to RSA 170-B:10, II (a), a surrender is final except under a circumstance stated in RSA 170-B:12 (Withdrawal of a Surrender).

DCYF's practice is to only support parental surrenders when a parent is fully informed about surrender, and wants to unconditionally surrender their parental rights.

In cases where one parent wants to surrender and the other parent is contesting a TPR petition, DCYF should have explained to the surrendering

parent that their surrender is final, absent fraud or duress as set forth in RSA 170-B:12, II (a), even if the other parent prevails in the TPR case.

E. Pre-Trial Matters

The court, at a minimum, should address the following pre-trial matters at a TPR preliminary hearing:

- **DCYF's RSA 169-C File**: Whether the parents and the CASA GAL/GAL have a copy of DCYF's RSA 169-C file.
- **Discovery, Witness Lists, Exhibits**: A date by which discovery, witness lists and a list of marked exhibits shall be provided to opposing counsel and to the CASA GAL/GAL.
- **CASA GAL/GAL Court Report**: A date for submission of the CASA GAL/GAL's Court Report, with copies to the other parties, which shall be at least thirty (30) calendar days prior to the TPR final hearing, thereby allowing the other parties sufficient time to review this report.
- **Indian Child Welfare Act (ICWA):** Whether the parties and counsel have sufficiently explored the child having Native American heritage, and the legal implications of failing to adhere to ICWA's notice, procedural and proof requirements. Failure to adhere to ICWA's notice requirements can result in a subsequent invalidation of a termination of parental rights order against an Indian parent and subsequent adoption of an Indian child.
- **Legal Issue(s):** Any pending legal issues pertaining to the TPR final hearing. If the court and/or the parties need additional time to address a legal issue, the court, with counsel, should identify a date and time to hear the issue sufficiently in advance of the TPR final hearing so that the parties have time to prepare for the TPR final hearing consistent with the court's ruling. Best practice is for these matters to be addressed in a teleconference.
- **Date and Time for TPR Final Hearing**: A date and time for the TPR final hearing, pursuant to Protocol 11 below.

PROTOCOL 11 SCHEDULING THE TPR FINAL HEARING PRIOR TO CONCLUDING THE TPR PRELIMINARY HEARING

Prior to concluding the TPR preliminary hearing, and in the absence of both parents surrendering their parental rights or their rights being terminated, the court with the parties and counsel shall select a date and time for the TPR final hearing.

This hearing should be held **and completed within sixty (60) calendar days of the TPR preliminary hearing**. In cases involving more than one day of trial, the court and the parties should select a date/time for the additional day(s) of the TPR final hearing, with the date(s) being consecutive whenever possible.

PROTOCOL 12 THE COURT'S TPR PRELIMINARY HEARING ORDER

The court shall issue and mail its TPR Preliminary Hearing Order **within five (5) business days of the TPR preliminary hearing**.

The TPR Preliminary Order shall be as follows:

A. Parent Appears and Will Contest TPR

When a parent appears at the TPR preliminary hearing and intends to contest the TPR, the court will issue its TPR Preliminary Hearing Order which shall:

- **identify the basis of the court's jurisdiction**;
- verify whether the parents (and, as applicable, the child's tribe pursuant to ICWA), were **timely and properly served** with DCYF's TPR petitions and the court's orders of notice specifying the date/time/place of the TPR preliminary hearing;
- verify whether the Indian Child Welfare Act (ICWA) does/does not apply;
- set the date by which **discovery, witness lists and a list of marked exhibits** shall be provided to opposing counsel as well as to the CASA GAL/GAL;
- set the date, time and method (e.g. teleconference) for addressing any **pending legal issues** prior to the TPR final hearing;
- set the date for submission of the **CASA GAL/GAL's Court Report** with copies to the other parties, which shall be at least thirty (30) calendar days prior to the TPR final hearing; and
- set the date and time for the **TPR final hearing**, which should be held and completed within 60 calendar days of the TPR preliminary hearing.

B. Parent Fails to Appear and Is Defaulted

1. Default Option 1

If a parent fails to appear after proper service and is defaulted pursuant to Option 1 in Protocol 10, the court may **convert the TPR preliminary hearing to a TPR final hearing** and proceed on the merits of the TPR petition against the defaulted parent. The court will hear from DCYF as to the ground(s) for termination of parental rights, and will hear from the CASA GAL/GAL regarding the best interests of the child. Upon proper proof of grounds and a determination of best interests to terminate parental rights, the court will issue a **Final Order on Termination of Parental Rights**. The court shall note in the Final Order that the parent failed to appear after proper service. In such cases, because the court will be issuing a Final Order, the court will not issue a TPR Preliminary Hearing Order as to the defaulted parent.

COMMENTS

Before a court can enter a default judgment in a RSA 170-C termination of parental rights case against a respondent who fails to appear, DCYF is required to submit an Affidavit As to Military Service, pursuant to the Servicemember Civil Relief Act (SCRA), as set forth above in Protocol 4.

Although the personal appearance of a party at a hearing is generally not required if that party is represented by counsel and has not been subpoenaed, a party **is required to personally appear** at a hearing **when the court's notice specifically requires the presence of a party** and counsel. A party's failure to personally appear in this circumstance warrants the court holding the party in default and proceeding to the merits of a case in a defaulted party's absence. *Douglas v. Douglas*, 143 N.H. 419 (1999)

The court may not lawfully terminate a defaulting party's parental rights without making specific factual findings that statutory grounds for termination were established, and that termination is in the child's best interest. *In re Taryn D. & a.,* 141 N.H. 376, 684 A.2d 63 (1996)

2. Default Option 2

When a parent fails to appear after proper service, the court may default the parent and, pursuant to Option 2 in Protocol 10, further consider striking the default at the TPR final hearing on termination of parental rights.

When the court chooses Option 2, the court should reflect the default in its TPR Preliminary Order, and proceed to discuss the remainder of the pre-trial matters set forth above, including selecting a date for a TPR final hearing to be held and completed within sixty (60) calendar days of the TPR preliminary hearing.

C. Parent Surrenders Parental Rights and Other Parent Retains Parental Rights and Responsibilities

When a parent appears and chooses to surrender parental rights, but the other parent retains parental rights and responsibilities as provided for in RSA 169-C:3, XXVII, the court will review the surrender documents, including any Voluntary Mediated Agreement, and, if appropriate, approve the surrender. The approved surrender will be docketed in a separate Surrender file, not in the TPR file. The court will not issue a TPR Preliminary Order for the surrendering parent. Rather, upon the court's approval of a parental surrender, DCYF shall promptly file with the court a **notice of withdrawal of the TPR petition** in the surrendering parent's RSA 170-C case. Upon receipt

of this notice, the court should close the surrendering parent's TPR case. In these cases, a Motion to Close Termination of Parental Rights (TPR) Case is not required and should not be filed by DCYF.

The court will also conduct the TPR preliminary hearing with respect to the non-surrendering parent, and issue a **TPR Preliminary Order** for the non-surrendering parent, covering all relevant pretrial matters. The court should note in its order that DCYF continues to have legal custody pursuant to an existing RSA 169-C order.

D. Parent Surrenders Parental Rights and Neither Parent Retains Parental Rights and Responsibilities

When a parent appears and wants to surrender parental rights, the court will review the surrender documents, including any Voluntary Mediated Agreement, and, if appropriate, approve the surrender. If the other parent also does not retain parental rights and responsibilities as provided for in RSA 169-C:3, XXVII, the court shall issue an **Order Transferring Care, Custody and Control** to DCYF, pursuant to RSA 170-B:11, II. In these cases, the court will not issue a TPR Preliminary Hearing Order.

Upon the court's approval of a parental surrender, DCYF shall promptly file with the court a **notice of withdrawal of the TPR petition** in the surrendering parent's RSA 170-C case. Upon receipt of this notice, the court should close the surrendering parent's TPR case. In these cases, a Motion to Close Termination of Parental Rights (TPR) Case is not required and should not be filed by DCYF.

The surrender documents, including the Order for Care, Custody and Control and a copy of any Voluntary Mediated Agreement, shall be docketed in a separate **Surrender of Parental Rights file** as set forth in the Surrender Protocols.

COMMENTS

Care, custody and control pursuant to RSA 170-B:11, II, and guardianship of the person and legal custody with DCYF pursuant to RSA 170-C:11, II, serve the same purposes, namely, when neither parent retains residual parental rights and responsibilities, to provide DCYF with full responsibility for the child's support, medical and other care until such time as the child is adopted; and to provide DCYF with the right to free the child for adoption, pursuant to RSA 170-B:5, I (d) and (e).

RSA 170-B:11, II, and RSA 170-C:11, II, do not require DCYF to file a motion requesting an order for temporary care, custody and control or guardianship of the child's person.

PROTOCOL 13 THE COURT CONDUCTING THE TPR FINAL HEARING

No child or youth should attend any RSA 170-C hearing. See Chapter 8, Part B.

The court should conduct the TPR final hearing as follows:

A. Reviewing Parental Surrenders

If one or both parents request court review and approval of a parental surrender(s), the court should proceed as set forth in the protocols for Surrender of Parental Rights.

When the court's approval of a parental surrender(s) at the TPR final hearing results in neither parent retaining residual parental rights and responsibilities, the court shall grant DCYF **care, custody and control** of the child(ren), pursuant to RSA 170-B:11, II, and schedule a 60-day RSA 169-C:24-c, post-permanency hearing pursuant to Protocol 16, A1 or 16, A2, depending on whether the child(ren) is/is not residing in a pre-adoptive home.

COMMENT

Parental rights and responsibilities are set forth in RSA 169-C:3, XVII and XXVII and RSA 170-C:2, IV and IX.

B. Conducting a Default Proceeding

If the court at the TPR preliminary hearing scheduled a default proceeding pursuant to Option 2 in Protocol 10 above, the court should enter a final default judgment against the parent(s) if the parent(s) fail to personally appear at the TPR final hearing, and the court determines that there are grounds for termination of parental rights and termination of parental rights is in the child's best interest.

When the court's final default judgment results in neither parent retaining residual parental rights and responsibilities, the court shall grant DCYF guardianship of the child's person and legal custody, pursuant to RSA 170-C, 11, II, and schedule a 60-day RSA 169-C:24-c post-permanency hearing pursuant to Protocol 16 below, depending on whether the child(ren) is/is not residing in a pre-adoptive home.

COMMENTS

Before a court can enter a default judgment in a RSA 170-C termination of parental rights case against a respondent who fails to appear, DCYF is required to submit an Affidavit As to Military Service, pursuant to the Servicemember Civil Relief Act (SCRA), as set forth above in Protocol 4.

Although the personal appearance of a party at a hearing is generally not required if that party is represented by counsel and

has not been subpoenaed, a party **is required to personally appear** at a hearing **when the court's notice specifically requires the presence of a party** and counsel. A party's failure to personally appear in this circumstance warrants the court holding the party in default, and proceeding to the merits of a case in a defaulted party's absence. *Douglas v. Douglas*, 143 N.H. 419 (1999)

The court may not lawfully terminate a defaulting party's parental rights without making specific factual findings that statutory grounds for termination were established, and that termination is in the child's best interest. *In re Taryn D. & a*., 141 N.H. 376, 684 A.2d 63 (1996)

C. Presiding at a Contested TPR Final Hearing

The court, when presiding at a contested TPR final hearing, shall rule on the following matters:

1. Whether DCYF has proven the alleged statutory ground(s) for termination of parental rights beyond a reasonable doubt

Pursuant to RSA 170-C:10, DCYF must prove its alleged ground(s) for termination of parental rights beyond a reasonable doubt.

If the court finds that DCYF has not proven a statutory ground beyond a reasonable doubt, the court shall dismiss the termination petition without consideration of whether termination of the parent-child relationship is in the child's best interest.

COMMENTS

Although TPR proceedings, as a practical matter, are a continuation of related RSA 169-C cases that typically involve the same judge, DCYF attorney, counsel for parents and the CASA GAL/GAL, RSA 170-C termination cases require the court to address matters not previously ruled on in the related abuse and/or neglect case, including whether DCYF can prove, beyond a reasonable doubt, an RSA 170-C:5 ground for termination of parental rights, and, if proven, whether it is in the child's best interest for the parent-child relationship to be terminated.

Pursuant to RSA 170-C:10, relevant and material evidence of any nature, including that contained in reports, studies or examinations, may be admitted and relied upon to the extent of its probative value. See *In re K.H.,* 167 N.H. 766, 118 A.3d 1032 (2015).

RSA 170-C:10 requires only that "the person making [the]… report" testify at trial, unless he or she is unavailable. It does not require testimony from the individuals who provided the information that is contained in the report. *In re K.H.,* 167 N.H. 766, 118 A.3d 1032 (2015).

2. Whether it in the child's best interest to terminate the rights of the parent(s)

If the court finds that DCYF has proven one or more of the alleged statutory grounds beyond a reasonable doubt, the court must also consider whether it is in the child's best interest to terminate the rights of the parent in question. See *In re Matthew G. and Christopher G.,* 124 N.H. 414, 469 A.2d 1365 (1983).

In making its finding whether termination is in the child's best interest, the court is not subject to a standard of proof such as there is in the ground phase because the conclusion of what is in the child's best interest is not an evidentiary fact. Rather, the conclusion concerns which of the possible alternative dispositional orders is the most desirable, under a standard giving priority to the assumed interest of the child. See *In re Matthew G. and Christopher G*.

COMMENTS

At the TPR final hearing, the CASA GAL/GAL is a full party to the RSA 170-C proceedings and, therefore, should **not** be included in any sequestration order.

The CASA GAL/GAL should, ordinarily, forego examining witnesses, and limit their participation to the "best interest" phase of the TPR final hearing, principally through submission of the CASA GAL/GAL's written report. However, a CASA GAL/GAL may be called to testify by the court, DCYF and/or parent's counsel.

PROTOCOL 14 THE COURT'S TPR FINAL HEARING ORDER

The court's TPR final order should be set forth as follows:

A. The Court's TPR Final Hearing Order Following a Contested or Defaulted Final Hearing on the Merits of the TPR Petition(s)

The court should issue and mail a TPR Final Hearing Order pertaining to a contested or defaulted TPR final hearing on the merits **within thirty (30) calendar days from the date the TPR final hearing concludes**, notwithstanding RSA 170-C:11, V, which allows the court up to sixty (60) days from the date of the TPR final hearing to issue a decision.

Consistent with RSA 170-C:11, every order of the court addressing the petition to terminate the parent-child relationship shall be in writing and include:

- the court's **jurisdiction, pursuant to RSA 170-C:3**;
- whether the parent(s) were **properly served**;
- whether the **ground(s)** for termination was (were) proven beyond a reasonable doubt, and, if yes, whether termination is in the **best interest** of the child;
- the **factual bases** for the court's legal findings; and
- the timing of **the next hearing**, as provided for in Protocol 16.

In addition, if the court terminates parental rights and neither parent retains parental rights and responsibilities, the court shall **appoint DCYF as guardian** of the child's person and vest legal custody in DCYF, pursuant to RSA 170-C:11, II. The pendency of an appeal from a final TPR order does not suspend the TPR final order, including the order that DCYF have guardianship over the child. However, the court will not schedule an adoption hearing until and unless the New Hampshire Supreme Court issues a mandate confirming the court's final order.

COMMENT

By the time the TPR final hearing in a termination case concludes, the parent(s) and other parties, as well as other interested persons, have typically been living with uncertainty for a substantial amount of time. In addition, the children involved need prompt resolution of their status regarding family and a permanent home.

B. The Court's Approval of a Surrender of Parental Rights at a Final TPR Hearing

The court's order in connection with an approval of a surrender of parental rights at a final TPR hearing is described above in Protocol 13, as well as in the Surrender Protocols.

PROTOCOL 15 APPEALS

Pursuant to RSA 170-C:15, any party aggrieved by any order or decree of the court may appeal to the New Hampshire Supreme Court in accordance with RSA 567-A. The pendency of an appeal, or an application therefore, shall not suspend the order of the court regarding the child. While an appeal is pending, the court should schedule and hold a RSA 169-C:24-c post-permanency hearing or, as applicable, a review hearing, consistent with Protocol 16.

Pursuant to New Hampshire Supreme Court Rule 7 (1) (a), an appeal to the Supreme Court must be made within thirty (30) days of the court's final decision with respect to the termination petition.

PROTOCOL 16 SCHEDULING RSA 169-C:24-c POST-PERMANENCY HEARING OR SUBSEQUENT PERMANENCY HEARING

Following the court issuing a final TPR order(s) and when there are no further RSA 170-C proceedings other than a possible appeal of the court's final TPR order, the court shall schedule a hearing, as follows, depending upon the child's and parent's status:

A. TPR Petition(s) Granted: RSA 169-C:24-c Post-Permanency Hearing

When the court grants a TPR petition(s), the court shall schedule a **RSA 169-C:24-c post-permanency hearing** that should to be held **within sixty (60) calendar days of the court's final TPR order**. Conducting these hearings pursuant to RSA 169-C:24-c satisfies the requirements of RSA 170-C:11, VI, and more specifically focuses the hearings on finalizing the permanency plan of adoption as required by federal and State law, including a judicial determination of whether DCYF is making reasonable efforts to finalize the permanency plan.

The court's notice of RSA 169-C:24-c post-permanency hearings shall not be provided to parents whose parental rights have been terminated as, pursuant to RSA 170-C:12, an order terminating the parent-child relationship shall divest the parent and the child of all legal rights, privileges, duties and obligations except the right of inheritance until the child is adopted. Thus, court staff will change the parent(s) status in the RSA 169-C case so that such parent(s) no longer receives hearing notices or other mail in such cases.

Additionally, RSA 170-C:15 provides that the pendency of an appeal, or an application thereof, shall not suspend the order of the court regarding the child. Consequently, parents whose parental rights have been terminated are not entitled to notice or to appear at a RSA 169-C post-permanency hearing.

The child or youth is welcome to attend any RSA 169-C:24-c post-permanency hearing. See Chapter 8, Part B.

The purpose of the post-permanency hearings is as follows:

1. Child Is Not Living in a Prospective Adoptive Home

The court should consider these cases a high priority, and the purpose of the RSA 169-C post-permanency hearing is for the court to determine whether DCYF has made **reasonable efforts to finalize the permanency plan of adoption**, foremost being efforts to identify, recruit and approve a qualified family for adoption, pursuant to RSA 169-C:24-a, II, so that an adoption may be finalized. This finding is required by the

Adoption and Safe Families Act of 1997 (ASFA) and RSA169-C:24-c every 12 months from a permanency hearing if the child is to be eligible for Title IV-E foster care maintenance funds. If this finding is not made, these funds may be at risk.

Thereafter, the court should conduct a RSA 169-C post-permanency hearing **every ninety (90) calendar days**, or more frequently at the court's discretion until the child is placed in a prospective adoptive home.

Upon the child being placed in a prospective adoptive home, the court should continue to conduct RSA 169-C post-permanency hearings as the court deems necessary or as requested by a party until such time as DCYF files an adoption petition(s), and an adoption hearing can be scheduled and held, pursuant to the Adoption Hearing Protocols.

COMMENT

Until a child is placed in a prospective adoptive home, DCYF's practice is to regularly update the other parties concerning the status of the child having a prospective adoptive home.

2. Child Has Lived in a Prospective Adoptive Home for at Least Six (6) Months

When a child is living in a prospective adoptive home for more than six (6) months when parental rights are terminated, the purpose of the RSA 169-C:24-c post-permanency hearing is for the court to determine whether DCYF has made **reasonable efforts to finalize the permanency plan of adoption.** This finding, required by the Adoption and Safe Families Act of 1997 (ASFA) and RSA 169-C:24-c every 12 months from a permanency hearing, for the child to be eligible for Title IV-E foster care maintenance funds. If these findings are not made, these funds may be at risk.

In the event neither parent appeals the court's final TPR order, the court should expect DCYF to **file adoption petitions within thirty (30) calendar days** of the child(ren) being legally freed for adoption when the child(ren) has resided in the pre-adoptive home for at least six (6) months and there are no significant concerns or unresolved issues concerning the child's placement in the pre-adoptive home or the pending adoption. In these cases, the court should further expect DCYF to file a motion to cancel the 60-day RSA 169-C post-permanency hearing, and to request that the court schedule an adoption hearing. Pursuant to Protocol 7 in the Adoption Protocols, the court shall **schedule, hold and complete an adoption hearing thirty (30) calendar days of DCYF filing an adoption petition(s)**.

If, however, there are **significant concerns or unresolved issues** concerning the child's placement in the adoptive home or the pending adoption, the court should not schedule an adoption hearing, and, instead, should continue to schedule and hold RSA 169-C:24-c post-permanency hearings every ninety (90) days or as the court may order until the adoption is finalized.

If, at the 60-day RSA 169-C post-permanency hearing, **an appeal of the TPR final order is pending**, the court should schedule additional RSA 169-C:24-c post-permanency hearings as the court may order, or as requested by a party, until such time as the appeal is resolved. If termination of parental rights is affirmed on appeal, the court should expect DCYF to file an adoption petition(s) **within thirty (30) calendar days** of the child(ren) being legally freed for adoption, provided there are no significant concerns or unresolved issues pertaining to the child's placement in the pre-adoptive home or the pending adoption. Pursuant to protocol 7 in the Adoption Protocols, the court shall then schedule, hold and complete an adoption hearing within thirty (30) calendar days of DCYF filing adoption petition(s).

3. Child Has Lived in a Prospective Adoptive Home for Less than Six (6) Months

When a child is living in a prospective adoptive home **but for less than six (6) months** when parental rights are terminated, the purpose of the RSA 169-C:24-c post-permanency hearing is for the court to determine whether DCYF has made reasonable efforts to finalize the permanency plan of adoption, including addressing any remaining pre-requisites for adoption. This finding is required by the Adoption and Safe Families Act of 1997 (ASFA) and RSA 169-C:24-c every 12 months from a permanency hearing, for the child to be eligible for Title IV-E foster care maintenance funds. If these findings are not made, these funds may be at risk.

In the event neither parent appeals the court's final TPR order, the court should expect DCYF to file an adoption petition(s) in a timely manner so that the adoption hearing can be held once the child(ren) has lived in the prospective adoptive home for six (6) months, provided there are no significant concerns or unresolved issues concerning the child's placement in the pre-adoptive home or the pending adoption. Pursuant to Protocol 7 in the Adoption Protocols, the court shall **schedule, hold and complete an adoption hearing thirty (30) calendar days of DCYF filing an adoption petition(s)**.

If, however, there are **significant concerns or unresolved issues** concerning the child's placement in the adoptive home or the pending adoption, the court should not schedule an adoption hearing, and, instead, should continue to schedule and hold RSA 169-C:24-c post-permanency

hearings every ninety (90) days or as the court may order until the adoption is finalized.

If, at the 60-day RSA 169-C post-permanency hearing, **an appeal of the TPR final order is pending**, the court should schedule additional RSA 169-C:24-c post-permanency hearings as the court may order, or as requested by a party, until such time as the appeal is resolved. If termination of parental rights is affirmed on appeal, the court should expect DCYF to file an adoption petition(s) **within thirty (30) calendar days** of the child(ren) being legally freed for adoption, **provided they have lived in the pre-adoptive home for six (6) months** and there are no significant concerns or unresolved issues pertaining to the child's placement in the pre-adoptive home or the pending adoption. Pursuant to protocol 7 in the Adoption Protocols, the court shall then schedule, hold and complete an adoption hearing within thirty (30) calendar days of DCYF filing adoption petition(s).

B. TPR Petition Withdrawn or Dismissed/Denied: Subsequent Permanency Hearing

If a termination of parental rights petition is withdrawn or dismissed/denied (and the parent has not surrendered their parental rights), the court, consistent with RSA 169-C:24-b, I(c), shall hold a subsequent permanency hearing no later than 90 days from the withdrawal or dismissal/denial of the termination of parental rights petition. See Chapter 11, Part A, Protocol 4, Section 6.

PROTOCOL 17 DCYF AND CASA GAL/GAL COURT REPORTS FOR RSA 170-C TPR HEARINGS AND RSA 169-C:24-c POST-PERMANENCY HEARINGS

DCYF and the CASA GAL/GAL shall submit court reports in RSA 170-C TPR hearings and RSA 169-C:24-c post-permanency hearings as follows:

A. RSA 170-C TPR Hearings

1. TPR Preliminary Hearing

Unless otherwise ordered by the court, DCYF and the CASA GAL/GAL will not file written reports for the TPR preliminary hearing. However, best practice is for DCYF and the CASA GAL/GAL to bring their **RSA 169-C permanency hearing reports to TPR preliminary hearings** for reference in the event the court defaults a parent(s) and proceeds to hear the merits of the DCYF TPR petition(s) and the recommendation of the CASA GAL/GAL.

2. TPR Final Hearing

Pursuant to Protocol 10, the CASA GAL/GAL shall file a written report for the TPR final hearing. At the TPR preliminary hearing, the court will identify a date for submission of the CASA GAL/GAL's Court Report, with copies to the other parties, which shall be **at least thirty (30) calendar days prior to the TPR final hearing**, thereby allowing the other parties sufficient time to review this report.

B. RSA 169-C:24-c Post-Permanency Hearings

When the court grants DCYF's petition for termination of parental rights and schedules an RSA 169-C:24-c post-permanency hearing pursuant to Protocol 16, the court should expect DCYF and the CASA GAL/GAL to submit court reports **at least five (5) business days prior to a RSA 169-C:24-c post-permanency hearing**.

PROTOCOL 18 THE COURT'S JURISDICTION AND DCYF FILING A MOTION TO CLOSE A RSA 170-C CASE

DCYF should file a Motion to Close Termination of Parental Rights (TPR) Case and/or a Motion to Close Juvenile Abuse/Neglect Case as follows:

A. TPR Petition(s) Granted and Adoption Finalized

When the court orders termination of the parent-child relationship and grants a TPR petition(s) AND an adoption has been finalized by the court, DCYF should file in the RSA 170-C case a **Motion to Close Termination of Parental Rights (TPR) Case (NHJB-2707)**. The court should only close a TPR case after receipt of this motion.

Additionally, after an adoption has been finalized by the court, DCYF should file in the RSA 169-C case a **Motion to Close Juvenile Abuse/Neglect Case (NHJB-2708)**. The court should only close an abuse/neglect case after receipt of this motion.

These two motions should reflect that a child's court-ordered **permanency plan of adoption was finalized, the name of the court that finalized the adoption and the date upon which it was finalized**.

COMMENTS

In very limited instances, the court may grant a TPR petition(s), but the court's jurisdiction will end before an adoption is finalized. In these cases, DCYF should file with the court a **Motion to Close Termination of Parental Rights (TPR) Case** and a **Motion to Close Juvenile Abuse/Neglect Case**. These two motions should reflect that a child's court-ordered **permanency**

plan of adoption was not finalized and the reason it was not finalized.

Filing Motions to Close in a RSA 170-C case and RSA 169-C case enables the **court system to collect and track important outcome data for abused and neglected children**, including whether their court-ordered permanency plan of adoption was finalized.

B. TPR Petition Dismissed/Denied

When the court does not order termination of the parent-child relationship and dismisses/denies the TPR petition(s), the court will close the TPR case. In such cases, a **Motion to Close Termination of Parental Rights (TPR) Case** is not required and should not be filed by DCYF.

C. TPR Petition Withdrawn

In cases where DCYF filed a TPR petition and thereafter wants to withdraw it, DCYF should file with the court a **notice of withdrawal of the TPR**. In these cases, a **Motion to Close Termination of Parental Rights (TPR) Case** is not required and should not be filed by DCYF.

If DCYF files with the court a notice of withdrawal of the TPR after a court approved parental surrender, the court will close the case concerning the surrendering parent(s). If in such cases the court approved parental surrender results in a child being legally freed for adoption, DCYF should, subsequent to an adoption petition being granted, promptly file in the RSA 169-C case a **Motion to Close Juvenile Abuse/Neglect Case**. The court should only close an abuse/neglect case after receipt of this motion.

COMMENT

In cases involving a surrendering parent, the related 169-C case(s) will remain open until the permanency plan for the child is finalized. Thus, court staff will change the surrendering parent status in the RSA 169-C case so that such parent no longer receives hearing notices or other mail in these cases.

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CHAPTER 13 SURRENDER OF PARENTAL RIGHTS

STATUTORY REFERENCES:

•RSA 169-C:3, Definitions

•RSA 169-C:24-a, Petition for Termination of Parental Rights Required; Reasonable Efforts to Reunify

•RSA 169-C:24-c, Permanency Hearings

•RSA 170-B:1, Purpose

•RSA 170-B:5, Persons Required to Execute a Surrender of Parental Rights

•RSA 170-B:6, Notice to Person Claiming Paternity and Hearing to Determine Right to Surrender

•RSA 170-B:8, Immediate Surrender Prohibited; Availability of Counseling

•RSA 170-B:9, Procedure for Execution of Surrender

•RSA 170-B:10, Content of Surrender

•RSA 170-B:11, Consequences of Surrender

•RSA 170-B:12, Withdrawal of Surrender

•RSA 170-B:14, Arrangements Between Adoptive and Birth Parents

•RSA 170-B:19, Hearing

•RSA 170-C:2, Definitions

•RSA 170-C:12, Effect of Decree

•RSA 170-C:15, Appeals

INTRODUCTION

Parental surrenders are pursuant to RSA 170-B:5 through RSA 170-B:12 in the Adoption statute.

These protocols guide the court, DCYF, the CASA GAL/GAL and counsel for parents whenever:

1. DCYF has filed a permanency hearing report recommending adoption as the permanency plan;

2. The court has identified adoption as the permanency plan, either at the permanency hearing or, after taking the issue under advisement, in its Permanency Hearing Order;

3. DCYF has filed TPR petitions against both parents at the same time; and

4. One parent or both parents subsequently want to surrender parental rights.

Best practice is for DCYF to discuss the surrender option with parents in certain cases as part of its concurrent planning work in the RSA 169-C case, particularly following the RSA 169-C 9-month review hearing and prior to a 12-month permanency hearing at which it is likely that DCYF will recommend adoption as a child's permanency plan. Concurrent planning work includes informing parents in applicable cases of the availability of surrender counseling, pursuant to RSA170-B:8, II, and that the counseling needs to take place in a timely way if an interested parent wants the court to review the surrender at the TPR preliminary or, at the latest, the final TPR hearing.

Regardless of any expressed parental interest in surrendering their parental rights or participating in mediation, it is important that DCYF file termination of parental rights petitions and that the court process the TPR case(s) in accordance with the procedures and timelines in the protocols for termination of parental rights. See Chapter 12. In this way, if a parent decides not to surrender their parental rights or to mediate or mediation is unsuccessful, the termination of parental rights case(s) will proceed in a timely manner, consistent with federal and State law and as reflected in Chapter 12.

PROTOCOL 1 COURT REVIEW OF PARENTAL SURRENDER AT RSA 170-C TPR PRELIMINARY HEARING OR FINAL HEARING

The court should review a parental surrender at the scheduled TPR preliminary hearing or TPR final hearing.

COMMENTS

Parental surrenders are governed by RSA 170-B:5 through 12, which do not require or otherwise provide for a surrender petition, notice, or a hearing for court review and approval of a surrender. However, best practice is for the court to review parental surrenders at a court hearing. In view of DCYF's practice of only filing an adoption petition when a child is legally freed for adoption, the

court's RSA 170-B jurisdiction is not available during the pendency of a RSA 170-C case, and, therefore, the court should review parental surrenders at the scheduled TPR preliminary or final hearing.

The same judge who is presiding over the RSA 170-C termination of parental rights case will need to review the parental surrender. Thus, the court with jurisdiction over the RSA 170-C case should maintain jurisdiction over the RSA 170-B surrender, regardless of the current residence of the surrendering parent. "It is strongly preferred that the same judge or judicially supervised magistrate presides over the entire child welfare case from the preliminary protective hearing through permanency, including adoption." The National Council of Juvenile and Family Court Judges' *Adoption and Permanency Guidelines* (2000) at 5, and re-stated in the NCJFCJ's *Enhanced Resource Guidelines* (2016) at 34. This practice encourages judges to take ownership of their cases, including timely permanency for the children and families involved.

PROTOCOL 2 REQUIRED FILINGS BY THE SURRENDERING PARENT AND COURT DOCKETING

A. Required Filings by the Surrendering Parent

A parent who wants to surrender their parental rights is required to make the following filings in connection with court review of a parental surrender at a RSA 170-C TPR preliminary or TPR final hearing:

1. Surrender of Parental Rights

The **Surrender of Parental Rights** form **(NHJB-2080)** sets forth the requirements of RSA 170-B:10.

2. Medical Information on Birth Parents

The requirement to provide information on the age and medical and personal backgrounds of the birth parents and child, pursuant to RSA 170-B:9, III, may be satisfied by filing with the court the **Medical Information on Birth Parents (NHJB-2193)**, which includes the medical history of the birth mother and father as well as the child's birth history. This requirement may be waived by the court for good cause shown, pursuant to RSA 170-B:9, III.

3. Affidavit of Birth Mother

If the child's father is not named in the child's birth certificate but the **Affidavit of the Birth Mother (NHJB-2189)** identifies a person as the child's father, pursuant to RSA 170-B:6, I, the putative father may be entitled to notice and a hearing to prove that he is the legal or birth father of the child. A putative father's hearing to establish paternity does not

preclude the court from reviewing and approving a parental surrender by the other parent.

COMMENT

DCYF's practice pursuant to the Adoption Protocols is to submit a written request to New Hampshire Child Support Enforcement Services in all DCYF-related adoptions to determine whether a claim of paternity has been timely filed. The claim must be filed prior to the birth mother's parental rights being surrendered or terminated.

B. Voluntary Mediated Agreement (VMA)-related cases

In RSA 170-B:14 **Voluntary Mediated Agreement (VMA)-related cases**, the surrenders are the result of a VMA and thus the filings for the parental surrenders and the VMA should occur simultaneously so that the court is able to review the VMA and the surrenders at the same date and time.

COMMENT

The Protocols use "voluntary mediated agreement" based on common usage versus RSA 170-B:14 "voluntarily mediated agreement".

C. Court Docketing of the Surrender Filings

A surrender of parental rights is categorized by the court as a separate case type, with each surrender given its own case file and case number. Therefore, the court will docket and file the surrender documents, including court-approved parental surrenders, in a separate Surrender of Parental Rights file, notwithstanding the court reviewing parental surrenders at a RSA 170-C TPR preliminary or TPR final hearing.

Each Surrender of Parental Rights case file should include:

1. Surrender of Parental Rights; and
2. Medical Information of Birth Parent (unless waived by the court for good cause shown, pursuant to RSA 170-B:9, III).

This file may also include:

3. Affidavit of Birth Mother.

PROTOCOL 3 NOTICE OF PARENTAL SURRENDER

Parental surrenders are governed by RSA 170-B:5 through RSA 170-B:12 which do not require the court to provide notice to other parties of the court's review and approval of a parental surrender.

Instead, and pursuant to Protocol 1, the court reviews parental surrenders at a scheduled RSA 170-C TPR preliminary or TPR final hearing.

PROTOCOL 4 THE COURT'S REVIEW OF A PARENTAL SURRENDER: SEVEN (7) CONSIDERATIONS

When reviewing a parental surrender, the court should preliminarily take into account, as applicable, the following seven (7) considerations:

A. Who Should Be Present When the Court Reviews a Surrender

When the court reviews a parental surrender, the court should meet in the courtroom, on the record, with the surrendering parent(s), counsel for the parent(s), and DCYF, unless a parent objects to DCYF's presence and/or the court excuses DCYF.

In cases where the court's RSA 169-C orders include domestic violence, and both parents are surrendering at the same time, the court should take the parental surrenders separately.

COMMENT

Parental surrenders are governed by RSA 170-B:5 through 12, which do not specify who may or may not be present when the court reviews a parental surrender. Consequently, the court has discretion in determining who will be present.

B. Adoption Petition(s) Not Required involving a RSA 169-C Case

Pursuant to RSA 170-B:1, I, the court in RSA 169-C involved cases may approve a parental surrender in the absence of an adoption petition having been filed with the court, provided DCYF contemplates the child(ren) being adopted. Contemplation of adoption includes cases in which DCYF recommends at a RSA 169-C permanency hearing or post-permanency hearing adoption as the child's permanency plan and has filed TPR petitions.

C. Unconditional Surrenders

A parental surrender is unconditional. RSA 170-B does not provide for conditional surrenders, and, therefore, the court should not approve them, including cases in which one parent surrenders and the other parent is contesting a TPR petition. More specifically, RSA 170-B:10, I, provides that upon the court's approval of a surrender, the parent's rights over the child will cease, and, pursuant to RSA 170-B:10, II (a), a surrender is final except under a circumstance stated in RSA 170-B:12 (Withdrawal of a Surrender).

Further, DCYF only supports a parental surrender when a parent is fully informed about surrender, and wants to unconditionally surrender their parental rights. In cases in which one parent wants to surrender and the other parent is contesting a TPR petition, the court should expect that DCYF will have explained to the surrendering parent that their surrender is final, absent fraud or duress as set forth in RSA 170-B:12, II (a), even if the other parent prevails in the TPR case.

D. Indian Child Welfare Act (ICWA)

Although parent's counsel, DCYF and/or the CASA GAL/GAL may have previously asked whether any of the parties knows or has reason to know the child is an Indian/Native American child, and/or the RSA 169-C court orders reflect that ICWA does not apply, the court should, nonetheless, ensure at the time of a parental surrender that ICWA does/does not apply. ICWA, pursuant to Sections 1913a and 1913c requires different and more stringent protections for a surrendering parent.

E. VMA-Related Surrenders

Consistent with RSA 170-B:14, II (d)(1)(A) and RSA 170-B:14, II (d)(1)(D), a parental surrender in connection with a Voluntary Mediated Agreement (VMA) should only be approved by the court in cases where the child is living with the prospective adoptive parent(s) who is(are) a party to the VMA.

The court may approve a VMA-related surrender by one parent when the other parent is contesting a TPR petition. If the other parent prevails in the TPR case, any agreed upon post-adoptive contact provided for in a court-approved VMA will not go into effect but the parental surrender will be final unless, pursuant to RSA 170-B:12, III, the court finds that the surrender was obtained by fraud or duress and that the withdrawal of the surrender is in the best interest of the child(ren).

COMMENT

RSA 170-B:14, II (d)(1)(A) is a "best interest" factor regarding the length of time a child has been under the actual care, custody and control of any person other than a birth parent and the circumstances related thereto. RSA 170-B:14, II (d)(1)(D) is a best interest factor pertaining to the adjustment to the child's home, school and community.

F. Surrender by Parent Under Age 18

If the surrendering parent is under the age of eighteen (18), RSA 170-B:9, IV, makes it discretionary whether the court will require the consent of the youth's parents or guardian. Nonetheless, best practice is for the court to require

such consent, unless excused for good cause shown. The court may enlist the assistance of the RSA 170-C CASA GAL/GAL in making a consent determination.

G. Out-of-State Parental Surrenders

Pursuant to RSA 170-B:9, V, if the parent does not reside in New Hampshire, the parent's surrender may be taken pursuant to the laws of the state where the parent resides. A surrender executed pursuant to the laws of a state other than New Hampshire shall include an affidavit stating that the surrender was taken in accordance with the laws of that state and, where applicable, that the agency named has the authority to surrender the child for an adoption.

PROTOCOL 5 THE COURT'S COLLOQUY AND APPROVAL OF A PARENTAL SURRENDER

The court should first swear in a parent who wants to surrender their parental rights and ask the parent to state the parent's name/address/date of birth, the child's date of birth, and whether the parent is the mother/father of the child.

Thereafter, the court's colloquy should include, as applicable, the following:

- Legal Representation;
- Voluntariness;
- Indian Child Welfare Act (ICWA);
- Unconditional Surrenders;
- Legal Consequences of Surrender;
- Failure of Adoptive Parent to Comply with Terms of a Court-Approved VMA;
- Review of Surrender of Parental Rights; and
- Court Approval of a Parental Surrender.

A. Legal Representation

- *Have you consulted with your attorney about surrendering your parental rights? Do you have any further questions for your attorney?*
- *Do you understand that if you are unable to afford an attorney the court can appoint an attorney to represent you in the RSA 170-C termination of parental rights case including your being able to discuss with your attorney a surrender of parental rights?*
- *Has your attorney and/or DCYF explained that, pursuant to RSA 170-B:8, II, counseling about your decision to place your child for adoption through a surrender of parental rights is available through DCYF? If yes, did you participate in this counseling? If not, are you interested in this counseling?*

If a parent is interested in surrender counseling, the court, as set forth in the Introduction to the Surrender Protocols, should inform the parent that any such counseling cannot result in the TPR final hearing being delayed or continued.

B. Voluntariness

- *Are you under the influence of any alcohol or drugs today, including medication? If on medication, are you taking medication as prescribed for you? Does the medication affect your ability to understand what is being discussed today?*

If a parent is on medication, the court should inquire of the parent's attorney if the attorney has any reason to believe the parent's medication(s) is(are) interfering with the parent's ability to understand what is being discussed.

- *Do you feel physically and emotionally well enough today to sign the Surrender of Parental Rights?*
- *In surrendering your parental rights, are you acting of your own free will? Have you been pressured in any way to make this decision? If so, by whom? Have you been promised any money or anything of value in exchange for surrendering your parental rights? If so, by whom?*

C. Indian Child Welfare Act (ICWA)

- *Do you know or have reason to know your child is an Indian/Native American child?*

The court should also inquire of the parent's attorney and DCYF (if present) as to whether ICWA applies because, if ICWA does apply, Sections 1913a and 1913c of the Act provide for different and more stringent protections for a surrendering parent.

D. Unconditional Surrenders

- *Do you understand if the other parent is contesting a TPR petition and prevails in the TPR case that your surrender of parental rights is, nonetheless, final absent fraud or duress, and that the other parent will retain their parental rights but you will not?*
- *Do you understand if the other parent is contesting a TPR petition that any agreed upon post-adoptive contact involving you and your child as provided for in the VMA will be null and void if the other parent prevails in the TPR case and retains parental rights?*

E. Legal Consequences of a Surrender

- *Do you understand that by surrendering your parental rights that your parental rights over the child(ren) will cease upon the court's approval of the surrender? RSA 170-B:10, I.*
- *Do you understand that after the court approves the surrender, all of your parental rights and obligations will be extinguished, except the obligation to pay any accrued and unpaid child support? RSA 170-B:10, II (b)*
- *Do you understand that after the court approves the surrender, you will no longer have a right to receive notice of future court hearings concerning the child(ren)? RSA 170-B, 11, I.*
- *Do you understand that after the court approves the surrender, the surrender is final and may not be revoked or set aside for any reason, unless the court finds that the surrender was obtained by fraud or duress and that the withdrawal of the surrender is in the best interest of the child(ren)? RSA 170-B:12, III.*
- *Do you understand that a surrender may not be withdrawn after the entry of the final adoption decree for any reason? RSA 170-B:12, V.*

F. Failure of Adoptive Parent to Comply with Terms of a Court-Approved VMA

- *Do you understand that the failure of an adoptive parent to comply with any provision in the VMA, such as post-surrender exchange of identifying or non-identifying information, communication or contact with the child(ren), is not a reason to revoke or set aside a parental surrender? RSA 170-B:14, II (a)*

G. Review of Surrender of Parental Rights

- *Is all the information accurate that is inserted into the Surrender of Parental Rights form?*

If any changes are necessary, the parent may make changes and initial them.

- *Have you read through the Surrender of Parental Rights form completely? Do you have any questions about the legal consequences of surrendering your parental rights?*
- *Do you wish to receive confirmation of the final adoption of the child(ren)?*

If the box is not checked, the parent should check the appropriate box.

- *Are you now prepared to sign the Surrender of Parental Rights form and give up your parental rights?*

H. The Court's Approval of a Parental Surrender:

The court should approve a parental surrender when:

- the court is satisfied the surrender **meets the statutory requirements** of RSA 170-B:9, II;
- the surrender **is unconditional** pursuant to RSA 170-B:10, I and II(a);
- the parent **understands the legal consequences** of a parental surrender as set forth in RSA 170-B:11, I; and
- the parent has **signed** the Surrender of Parental Rights form **in the court's presence** as required by RSA 170-B:9, II.

PROTOCOL 6 THE COURT'S ORDER FOLLOWING APPROVAL OF A PARENTAL SURRENDER

The court's order following approval of a parental surrender is set forth below.

A. Order Transferring Care, Custody and Control, if Neither Parent Retains Residual Parental Rights and Responsibilities

When the court approves a parental surrender and the other parent also does not retain residual parental rights and responsibilities, the court shall issue an **Order Transferring Care, Custody and Control (NHJB-2419)** to DCYF, pursuant to RSA 170-B:11, II.

B. A TPR Preliminary/Final Order Regarding the Other Parent, if the Other Parent Retains Residual Parental Rights and Responsibilities

When the court approves a parental surrender, but the other parent retains residual parental rights and responsibilities, the court will not issue a Care, Custody and Control Order in connection with the parental surrender. DCYF will continue to have legal custody pursuant to an existing RSA 169-C order.

However, upon approving a parental surrender for one parent at a RSA 170-C hearing, the court must still conduct the relevant TPR hearing for the other parent. Thus, if the court approves a parental surrender at a **TPR preliminary hearing**, the court will continue to conduct the preliminary hearing for the other, non-surrendering parent, and issue a **TPR Preliminary Hearing Order (NHJB-3028)**. Or, if the court approves a parental surrender **at a RSA 170-C final hearing**, the court will continue to conduct the final hearing with respect to the other, non-surrendering parent, and issue a TPR final order pursuant to the Protocols for Termination of Parental Rights.

COMMENTS

The surrender documents, including the Order Transferring Care, Custody and Control, shall be docketed in a separate Surrender of Parental Rights file, pursuant to these Protocols.

Residual parental rights and responsibilities are set forth in RSA 169-C:3, XVII, RSA 169-C:3, XXVII, RSA 170-C:2, IV and RSA 170-C:2, IX.

Pursuant to RSA 170-B:11, II, temporary care, custody and control provides DCYF with full responsibility for the child's support, medical and other care until such time as the child is adopted, and further provides DCYF with the right to free the child for adoption, pursuant to RSA 170-B:5, I (e), via DCYF's surrender of parental rights.

RSA 170-B:11, II, does **not** require DCYF to file a motion requesting an order for temporary care, custody and control.

Pursuant to RSA 170-B: 11, II, an order for care, custody and control shall not be longer than six months unless otherwise ordered by the court.

PROTOCOL 7 SCHEDULING THE NEXT HEARING FOLLOWING THE COURT'S APPROVAL OF A PARENTAL SURRENDER(S)

Following the court approving a parental surrender(s) and depending upon the child's and/or other parent's status, the court should schedule one of the following hearings:

- RSA 170-B adoption hearing;
- RSA 169-C:24-c, I, post-permanency hearing; or
- RSA 170-C TPR hearing

A. Adoption Hearing

As provided in the Adoption Protocols, the court shall schedule, hold and complete an RSA 170-B:19 adoption hearing **thirty (30) calendar days** from DCYF filing adoption petition(s). The Adoption Protocols further provide that DCYF should file the adoption petition **within thirty (30) calendar days** from the date when:

- the child is legally freed for adoption;
- the child has resided in the prospective adoptive home for at least six (6) months; and
- there are no significant concerns or unresolved issues concerning the child's placement in the prospective adoptive home or the pending adoption.

COMMENTS

RSA 170-B:19, IV (c) establishes six (6) months as the least amount of time a child shall reside in a prospective adoptive home before the court may issue a final adoption decree. Consequently, an adoption hearing should not be scheduled and held solely on the basis that a child has resided in the prospective adoptive home for six (6) months.

Although RSA 170-B:19, IV (c) provides for interlocutory adoption decrees when a child has resided in a prospective adoptive home for less than six (6) months, DCYF's practice is to only request an adoption hearing when a child has resided in a prospective adoptive home for at least six (6) months.

Notwithstanding RSA 170-C:15, which provides that the pendency of an appeal from a TPR order shall not suspend the trial court's order, an adoption hearing should not be held until and unless the New Hampshire Supreme Court issues a mandate affirming the TPR order(s).

B. RSA 169-C:24-c, I, Post-Permanency Hearing

When the court approves a parental surrender(s) and the child is legally freed for adoption but is not living in a prospective adoptive home or has not lived in a prospective home for at least six months, or is otherwise not ready for adoption, the court shall schedule and hold a RSA 169-C:24-c, I, post-permanency hearing to be held **within sixty (60) calendar days** of the court's approval of the parental surrender(s).

Consistent with RSA 170-C:12 and RSA 170-C:15, the court should not provide notice of a RSA 169-C post-permanency hearing to a parent who has surrendered their parental rights. Thus, **court staff will change the surrendering parent(s) status in the RSA 169-C case** so that such parent(s) no longer receives hearing notices or other mail in such cases.

The purpose of this post-permanency hearing is as follows:

1. Child Legally Freed for Adoption but Is Not Living In A Prospective-Adoptive Home

The court should consider these cases a high priority, and the purpose of the 60-day post-permanency hearing is for the court to determine whether DCYF has made **reasonable efforts to finalize the permanency plan of adoption**, foremost being efforts to identify, recruit and approve a qualified family for adoption, pursuant to RSA 169-C:24-a, II, so that an adoption may be finalized. This finding is required by the Adoption and Safe Families Act of 1997 (ASFA) and RSA 169-C:24-c every 12 months from a permanency hearing if the child is to be eligible

for Title IV-E foster care maintenance funds. If not made, these funds may be at risk.

Thereafter, the court should conduct additional post-permanency hearings **every ninety (90) calendar days**, or more frequent post-permanency hearings at the court's discretion, until the child is placed in a prospective adoptive home.

Upon the child being placed in a prospective adoptive home, the court should continue to conduct post-permanency hearings as the court deems necessary or as requested by a party until such time as DCYF files an adoption petition(s) and an adoption hearing is scheduled and held.

2. Child Legally Freed for Adoption but Has Lived in a Prospective Adoptive Home for Less Than Six (6) Months

When a child is legally freed for adoption but has lived in a prospective adoptive home for less than six (6) months when a surrender is approved, the purpose of the 60-day post-permanency hearing is for the court to determine whether DCYF has made **reasonable efforts to finalize the permanency plan of adoption**. This finding is required by the Adoption and Safe Families Act of 1997 (ASFA) and RSA 169-C:24-c every 12 months from a permanency hearing, for the child to be eligible for Title IV-E foster care maintenance funds. If not made, these funds may be at risk.

At a post-permanency hearing, if the court determines that the child(ren) is legally freed and ready for adoption but has not yet resided in the prospective adoptive home for at least six (6) months, the court shall set a schedule for DCYF to file, on behalf of the prospective adoptive parent(s), the adoption petition(s) **at least thirty (30) days prior to the six-month mark**, so the court can ultimately schedule the adoption hearing soon after the child(ren) has resided in the prospective adoptive home for at least six (6) months. The court should conduct additional RSA 169-C:24-c, I, post-permanency hearings as the court may order or as requested by a party until such time as DCYF files an adoption petition.

COMMENTS

Conducting the post-surrender hearings pursuant to RSA 169-C:24-c, I, satisfies the requirements of RSA 170-B:11, VI. These RSA 169-C post-permanency hearings also focus the parties on finalizing the permanency plan of adoption and include a judicial determination of whether DCYF is making reasonable efforts to finalize the permanency plan.

Until a child is placed in a prospective adoptive home, DCYF's practice is to regularly update the other parties concerning the status of the child having a prospective adoptive home.

When the court schedules RSA 169-C:24-c, I, post-permanency hearings following a parental surrender(s), the court should expect **DCYF and the CASA GAL/GAL** to submit court reports at least five (5) business days prior to a post-permanency hearing.

C. TPR Hearings

When the court approves a parental surrender **at a TPR preliminary hearing** and the other parent is contesting a TPR petition, the next hearing the court shall schedule, in the non-surrendering parent's case, is the TPR final hearing to be held and completed **within sixty (60) calendar days of the TPR preliminary hearing**, pursuant to the Protocols for Termination of Parental Rights.

When the court approves a parental surrender **at a TPR final hearing**, and the other parent is contesting a TPR petition, the next hearing the court shall schedule depends on whether the court grants or dismisses the TPR petition and as provided for in the Protocols for Termination of Parental Rights.

PROTOCOL 8 WITHDRAWAL OF A COURT-APPROVED SURRENDER OF PARENTAL RIGHTS

Prior to the entry of a final adoption decree and pursuant to RSA 170-B:12, I, a parent who wants to withdraw a court-approved surrender of parental rights shall notify the court in writing where the surrender was approved.

Upon receiving a written notice of a parent's request to withdraw their surrender, the court, pursuant to RSA 170-B:12, II (a), shall notify the prospective adoptive parents and DCYF of the parent's request, and, pursuant to RSA 170-B:12, II (b), shall conduct an evidentiary hearing. The rules of evidence are not applicable at this hearing, and the court has the discretion to determine who shall be present at the hearing which as a matter of best practice should include the RSA 170-C CASA GAL/GAL. The same judge who approved the parental surrender should conduct this hearing.

Pursuant to RSA 170-B:12, III, a surrender by a parent, properly executed, acknowledged and approved the court, may not be withdrawn unless the court finds that a parent is able to prove by a preponderance of the evidence that their surrender was obtained by fraud or duress, and, if proven, that withdrawal of the surrender is in the best interests of the child(ren). In making a best interest determination, the court may consider every facet of each parent's life and the recommendation of the RSA 170-C CASA GAL/GAL.

Pursuant to RSA 170-B:12, V, a surrender shall not be withdrawn after entry of the final decree of adoption for any reason.

COMMENT

Section 1913 c. of the Indian Child Welfare Act (ICWA) provides that the parent of an Indian child may withdraw for any reason their consent prior to the entry of a final decree of adoption, and the child shall be returned to the parent. Section 1913 d. provides that such a parent within two years following the entry of a final decree of adoption may petition the court to vacate the final decree of adoption based on the parent's consent being obtained through fraud or duress.

PROTOCOL 9 FOLLOWING COURT APPROVAL OF A PARENTAL SURRENDER: DCYF'S NOTICE OF WITHDRAWAL OF TPR PETITION(S) AND CLOSURE OF THE TPR CASE

Following court approval of a parental surrender, DCYF shall file notice of withdrawal of the TPR petition(s) accordingly:

A. Neither Parent Retains Residual Parental Rights and Responsibilities

When neither parent retains residual parental rights and responsibilities, DCYF shall promptly file with the court a notice of withdrawal of the TPR petition in the surrendering parent's RSA 170-C case.

Upon receipt of this notice, the court should enter a withdrawn disposition in the RSA 170-C case and close the surrendering parent's termination of parental rights and surrender cases. In such cases, a Motion to Close Termination of Parental Rights (TPR) Case is not required and should not be filed by DCYF. Outcome data for the child will be captured through the surrender case and DCYF's subsequent filing of the RSA 169-C Motion to Close.

COMMENT

The related 169-C case will remain open until the child's permanency plan of adoption is finalized. Thus, court staff will change the surrendering parent(s)' status in the RSA 169-C case so that the parent(s) no longer receives hearing notices or other mail pertaining to the RSA 169-C case.

B. One Parent Retains Residual Parental Rights and Responsibilities

When one parent retains residual parental rights and responsibilities, DCYF shall promptly file with the court a notice of withdrawal of the TPR petition in the surrendering parent's RSA 170-C case.

Upon receipt of this notice, the court should enter a withdrawn disposition in the RSA 170-C case and close the surrendering parent's termination of parental rights and surrender cases. In these cases, a Motion to Close Termination of Parental Rights (TPR) Case is not required and should not be

filed by DCYF. Outcome data for the child will be captured through the Surrender case and DCYF's subsequent filing of the RSA 169-C Motion to Close.

COMMENTS

The related 169-C case(s) will remain open until the permanency plan for the child is finalized. Thus, court staff will change the surrendering parent(s) status in the RSA 169-C case so that such parent(s) no longer receives hearing notices or other mail in such cases.

Residual parental rights and responsibilities are set forth in RSA 169-C:3, XVII, RSA 169-C:3 XXVII, RSA 170-C:2, IV and RSA 170-C:2, IX.

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CHAPTER 14 VOLUNTARY MEDIATION

STATUTORY REFERENCES:

•RSA 170-B:10, Content of Surrender

•RSA 170-B:12, Withdrawal of Surrender

•RSA 170-B:14, Arrangements Between Adoptive and Birth Parents

•RSA 170-C:7, Notice

•RSA 170-C:8, Guardian ad Litem

•RSA 170-C:10, Hearing

•RSA 170-C:14, Confidentiality of Records

PART A THE COURT PROCESS

INTRODUCTION

A Voluntary Mediated Agreement is pursuant to RSA 170-B:14 in the Adoption statute. These protocols use "voluntary mediated agreement" based on common usage versus RSA 170-B:14 and Voluntarily Mediated Agreement (VMA).

RSA 170-B:14, II (a) provides that venue for approval and enforcement of Voluntary Mediated Agreements shall lie in a court of competent jurisdiction that would otherwise issue the termination decree. Therefore, the court presiding over the RSA 170-C termination of parental rights case(s) will review and, as warranted, approve Voluntary Mediated Agreements at the RSA 170-C TPR preliminary or, if necessary, the final hearing.

Court review of VMAs in RSA 170-C allows for the involvement of all parties to a VMA, including prospective-adoptive parent(s) as RSA 170-C:10 authorizes the court to admit to a termination of parental rights hearing those persons entitled to notice under RSA 170-C:7 or as the judge shall find to have a direct interest in the case or in the work of the court.

The purpose of mediation, consistent with RSA 170-B:14, II, is to facilitate the timely achievement of permanency when adoption is the RSA 169-C court-approved permanency plan. For a child who is in the legal custody of DCYF, mediation provides an option for parents, DCYF and prospective adoptive parent(s) to enter into a Voluntary Mediated Agreement that allows parents to have post-adoptive exchange of information, communication or contact. "Communication and/or contact", are not defined by statute or case law, and are, commonly, the main focus of mediation.

Mediation is an entirely voluntary process, and there are no adverse consequences in a pending RSA 170-C TPR case concerning a parent who does not want to mediate or who participates in mediation but the mediation does not result in a VMA. Similarly, there are no adverse consequences concerning a prospective adoptive parent(s) who does not want to participate in mediation or who participates in mediation but the mediation does not result in a VMA.

If DCYF is the only party unwilling to participate in mediation, DCYF shall provide a written explanation of its position to the court, the birth parents, and the prospective adoptive parent(s), pursuant to RSA 170-B:14, II (a). Additionally, DCYF should provide a copy to the RSA 170-C CASA GAL/GAL.

The VMA option is available if one parent is interested in participating in mediation but the other parent is not interested and will contest a TPR petition. However, if the court approves a Voluntary Mediated Agreement involving one parent only, the parent's VMA-related surrender is unconditional.

Although the court may review and approve VMAs at any time in RSA 169-C cases, Voluntary Mediated Agreements are most common in RSA 170-C cases and are limited in RSA 170-C cases to when:

- DCYF has filed TPR petitions against both RSA 169-C parents;
- Parties to mediation (birth parent(s), prospective adoptive parent(s) and DCYF) agree that mediation is appropriate;
- One or both parents will surrender their parental rights immediately following court approval of a VMA;
- Child is living with the prospective adoptive parent(s); and
- Court will be able to review a VMA at a hearing prior to the final TPR hearing, ideally at the TPR preliminary hearing.

Additionally, the agreed upon communication and/or contact in the Voluntary Mediated Agreement will not become effective until and unless the child(ren) is adopted by the prospective adoptive parent(s) who is a party to the court-approved VMA.

To facilitate timely permanency, DCYF's practice is to discuss the mediation option with parents and prospective adoptive parents as part of DCYF's concurrent planning work in the RSA 169-C cases. This work begins in earnest no later than immediately following the 9-month review hearing in the RSA 169-C cases where parents have made little or no progress in correcting the conditions of abuse and neglect. In this way, interested parents and prospective adoptive parents have sufficient time to consider the Voluntary Mediated Agreement option and to participate in a timely mediation session, thereby allowing a VMA to be reviewed and, as warranted, approved by the court at the TPR preliminary hearing.

PROTOCOL 1 FILING AND DOCKETING THE NOTICE OF INTENT TO MEDIATE

The filing and docketing of required documents for a mediation session should be handled as follows:

A. Notice of Intent to Mediate

Both the birth parent(s) and DCYF must file, jointly or separately, a **Notice of Intent to Mediate (NHJB-2542)** in order for the clerk to schedule the mediation session. The Notice of Intent to Mediate has one section specific to birth parent(s) and one section specific to DCYF. As the prospective adoptive parent(s) are not a party to either the RSA 169-C or RSA 170-C cases, DCYF must consult with the prospective adoptive parent(s) to determine whether they agree to participate in mediation. If so, the DCYF section of the Notice of Intent to Mediate will reflect the name(s) and mailing address of the prospective adoptive parent(s). If the address of the prospective adoptive parents is to be kept confidential, DCYF should submit their address on a separate form.

All parties should include proposed dates for mediation on the Notice of Intent to Mediate form, to assist in the prompt scheduling by the court of such mediation. Ideally, the suggested dates should be prior to the TPR preliminary hearing, so that the court may review and, as warranted, approve a VMA at the TPR preliminary hearing. If, however, the parties make a request for mediation at the TPR preliminary hearing, they should indicate on the Intent to Mediate form their proposed dates for mediation. These dates must be prior to the TPR final hearing, which should be scheduled within sixty (60) days of the TPR preliminary hearing.

COMMENTS

The court will already have a RSA 170-C termination of parental rights (TPR) petition(s) filed, as DCYF will have filed such petition(s) following the court's permanency order approving a permanency plan of adoption.

In cases in which mediation is requested prior to a RSA 169-C permanency hearing, DCYF may not as yet have legal grounds to file a TPR petition. In such cases, the requirement that a TPR petition be filed is waived and the Notice of Intent to Mediate shall be filed in the RSA 169-C case.

B. Docketing the Notice of Intent to Mediate in the RSA 170-C TPR Case

Upon receiving the **Notice of Intent to Mediate** form(s) signed by the birth parent(s), DCYF and the prospective adoptive parents, the court should docket these filings pursuant to RSA 170-C. The **Notice of Intent to Mediate** will include the name(s) and address(es) of the prospective adoptive parent(s), which court staff shall **enter in the TPR case** in order to send notice of the mediation session to the prospective adoptive parents as well as the other parties.

PROTOCOL 2 SCHEDULING AND NOTICE OF MEDIATION

The court should schedule the mediation session as follows:

A. Selection of Mediator

The court shall select a mediator using only the approved list of specially trained mediators, and, whenever possible, a mediator who also has training in or experience with RSA 169-C abuse and/or neglect cases. The court should select a mediator who is available on one of the recommended dates/times the parties included on the Notice of Intent to Mediate.

B. Timing of Mediation Session

Upon receipt of the Notice to Intent to Mediate, the clerk should schedule the mediation before the TPR preliminary hearing. If, however, the court receives a request for mediation at or following the TPR preliminary hearing, the court

may schedule a mediation session but should do so only when the parties agree that the mediation will not delay the completion of the TPR final hearing—which is to occur within sixty (60) days of the TPR preliminary hearing—if mediation is not successful or if the VMA is not approved or if the parent does not ultimately surrender their parental rights.

Commencing the mediation process following a TPR preliminary hearing is not best practice due to potential delays in the court conducting and completing the TPR final hearing, if needed, within sixty (60) calendar days of the TPR preliminary hearing. For example, mediation involves prospective adoptive parents who are not a party to the RSA 170-C case(s) and whose availability for the court's review of a VMA may be uncertain.

C. Location of Mediation

Mediation should be held in-person at a court building unless the parties agree to a different location.

However, if a party is not able to physically appear for an in-person mediation session, they may request, on their Notice of Intent to Mediate, that the court schedule a remote mediation session in order to participate electronically. Also on such form, any party may indicate that if other parties are not able to participate in-person, they are agreeable to participating in mediation electronically. Thus, if all parties are agreeable, the clerk may schedule an electronic mediation session.

Despite the location, the court is neither present at nor has any role in the mediation session conducted by a court-approved mediator.

D. Notice to Mediator

The court should send the **Notice of Mediation Session** to the mediator **within three (3) calendar days of receiving the required filings**. The Notice of Mediation Session serves as the mediator's appointment and is required before a mediation session may be held.

The court should include with the Notice of Mediation Session to the mediator the following blank forms:

- Agreement to Mediate (NHJB-2179);
- Voluntarily Mediated Agreement (NHJB-2302);
- Alternative Dispute Resolution (ADR) Report (NHJB-2324); and
- Mediation Questionnaire (NHJB-2091).

Due to limited mediation resources, the court should not issue a second Notice of Mediation Session in cases where a party to mediation does not appear for a scheduled mediation session or the parties mediate but are unable to reach an agreement. However, mediators have discretion to

reschedule a mediation, in consultation with the parties, and provided the mediation can occur in a timely manner.

COMMENT

The court's Notice of Mediation Session should not serve to continue or otherwise delay the RSA 170-C TPR preliminary hearing.

E. Notice to Parties to Mediation

At the same time the court sends a Notice of Mediation Session to the mediator, the court should also send a **Notice of Mediation Session** to the following parties to mediation as identified in RSA 170-B:14, I, all of whom shall attend the mediation session:

- birth parent(s);
- prospective adoptive parent(s); and
- DCYF.

F. Notice of Mediation to the RSA 170-C CASA GAL/GAL

Although not identified as a party to mediation in RSA 170-B:14, I, the court should send a Notice of Mediation Session to the RSA 170-C CASA GAL/GAL consistent with RSA 170-B:14, II (d)(1) which authorizes the court to consider the recommendations of any guardian ad litem in determining whether a Voluntary Mediated Agreement is in the child's best interests. Absent the CASA GAL/GAL's presence at the mediation session, the court may be disadvantaged in making a determination whether a VMA is in the child(ren)'s best interest due to the CASA GAL/GAL not having personal knowledge of the mediation session.

COMMENTS

Pursuant to RSA 170-B:14, II (b) other people may be invited to participate in the mediation by mutual consent of DCYF, birth parents and prospective adoptive parents. However, these invitees shall not be parties to any agreement reached during the mediation.

In the event a parent who is the subject of a TPR petition alleging RSA 170-C:5, IV mental deficiency or mental illness is interested in mediating, RSA 170-C:8 requires the court to appoint a guardian ad litem for the alleged incompetent parent. If such a parent, DCYF and the prospective adoptive parent(s) are interested in mediating, the RSA 170-C guardian ad litem for the parent should receive notice of and appear at the mediation session.

Pursuant to RSA 170-B:14, II (a), children and youth, including youth fourteen (14) years of age and older, are not identified as parties to mediation.

PROTOCOL 3 NOTIFICATION OF COURT REVIEW OF A VOLUNTARY MEDIATED AGREEMENT TO PROSPECTIVE ADOPTIVE PARENT(S) AND YOUTH FOURTEEN (14) YEARS OF AGE OR OLDER

Notification of court review of a VMA to a prospective adoptive parent(s) and youth fourteen (14) years of age or older should be handled as follows:

A. DCYF Notifying Prospective Adoptive Parent(s)

When a parent(s), prospective adoptive parent(s), and DCYF enter into a Voluntary Mediated Agreement, the court should expect DCYF to notify the prospective adoptive parents of the date, time and place of the RSA 170-C TPR preliminary hearing at which the court will review the VMA, or of a specifically scheduled hearing to review the VMA.

The court should additionally expect DCYF to ensure that the prospective adoptive parent(s) appear in person at this hearing.

COMMENTS

VMAs are governed by RSA 170-B:14 which does not require or otherwise provide for a petition, notice or a hearing, for court review and approval. However, best practice is for the court to review VMAs at a RSA 170-C TPR preliminary hearing with all parties to mediation and the RSA 170-C CASA GAL/GAL being present.

Birth parent(s) and DCYF will have prior notice of a TPR preliminary hearing at which a VMA is to be reviewed, pursuant to a RSA 169-C Permanency Hearing Order of the court which includes the date and time for the RSA 170-C TPR preliminary hearing.

B. DCYF and RSA 170-C CASA GAL/GAL Notifying Youth Fourteen (14) Years of Age or Older

Upon the parent(s), prospective adoptive parent(s), and DCYF reaching a Voluntary Mediated Agreement, the court should expect DCYF in collaboration with the CASA GAL/GAL to explain the terms of the VMA to a youth fourteen (14) years of age and older, answer any questions the youth may have, and ask the youth whether the youth wants the court to approve the VMA.

If DCYF and the CASA GAL/GAL are satisfied that the youth fourteen (14) years of age or older understands the terms of the VMA and wants the court

to approve the Voluntary Mediated Agreement, DCYF shall have the youth sign a copy of the VMA and promptly file this with the court, with copies to the other parties to the mediation and to the CASA GAL/GAL. DCYF, in collaboration with CASA/GAL, shall also inform the youth that the court will review and, as warranted, approve the VMA at an upcoming TPR preliminary hearing.

COMMENTS

RSA 170-B:14, II (a) does not include children and youth, including youth fourteen (14) years of age and older as parties to mediation. Additionally, the protocols about children and youth in court (Chapter 8, Part B) do not include a TPR preliminary hearing as a hearing that a child and youth fourteen (14) years of age or older may attend. Thus, the court should not expect a youth to attend the TPR preliminary hearing.

In the rare circumstance that parties reach an agreement that the youth will not assent to, DCYF should notify the birth parents and the prospective adoptive parents of the youth's position, and the CASA GAL/GAL should explain in their VMA report to the court that the youth did not assent.

PROTOCOL 4 CONSIDERATIONS FOR THE COURT PRIOR TO REVIEWING A VOLUNTARY MEDIATED AGREEMENT

When DCYF, parent(s) and the prospective adoptive parent(s) want the court to review and approve a Voluntary Mediated Agreement at a TPR preliminary hearing, the court should have in mind the following considerations:

A. Voluntarily Mediated Agreement

The Voluntary Mediated Agreement contains all the RSA 170-B:14 legal requirements for a VMA and is the only document that satisfies the requirement that a VMA be in writing.

B. Prospective Adoptive Parent(s) Needs to Personally Appear at the Court's Review of a VMA at TPR Preliminary Hearing

As provided in Protocol 5, the court should expect DCYF to ensure that the prospective adoptive parent(s) personally appear at a TPR preliminary hearing at which a Voluntary Mediated Agreement will be reviewed by the court.

When a prospective adoptive parent's physical presence is not possible, s/he may participate in the court's review of the VMA electronically, unless otherwise ordered by the court.

C. Conditional Surrenders

RSA 170-B does not provide for conditional surrenders, and, consequently, the court should not approve a conditional surrender, including when a surrender is made in connection with a Voluntary Mediated Agreement. More specifically, RSA 170-B:10, I, provides that upon the court's approval of a surrender, the parent's rights over the child will cease, and pursuant to RSA 170-B:10, II (a), a surrender is final except under circumstances stated in RSA 170-B:12 (Withdrawal of a Surrender).

D. Court Review and Approval of a VMA and Related Parental Surrender Involving One Parent Only

The court may approve a Voluntary Mediated Agreement and related parental surrender involving one parent only in cases where the other parent is contesting a TPR petition. If the other parent prevails in the TPR case, any agreed upon post-adoptive contact provided for in a court-approved VMA will not go into effect but the parent's surrender will be final unless, pursuant to RSA 170-B:12, III, the court finds that the surrender was obtained by fraud or duress and that the withdrawal of the surrender is in the best interests of the child(ren).

E. Parties Request Change and/or Addition to a VMA

If mediation has resulted in a Voluntary Mediated Agreement but the parties at the TPR preliminary hearing request that a change and/or addition be made to the VMA, the court may make the requested change and/or addition when all parties to the mediation are in agreement and the parties initial any change/addition to the VMA.

PROTOCOL 5 THE COURT'S REVIEW AND APPROVAL OF A VOLUNTARY MEDIATED AGREEMENT

When a parent(s), prospective adoptive parent(s) and DCYF want the court to review and approve a Voluntary Mediated Agreement at the RSA 170-C TPR preliminary hearing, the court should initially ensure that DCYF, birth parent(s) and prospective adoptive parent(s) have copies of:

- **Voluntarily Mediated Agreement** forwarded to the court by the mediator following a successful mediation; and
- **RSA 170-C CASA GAL/GAL report** filed with the court in connection with the VMA.

Thereafter, the court should address the following matters:

A. Legal Representation

Although RSA 170-B:14 does not provide for counsel in mediation cases, the court should inquire whether all parties to a VMA were represented by counsel at the mediation.

Ordinarily, birth parents will be assisted in mediation by RSA 170-C counsel but prospective adoptive parents may not be represented by counsel as neither RSA 170-C or RSA 170-B:14 provides for court-appointed counsel for prospective adoptive parents, although these parents may retain counsel to assist them with mediation.

B. Questions Concerning the Voluntary Mediated Agreement

The court should inquire whether the parties have any questions concerning the Voluntary Mediated Agreement, including the legal provisions as well as any specified post-adoptive communication or contact.

C. Post-Adoptive Modification, Enforcement or Discontinuance of a Voluntary Mediated Agreement

Prior to approving a Voluntary Mediated Agreement, it is especially important that the court review with the parties each of the following provisions concerning **modification, enforcement and discontinuance of a court-approved VMA**:

1. before a court may enter an order requiring modification of compliance with, or discontinuance of the agreement, the moving party shall certify under oath that he or she has participated in good faith in mediating the dispute giving rise to the action prior to filing the equity action. RSA 170-B:14, II (i);

2. the court may modify the terms of the Voluntary Mediated Agreement if the court finds by a preponderance of the evidence that there has been a material and substantive change in the circumstances and that the modification is in the best interests of the child (RSA 170-B:14, II (i) (2);

3. a court-imposed modification of a previously approved agreement may limit, restrict, condition, decrease, or discontinue the sharing of information and/or contact between the birth parents and the child but in no event shall a court-imposed modification serve to expand, enlarge, or increase the amount of contact between the birth parent(s) and the child or place new obligations on the parties to the agreement (RSA 170-B:14, II (i) (2));

4. any breach, modification, or invalidation of the agreement, or any part of it, shall not affect the validity of any surrender of parental rights or the interlocutory or final decree of adoption (RSA 170-B:14, II (a)); and

5. a VMA shall cease to be enforceable on the date the child turns 18 years of age (RSA 170-B:14, II (h)).

COMMENT

It is particularly important that any prospective adoptive parents who were not represented by counsel are informed about post-adoptive modification, enforcement or discontinuance of a VMA.

D. Approving the Voluntary Mediated Agreement

Pursuant to RSA 170-B:14, II (d), the court shall approve the Voluntary Mediated Agreement if the court determines that the VMA is in the best interests of the child. In making this determination, factors that the court may consider, as set forth in RSA 170-C:14, II (d)(1)(A) through (H), include:

1. the length of time that the child has been under the actual care, custody, and control of any person other than a birth parent and the circumstances relating thereto;

2. the desires of the child's birth parent(s) as to custody or residency and the desire of the child as to the child's custody or residency;

3. the interaction and interrelationship of the child with birth parents, siblings, and any other person who may significantly affect the child's best interest;

4. the adjustment to the child's home, school, and community;

5. the willingness and ability of the birth parents to respect and appreciate the bond between the child and the prospective adoptive parents;

6. the willingness and ability of the prospective adoptive parents to respect and appreciate the bond between the child and the birth parents;

7. any evidence of abuse and/or neglect of the child; and

8. the recommendations of any guardian ad litem.

E. Ensuring All Parties to the VMA Have Signed the Voluntarily Mediated Agreement

1. The Parties to Mediation

Pursuant to RSA 170-B:14, II(d)(H)(2), the court should ensure that all parties to mediation have signed the Voluntary Mediated Agreement that has been submitted to the court for approval, under oath, attesting that the VMA was

entered into knowingly and voluntarily and is not the product of coercion, fraud or duress. Best practice is for the parties to mediation, upon reaching a mediated agreement and **prior to the concluding the mediation session**, to sign, under oath, the Voluntary Mediated Agreement.

In cases where a parent participates electronically in a successful mediation, the court should send a copy of the VMA signed by the other parties to the absent party for the absent party to sign under oath and return to the court. The absent party's signature page should then be attached to the original VMA.

COMMENTS

A basic tenet of mediation is to have the parties document and sign their agreement to the terms of a mediation before they adjourn the mediation session. This practice discourages subsequent disagreements concerning one or more terms of an agreement by preserving what has been agreed to.

The incorporation of the requirements of RSA 170-B:14, II (d)(H)(2) in the Voluntary Mediated Agreement satisfies and makes unnecessary the filing of a separate affidavit(s).

2. Youth Fourteen (14) Years of Age or Older

Pursuant to RSA 170-B:14, II (e), if a youth is fourteen (14) years of age or older, the Voluntary Mediated Agreement shall contain the written assent of the youth.

As provided in Protocol 5, DCYF and the CASA GAL/GAL will meet with a youth fourteen (14) years of age or older following a successful mediation session to discuss the terms of the Voluntary Mediated Agreement. If the youth understands and supports the terms of the VMA, DCYF will have the youth sign a copy of the VMA and promptly file this with the court, with copies to the other parties to the mediation session and to the CASA GAL/GAL. Court staff will then attach this form to the Voluntary Mediated Agreement.

COMMENT

The assent of a youth fourteen (14) years of age or older is not required to be given before a notary public or in the court's presence.

3. CASA GAL/GAL

RSA 170-B:14, II (a) does not identify the CASA GAL/GAL as a party to mediation, and, therefore, the CASA GAL/GAL should not sign the Voluntary Mediated Agreement.

F. Issuing the Court-Approved Voluntary Mediated Agreement

The Voluntary Mediated Agreement is docketed in the RSA 170-C file. Once approved, the court-approved Voluntary Mediated Agreement should be sent to the parties and the RSA 170-C CASA GAL/GAL within five (5) business days after the court's approval of a VMA and related surrender of parental rights.

While the VMA is initially docketed in the RSA 170-C file, once an adoption petition is filed, DCYF shall file a copy of the court-approved VMA in the adoption case, as the VMA must be incorporated into the adoption decree pursuant to RSA 170-B:14, II(f).

PROTOCOL 6 MODIFICATION, ENFORCEMENT OR DISCONTINUANCE OF A VOLUNTARY MEDIATED AGREEMENT

A. Jurisdiction

Pursuant to RSA 170-B:14, II (h), the court issuing final approval of the Voluntary Mediated Agreement shall have continuing jurisdiction over enforcement of the VMA until the child reaches their 18th birthday.

B. Commencing an Equity Action

Pursuant to RSA 170-B:14, II(i), a party to a court-approved Voluntary Mediated Agreement may seek to modify, enforce, or discontinue the agreement by commencing an equity action in the court that approved the underlying agreement. A court order for modification, enforcement or discontinuance of the terms of the Voluntary Mediated Agreement shall be the sole remedies for breach of the agreement.

Pursuant to RSA 170-B:14, II (i), prior to the court hearing the matter, the moving party must certify under oath that s/he has participated, or attempted to participate, in good faith in mediating the dispute. In addition, the court should provide notice of the hearing to all parties to the agreement. Pursuant to RSA 170-B:14, II (i)(1), the parties are not entitled to the appointment of counsel, but the court may appoint a guardian ad litem.

C. VMA Enforcement Requirements

In addition to meeting the RSA 170-B:14 requirements for court approval, a Voluntary Mediated Agreement, pursuant to RSA 170-B:14, II (a), must be reached through a court-approved mediation program, and, pursuant to RSA 170-B:14, II (f), shall be:

1. in writing;

2. approved by the court prior to the date for entry of any adoption decree; and

3. incorporated but not merged into any adoption decree and shall survive as an independent agreement.

Pursuant to RSA 170-B:14, II (f)(3), the enforceability of a Voluntary Mediated Agreement commences with the date of the child's adoption, and, pursuant to RSA 170-B:14,II (h), shall cease to be enforceable on the date the child turns 18 years of age.

COMMENTS

The **Voluntarily Mediated Agreement** is always used by the parties, and it is the only document that satisfies the requirement that the VMA be in writing.

Pursuant to RSA 170-B:14, II (g), a VMA need not disclose the identity of the parties to be enforceable, but if an identity is not disclosed, the unidentified person shall designate a resident agent for the purpose of service of process.

D. The Court's Order on Modification, Enforcement or Discontinuance of a VMA

In addition to the RSA 170-B:14 modification, enforcement or discontinuance provisions set forth in Protocol 8, RSA 170-B:14 provides:

1. the court may also impose appropriate sanctions consistent with its equitable powers but not inconsistent with RSA 170-B:14, II, including the power to issue restraining orders; and

2. if the court finds that an action to modify, enforce or discontinue the Voluntary Mediated Agreement was wholly insubstantial, frivolous, and not advanced in good faith, the court may award attorneys' fees and costs to the prevailing parties, pursuant to RSA 170-B:14,II (i)(3).

COMMENT

If the court requests that DCYF attend a post-adoption hearing pertaining to the enforcement, modification and/or discontinuance of a VMA, the court should not require DCYF to resume providing services to any party to the mediation or to the child/youth who was the subject of the mediation.

PART B THE MEDIATION PROCESS: GUIDANCE FOR MEDIATORS, DCYF, PARENTS, PROSPECTIVE ADOPTIVE PARENTS AND RSA 170-C CASA GALS/GALS

PROTOCOL 7 PRIOR TO A MEDIATION SESSION

The following are considerations prior to a mediation session:

A. Mediation Summary for Voluntarily Mediated Adoption

Upon receiving a copy of the Notice of Mediation Session the court sends to the mediator, DCYF shall submit a completed **Mediation Summary for Voluntarily Mediated Adoption (NHJB-3220)** to the mediator no later than five (5) calendar days prior to any scheduled mediation, with copies to the other parties to the mediation and to the RSA 170-C CASA GAL/GAL. At their discretion, other parties to mediation may also submit a completed Mediation Summary form to the mediator. However, a completed Mediation Summary form shall not be submitted to the court.

Except for filing a completed Mediation Summary form or discussing scheduling matters, the parties to mediation should not communicate with the mediator concerning the case prior to a mediation session. Additionally, a Mediation Summary form should not include argumentation concerning the RSA 169-C cases or the pending mediation.

B. The RSA 170-C CASA GAL/GAL

Pursuant to Protocol 2, Section F above, and absent the objection of any party to mediation, the court will expect the CASA GAL/GAL to attend the mediation session. Without the CASA GAL/GAL's presence at the mediation session, the court may be disadvantaged in making a determination whether a VMA is in the child(ren)'s best interest due to the CASA GAL/GAL not saving personal knowledge of the mediation session.

C. Children/Youth

Pursuant to RSA 170-B:14, II (a), children and youth, including youth fourteen (14) years of age or older, are not parties to mediation. In view of the sensitive and often emotional nature of mediation sessions involving a child/youth's birth parent(s) and prospective adoptive parent(s), children and youth fourteen (14) years of age or older should not be invited to attend mediation sessions.

However, because a youth 14 years of age or older must assent to a VMA, the parties should clearly understand the youth's position about any future communication or contact with the birth parent prior to the parties agreeing to mediate. Additionally, whenever possible or feasible, youth 14 years of age or older should be reachable by phone in the event of an unexpected occurrence at a mediation session and the CASA GAL/GAL needs to speak with the youth.

COMMENT

DCYF in collaboration with the CASA GAL/GAL will work with the prospective adoptive parent(s) to ensure a child, consistent with the child's age and maturity, and youth fourteen (14) years of age or older, are informed of the mediation, prior to and following a mediation session.

D. Physical Presence of All Parties at Mediation Session

Mediation sessions should be held in-person, at a court building unless the parties agree to a different location.

However, all parties may agree to a remote mediation session, indicating such on their Notice of Intent to Mediate. In such circumstances, the clerk will schedule the mediation session to occur electronically.

If any party does not appear for a scheduled mediation session, the mediator shall promptly advise the court in writing. Due to limited mediation resources, the court, pursuant to Protocol 2, Section D above, should not schedule a second Notice of Mediation Session in the event a party does not appear for mediation.

E. Counsel

Counsel provide valuable assistance at mediation sessions, and, therefore, counsel for DCYF and birth parents as well as any counsel retained by prospective adoptive parents, typically, attend mediation sessions.

PROTOCOL 8 AT A MEDIATION SESSION

The following are considerations at a mediation session:

A. Signing the Agreement to Mediate

At the outset of a mediation session, the mediator shall ask the parties and their counsel, if present, to review and, if agreeable, sign the Agreement to Mediate (NHJB-2179) which outlines the ground rules for mediation. Any party to the mediation who is participating electronically must acknowledge that they have read and understand the Agreement to Mediate, and the

mediator will document this acknowledgement. **Mediation cannot proceed until all parties sign or acknowledge the information on this form**.

COMMENT

The Agreement to Mediate is for the mediator and the parties to mediation only, and should not be filed with the court.

B. The Role of the RSA 170-C CASA GAL/GAL

Although not a party and in the absence of a party to mediation objecting pursuant to RSA 170-B:14, II (b), the CASA GAL/GAL should attend the mediations session. If invited by a party to the mediation to speak, the CASA GAL/GAL should limit their comments to whether, in their opinion, the VMA being considered at the mediation session is in the child/youth's best interest.

Attending the mediation session allows the CASA GAL/GAL to have personal knowledge of the mediation session and, if an agreement is reached by the parties, the terms of the VMA. Having this personal knowledge will be beneficial to the CASA GAL/GAL when preparing a report regarding the VMA, and advising the court whether, in the CASA GAL/GAL's opinion, the terms of the VMA is in the child/youth's best interest, pursuant to RSA 170-B:14, II (d)(1).

C. The Parties Mediate and Reach an Agreement

If the parties reach an agreement during the mediation session, the following is required:

1. Description of Any Post-Adoptive Communication or Contact in the Voluntarily Mediated Agreement

   The parties and, if present, counsel with the assistance of the mediator need to complete the Voluntary Mediated Agreement (NHJB-2302) by **specifying the precise nature of any post-adoptive communication and/or contact** that the parties have agreed to as a result of the RSA 170-B:14 mediation.

   The Voluntarily Mediated Agreement is always used by the parties, **and it is the only document that satisfies the requirement that a VMA be in writing**.

2. Signing the Voluntarily Mediated Agreement

   Upon reaching a mediated agreement and prior to concluding the mediation session, the parties shall sign, under oath, the Voluntary Mediated Agreement. Best practice is for counsel, if present, to also sign this form.

COMMENTS

A basic tenet of mediation is to have the parties document and sign their agreement to the terms of a mediation before they adjourn the mediation session. This practice discourages subsequent disagreements by preserving in writing what has been agreed to.

The incorporation of the requirements of RSA 170-B:14, II (d)(H)(2) in the Voluntary Mediated Agreement satisfies and makes unnecessary the filing of a separate affidavit(s).

When a parent participates electronically in a successful mediation, the court will send a copy of the VMA signed by the other parties to the absent party for the absent party to sign under oath and return to the court. The absent party's signature page will then be attached to the original VMA.

A parent who participates in a successful mediation should not sign the **Surrender of Parental Rights** (NHJB-2080) at the mediation session. Instead, the parent will sign the Surrender of Parental Rights at the scheduled TPR preliminary hearing immediately following the court's review and approval of the connected Voluntary Mediated Agreement.

D. The Parties Mediate but Do Not Reach an Agreement

If the parties are unable to reach a mediated agreement, the mediator shall promptly advise the court in writing, with a copy provided to the other parties and the CASA GAL/GAL. Additionally, as provided in Protocol 2, Section D above, due to limited mediation resources, the court should not issue a second Notice of Mediation Session in cases where a party to mediation does not appear for a scheduled mediation session or the parties mediate but are unable to reach an agreement.

However, if the parties are unable to reach an agreement as to all particulars but the parties and the mediator believe there is a strong likelihood of a complete agreement being reached after a brief recess, the mediation session may be recessed for a period not to exceed fourteen (14) calendar days from the initial mediation session. The resumption of such a mediation should not require more than one or two hours to either finalize the agreement or determine that a VMA cannot be reached, and may be conducted by the use of a conference call. In no circumstances should the resumption of such mediation result in the RSA 170-C TPR final hearing being delayed or continued.

PROTOCOL 9 AFTER A MEDIATION SESSION

The following are considerations after a mediation session:

A. Mediator Filing the Completed Voluntarily Mediated Agreement with the Court

The mediator shall file the completed **Voluntarily Mediated Agreement** with the court immediately following a successful mediation session, and shall send copies of the Agreement to the other parties to the mediation and to the CASA GAL/GAL.

COMMENT

At the same time the mediator files with the court the completed Voluntary Mediated Agreement, the parent who wishes to surrender should file with the court a Surrender of Parental Rights (NHJB-2080), **as well as other necessary surrender documents** consistent with **Chapter 13, Surrender of Parental Rights**. This will ensure there is no delay in the court reviewing and, as warranted, approving the VMA and, immediately thereafter, the parental surrender(s).

B. Mediator Notifying the Court of an Unsuccessful Mediation

Pursuant to Protocol 10, if the parties are unable to reach a Voluntary Mediated Agreement, the mediator shall promptly advise the court in writing, with a copy provided to the other parties to mediation and the CASA GAL/GAL.

C. RSA 170-C CASA GAL/GAL Filing Court Report

The CASA GAL/GAL shall file a report with the court at least five (5) calendar days prior to the court's review of a VMA at a RSA 170-C TPR preliminary hearing, advising the court whether, in the CASA GAL/GAL's opinion, the agreed upon terms of a VMA are in the child/youth's best interest pursuant to RSA 170-B:14, II (d)(1).

D. Written Assent of Youth Fourteen (14) Years of Age or Older

As provided in Protocol 5, DCYF and the CASA GAL will meet with a youth fourteen (14) years of age or older following a successful mediation session to discuss the terms of the VMA. If the youth understands and supports the terms of the VMA, DCYF shall have the youth sign a copy of the VMA and promptly file this with the court, with copies to the other parties to the mediation session and to the CASA GAL/GAL.

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CHAPTER 15 ADOPTION

STATUTORY REFERENCES:

•RSA 169-C:24-c, Post-Permanency Hearings

•RSA 170-B:3, Who May Be Adopted; Requirements

•RSA 170-B:5, Persons Required to Execute a Surrender of Parental Rights

•RSA 170-B:6, Notice to Person Claiming Paternity and Hearing to Determine Right to Surrender

•RSA 170-B-9, Procedure for Execution of Surrender

•RSA 170-B:10, Content of Surrender

•RSA 170-B:11, Consequences of Surrender

•RSA 170-B:15, Jurisdiction, Venue, and Inconvenient Forum

•RSA 170-B:16, Petition for Adoption

•RSA 170-B:17, Notice of Petition

•RSA 170-B:18, Assessment

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•RSA 170-B:20, Dismissal of Adoption Proceedings

•RSA 170-B:21, Appeals and Validation of Adoption Decrees

•RSA 170-B:22, Report of Adoption

•RSA 170-B:23, Confidentiality of Records

•RSA 170-B:24, Requests for Identifying and Non-Identifying Information

•RSA 170-C:11, Decree

•RSA 490-D:2, Jurisdiction

INTRODUCTION

These adoption protocols apply only to DCYF cases with a connected RSA 169-C abuse and/or neglect case plus an RSA 170-C termination of parental rights or RSA 170-B surrender of parental rights case(s). These protocols should be used by the court when:

- the child is **legally freed** for adoption (neither parent retains residual parental rights and responsibilities and no appeals are pending with the superior court or New Hampshire Supreme Court);
- the child has resided in a **pre-adoptive home for at least six (6) months**; and
- there are **no significant concerns or unresolved issues** regarding the child's placement in the pre-adoptive home and/or the pending adoption.

An adoption is a special milestone for a family and, consequently, courtroom ceremony is a very important part of an adoption hearing. In addition to ensuring that all procedural and legal requirements have been met, the court should take particular care to make an adoption a unique hearing and celebratory in nature.

PROTOCOL 1 JURISDICTION

Consistent with RSA 490-D:2, VII, the family division has exclusive jurisdiction over the adoption of a child in RSA 169-C abuse and neglect cases, and RSA 170-C termination of parental rights cases. See also New Hampshire Circuit Court – Family Division Rule 7.1 (the family division has jurisdiction of adoptions in conjunction with proceedings brought pursuant to RSA 169-C, RSA 170-C or RSA 463).

The petition for adoption shall be filed in the family division court in which a RSA 170-B surrender has taken place or a termination of parental rights under RSA170-C proceeding has occurred related to the same child, consistent with RSA 170-B:15, II.

PROTOCOL 2 JUDGE

The judge who presided in the connected RSA 169-C abuse and/or neglect cases and the RSA 170-C termination of parental rights cases should preside in the RSA 170-B adoption case.

In the event the judge in the RSA 169-C cases did not preside in the RSA 170-C cases, the judge in the RSA 169-C cases should preside in the RSA 170-B adoption case.

COMMENT

"It is strongly preferred that the same judge or judicially supervised magistrate presides over the entire child welfare case from the preliminary protective hearing through permanency, including adoption." National Council of Juvenile and Family Court Judges, *Adoption and Permanency Guidelines* (2000)

at 5; and re-stated in the NCJFCJ's *Enhanced Resource Guidelines* (2016) at 34 which also provides that this practice "encourages judges to take ownership in and maintain active oversight of their cases."

PROTOCOL 3 FILING THE ADOPTION PETITION(S)

The court should expect DCYF, **as part of its reasonable efforts requirement pursuant to RSA 169-C:24-c, II**, to file an adoption petition(s) on behalf of a pre-adoptive parent(s) **thirty (30) calendar days from the date** the child is **legally freed** for adoption when:

- the child has resided in a **pre-adoptive home for at least six (6) months**; and
- there **are no significant concerns or unresolved issues** regarding the child's placement in the pre-adoptive home and/or the pending adoption.

Notwithstanding RSA 170-B:16, I, the court **should not** require DCYF to file a motion to waive the requirement that an adoption petition be filed within 30 days after the child has been placed in a pre-adoptive home. While this statutory requirement for filing an adoption petition is appropriate in private adoptions cases, it is not appropriate in DCYF cases where DCYF typically places children in out-of-home placements early in the RSA 169-C abuse and/or neglect cases and prior to a permanency hearing at which adoption is identified as the child's permanency plan. Additionally, DCYF's practice is to file an adoption petition on behalf of a pre-adoptive parent(s) only when a child has resided in a pre-adoptive home for at least six (6) months.

COMMENTS

As part of DCYF's reasonable efforts to finalize a child's permanency plan of adoption, the court may order DCYF to file an adoption petition.

When a child is legally freed for adoption but has not resided in a pre-adoptive home for at least six (6) months, is not residing in a pre- adoptive home, or there are significant concerns or unresolved issues, the court should conduct **RSA 169-C:24-c, I, post-permanency hearings** as provided for in the protocols for Termination of Parental Rights and Surrender of Parental Rights.

PROTOCOL 4 DOCUMENTS FILED BY DCYF WITH THE ADOPTION PETITION(S)

The court shall expect that DCYF will file the following documents with the adoption petition. Upon receipt of the adoption petition and all the following documents, the court will schedule the adoption hearing.

A. Vital Statistics (form VS-37)

The VS-37 form includes the name of the town in which the child was born, and, pursuant to RSA 170-B:22, I, the court, within seven (7) days of issuing a

final decree of adoption, shall send a copy of the report of adoption (form VS-37) to the town clerk where the adoptee was born. The town clerk prepares and issues a new birth certificate reflecting any change in the child's name.

COMMENT

DCYF should include for the "judgment date" referenced on form VS-37 the expiration of the appeal period in the 170-C TPR case.

B. Department of Health and Human Services or Agency Surrender of Parental Rights

Pursuant to RSA 170-B:5, I (e), a surrender of parental rights shall be obtained from DCYF which through court action or surrender has been given the care, custody and control or guardianship of the adoptee including the right to surrender.

COMMENT

DCYF's practice is to use court form **Department of Health and Human Services or Agency Surrender of Parental Rights (NHJB-2081)** to free a child for adoption, regardless of whether DCYF obtained the right to surrender pursuant to parental surrenders (RSA 170-B:11, II) or termination of parental rights (RSA 170-C:11, II).

C. Home Study and Adoptive Home Study Update (RSA 170-B:18, I, Assessment)

The Home Study and Adoptive Home Study Update are the written assessment required by RSA 170-B:18, I and IV. Pursuant to RSA 170-B:18, I, the purpose of the assessment is to ascertain whether the adoptive home is a suitable home for the child and whether the proposed adoption is in the best interests of the child.

- The assessment includes the dates of all background checks (criminal records and central registry) that have been completed by DCYF on the prospective adoptive parent(s), as required by RSA 170-B:18, VII.

- If a child is in an out-of-state placement pursuant to an ICPC home study in the RSA 169-C case, an adoption home study updating the home study must be completed by the receiving state and returned to the requesting state (New Hampshire) within sixty (60) days of the out-of-state agency receiving the request. DCYF's practice is to request the adoptive home study as soon as the court's permanency order identifies adoption as the permanency plan notwithstanding some states not being willing to do an adoptive study until the state receives verification that the child is legally freed for adoption. Upon receiving an adoption home study from the

receiving state, DCYF should promptly file the adoption home study with the court, with copies provided to all other parties.

- Pursuant to RSA 170-B:16, VII, if a minor is to be adopted from another state or country, the petition shall include documentation indicating compliance with RSA 170-A (Interstate Compact on the Placement of Children) and 170-B:28. DCYF will file this documentation with the court on behalf of the adoptive parent(s).

D. Affidavit of Expenses

- Pursuant to RSA 170-B:19, V, before a final decree of adoption is issued in the adoption of a minor child not related to the petitioner, DCYF shall file with the court on forms supplied by DHHS an affidavit listing the amount of fees or other charges paid to, on or behalf of, birth parents, physicians, attorneys, or other person in connection with the adoption.
- DCYF usually does not incur costs related to the adoption process but occasionally there are travel expenses such as when the adoptive parent(s) travels from another state to finalize the adoption in New Hampshire.

E. Sharing of Confidential Adoption Information Statement

- The Statement is used to document the specific, confidential adoption information that DCYF has shared with pre-adoptive parent(s).
- Pursuant to RSA 170-B:23, III, nothing contained in RSA 170-B:23 or RSA 170-B:24 shall prevent DCYF from sharing with the adoptive parent(s) all information it has available about the minor child being placed for adoption.

F. Adoptive Histories, Parts I and II

- The Adoptive Histories, Parts I and II, are prepared by a third party who summarizes all information in the child's DCYF case file which may include information a surrendering parent is required to file with the court, pursuant to RSA 170-B:9, III.
- The Adoptive Histories also provide the adoptive parent(s) with information about the child, and, collectively, is one of the documents listed in the Confidential Adoption Information form. The Adoptive Histories do not include identifying information such as the last name of the birth parents.

G. New Hampshire Putative Father Registry Check

- DCYF submits a written request to New Hampshire Child Support Enforcement Services in all DCYF-related adoptions to determine whether

a claim of paternity has been timely filed. The claim must be filed prior to the birth mother's parental rights being surrendered or terminated.

- Pursuant to RSA 170-B:6, I (c), a person who timely files a claim of paternity shall be given notice by the court of the right to request a hearing to prove paternity.
- Pursuant to RSA 170-B:5, I (c), a surrender of parental rights shall be obtained from the birth father, provided that he was found to be entitled to notice and found to be entitled to the right to surrender his parental rights pursuant to RSA 170-B:6, and further provided that if the birth father is under 18 years, the court may require the assent of his parents or legal guardian.

H. Adoption Assistance Agreement

DCYF completes an Adoption Assistance Agreement even when DCYF is not providing an adoptive parent(s) with a subsidy because adoption assistance also consists of Medicaid and post-adoptive services.

I. Certified Copy of the Birth Certificate of the Child or Verification of Birth Record

Pursuant to RSA 170-B:16, V, DCYF shall file the birth certificate of the child at the same time the adoption petition is filed. DCYF does not file the birth certificate of a child in connection with the RSA 169-C cases.

COMMENT

DCYF is not required to file a birth record in the adoption case(s) when it has previously filed a birth record in connection with a parental surrender.

J. Name of Any Person Whose Surrender Is Required but Has Not Surrendered Their Parental Rights

This requirement is pursuant to RSA 170-B:16, III (a) and (b) with RSA 170-B:16, III (c) providing that an order of termination of parental rights is a fact or circumstance that excuses the lack of a parental surrender.

COMMENTS

Although RSA 170-B:16, III, requires a petition for adoption to be accompanied by written surrenders, DCYF is not required to file written surrenders in cases where the court in the RSA 170-C case(s) reviewed and approved the surrenders by one or both parents. In these circumstances, the court will have the related surrender file available for its review.

Pursuant to RSA 170-B:16, VIII, if the surrender was executed in another state or country, or medical information was

not provided as required by RSA 170-B:9, III, DCYF shall file with the court information on the age and medical and personal backgrounds of the birth parents and minor child. DCYF will file this information with the court on behalf of the pre-adoptive parent(s).

K. Voluntary Mediated Agreement, if Applicable

If DCYF, the prospective adoptive parents and the birth parent(s) entered into a Voluntary Mediated Agreement (VMA) during the RSA 170-C or RSA 169-C case, and the VMA was subsequently approved by the court, DCYF shall include a copy of the approved VMA with the adoption petition. Pursuant to RSA 170-B:14, II (f), a Voluntary Mediated Agreement must be: 1) in writing; 2) approved by the court prior to the date for entry of any adoption decree; and 3) incorporated but not merged into any adoption decree and shall survive as an independent agreement.

PROTOCOL 5 CHECKLIST FOR COURT STAFF BEFORE SCHEDULING AN ADOPTION HEARING

Court staff should complete the following checklist prior to scheduling an adoption hearing to establish that the child is legally freed for adoption and that the required documents are on file with the court. Once established, court staff should promptly mail notice of the adoption hearing, pursuant to these protocols.

A. Child Legally Freed for Adoption:

- the parents have surrendered or parental rights have been terminated as required by RSA 170-B:19, IV: Yes___ No___
- an appeal is pending: Yes ___ No ___
- DCYF has filed a Surrender of Parental Rights form with the court as required by RSA 170-B:5, I(e): Yes___ No___
- if applicable, DCYF has filed an affidavit when a parent's surrender is executed in a state other than New Hampshire as required by RSA 170-B:10, V: Yes___ No ___ NA ____
- DCYF has checked the New Hampshire Putative Father Registry: Yes ___ No ___

B. The Required Documents Are on File With the Court:

- a written assessment report ("Home Study and Adoptive Home Study Update") as required by RSA 170-B:18, I: Yes___ No ___
- either a certified copy of the child's birth certificate or verification of the child's birth record as required by RSA 170-B:16, V: Yes___ No ___
- an affidavit of expenses as required by RSA 170-B:19, V: Yes___ No ___

- Vital Statistics form (VS-37) as required by RSA 170-B:22, I: Yes __ No __

PROTOCOL 6 SCHEDULING THE ADOPTION HEARING

Consistent with RSA 170-B:17, I, the court should schedule, hold and complete an adoption **hearing thirty (30) calendar days** from **the filing of an adoption petition** and all **adoption documents** set forth above in Protocol 4.

COMMENTS

The court must receive the adoption petition and all the documents included in Protocol 4 to schedule the adoption hearing.

Scheduling an adoption hearing sooner than thirty (30) calendar days may not allow sufficient time for invited guests of the pre-adoptive parent(s), some of whom may reside out-of-state, to attend the adoption hearing, and for the adoptive parent(s) to plan a post-adoption celebration.

In a case involving an interstate adoption, scheduling the adoption hearing thirty (30) calendar days from an adoption petition being filed may not be possible. In such cases, the court should carefully monitor the case by, as necessary, **conducting RSA 169-C:24-c, I, post-permanency hearings** to ensure everything possible is being done to avoid unnecessary delays.

PROTOCOL 7 APPOINTMENT OF GUARDIAN AD LITEM FOR AN INCAPACITATED ADOPTEE

Pursuant to RSA 170-B:3, II, the court has discretionary authority to appoint a guardian ad litem when an adoptee is alleged to be incapacitated, incompetent, mentally ill, developmentally disabled, or is in any other way emotionally or mentally deficient.

When the court determines a guardian ad litem is needed to protect the child's interests, the court should appoint the RSA 170-C CASA GAL/GAL based on their knowledge of the child. The court should include with the notice of the adoption hearing the court's RSA 170-B CASA GAL/GAL order of appointment.

COMMENT

Ordinarily, the court will have extensive knowledge of the child based on the court's prior involvement with the child in the RSA 169-C and 170-C cases, and, therefore, the court will be in a position to know whether the appointment of a RSA 170-B:3, II guardian ad litem is needed. If, however, the court is not familiar with the child, the court should expect **DCYF and/or the RSA 170-C CASA GAL/GAL to file a motion** with the court requesting the appointment of a RSA 170-B:3, II, guardian ad litem.

PROTOCOL 8 NOTICE OF THE ADOPTION HEARING

Pursuant to RSA 170-B:17, I, the court shall mail notice of the scheduled adoption hearing, to be held **thirty (30) calendar days from an adoption petition being filed**, to the following persons:

- the pre-adoptive parent(s) (petitioner);
- all guardians of the child;
- the person having legal custody of the child (DCYF); and
- the guardian ad litem of any party, including the RSA 170-C CASA GAL/GAL for the child and, as applicable, the RSA 170-B CASA GAL/GAL for the child.

COMMENTS

DCYF has continuing "legal custody" of the child pursuant to an order in the RSA 169-C cases which are not closed until the child is adopted.

Best practice is for DCYF and the CASA GAL/GAL to only attend an adoption hearing when invited by the pre-adoptive parent(s) and the child or when their presence is requested by the court. Regardless of whether DCYF and/or the CASA GAL/GAL is invited to attend an adoption hearing, DCYF should prepare the pre-adoptive parent(s) for the adoption hearing, and the CASA GAL/GAL should prepare the child. Preparing the youth includes advising youth fourteen (14) years of age and older that their assent to be adopted, pursuant to RSA 170-B:3,I, is required in writing and in the court's presence unless the court determines that it is not in the best interests of the youth to require an assent.

PROTOCOL 9 CONDUCTING THE ADOPTION HEARING

When conducting the adoption hearing, the court should consider using the following format:

- Establishing a Welcoming and Informal Courtroom
- The Court's Colloquy with the Adoptive Parent(s)
- The Court's Discussion with a Child
- Granting the Adoption Petition(s)

A. Establishing a Welcoming and Informal Courtroom

An adoption is a special milestone for a family and, consequently, courtroom ceremony is a very important part of an adoption hearing. In addition to ensuring that all procedural and legal requirements have been met, the court

should take particular care to make an adoption a unique hearing and celebratory in nature. Suggested practices include:

- Sitting with the child and adoptive parent(s) at a table in the courtroom or with the child at the judge's bench;
- Allowing for and welcoming guests of the adoptive parent(s) to be part of the adoption hearing and asking them to identify themselves and the nature of their relationship with the adoptive parent(s) and child to be adopted;
- Inviting comments from the adoptive parent(s), the child, and other persons present at the hearing; and
- Allowing the family to have congratulatory signs in the courtroom and to take pictures at the conclusion of the hearing to commemorate the adoption.

COMMENTS

This protocol is based on input from experienced family court judges as well as feedback from foster and adoptive parents in New Hampshire.

Although RSA 170-B:23, I, provides that all hearings held in adoptive proceedings shall be in closed court without admittance of any person other than essential officers of the court, the parties, their witnesses, counsel, and representatives of the agencies present to perform their official duties, a final adoption hearing in DCYF-connected cases is celebratory in nature, and does not involve contested issues. Therefore, invited guests of the adoptive parent(s) and child, which may include DCYF and/or the CASA GAL/GAL, as well as court staff involved with the connected RSA 169-C and/or RSA 170-C cases, should be permitted to be present for the adoption hearing and celebration.

B. The Court's Colloquy with the Adoptive Parents

- *do you understand that today's hearing is the final adoption hearing?*
- *have you been advised of information on the age, medical and personal backgrounds of the birth parents and the child to be adopted, which may include but is not limited to ethnic and religious background, as is reasonably known?*
- *do you understand that _____ (name of child) will become your legal heir?*
- *do you understand that adoption is permanent and irreversible?*

- *do you understand that you as the adoptive parent(s) will have all the rights and responsibilities for _____ (name of child) as if _____ were your biological child?*
- *additionally, the court should review with the adoptive parent(s) and child the **Vital Statistics (form VS-37)** concerning any change of the child's name.*

C. The Court's Discussion with a Youth and Child

1. Youth Fourteen (14) Years of Age and Older

- As required by RSA 170-B:3, I, if an adoptee is fourteen (14) years of age or older, they must assent to the adoption in writing and in the court's presence unless the court determines that it is not in the best interests of the adoptee to require an assent.
- The court will often know whether a youth fourteen (14) years of age or older wants to be adopted based on the court's prior communications with the youth and/or DCYF and the CASA GAL/GAL at RSA 169-C hearings and/or by comments the youth makes at the adoption hearing. However, if the court has any concerns or questions about the youth assenting to their adoption, the court should meet separately with the youth and/or inquire of DCYF and the CASA GAL/GAL, if present at the hearing, concerning the youth's feelings about being adopted.

2. Child Less Than Fourteen (14) Years of Age

- Although a written assent to being adopted is not required for a child less than fourteen (14) years of age, these children often are highly aware of their life situation and, therefore, their wishes concerning an adoption should be considered by the court as made known to the court by DCYF, the CASA GAL/GAL, the adoptive parent(s) and/or by the child. Additionally, the court may want to invite a child less than fourteen (14) years of age and any adoptive siblings present at the adoption hearing to sign the adoption petition although these signatures are not legally required.

3. Incapacitated Child with an RSA 170-B:3, II CASA GAL/Guardian ad Litem

- If the court has exercised its discretion to appoint a guardian ad litem for an incapacitated adoptee pursuant to RSA 170-B:3, II, the court will usually have appointed the RSA 170-C CASA GAL/GAL to serve in this capacity as provided for in Protocol 7. The court should inquire of the CASA GAL/GAL concerning the child's ability to understand the

pending adoption and whether, in the CASA GAL/GAL's opinion, the child wants to be adopted.

COMMENT

Notwithstanding whether the CASA GAL/GAL will be present at the adoption hearing, the RSA 170-C CASA GAL/GAL should prepare the child for the adoption hearing. This includes but is not limited to the CASA GAL/GAL advising youth fourteen (14) years of age and older that their written assent is required in the court's presence unless the court determines that it is not in the best interests of the adoptee to require an assent.

4. Granting the Adoption Petition

Pursuant to RSA 170-B:19, IV, the court should grant the adoption petition(s) if:

- the required surrenders have been obtained or excused (parental rights have been terminated) pursuant to RSA 170-B:19, IV; and
- the adoption is in the best interests of the child.

COMMENTS

The court may want to have staff **prepare the Certificate of Adoption prior to the adoption hearing** so that the adoptive parent(s) can leave the hearing with a copy of it.

The "required surrenders" include any parental surrenders, and, pursuant to RSA 170-B:5, I (e), the Department of Health and Human Services or Agency Surrender of Parental Rights. Pursuant to RSA 170-B:16, III (c), a circumstance which excuses the lack of a parental surrender is a termination of parental rights.

In the rare instance that the requirements of RSA 170-B:19, IV for granting an adoption petition have not been met, the court, pursuant to RSA 170-B:19, VI (a), shall dismiss the petition and determine the person to have custody of the minor child pursuant to RSA 170-B:20, III; or, pursuant to RSA 170-B:19, VI (b), extend the interlocutory period, and determine the person to have custody of the minor child, including the petitioners if in the best interests of the child. The court may provide for observation, assessment, and further report on the adoptive home during the extended interlocutory period.

PROTOCOL 10 APPEALS AND VALIDATION OF ADOPTION DECREES

Supreme Court Rule 7(1) (A) provides that an appeal shall be filed by the moving party within 30 days from the date of the clerk's written notice of the decision on the merits). See also RSA 170-B:21, I.

Pursuant to RSA 170-B:21, II, subject to the disposition of an appeal upon the expiration of one (1) year after a final adoption decree is issued, the decree cannot be questioned by any person, including the petitioner, in any manner upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter.

COMMENT

Section 1913(d) of the Indian Child Welfare Act (ICWA) provides that "[n]o adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under State law."