

OVERVIEW OF PERMANENCY TIMELINES AND JUDICIAL REVIEW

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Introduction

“As the Children’s Code has evolved and the federal Adoption and Safe Families Act (AFSA) has been implemented, the timeframes within which important decisions must be made have consistently shortened. This sense of urgency reflects the reality that time is not static to a child. A child separated from his or her family deserves the speediest of resolutions. Foster care is a stopgap measure, never a solution.”¹

This report provides information, when available, that is responsive to the following questions:

How does New Mexico compare to federal timelines and timelines in other states who are doing better (than New Mexico) with Permanency?

Have any states revised their timelines to the betterment of children and families? If so, which states and how do they compare to New Mexico (before and after)? Are any of these practices ones which New Mexico should consider adopting?

Are there any states which have a statute or rule stating children’s court cases have docketing priority over other case types?

What court practices play a role in reaching permanency faster, such as periodic judicial reviews? If so, are there any states which mandate periodic judicial reviews?

In the course of conducting research, a select number of resources were particularly useful. Hopefully, calling attention to these resources will inform discussions among policy makers in New Mexico. The titles of the resources and links to them are as follows:

“Assessing Quality of Permanency Hearings: Toolkit”, New York Unified Court System, Child Welfare Court Improvement Project (2017) [CWCIP_PPH_Toolkit_0.pdf \(nycourts.gov\)](#)

“Concurrent Planning for Timely Permanency for Children”, Child Welfare Information Gateway (2021) [Concurrent Planning for Timely Permanency for Children \(childwelfare.gov\)](#)

¹ “New Mexico Child Welfare Handbook: A Legal Manual on Child Abuse and Neglect”, published by the Corinne Wolfe Center for Child and Family Justice, Institute of Public Law, University of New Mexico School of Law (2018), Chapter 1, pp. 1-3. **(The Corinne Wolfe Center is currently working on updates to the legal manual)**

“New Mexico Child Welfare Handbook: A Legal Manual on Child Abuse and Neglect”, Published by the Corinne Wolfe Center for Child and Family Justice at the Institute of Public Law, UNM School of Law (2018) [2018-child-welfare-handbook.pdf \(unm.edu\)](https://www.unm.edu/~ipl/2018-child-welfare-handbook.pdf)

How does New Mexico compare to federal timelines and timelines in other states who are doing better (than New Mexico) with Permanency?

Summary of Key Timetables in the Federal “Adoption and Safe Family Act”

“Some children initially remain with their parents and receive in-home services that will prevent removal. States determine the timetable for these services. Most of these children are in and out of the child welfare system within 3 months. Some may return several times for in-home services and may eventually move into foster care. Some States require that these cases be brought to the court's attention after a certain period of time if services are not successful.

The Federal foster care requirements follow a series of timetables that are estimates of the length of time it takes to ensure a reasonable decision can be made about the best interests of the child to either return to the family or move into an adoption status.

The timetables are built into the service plans that are developed with parents and represent conditions that parents must successfully meet to have their children returned to their care. The timetables are supervised by, and parents are under the jurisdiction of, the dependency courts as these decisions are made:

Time-limited family reunification services are those provided to a child and family where the child has been removed and placed in foster care. Family reunification services must be provided in the first 15 months from the date the child enters foster care; and

Each child must have a case plan that places the child in a safe environment that has the least restrictive (most family-like) setting available and is in close proximity to the parents' home, consistent with the best interests of the child. A case review is conducted on the status of each child in foster care no less than once every 6 months, either by a court or by the child welfare agency, to determine: safety of the child, continuing necessity for placement, extent to which the parents have complied with the case plan, progress toward alleviating the circumstances

that required placement, and projection of a likely date by which the child may be returned.

Each child must have a permanency hearing, usually held in a family or juvenile court, no later than 12 months after the child enters foster care and not less than every 12 months thereafter during continuation of foster care, depending on the State Statute. This hearing determines the permanency plan for the child. [emphasis added]

When a child has been in foster care for 15 of the most recent 22 months, the State must file a petition to terminate parental rights, unless one of the following three conditions applies: (1) a relative is caring for the child, (2) there is a compelling reason that termination would not be in the best interests of the child, or (3) the State has not provided the family the needed services within the required deadlines.”²

Summary of Key Timelines in the New Mexico Children’s Code

Returning the child home is the plan in most cases. This means that within six months from the judicial review hearing, or within 12 months of the child entering foster care, whichever date comes first, the court must hold a permanency hearing to determine whether reunification remains viable. Prior to the permanency hearing, the parties are required to attend a pre-permanency hearing conference. If the plan for returning the child to the home does not appear to be viable, the parties may explore alternative placement arrangements that could provide for the long term needs of the child while preserving family relationships.

At the permanency hearing, all of the parties have the opportunity to present evidence and to cross-examine witnesses, although the formal rules of evidence do not apply. Again, it is important that the court hear the child’s view. At the end of the hearing, the court will order one of the following permanency plans for the child:

- reunification;
- placement for adoption after relinquishment or termination of the parent’s rights;
- placement with a person who will be the child’s permanent guardian;

² “Summary of Key ASFA Timetables”, National Center on Substance Abuse and Child Welfare [Summary of Key ASFA Timetables \(hhs.gov\)](https://www.hhs.gov/summary-of-key-asfa-timetables)

- placement in CYFD’s legal custody with the child placed in the home of a fit and willing relative; or
- if none of these options are appropriate for the 16 or 17 year old, placement of the child in CYFD’s legal custody under a planned permanent living arrangement.

If the court adopts a plan of reunification, it will also adopt a plan for transitioning the child home and schedule a permanency review hearing within three months. If the child is returned home before the hearing, the hearing will be vacated. If the child has not returned home yet, then the court will take evidence and decide whether it should change the child’s plan, return the child to the custody of the parent, guardian, or custodian and dismiss the case, or return the child subject to conditions imposed by the court, including protective supervision and continuation of the case plan.

Important: The court must conduct a permanency hearing and adopt a permanency plan within 12 months of the child entering foster care. [emphasis added] A child is considered to have entered foster care on either the date of the first judicial finding that the child has been abused or neglected or 60 days after the date on which the child was removed from the home, whichever is earlier. Hearings will be held to approve a permanency plan for the child at least once every 12 months while the child is in CYFD’s legal custody.³

The New Mexico Children’s Code is in alignment with the federal Adoption and Safe Family Act, as both require that the court conduct a permanency hearing within 12 months of the child entering foster care. [emphasis added]

Timeline

The Children’s Code requires that the parties attend a meeting prior to the initial permanency hearing to attempt to settle issues attendant to the hearing and develop a proposed case plan that serves the child’s best interests. §32A-4-25.1(A)(3). The purpose of the meeting is to try to settle the issues to be addressed at the permanency hearing and develop a further treatment plan that serves the child’s best interests. §32A-4-25.1(A)(3). The Children’s Court Rules require that the pre-

³ “New Mexico Child Welfare Handbook: A Legal Manual on Child Abuse and Neglect”, published by the Corinne Wolfe Center for Child and Family Justice, Institute of Public Law, University of New Mexico School of Law (2018), Chapter 1, pp. 7-8. [2018-child-welfare-handbook.pdf \(unm.edu\)](#) (The Corinne Wolfe Center is currently working on updates to the legal manual)

hearing mandatory meeting take place not less than five days prior to the hearing. Rule 10-345(D).⁴

The initial permanency hearing must be conducted by the earliest of the following dates:

- 6 months after the initial judicial review hearing (§32A-4-25.1(A)); or
- 30 days after a judicial determination that reasonable efforts toward reunification are not required (§§32A-4-22(J) and 32A-4-25(K)); or
- 12 months after the child enters foster care (§32A-4-25.1(A)). A child enters foster care on the earlier of: the date of the first judicial finding that the child has been abused or neglected, or 60 days from the date the child was removed from the home. (§32A-4-25.1(E)).⁵

If the court adopts a permanency plan of reunification at the first permanency hearing, the court must adopt a plan for transitioning the child home within a reasonable period of time, depending on the facts and circumstances of the case, but not to exceed six months. The court must also schedule a permanency review hearing to be heard within three months. If the child is reunified, this hearing may be vacated. §32A-4-25.1(C); Rule 10-345(F).⁶

Under §32A-4-25 and Rule 10-346, the court should be scheduling a judicial review hearing every six months to review the department's progress in implementing the court's orders, including the case plan (also known as the treatment plan). These are often merged or scheduled together with permanency hearings held under §32A-4-25.1.⁷

Have any states revised their timelines to the betterment of children and families? If so, which states and how do they compare to New Mexico (before and after)? Are any of these practices ones which New Mexico should consider adopting?

“In most States, the first permanency hearing must be held within 12 months after the child enters out-of-home care with subsequent hearings every 12 months thereafter until the child achieves permanency. If at any time during the course of

⁴ *Ibid*, Chapter 20, p. 1

⁵ *Ibid*, Chapter 21, p. 1

⁶ *Ibid*, Chapter 22, p. 1

⁷ *Ibid*, Chapter 23, p. 2

the case the court finds that reasonable efforts to return the child home are not appropriate, a permanency hearing will be scheduled within 30 days.

Some States, however, maintain shorter timelines for conducting initial permanency hearings. In New York, Oklahoma, and Texas the first permanency hearing must be held within 6 months. In Connecticut, the first hearing must be held within 9 months, and in Virginia, the hearing must be held within 10 months. In Louisiana, if the child was removed from the home before the disposition hearing, the permanency hearing must occur within 9 months. Four States provide for a shorter timeframe for permanency hearings for young children.”⁸

As noted in the preceding paragraph, some states do maintain shorter timelines for conducting initial permanency hearings. However, I was unable to determine if shorter permanency timelines in some states were as originally enacted or if the timelines were shortened.

The state of New York has published an assessment of permanency hearings in that state which may be useful to policymakers in New Mexico. Under the leadership of the New York Child Welfare Improvement Project, the assessment includes concrete steps to analyze current practice regarding permanency hearings in New York. The steps followed in New York are as follows:

1. Identify what you would like to know about the quality of hearings in your jurisdiction.
2. Determine if there is data available to answer your questions.
3. Determine what resources are available to assess hearing quality.
4. Identify the best methodology to collect the data you need to examine hearing quality in your jurisdiction.
5. Develop a plan to collect data.
6. Analyze data and present the findings.
7. Review findings, identify strengths and challenges.
8. Develop an action plan for any enhancements to practice.
9. Make changes.
10. Reevaluate to see if change occurred in practice or outcomes.⁹

⁸ “Court Hearings for the Permanent Placement of Children”, Child Welfare Information Gateway (2020), Children’s Bureau, U.S. Department of Health and Human Services. [Court Hearings for the Permanent Placement of Children \(childwelfare.gov\)](https://www.childwelfare.gov/court-hearings-for-the-permanent-placement-of-children/)

⁹ “Assessing Quality of Permanency Hearings: Toolkit”, published by the New York Child Welfare Improvement Project (2017)

Given that New York requires a first permanency hearing within six months and the above-mentioned report that assesses the quality of permanency hearings in that state, perhaps further research into permanency planning in New York is warranted.

Are there any states which have a statute or rule stating children’s court cases have docketing priority over other case types?

In 2005, the state of Minnesota adopted statutory language that established docketing priority for child protection cases:

“260C.151 SUMMONS; NOTICE.

Subdivision 1. Issuance of summons. After a petition has been filed and unless the parties hereinafter named voluntarily appear, the court shall set a time for a hearing and shall issue a summons requiring the child's parents or legal guardian and any person who has legal custody of the child to appear before the court at a time and place stated. The summons shall have a copy of the petition attached, and shall advise the parties of the right to counsel and of the consequences of failure to obey the summons. **The court shall give docket priority to any child in need of protection or services or neglected and in foster care, that contains allegations of child abuse over any other case.** [emphasis added] As used in this subdivision, "child abuse" has the meaning given it in section [630.36, subdivision 2.](#)”¹⁰

An examination of Local Rules for the New Mexico District Courts turned-up several rules that address docketing priorities for children’s court cases and juvenile matters.

Second Judicial District Court

LR2-106. Priorities for resolving scheduling conflicts.

A. Scheduling priorities. Scheduling conflicts between or within the various courts (i.e., children’s court, civil court, criminal court, and domestic relations court) shall be resolved using the following order of priorities:

- (1) all matters given preference by statute or Supreme Court rule;
- (2) trials and hearings on the merits, with jury trials taking precedence over non-jury trials;

¹⁰ [Minnesota Statutes 2022, Section 260C.151 \(mn.gov\)](#)

- (3) children’s court cases, with the oldest case generally taking precedence;
- (4) criminal court cases, with the following factors all being considered to determine priority:
 - (a) date of indictment or date of information;
 - (b) date of arraignment; and
 - (c) whether the defendant is or is not in custody;
- (5) domestic relations court cases, with the oldest case generally taking precedence but child related issues taking precedence over all other issues;
- (6) civil court cases;
- (7) all other matters.

LR2-502. Exemption from Rule 1-016 NMRA.

All children’s court civil cases shall be exempt from the pretrial scheduling order requirements of Rule 1-016(B) NMRA.

Thirteenth Judicial District Court

LR13-105. Conflicts and priorities.

A. Priorities. Unless otherwise ordered by the court, the following priorities shall govern:

- (1) criminal and juvenile matters;
- (2) all matters given preference by statute;
- (3) civil jury trials;
- (4) civil nonjury trials;
- (5) domestic relations matters; and
- (6) all other matters.

What court practices play a role in reaching permanency faster, such as periodic judicial reviews? If so, are there any states which mandate periodic judicial reviews?

In New Mexico, “the initial judicial review hearing must be held within 60 days of the disposition. This hearing gives the court and the parties an opportunity to review the implementation of the plan, identify any impediments, and adjust the plan as necessary. The hearing also serves as an important reminder that the goals of the treatment aspects of the plan must be achieved within six months or else the permanency plan may change. Finally, the hearing provides an opportunity for the

court, the parties, the CASA volunteer, and the citizen review board to address the child's adjustment to placement along with any other matters that have arisen since the inception of the case. It is important to remember that the child's voice needs to be heard here, whether in person or through the child's GAL or attorney, and that the child is a party and may, as a general rule, attend the hearing. The formal rules of evidence do not apply at this hearing.

In the vast majority of cases, the treatment aspect of the case plan is congruent with a permanency plan of maintaining the child at home or returning the child to the home. In the most severe or intractable situations, however, the court may find that aggravated circumstances exist and may order that no further efforts toward reunification need to be attempted. In those instances, the court must set a permanency hearing within 30 day of that determination. Otherwise, the permanency hearing must be held within six months of the initial judicial review or within 12 months of the child entering foster care, whichever occurs earlier.

Judicial reviews will continue to be held every six months during the life of the case. These periodic reviews are often combined with permanency hearings. For older youth close to aging out, these reviews are also opportunities for the court to adopt a transition plan for the youth and to ensure that CYFD is taking the necessary steps to prepare the young person to leave foster care."¹¹

Timeline

"The initial judicial review must be held within 60 days of the disposition, regardless of whether the dispositional hearing was held in conjunction with the adjudicatory hearing or at some time thereafter. §32A-4-25(A); Rule 10-346."¹²

"Some children's court judges have also used what they call "compliance" or "interim" hearings. These hearings have many of the same characteristics as a judicial review but are held with greater frequency, in some cases once a month, to allow the court and the parties to check in with each other and address any problems as they arise. Not in the Children's Code or rules, these hearings may be scheduled at any time, at the request of a party or as the court deems necessary. Because of the burden on the parties that these may impose, the court should be

¹¹ *Ibid*, Chapter 1, pp. 6-7

¹² *Ibid*, Chapter 19, p. 1

careful to minimize formal reporting requirements and avoid holding the hearings too frequently.”¹³

“All States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands require case reviews for children placed in out-of-home care. In most States, the first case review hearing must be held within 6 months with subsequent hearings every 6 months until the child's case is closed by the court. Some States, however, require more frequent hearings. For example, Minnesota, North Dakota, Ohio, and West Virginia require case review hearings every 3 months. Mississippi requires an initial review hearing within 3 months after the child enters care and subsequent hearings every 6 months. Georgia requires that the initial review hearing be held within 75 days and then every 4 months thereafter. In Virginia, the first review hearing must be held within 60 days and then every 4 months as long as the child remains in the court's custody. Permanency hearings are required in the statutes of all States, the District of Columbia, and Puerto Rico.”

¹³ *Ibid*, Chapter 19, p. 2