

State of New Hampshire
Judicial Branch

**Greenbook Court Guide
for
Co-Occurrence Cases**

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INTRODUCTION

This Greenbook Court Guide for Co-Occurrence Cases grew out of a five-year project in Grafton County known as The Greenbook Project. Its purpose is to help judges deal with the difficult child protection cases under RSA 169-C where domestic violence is also present.

Background

In 1999, the National Council of Juvenile and Family Court Judges published a book entitled Effective Interventions in Domestic Violence and Child Maltreatment Cases: Guidelines for Policy and Practice (subsequently known as “The Greenbook”). The Greenbook was developed in response to the increasing awareness that a very high percentage of child protection cases involve parents who have been abused also. Nationally the rate of co-occurrence is anywhere from 30 to 60%.

To help Courts across the country implement the guidelines of the Greenbook, the United States Departments of Justice and Health and Human Services funded six demonstration sites over a period of five years. Grafton County was selected to be one of those six sites.

The Grafton County Greenbook project has brought together the District and Family Division Courts, the Division for Children, Youth and Families, the state Coalition Against Domestic and Sexual Violence (and the 10 local crisis centers) and CASA-NH (Court Appointed Special Advocates) to examine issues of co-occurrence. Through our work in New Hampshire, we have learned that our own rates of co-occurrence range from 29% to 53%. Many meetings and events have been conducted over the course of the past five years to learn more about the relationship between child abuse and/or neglect and domestic violence and how we (the four partners identified above) can improve our methods and procedures for working with these cases. Each partner has determined that an important vehicle for disseminating the information statewide and for sustaining this work over time is the development of a guide, or set of protocols, much like the Courts have with the Court Improvement Project Protocols and the Domestic Violence Protocols. This guide thus represents the Court’s effort to capture and articulate guiding principles and best practices for co-occurrence cases. As the federal funding for Greenbook ends in the fall of 2006, we hope this guide will continue to help judges throughout the state for years to come.

What is co-occurrence and when should this guide be used?

Co-occurrence is generally referred to as the simultaneous existence of child abuse and/or neglect and domestic violence within a family. This broad definition is fine for gaining perspective of the concept, but more specificity is needed to help judges in determining when and how to use this guide in a co-occurrence proceeding.

In a proceeding brought under RSA 169-C, allegations of domestic violence may form the basis for the petition, in which case the allegations of domestic violence must be proved, as well as the effect of the domestic violence on the child. Alternatively, allegations of domestic violence may be ancillary to other allegations of abuse and/or neglect, in which case domestic violence need not be specifically proved for a finding of abuse and/or neglect to be made. In these latter cases, the presence of domestic violence will be most relevant at the time of disposition.

The following criteria should be used to determine whether a case is a co-occurrence case and whether the guide should be used.

- (1) Whether there are allegations of domestic violence contained in the child abuse and/or neglect petition or ex parte petition and/or information about domestic violence is included in the affidavit accompanying the petition;
- (2) Whether there is evidence introduced at any stage of the child protection proceeding that domestic violence is or has impacted the parents and/or the child;
- (3) Whether there is a current or past domestic violence protective order in any state involving at least one of the parents of the child;
- (4) Whether there is a concurrent request for a domestic violence protective order involving at least one of the parents of the child;
- (5) Whether there are convictions for domestic violence misdemeanors or felonies in any state involving at least one of the parents of the child; or
- (6) Whether there are relevant criminal charges or convictions against one or both of the parents. Relevant criminal charges include but are not necessarily limited to the following, which are drawn from RSA 173-B:
 - Assault or reckless conduct as defined in RSA 631:1 through 3;
 - Criminal threatening as defined in RSA 631:4;
 - Sexual assault as defined in RSA 632-A:2 through 5;
 - Interference with freedom as defined in RSA 633:1 through 3-a;
 - Destruction of property as defined in RSA 634:1 and 2;
 - Unauthorized entry as defined in RSA 635:1 and 2; and
 - Harassment as defined in 644:4. Note also that RSA 644:4(e) includes in its definition reference to interference with custody and kidnapping as described in RSA 633:4.

If the child protection case is thus determined to be a co-occurrence case because domestic violence is also present, then this guide should be used.

This guide recognizes the distinction between the relatively few cases in which domestic violence is the basis for bringing the child abuse and/or neglect petition and the many cases in which domestic violence is occurring, but is not the primary contributing factor for the petition. Both categories of cases are co-occurrence cases, with both an abuse and/or neglect component and a domestic violence component. In some cases, effects of the adult domestic violence on the child are so serious that they are the primary reason for the filing of an abuse and/or neglect petition. In such cases, it is alleged and the state, through DCYF, must prove that the child has or is likely to suffer emotional trauma as a result of witnessing violence perpetrated by an adult against another adult, or has been endangered by being caught in the crossfire of such violence. In these cases, DCYF must prove both that the domestic violence occurred as alleged and that the child was endangered by the domestic violence. If founded and dispositional orders are issued to address the domestic violence, then failure to correct such behavior may be grounds to deny reunification with the child. References to cases in which domestic violence is the primary basis for the child abuse and/or neglect petition are specifically identified as such within this guide.

By contrast, domestic violence occurs in many households where abuse and/or neglect has been may be occurring, but is not included as an allegation to be proved in the petition. In these cases, there is no standard of proof associated with the domestic violence aspect of the case. The domestic violence, however, is an integral consideration for the Court when formulating the case plan and issuing orders for corrective action due to the effects of the domestic violence on the family dynamics.

The Court will assess co-occurrence information in different ways throughout all phases of the proceedings. Through the adjudicatory phase of the proceedings, the Court has the constitutional responsibility to remain impartial and consider only relevant evidence in deciding whether to enter a finding of abuse and/or neglect against one or both parents. After a finding has been made, however, the Court may then broaden its scope and consider all aspects of the case that may impact on the child's welfare, including the effects of the child's exposure to domestic violence without making a specific finding concerning the domestic violence. At the disposition phase the emphasis is on remedial corrective action; therefore, the Court is able to factor in conduct that goes beyond the allegations contained in the petition to order services that address behaviors that detrimentally affect the child.

Because this guide is for use in child protection cases, the adults are referred to as parents. However, because of the presence of domestic violence, one parent may also be a victim of domestic violence and the other, a perpetrator of domestic violence. Therefore, a mother may be accused of neglecting or abusing her child, but may also be a victim of domestic violence. A father may also be accused of neglecting or abusing his child, and also be accused of abusing the children's mother. Although any number of variations exist, this is the most common Greenbook scenario.

What is the relationship between this Greenbook Guide and the Court Improvement Project Protocols?

Judges in New Hampshire are familiar with the Court Improvement Project's *Protocols Relative to Abuse and/or Neglect and Permanency Planning* which were developed in 2002 and have been used statewide ever since for all cases filed under RSA 169-C. The CIP Protocols continue to provide critical guidance for handling child protection cases. This co-occurrence guide offers supplementary guidance for child protection cases where domestic violence is also present. This guide does not repeat all the information contained in the CIP Protocols, but does make reference to the corollary CIP chapters to assist judges in applying the co-occurrence principles. Thus the reader will see a reference to the CIP Protocols at the beginning of each chapter of this guide.

How to use this Greenbook Guide:

Once a determination is made that the child protection case is a co-occurrence case, this guide should be used. The guide follows a child protection case chronologically through the Court process from an ex parte petition to a permanency hearing. Each chapter includes a series of key issues. Each issue includes a principle which offers the Court specific guidance on how to address the issue. Each principle is followed by a contextual statement to provide more comprehensive information and rationale for the principle.

It is hoped that this guide will assist judges in fulfilling their important responsibilities in child protection cases. Comments, questions and constructive suggestions for improvement or clarification are most welcome.

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CHAPTER 1

GENERAL PROVISIONS

Introduction

For reference see Court Improvement Project Protocols Chapter 1.

The safety concerns raised by the presence of domestic violence in a child abuse and/or neglect case may necessitate that the Court follow procedures to enhance safety and support to parents. Five key issues are addressed: This section provides the Court with guidance about gathering Court files and issuing consistent orders, non-party attendance at hearings, confidentiality of communication with advocates, and Courthouse security.

KEY ISSUES

1. GATHERING COURT FILES

Principle:

Whenever there is a request for ex-parte orders or a child abuse and/or neglect petition is filed, Court staff shall gather all related files from all Courts within the Courthouse prior to any hearing. Where Odyssey is available, Court staff shall search the statewide database for related files. Staff shall identify all related case titles on the jacket of the abuse and/or neglect case. Related files are those having as parties any of the parents, children or household members in the child abuse and/or neglect petition. Such files may include:

- RSA 169-C (Child Abuse and/or Neglect)
- RSA 169-B and RSA 169-D (Delinquency and CHINS)
- RSA 173-B and RSA 633:3-a (Domestic Violence and Stalking)
- RSA 458 and 461-A (Divorce and Parenting Petitions)
- RSA 463 (Guardianship of Minors)
- Criminal cases, including pending bail orders

Context:

Accessing the related files will allow the Court to review pertinent information to issue consistent orders between different cases. The Court needs to avoid issuing conflicting and inconsistent orders.

2. **ISSUING CONSISTENT ORDERS**

Principle:

In a co-occurrence case related files must be reviewed by the Court in light of the safety concerns raised in the petition prior to issuing any order. However, review of related files shall be for the purpose of determining what, if any, current orders are outstanding against the parties and not for the purpose of determining the outcome of the abuse and/or neglect case. Particular attention should be paid to “no contact” provisions that are currently active against any of the parties. Care should be taken to replicate the conditions of “no contact” that are required to ensure the safety of the child. The Court should also pay attention to orders for visitation and contact any other Court to advise of superseding orders. The Court shall indicate on the record which Court files have been reviewed and state that the Court intends to use this information only to issue consistent Court orders that impact the safety of the child.

Context:

After the Court has made its findings, a review of the related files will allow the Court to issue orders that are not inconsistent with orders issued in other cases or, if they are, to reconcile the differences so the parties will understand which governs.

3. **NON-PARTY ATTENDANCE AT HEARINGS**

Principle:

Consistent with CIP Chapter 1, Protocol 4, the Court has discretion to determine whether to allow non-parties to attend the proceedings on a limited basis to provide support to the parents. In exercising its discretion, the Court should be mindful of the impact in a co-occurrence case of the presence of other persons on the parents.

Context:

In a co-occurrence case either parent may request the presence of a support person. For example, a parent who is a victim of domestic violence may request a Domestic Violence Specialist (DVS)/advocate be present. When a DVS/advocate is permitted into child protection proceedings, he/she does not sit at counsel table or participate. This is unlike a domestic violence proceeding where an advocate may have a more active role. (See NH Domestic Violence Protocol 7-7.) In deciding who is to be present at the hearing, the Court should be mindful that an adult victim of domestic violence may fear intimidation or retaliation from the presence of an alleged batterer or another individual associated with that person at a child abuse and/or neglect hearing.

4. **CONFIDENTIALITY OF A DOMESTIC VIOLENCE
SPECIALIST/ADVOCATE**

Principle:

The Court shall not require the DVS/advocate to provide any information to the Court unless the privilege is waived by the client of the advocate.

Context:

Under RSA 173-C victims of domestic and sexual violence are afforded privileged communication with domestic violence advocates (with the exception of the mandatory reporting of child abuse and/or neglect under RSA 169-C). The privilege may be waived or claimed in all civil, administrative, and criminal proceedings.

5. **COURTHOUSE SECURITY**

Principle:

Co-occurrence cases call for heightened awareness of safety considerations because of the increased potential for physical and emotional harm. All Court staff should inform security if there is reason to believe any party could cause harm or otherwise be disruptive. Parties should enter, wait, be seated in the Courtroom and leave the Courthouse premises separate from each other.

Context:

In a co-occurrence case Court security arrangements should mirror those provided in a domestic violence civil protective order hearing. Court Security promotes the safety of all parties in and around the Courthouse.

CHAPTER 2

THE BILL F. HEARING

Introduction

For reference see Court Improvement Project Protocols Chapter 1A. See also In re Bill F., 145 N.H. 267, 761 A.2d 470 (2000), RSA 169-C:19-e.

A *Bill F.* hearing is held to determine whether a non-accused parent is unfit to perform his/her parental duties. In a co-occurrence case, such a hearing may raise safety concerns for the accused/offending parent. This section presents guidance around who should attend and how to conduct a *Bill F.* hearing, the fitness determination and Court's order and the 30 day status hearing that Courts may conduct following a *Bill F.* hearing.

KEY ISSUES

1. GATHERING COURT FILES

Principle:

Whenever there is a request for ex-parte orders or a child abuse and/or neglect petition is filed, Court staff shall gather all related files from all Courts within the Courthouse prior to any hearing. Where Odyssey is available Court staff shall search the statewide database for related files. Staff shall identify all related case titles on the jacket of the abuse and/or neglect case. Related files are those having as parties any of the parents, children or household members in the child abuse and/or neglect petition. Such files may include:

- RSA 169-C (Child Abuse and/or Neglect)
- RSA 169-B and RSA 169-D (Delinquency and CHINS)
- RSA 173-B and RSA 633:3-a (Domestic Violence and Stalking)
- RSA 458 and 461-A (Divorce and Parenting Petitions)
- RSA 463 (Guardianship of Minors)
- Criminal cases, including pending bail orders

Context:

Accessing the related files will allow the Court to review pertinent information to issue consistent orders between different cases. The Court needs to avoid issuing conflicting and inconsistent orders.

2. **ISSUING CONSISTENT ORDERS**

Principle:

In a co-occurrence case related files must be reviewed by the Court in light of the safety concerns raised in the petition prior to issuing any order. However, review of related files shall be for the purpose of determining what, if any, current orders are outstanding against the parties and not for the purpose of determining the outcome of the abuse and/or neglect case. Particular attention should be paid to “no contact” provisions that are currently active against any of the parties. Care should be taken to replicate the conditions of “no contact” that are required to ensure the safety of the child. The Court should also pay attention to orders for visitation and contact any other Court to advise of superseding orders. The Court shall indicate on the record which Court files have been reviewed and state that the Court intends to use this information only to issue consistent Court orders that impact the safety of the child.

Context:

After the Court has made its findings, a review of the related files will allow the Court to issue orders that are not inconsistent with orders issued in other cases or, if they are, to reconcile the differences so the parties will understand which governs.

3. **ATTENDANCE RECOMMENDED AT A *BILL F.* HEARING**

Principle:

Although CIP Chapter 1A, Protocol 2 indicates that the accused/offending parent should attend the *Bill F.* hearing, if it is that parent who is objecting to the placement, some accommodation may need to be made for testimony from a remote location.

Context:

In a co-occurrence case, an accused parent may not be able to speak candidly at a *Bill F.* hearing due to intimidation or fear. Reasonable accommodation to the method of testifying may be helpful to ensure the parent’s safety.

4. **CONDUCTING THE *BILL F.* HEARING**

Principle:

CIP Chapter 1A, Protocol 3 provides that at a *Bill F.* hearing the Court should afford all parties the opportunity to be heard and to present and cross-examine

witnesses. If an accused/offending parent in a co-occurrence case will testify at a *Bill F.* hearing, or will be cross-examined, the Court, if requested, should consider alternatives to having the accused/offending parent testify, or be cross-examined, in the presence of the non-accused parent. The Court should give consideration to using technology (such as allowing the parent to testify from a different location) or third-party testimony as a means of hearing from the accused/offending parent.

5. **FITNESS DETERMINATION**

Principle:

At a *Bill F.* hearing the Court must determine, pursuant to RSA 169-C:19-e, whether a non-accused parent is unfit to perform his/her parental duties. In making findings of fact supporting its decision, consistent with CIP Chapter 1A, Protocols 3 and 4, the Court should consider the following in a co-occurrence case:

- a. Whether there is any evidence that domestic violence is, has or will impact the parent's ability to provide proper parental care;
- b. Whether there is a current and/or past domestic violence protective order in any state involving the non-accused parent;
- c. Whether there is a concurrent request for a domestic violence protective order involving the non-accused parent;
- d. Whether there are convictions for domestic violence misdemeanors or felonies in any state involving the non-accused parent; or
- e. Whether there are any relevant criminal charges or convictions against the non-accused parent.
 - Assault or reckless conduct as defined in RSA 631:1 through 3;
 - Criminal threatening as defined in RSA 631:4;
 - Sexual assault as defined in RSA 632-A:2 through 5;
 - Interference with freedom as defined in RSA 633:1 through 3-a;
 - Destruction of property as defined in RSA 634:1 and 2;
 - Unauthorized entry as defined in RSA 635:1 and 2; and
 - Harassment as defined in 644:4. Note also that RSA 644:4(e) includes in its definition reference to interference with custody and kidnapping as described in RSA 633:4.

Context:

When determining a non-accused parent's fitness, the Court should consider the history, current existence and severity of any domestic violence and whether such history has or has had a demonstrable negative impact on the child.

6. **THE COURT'S ORDER FOLLOWING A BILL F. HEARING AND A 30-DAY STATUS HEARING**

Principle:

In accordance with CIP Chapter 1A, Protocols 3 and 4, if the Court determines that a non-accused parent is fit and places the child with that parent, the Court should schedule a hearing in 30 days to review the child's status and whether the child should remain with the non-accused parent. As required for all other hearings, DCYF and CASA GAL/GAL must submit a report to the Court at least five days in advance.

Context:

The circumstances of a co-occurrence case may be volatile and thus require more frequent review by the Court to ensure the continued safety and well-being of the child. This is particularly true if the child has had limited contact or no prior relationship with the non-accused parent.

CHAPTER 3

PETITION, SUMMONS, AND COURT APPOINTMENTS

Introduction

For reference see Court Improvement Project Protocols Chapter 2.

Domestic violence in child protection cases is often overlooked or referred to only in very general terms. The presence of domestic violence can affect all aspects of a child protection proceeding, beginning with how the petition is drafted. Additionally, timely appointment of counsel who understand the nature of domestic violence can help to ensure that the parents' needs and interests are protected, and that appropriate services are provided to meet those needs. This section of the guide provides information on these issues as well as how to decide if a case is a co-occurrence one. Also addressed in this section is guidance around the redaction of identifying information on a petition if a domestic violence protection order is in effect.

KEY ISSUES

1. SUFFICIENCY OF ABUSE AND/OR NEGLECT PETITION WITH REGARD TO DOMESTIC VIOLENCE

Principle:

A child abuse and/or neglect petition that alleges that a family is “involved with domestic violence” is legally insufficient, pursuant to RSA 169-C:7, III. If such a petition is filed, the Court should, pursuant to District Court Rule 3.8C, give the Division for Children, Youth and Families (DCYF) the opportunity to amend the petition to specifically identify the nature and extent of the domestic violence and the impact on the child's health or safety. If domestic violence is the basis for the child abuse and/or neglect petition, the domestic violence must be properly pled in the petition. If domestic violence is not the basis for the child abuse and/or neglect petition but is affecting the child, the affidavit accompanying the petition should so specify so the Court may make appropriate reference to the facts in its orders.

Context:

When domestic violence is either the basis for the child abuse and/or neglect petition or is a secondary factor, the petition and/or supporting affidavit must clearly articulate the danger to the health or safety of the child. Whether domestic

violence is the principal reason for intervention or a secondary factor affecting the child's well-being, early identification will enable the Court to properly make a finding and order appropriate assessment, intervention and services throughout the case.

2. GATHERING COURT FILES

Principle:

Whenever there is a request for ex-parte orders or a child abuse and/or neglect petition is filed, Court staff shall gather all related files from all Courts within the Courthouse prior to any hearing. Where Odyssey is available, Court staff shall search the statewide database for related files. Staff shall identify all related case titles on the jacket of the abuse and/or neglect case. Related files are those having as parties any of the parents, children or household members in the child abuse and/or neglect petition. Such files may include:

- RSA 169-C (Child Abuse and/or Neglect)
- RSA 169-B and RSA 169-D (Delinquency and CHINS)
- RSA 173-B and RSA 633:3-a (Domestic Violence and Stalking)
- RSA 458 and 461-A (Divorce and Parenting Petitions)
- RSA 463 (Guardianship of Minors)
- Criminal cases, including pending bail orders

Context:

Accessing the related files will allow the Court to review pertinent information to issue consistent orders between different cases. The Court needs to avoid issuing conflicting and inconsistent orders.

3. ISSUANCE OF SUMMONS WHEN THERE IS AN OPEN DOMESTIC VIOLENCE CASE

Principle:

Upon the request for ex-parte orders or the filing of a child abuse and/or neglect petition, the Court staff shall determine if there is an open domestic violence case involving any of the parties. If there is an open domestic violence case, the Court staff shall redact from the abuse and/or neglect petition any identifying information about a plaintiff's location, including her/his address and telephone number prior to issuing the summons.

Context:

The safety of the parties is a special consideration in a co-occurrence case. In general, all information about the whereabouts of a child is shared with the parties

in a child abuse and/or neglect case. However, when there is an open domestic violence case, information regarding the whereabouts of the plaintiff, who may also be the custodial parent in the abuse and/or neglect case, must be protected by the Court. In a co-occurrence case, when custody has remained with a parent who has filed a domestic violence petition pursuant to RSA 173-B, the Court must be aware of the differing requirements of RSA 169-C:7, IV(b) (name and address of any custodial parent) and RSA 173-B:3, I (prohibition against release of the whereabouts).

4. ISSUING CONSISTENT ORDERS

Principle:

In a co-occurrence case related files must be reviewed by the Court in light of the safety concerns raised in the petition prior to issuing any order. However, review of related files shall be for the purpose of determining what, if any, current orders are outstanding against the parties and not for the purpose of determining the outcome of the abuse and/or neglect case. Particular attention should be paid to “no contact” provisions that are currently active against any of the parties. Care should be taken to replicate the conditions of “no contact” that are required to ensure the safety of the child. The Court should also pay attention to orders for visitation and contact any other Court to advise of superseding orders. The Court shall indicate on the record which Court files have been reviewed and state that the Court intends to use this information only to issue consistent Court orders that impact the safety of the child.

Context:

After the Court has made its findings, a review of the related files will allow the Court to issue orders that are not inconsistent with orders issued in other cases or, if they are, to reconcile the differences so the parties will understand which governs.

5. DETERMINATION OF CO-OCCURRENCE IN A CHILD ABUSE AND/OR NEGLECT PROCEEDING

Principle:

Whenever a child abuse and/or neglect petition is filed, the Court shall review the affidavit and survey the files gathered by Court staff to determine if the case should be deemed a co-occurrence case. If so, this guide shall be used for the duration of the case. The determination will be guided by the following factors:

- a. Whether there are allegations of domestic violence contained in the child abuse and/or neglect petition or ex parte petition and/or information about domestic violence in the affidavit;

- b. Whether there is a current and/or past domestic violence protective order in any state involving at least one of the parents of the child;
- c. Whether there is a concurrent request for a domestic violence protective order involving at least one of the parents of the child;
- d. Whether there are convictions for domestic violence misdemeanors or felonies in any state involving at least one of the parents of the child; or
- e. Whether there are any relevant criminal charges or convictions against one or both of the parents.
 - Assault or reckless conduct as defined in RSA 631:1 through 3;
 - Criminal threatening as defined in RSA 531:4;
 - Sexual assault as defined in RSA 632-A:2 through 5;
 - Interference with freedom as defined in RSA 633:1 through 3-a;
 - Destruction of property as defined in RSA 634:1 and 2;
 - Unauthorized entry as defined in RSA 635:1 and 2; and
 - Harassment as defined in 644:4. Note also that RSA 644:4(e) includes in its definition reference to interference with custody and kidnapping as described in RSA 633:4

Context:

Early identification of a co-occurrence case establishes the application of this guide and promotes safe and successful strategies in addressing the complex issues facing families where child abuse and/or neglect and domestic violence are present.

6. APPOINTMENT OF COUNSEL

(A) Mandatory Appointment of Counsel – Non-Accused Household Parent

Principle:

For purposes of appointment of counsel, a non-accused parent who has fled the household due to domestic violence retains his/her status as a household member and the Court, pursuant to RSA 169-C:10, II a), shall appoint counsel to represent that parent.

Context:

A parent may seek temporary living arrangements to protect him/herself from domestic violence. Thus, the parent may be temporarily out of the household, with or without the child, but should nevertheless be considered a household member and entitled to the appointment of counsel.

(B) Appointment of Counsel – Domestic Violence Training

Principle:

In a co-occurrence case, the Court staff should appoint counsel who have received training on domestic violence.

Context:

It is important for Court-appointed counsel to understand the dynamics of domestic violence, including the behavioral characteristics of victims and perpetrators, as well as the effects of domestic violence on children. While each case is unique and the facts will guide the outcome of the case, it is important that counsel understand why a parent who is a victim of domestic violence may act in certain ways that seem counterintuitive, the nature of the relationships between the parents and between the parents and child when violence is present, and how that will affect the development of case plans for parents and appropriate services for the child.

(C) Timing of Appointment of Counsel

Principle:

Upon the filing of a petition in a co-occurrence case, the Court staff shall immediately appoint counsel, pursuant to RSA 169-C:10, II(a), so counsel will be present at the preliminary hearing. Although the CIP Chapter 5, Protocol 5 permits the preliminary hearing to be held without the presence of counsel for the accused parent, in a co-occurrence case the preliminary hearing should not be held without counsel present for any parent who is entitled to counsel. If counsel cannot be present for the preliminary hearing, the Court should issue an order continuing the case for no more than five calendar days for good cause shown, pursuant to RSA 169-C:26. Good cause in a co-occurrence case includes the unavailability of counsel. The Court shall ensure that the adjudicatory hearing is conducted and completed within 30 days of the filing of the petition, consistent with RSA 169-C:15, III(d).

Context:

It is difficult for any individual to represent him/herself in a child abuse and/or neglect proceeding. Parents who are accused of abuse and/or neglect with the complication of domestic violence need legal representation. In a co-occurrence case, a parent who is a victim of domestic violence may be too intimidated to effectively advocate or even communicate relevant issues to the Court. This may be exacerbated by the presence of the other parent who is an alleged domestic violence perpetrator. Counsel can address issues such as services for a parent/ alleged victim that might allow a child to be returned home at this stage, potential removal of an alleged perpetrator of domestic violence, visitation concerns, or alternative placement options that a parent might not think of or know how to convey.

CHAPTER 4

PRELIMINARY HEARING

Introduction

For reference see Court Improvement Project Protocols Chapter 5.

One of the critical aspects of a preliminary hearing is to oversee efforts by DCYF to locate and notify absent parents, as well as identify relatives who might be possible placement options. In a co-occurrence case, the search for or eventual involvement of an absent parent may raise safety concerns for the other parent and child. This section provides guidance around the unique safety considerations in a co-occurrence case including the Court's preliminary orders for placement, visitation, evaluations, treatment, and stay away orders. There is also a discussion about the importance of having counsel present for both parents, and guidance is provided around the continuation of preliminary hearings to allow counsel to be present. This section also provides the Court with guidance on gathering Court files so that consistent orders are issued. Finally, there is a discussion around concurrent planning.

KEY ISSUES

1. GATHERING COURT FILES

Principle:

Court staff shall gather all related files from all Courts within the Courthouse prior to any hearing. Where Odyssey is available Court staff shall search the statewide database for related files. Staff shall identify all related case titles on the jacket of the abuse and/or neglect case. Related files are those having as parties any of the parents, children or household members in the child abuse and/or neglect petition. Such files may include:

- RSA 169-C (Child Abuse and/or Neglect)
- RSA 169-B and RSA 169-D (Delinquency and CHINS)
- RSA 173-B and RSA 633:3-a (Domestic Violence and Stalking)
- RSA 458 and 461-A (Divorce and Parenting Petitions)
- RSA 463 (Guardianship of Minors)
- Criminal cases, including pending bail orders

Context:

Accessing the related files will allow the Court to review pertinent information to issue consistent orders between different cases. The Court needs to avoid issuing conflicting and inconsistent orders.

2. **ISSUING CONSISTENT ORDERS**

Principle:

In a co-occurrence case related files must be reviewed by the Court in light of the safety concerns raised in the petition prior to issuing any order. However, review of related files shall be for the purpose of determining what, if any, current orders are outstanding against the parties and not for the purpose of determining the outcome of the abuse and/or neglect case. Particular attention should be paid to “no contact” provisions that are currently active against any of the parties. Care should be taken to replicate the conditions of “no contact” that are required to ensure the safety of the child. The Court should also pay attention to orders for visitation and contact any other Court to advise of superseding orders. The Court shall indicate on the record which Court files have been reviewed and state that the Court intends to use this information only to issue consistent Court orders that impact the safety of the child.

Context:

After the Court has made its findings, a review of the related files will allow the Court to issue orders that are not inconsistent with orders issued in other cases or, if they are, to reconcile the differences so the parties will understand which governs.

3. **PRESENCE OF COUNSEL**

Principle:

Upon the filing of a petition in a co-occurrence case, the Court staff shall immediately appoint counsel, pursuant to RSA 169-C:10, II(a), so counsel will be present at the preliminary hearing. Although CIP Chapter 5, Protocol 5 permits the preliminary hearing to be held without the presence of counsel for the accused parent, in a co-occurrence case the preliminary hearing should not be held without counsel present for any parent who is entitled to counsel. If counsel cannot be present for the preliminary hearing, the Court should issue an order continuing the case for no more than five calendar days for good cause shown, pursuant to RSA 169-C:26. Good cause in a co-occurrence case includes the unavailability of counsel. The Court must still ensure that the adjudicatory hearing is conducted and completed within 30 days of the filing of the petition, consistent with RSA 169-C:15, III (d).

Context:

It is difficult for any individual to represent him/herself in a child abuse and/or neglect proceeding. Parents who are accused of abuse and/or neglect with the complication of domestic violence need legal representation. In a co-occurrence case, a parent who is a victim of domestic violence may be too intimidated to effectively advocate or even communicate relevant issues to the Court. This may be exacerbated by the presence of the other parent who is an alleged domestic violence perpetrator. Counsel can address issues such as services for a parent/alleged victim that might allow a child to be returned home at this stage, potential removal of an alleged adult perpetrator of domestic violence, visitation concerns, or alternative placement options that a parent might not think of or know how to convey.

4. **APPOINTMENT OF SEPARATE COUNSEL**

Principle:

For a co-occurrence case, the Court must ensure that each parent who qualifies for Court-appointed counsel receives independent counsel.

Context:

It is an inherent conflict of interest for an attorney to represent two parents when one is or may be a victim of domestic violence and the other, the perpetrator. In such cases, each parent needs separate legal representation.

5. **LOCATING ABSENT PARENTS**

Principle:

At the preliminary hearing, the Court shall inquire about parents who are not present and shall require, if not already done, DCYF to submit an affidavit pursuant to CIP Chapter 5, Protocol 4. The Court must ensure that DCYF makes ongoing efforts to locate an absent parent to satisfy due process requirements.

Context:

Safety concerns for the accused parent may arise as a result of attempting to locate the other parent who is an alleged perpetrator of domestic violence. In a co-occurrence case, the accused parent may appear uncooperative in helping to locate an absent parent for fear of abuse. The parent may believe that by disclosing the others parent's location, his/her own safety and that of the child may be compromised. The Court must ensure that DCYF works with the accused parent to protect his/her safety if the absent parent is located.

6. **PLACEMENT WITH RELATIVES**

Principle:

Prior to approving a relative placement in a co-occurrence case, the Court shall review the safety and propriety of such placement. Placement with a relative needs to be carefully explored with all parties to determine if such placement is safe. Additionally, the Court needs to ensure that the relative is supportive of reunification and will comply with the Court's orders. The Court shall make this inquiry at the preliminary hearing, even if the child has already been temporarily placed with the relative.

Context:

In a co-occurrence case, a relative placement needs to be assessed for family modeling of abusive behavior, manipulation of familial relationships by the parent who is the alleged abuser, intimidation of the parent/alleged victim by family members of the parent/alleged abuser, and the temptation to allow the parent access to the child when prohibited. Additionally, possible relative placements should be screened for child abuse and/or neglect, substance abuse, domestic violence and a criminal background check as suggested by CIP Chapter 8, Protocol 5B. To conduct a criminal record check, DCYF will need to have the relative sign a release.

7. **SPECIFICITY OF VISITATION ORDERS FOR PARENTS**

Principle:

In a co-occurrence case, the Court shall order separate visitation for each parent where visitation is warranted. The Court shall inquire of all parties about their recommendations and requests for visitation. The visitation order shall clearly articulate the terms of the visitation and not simply be left to the discretion of DCYF and/or GAL or CASA GAL. In ordering visitation for each parent, the Court should inquire about and consider the following factors:

- Is there a current order for visitation? If so, what are the terms of that order? Should that order be adopted or a different order crafted? If a new order is crafted, the order under RSA 169-C takes precedence and any other Court should be notified.
- Should visitation be supervised? Supervised visitation should only be ordered if there are emotional and physical safety concerns for the child in relation to either parent. If professional supervision is ordered, it is important to ensure that it occurs in a safe setting for the supervisor as well.

- Is the child afraid of or intimidated by either parent?
- Is the child likely to be used as a conduit to send threats or messages from one parent to the other?
- Where will the visitation occur? Is the setting a place where the child and the parent feel safe?
- How long should the visits last? Will longer visits cause the child to feel more or less secure?
- When a child has siblings, should a parent have visitation with all the children at once? Would such sibling visitation make the child feel more emotionally secure and supported? Would the child benefit from individual attention from the parent?
- Who is appropriate to provide the supervision of the child and parents? The visitation supervisor must be appropriate to meet the needs of the family. In a co-occurrence case, when selecting the “least restrictive” safe supervision, the Court must carefully consider whether it is appropriate for a relative to supervise the visits.

Context:

In the context of a child abuse and/or neglect case, safe and successful visitation of a child with a parent from whom the child has been removed is one of the primary predictors of reunification. The safety of the child can be promoted by enhancing the safety of the parent/alleged victim. The Court should focus on what is safe and appropriate for the child given the nature of the alleged child abuse and/or neglect the child has suffered, the age of the child, and the child’s relationship with each parent and the history of the relationship between the parents.

The Court should be aware of the potential for conflict between the two statutory goals under RSA 169-C and RSA 173-B. In the context of a civil domestic violence proceeding, the Court considers visitation with a parent/alleged batterer only if it would be safe. The Court has the authority to limit contact and, when appropriate, prohibit visitation altogether. By contrast, the child protection statute focuses on visitation as a major factor in reunification and contemplates that visitation will be by the “least restrictive” means. The intent of Court ordered visitation in a co-occurrence case is to provide the child with safe and conflict-free access to both parents through services delivered by competent providers.

8. **VISITATION WITH SIBLINGS**

Principle:

When children have been removed from their home but not placed together, the Court should carefully inquire about the propriety of sibling visitation consistent with RSA 169-C:19-d.

Context:

If children are not placed together, it may be important for them to regularly visit with each other. In addition, children may feel more emotionally supported if they visit with a parent while in the company of their siblings.

A child who has suffered abuse and/or neglect and who has also been exposed to domestic violence in the home may experience great trauma. All efforts to enhance a child's emotional security should be made, including visitation with siblings. Even if children who have been removed from their home are placed together, they may feel more emotionally secure and supported if they have visitation with a parent in the company of their siblings.

If any unsafe contact between siblings has been identified, visitation between those siblings will need to be carefully re-assessed and may need to be restricted to prevent any additional unsafe contact, at least until appropriate services for the children are implemented.

9. **PSYCHOLOGICAL EVALUATIONS**

Principle:

Psychological evaluations should not be ordered unless there are specific mental health issues to be addressed. If psychological evaluations are ordered, the Court should request that the evaluator have an understanding of domestic violence to avoid misinterpretation of commonly used profiling tests.

Context:

The results of tests used to formulate an evaluation can be open to misinterpretation. Whatever profiling tests are used should be identified in the report and analyzed in light of child abuse and/or neglect concerns and domestic violence considerations. An evaluator's interpretations can negatively impact a parent's case plan when adequate consideration is not given to the effects of one parent abusing the other. Additionally, if a parent denies any domestic violence, it will be important to have a context within which to understand such representations, and an ability to develop an appropriate case plan for that parent.

10. COUPLES COUNSELING, MEDIATION AND FAMILY THERAPY

Principle:

In a co-occurrence case, the Court shall not order couples counseling, or mediation or family therapy with both parents participating together.

Context:

If a domestic violence protective order is in effect, RSA 173-B:5, I(b)8 prohibits a Court from ordering joint counseling or mediation. Even if a domestic violence protective order is not in effect, joint or family therapy with both parents present and/or mediation services would not be appropriate in a co-occurrence case.

11. STAY AWAY ORDERS

To be drafted

12. IDENTIFICATION OF CONCURRENT PLAN IN THE COURT'S ORDER

Principle:

The Court shall inquire of DCYF about the concurrent plan for a child and shall identify the concurrent plan in its preliminary order.

Context:

In all child protection cases where a child has been removed from the home, a concurrent plan must be developed for each child. Concurrent planning is a process of working towards reunification while, at the same time, establishing an alternative or contingency back-up plan that can be implemented in a timely manner. In a co-occurrence case, the presence of domestic violence does not change the need for a concurrent plan or its implementation. However, the victimization of a parent may be a factor in determining whether circumstances exist to allow extension of the reunification efforts should the Court make a finding of abuse and/or neglect.

CHAPTER 5

CONSENT DECREE

Introduction

For reference see Court Improvement Project Protocols Chapter 6.

A key consideration of any consent decree is whether the parties' consents are voluntary. In a co-occurrence case, care must be given to assure that the consent is not the result of coercive control that is so often a dynamic in these cases. This section offers guidance on ways to assure that a consent is voluntary, the importance of individual legal representation, and the specificity of the consent decree. There is also a discussion of the domestic violence component of the social study and the permanency hearing date.

KEY ISSUES

1. GATHERING COURT FILES

Principle:

Court staff shall gather all related files from all Courts within the Courthouse prior to any hearing. Where Odyssey is available, Court staff shall search the statewide database for related files. Staff shall identify all related case titles on the jacket of the abuse and/or neglect case. Related files are those having as parties any of the parents, children or household members in the child abuse and/or neglect petition. Such files may include:

- RSA 169-C (Child Abuse and/or Neglect)
- RSA 169-B and RSA 169-D (Delinquency and CHINS)
- RSA 173-B and RSA 633:3-a (Domestic Violence and Stalking)
- RSA 458 and 461-A (Divorce and Parenting Petitions)
- RSA 463 (Guardianship of Minors)
- Criminal cases, including pending bail orders

Context:

Accessing the related files will allow the Court to review pertinent information to issue consistent orders between different cases. The Court needs to avoid issuing conflicting and inconsistent orders.

2. **ISSUING CONSISTENT ORDERS**

Principle:

In a co-occurrence case related files must be reviewed by the Court in light of the safety concerns raised in the petition prior to issuing any order. However, review of related files shall be for the purpose of determining what, if any, current orders are outstanding against the parties and not for the purpose of determining the outcome of the abuse and/or neglect case. Particular attention should be paid to “no contact” provisions that are currently active against any of the parties. Care should be taken to replicate the conditions of “no contact” that are required to ensure the safety of the child. The Court should also pay attention to orders for visitation and contact any other Court to advise of superseding orders. The Court shall indicate on the record which Court files have been reviewed and state that the Court intends to use this information only to issue consistent Court orders that impact the safety of the child.

Context:

After the Court has made its findings, a review of the related files will allow the Court to issue orders that are not inconsistent with orders issued in other cases or, if they are, to reconcile the differences so the parties will understand which governs.

3. **APPOINTMENT OF COUNSEL**

Principle:

Before approving a consent decree in a co-occurrence case, the Court shall ensure that each parent, if eligible, is represented by separate counsel. If possible, the Court staff should ensure that in a co-occurrence case each parent is represented by counsel who is trained in domestic violence.

Context:

A consent decree signed by parents on the advice of the shared representation of counsel cannot be considered free and voluntary if one parent is being abused, or in fear of being abused, by the other parent. It also would be a conflict of interest for counsel to represent parents with actual or potentially divergent legal interests. Also, if counsel trained in domestic violence issues is not available to represent the parent/ victim, it is especially important that appointed counsel have the assistance of a DVS or other advocate to reduce the chances of counsel misperceiving or even misrepresenting the parent.

4. **VOLUNTARY CONSENT ORDER**

Principle:

Pursuant to RSA 169-C:17, II, the Court must determine that parents voluntarily and intelligently consent to the terms and conditions of the consent order. To accomplish this the Court should inquire of each parent, on the record and without the other parent present, whether the consent is voluntary.

Context:

Domestic violence takes many forms in addition to physical violence, including threats, coercion and intimidation. It is important for the Court to ensure that a parent's consent is voluntary, and not the result of coercion by the other.

5. **SPECIFICITY OF CONSENT DECREE**

Principle:

Before approving a consent decree in a co-occurrence case, the Court shall carefully review the consent decree to make sure that, as much as possible, any domestic violence which forms the basis, in whole or in part, for the abuse and/or neglect finding is specifically identified and attributed to the responsible parent(s).

Context:

Broad, general statements in a consent decree such as "involved with domestic violence" are neither helpful in understanding the specific nature of the abuse and/or neglect nor in formulating case plans which specifically target what needs to be corrected, and by whom.

6. **SOCIAL STUDY AND DOMESTIC VIOLENCE ASSESSMENT**

Principle:

The Court shall order DCYF to complete, pursuant to RSA 169-C:18, V and V-a, a social study to be submitted before the dispositional hearing. The Court should expect the social study to include a domestic violence assessment that details any past or present abuse perpetrated by one parent the other, and the impact, if any, of the domestic violence on the child. The history of domestic violence should include self-reported personal histories and any official documentation such as police reports, Court records, medical records and incident reports. The report should also include an assessment of any domestic violence from each parent's perspective.

Context:

A comprehensive history of domestic violence is important for the development of an effective case plan, and for maximizing the safety of all family members.

Principle:

The Court should also expect DCYF's social study to include a comprehensive report detailing any violence committed by one sibling against another.

Context:

A comprehensive history of any sibling violence is important for the development of an effective case plan and for maximizing the children's safety including, in some instances, the children not being placed together for a period of time or not visiting with each other.

7. PERMANENCY HEARING DATE

Principle:

The Court shall ensure that a consent decree includes the date of the permanency hearing. Pursuant to CIP Chapter 11, Protocol 2, a permanency hearing shall be scheduled by the Court 12 months from the entry and approval of a consent decree that includes a finding and an out-of-home placement.

Context:

A permanency hearing only needs to be held when there is a finding of abuse and/or neglect and a child has been in an out-of-home care for 12 months. When a child is in out-of-home care, case planning typically focuses on providing services to reduce the risk of child abuse and/or neglect and to strengthen parenting ability. Case planning in a co-occurrence case should also focus on the safety of the parent/victim and accountability for the parent/ perpetrator of domestic violence.

CHAPTER 6

ADJUDICATORY HEARING

Introduction

For reference see Court Improvement Project Protocols Chapter 7.

Whether domestic violence in a co-occurrence case is the principal reason for intervention or a secondary factor affecting the child's well-being, early identification of the domestic violence will enable the Court to properly make a finding and order appropriate assessment, intervention and services throughout the case. Any domestic violence which forms the basis, in whole or in part, for the abuse and/or neglect finding must be specifically identified and attributed to the responsible parent. Specific findings concerning domestic violence are especially important for maximizing the safety of all family members. This section provides guidance on testimony at an adjudicatory hearing, which can present safety concerns for adult victims, the specificity of the Court's order, the domestic violence component of a social study and the requirement that the permanency hearing date be included in the Court's order.

KEY ISSUES

1. GATHERING COURT FILES

Principle:

Court staff shall gather all related files from all Courts within the Courthouse prior to any hearing. Where Odyssey is available, Court staff shall search the statewide database for related files. Staff shall identify all related case titles on the jacket of the abuse and/or neglect case. Related files are those having as parties any of the parents, children or household members in the child abuse and/or neglect petition. Such files may include:

- RSA 169-C (Child Abuse and/or Neglect)
- RSA 169-B and RSA 169-D (Delinquency and CHINS)
- RSA 173-B and RSA 633:3-a (Domestic Violence and Stalking)
- RSA 458 and 461-A (Divorce and Parenting Petitions)
- RSA 463 (Guardianship of Minors)
- Criminal cases, including pending bail orders

Context:

Accessing the related files will allow the Court to review pertinent information to issue consistent orders between different cases. The Court needs to avoid issuing conflicting and inconsistent orders.

2. **ISSUING CONSISTENT ORDERS**

Principle:

In a co-occurrence case related files must be reviewed by the Court in light of the safety concerns raised in the petition prior to issuing any order. However, review of related files shall be for the purpose of determining what, if any, current orders are outstanding against the parties and not for the purpose of determining the outcome of the abuse and/or neglect case. Particular attention should be paid to “no contact” provisions that are currently active against any of the parties. Care should be taken to replicate the conditions of “no contact” that are required to ensure the safety of the child. The Court should also pay attention to orders for visitation and contact any other Court to advise of superseding orders. The Court shall indicate on the record which Court files have been reviewed and state that the Court intends to use this information only to issue consistent Court orders that impact the safety of the child.

Context:

After the Court has made its findings, a review of the related files will allow the Court to issue orders that are not inconsistent with orders issued in other cases or, if they are, to reconcile the differences so the parties will understand which governs.

3. **TESTIMONY**

Principle:

If an accused/offending parent in a co-occurrence case chooses to testify, or will be cross-examined, the Court, if requested, should consider alternatives to having the parent/alleged victim testify, or be cross-examined, in the presence of the parent/alleged batterer. The Court should give consideration to using technology (such as allowing a parent to testify from a different location) or third-party testimony as a means of hearing from the parent when there are indications that, not to do so, will likely result in the parent/victim either being unable or unwilling to testify.

Context:

Neither the formal rules of evidence, pursuant to RSA 169-C:12, nor face-to-face confrontation apply in child protection proceedings.

4. SPECIFICITY OF COURT ORDER

Principle:

If domestic violence forms the basis for the finding of abuse and/or neglect, the Court's order should specifically identify who perpetrated violence against whom, what the child witnessed, and the impact on the child's safety.

Context:

Specific findings concerning domestic violence are especially important for the development of an effective case plan, and for maximizing the safety of all family members when domestic violence forms the basis for the finding.

5. SOCIAL STUDY AND DOMESTIC VIOLENCE ASSESSMENT

Principle:

The Court shall order DCYF to complete, pursuant to RSA 169-C:18, V and V-a, a social study to be submitted before the dispositional hearing. The Court should expect the social study to include a domestic violence assessment that details any past or present abuse perpetrated by one parent the other, and the impact, if any, of the domestic violence on the child. The history of domestic violence should include self-reported personal histories and any official documentation such as police reports, Court records, medical records and incident reports. The report should also include an assessment of any domestic violence from each parent's perspective.

Context:

A comprehensive history of domestic violence is important for the development of an effective case plan, and for maximizing the safety of all family members.

Principle:

The Court should also expect DCYF's social study to include a comprehensive report detailing any violence committed by one sibling against another.

Context:

A comprehensive history of any sibling violence is important for the development of an effective case plan and for maximizing the children's safety including, in some instances, the children not being placed together for a period of time or not visiting with each other.

6. **PERMANENCY HEARING DATE**

Principle:

In its order the Court shall, pursuant to CIP Chapter 11, Protocol 2, schedule a permanency hearing 12 months from the finding of abuse and/or neglect for cases in which a child is in an out-of-home placement.

Context:

A permanency hearing only needs to be held when there is a finding of abuse and/or neglect and a child has been in out-of-home care for 12 months. When a child is in out-of-home care, case planning typically focuses on providing services to reduce the risk of child abuse and/or neglect and to strengthen parenting ability. Case planning in a co-occurrence case should also focus on the safety of the parent/victim and accountability for the parent/perpetrator of domestic violence.

CHAPTER 7

DISPOSITIONAL HEARING

Introduction

For reference see Court Improvement Project Protocols Chapter 8.

In ensuring that the case plan is appropriate to address the conditions that led to the finding, it is critical that dispositional orders take into consideration the safety concerns raised in a co-occurrence case. To provide guidance around these issues, this chapter discusses the content of the social study related to the domestic violence, the appropriate structure for a case plan, appropriate services for family members and the importance of the Court engaging in a meaningful inquiry as to the delivery of services. Guidance is provided on how to structure this inquiry. In addition, guidance for orders around placement with relatives and visitation with parents and siblings is also offered.

KEY ISSUES

1. GATHERING COURT FILES

Principle:

Court staff shall gather all related files from all Courts within the Courthouse prior to any hearing. Where Odyssey is available Court staff shall search the statewide database for related files. Staff shall identify all related case titles on the jacket of the abuse and/or neglect case. Related files are those having as parties any of the parents, children or household members in the child abuse and/or neglect petition. Such files may include:

- RSA 169-C (Child Abuse and/or Neglect)
- RSA 169-B and RSA 169-D (Delinquency and CHINS)
- RSA 173-B and RSA 633:3-a (Domestic Violence and Stalking)
- RSA 458 and 461-A (Divorce and Parenting Petitions)
- RSA 463 (Guardianship of Minors)
- Criminal cases, including pending bail orders

Context:

Accessing the related files will allow the Court to review pertinent information to issue consistent orders between different cases. The Court needs to avoid issuing conflicting and inconsistent orders.

2. **ISSUING CONSISTENT ORDERS**

Principle:

In a co-occurrence case related files must be reviewed by the Court in light of the safety concerns raised in the petition prior to issuing any order. However, review of related files shall be for the purpose of determining what, if any, current orders are outstanding against the parties and not for the purpose of determining the outcome of the abuse and/or neglect case. Particular attention should be paid to “no contact” provisions that are currently active against any of the parties. Care should be taken to replicate the conditions of “no contact” that are required to ensure the safety of the child. The Court should also pay attention to orders for visitation and contact any other Court to advise of superseding orders. The Court shall indicate on the record which Court files have been reviewed and state that the Court intends to use this information only to issue consistent Court orders that impact the safety of the child.

Context:

After the Court has made its findings, a review of the related files will allow the Court to issue orders that are not inconsistent with orders issued in other cases or, if they are, to reconcile the differences so the parties will understand which governs.

3. **SOCIAL STUDY AND DOMESTIC VIOLENCE ASSESSMENT**

Principle:

In a co-occurrence case, the Court shall pay particular attention to the domestic violence assessment of the social study submitted by DCYF. This should include a review of the past and present domestic violence identified from police reports, Court records, medical records, and other incident reports and from the reported perspective of each parent and child. The report should also detail the impact of the domestic violence on the child if known. Any identified sibling violence should also be addressed. The social study should thus present a comprehensive report detailing the current circumstances and any history of violence perpetrated by any members of the family.

Context:

When domestic violence and child abuse and/or neglect co-exist, the Court must exercise special care to understand existing family dynamics in order to protect the abused parent and child. Those dynamics can be complicated and concealed. A social study that ignores, inadequately identifies, or erroneously assesses the violence occurring in a family may be more harmful than helpful. Having a

comprehensive history of domestic violence is necessary for the development of an effective case plan.

4. SEPARATE CASE PLAN FOR EACH PARENT

Principle:

The Court shall require that each parent have an individualized case plan that addresses his or her needs relative to the conditions that led to the finding of abuse and/or neglect. The Court shall ensure that the case plan clearly articulates what is expected of each parent to correct the conditions that led to the finding and assure a long-term safe environment for the child.

Context:

In any child protection case, the case plan should identify what each parent needs to do to correct the conditions that led to the finding and, correct his or her behavior and provide safety and stability for the child. One parent should not be expected to correct the other parent's behavioral or parenting deficiencies. This is especially true in a co-occurrence case where a parent/victim should not be held accountable for the perpetrator's acts of domestic violence; rather, the parent/perpetrator should be held accountable for such behavior and its impact on the child.

5. SERVICES FOR CHILD

Principle:

If domestic violence has impacted the well-being of the child, the Court shall ensure that the case plan sets forth specifically the needs of the child and what services the child should be provided to address the impact the violence has had on the child.

Context:

Children, even within the same family, may experience domestic violence in different ways. There are a number of factors that may affect how domestic violence impacts a particular child. The emotional and physical needs of each child should be considered in any assessment to help promote the child's sense of safety and security. Additionally, the child's relationship with each parent should be considered in determining the most appropriate and useful services.

6. **FINANCIAL CONSIDERATIONS**

Principle:

The Court shall inquire about the degree of financial dependence of one parent on another. The Court should consider issuing orders requiring one parent to provide child support or household maintenance to the other. The Court should also consider ordering DCYF to assist families in determining eligibility for public assistance.

Context:

Financial dependence is a common reason for adult victims to stay with their abusers. In a co-occurrence case, perpetrators frequently prevent adult victims from gainful employment outside the home and also control all financial resources, thus preventing victims from having access to any money, even if in joint accounts.

7. **SERVICE PROVIDERS KNOWLEDGEABLE ABOUT DOMESTIC VIOLENCE**

Principle:

In a co-occurrence case, where counseling or other services related to the domestic violence are ordered, the Court should, to the extent possible, encourage the selection of providers who are knowledgeable about domestic violence.

Context:

Parents involved in a co-occurrence case are susceptible to complex layers of coercion, dominance, control, fear, feelings of inadequacy, and hopelessness. It is very important for service providers to understand the dynamics that may contribute to the behaviors of the parents, and to be able to provide competent assessment and intervention. Professionals without a knowledge of domestic violence may inadvertently do more harm than good if information is misinterpreted and inappropriate services offered.

8. **PSYCHOLOGICAL EVALUATIONS**

Principle:

Psychological evaluations should not be ordered unless there are specific mental health issues to be addressed. If psychological evaluations are ordered, the Court should request that the evaluator have an understanding of domestic violence to avoid misinterpretation of commonly used profiling tests.

Context:

The results of tests used to formulate an evaluation can be open to misinterpretation. Whatever profiling tests are used should be identified in the report and analyzed in light of child abuse and/or neglect concerns and domestic violence considerations. An evaluator's interpretations can negatively impact a parent's case plan when adequate consideration is not given to the effects of one parent abusing the other. Additionally, if a parent denies any domestic violence, it will be important to have a context within which to understand such representations, and an ability to develop an appropriate case plan for that parent.

9. THE COURT'S INQUIRY AT THE DISPOSITIONAL HEARING REGARDING SERVICES FOR PARENTS

Principle:

In a co-occurrence case, the Court shall engage in a meaningful inquiry of all parties to determine if domestic violence services are needed for either parent. Additionally, the Court shall be assured that each parent has had an opportunity to identify services that they may need. The dispositional order shall articulate the services required to meet the identified needs of each parent. It is critical for the Court to consider a range of possible domestic violence related services for parents regardless of whether domestic violence is the principal issue. The Court may order DCYF to arrange and/or provide education and safety planning. The Court may also order a parent who has perpetrated domestic violence into a batterer intervention program.

Context:

The Court should be ordering domestic violence services to remedy specific safety considerations as it does with other issues, such as how substance abuse is addressed through the provision of services aimed at sobriety and recovery. Parents may also need services which could be characterized as restorative, to assist them in caring for their child even if such services do not relate to the cause for the finding. For example, a parent who is also a victim of domestic violence may need employment or housing assistance that the parent who has perpetrated domestic violence does not.

10. COUPLES COUNSELING, MEDIATION AND FAMILY THERAPY

Principle:

In a co-occurrence case, the Court shall not order couples counseling, or mediation or family therapy with both parents participating together.

Context:

If a domestic violence protective order is in effect, RSA 173-B:5,I(b)8 prohibits a Court from ordering joint counseling or mediation. Even if a domestic violence protective order is not in effect, joint or family therapy with both parents present and/or mediation services would not be appropriate in a co-occurrence case.

11. PLACEMENT WITH RELATIVES

Principle:

Prior to approving a relative placement in a co-occurrence case, the Court shall review the safety and propriety of such placement. Placement with a relative needs to be carefully explored with all parties to determine if such placement is safe. Additionally, the Court needs to ensure that the relative is supportive of reunification and will comply with the Court's orders. The Court shall make this inquiry at the dispositional hearing, even if the child has already been temporarily placed with the relative.

Context:

In a co-occurrence case, relative placements need to be assessed for family modeling of abusive behavior, manipulation of familial relationships by the parent/abuser, intimidation of the other parent by family members of the parent/abuser, and the temptation to allow the parent access to the child when prohibited. Additionally, possible relative placements should be screened for child abuse and/or neglect, substance abuse, domestic violence and a criminal background check as suggested by CIP Chapter 8, Protocol 5B. To conduct a criminal record check, DCYF will need to have the relative sign a release.

12. SPECIFICITY OF VISITATION ORDERS FOR PARENTS

Principle:

In a co-occurrence case, the Court shall order separate visitation for each parent where visitation is warranted. The Court shall inquire of all parties about their recommendations and requests for visitation. The visitation order shall clearly articulate the terms of the visitation and not simply be left to the discretion of DCYF and/or GAL or CASA GAL. In ordering visitation for each parent, the Court should inquire about and consider the following factors:

- Is there a current order for visitation? If so, what are the terms of that order? Should that order be adopted or a different order crafted? If a new order is crafted, the order under RSA 169-C takes precedence and any other Court should be notified.

- Should visitation be supervised? Supervised visitation should only be ordered if there are emotional and physical safety concerns for the child in relation to either parent. If professional supervision is ordered, it is important to ensure that it occurs in a safe setting for the supervisor as well.
- Is the child afraid or intimidated by either parent?
- Is the child likely to be used as a conduit to send threats or messages from one parent to the other?
- Where will the visitation occur? Is the setting a place where the child and the parent feel safe?
- How long should the visits last? Will longer visits cause the child to feel more or less secure?
- When a child has siblings, should a parent have visitation with all the children at once? Would such sibling visitation make the child feel more emotionally secure and supported? Would the child benefit from individual attention from the parent?
- Who is appropriate to provide the supervision of the child and parents? The visitation supervisor must be appropriate to meet the needs of the family. In a co-occurrence case, when selecting the “least restrictive” safe supervision, the Court must carefully consider whether it is appropriate for a relative to supervise the visits.

Context:

In the context of a child abuse and/or neglect case, safe and successful visitation of a child with a parent from whom the child has been removed is one of the primary predictors of reunification. The safety of the child can be promoted by enhancing the safety of the parent/victim. The Court should focus on what is safe and appropriate for the child given the nature of the child abuse and/or neglect the child has suffered, the age of the child, and the child’s relationship with each parent and the history of the relationship between the parents.

The Court should be aware of the potential for conflict between the two statutory goals under RSA 169-C and RSA 173-B. The child protection statute focuses on visitation as a major factor in reunification and contemplates that visitation will be by the “least restrictive” means. In the context of a civil domestic violence proceeding, the Court considers visitation by the perpetrator only if it would be safe. The Court has the authority to limit contact and prohibit visitation altogether. The intent of Court ordered visitation in a co-occurrence case is to provide the

child with safe and conflict-free access to both parents through services delivered by competent providers.

In a co-occurrence case the existence of domestic violence requires that the Court carefully consider the circumstances of visitation when supervised by relatives of a parent/perpetrator. It is possible that such relatives may model abusive behavior themselves, may be manipulated by their relationships with the perpetrator, may intimidate the other parent, and may be tempted to allow the parent unsupervised access to the child when such access has been prohibited by Court order.

13. VISITATION WITH SIBLINGS

Principle:

When children have been removed from their home but not placed together, the Court should carefully inquire about the propriety of sibling visitation consistent with RSA 169-C:19-d.

Context:

If children are not placed together, it may be important for the children to regularly visit each other. In addition, a child may feel more emotionally supported if they visit with a parent while in the company of their siblings.

A child who has suffered abuse and/or neglect and who has also been exposed to domestic violence in the home may experience great trauma. All efforts to enhance a child's emotional security should be made, including visitation with siblings. Even if children who have been removed from their home are placed together, they may feel more emotionally secure and supported if they have visitation with a parent in the company of their siblings. If any unsafe contact between siblings has been identified, visitation between those siblings will need to be carefully re-assessed and may need to be restricted to prevent any additional unsafe contact, at least until appropriate services for the children are implemented.

14. CONDUCTING A 45-DAY PAPER REVIEW

Principle:

In a co-occurrence case, the Court should conduct a paper review 45 days after the dispositional hearing to ensure that all appropriate referrals for services have been made, and parents connected with those services, and conduct the first in-person hearing within 90 days of the dispositional hearing. Prior to this, DCYF will submit a brief outline apprising the Court of the status to-date of the provision of services for the 45-day paper review. A review hearing should only be held as a result of this paper review if services are not in place. If such a

hearing is conducted, DCYF should not be required to submit an additional report. Thereafter, review hearings should be conducted consistent with CIP Chapter 10, Protocol 1, namely 90 days from the dispositional hearing.

Context:

Ensuring that services are instituted and parents engaged early are key factors that greatly enhance a parent's ability to correct the conditions which led to the finding of abuse and/or neglect. For a parent who may have been victimized by the other parent, she/he may be so traumatized that increased Court oversight is needed to ensure that services are begun in a timely manner. Conversely, a parent who has abused the other may need additional oversight to begin addressing the case plan and to be held accountable for inappropriate behavior.

CHAPTER 8

REVIEW HEARINGS

Introduction

For reference see Court Improvement Project Protocols Chapter 10.

Review hearings are vital to assuring that the case plan remains relevant to the needs of family members, determining the necessity of out-of-home care, determining whether DCYF is providing all Court-ordered services, and assessing the progress the parents are making as a result. This section offers guidance on conducting review hearings, including the timing and method of conducting the review hearings, the content of the DCYF report, safety concerns of foster parents, visitation with the children and between siblings, and when and how to close the case.

KEY ISSUES

1. CONDUCTING A 45-DAY PAPER REVIEW

Principle:

In a co-occurrence case, the Court should conduct a paper review 45 days after the dispositional hearing to ensure that all appropriate referrals for services have been made, and parents connected with those services, and conduct the first in-person hearing within 90 days of the dispositional hearing. DCYF will submit a brief outline apprising the Court of the status to-date of the provision of services for the 45-day paper review. A review hearing should only be held as a result of this paper review if services are not in place. If such a hearing is conducted, DCYF should not be required to submit an additional report. Thereafter, review hearings should be conducted consistent with CIP Chapter 10, Protocol 1, namely 90 days from the dispositional hearing.

Context:

Ensuring that services are instituted and parents engaged early are key factors that greatly enhance a parent's ability to correct the conditions which led to the finding of abuse and/or neglect. For a parent who may have been victimized by the other parent, she/he may be so traumatized that increased Court oversight is needed to ensure that services are begun in a timely manner. Conversely, a parent who has abused the other may need additional oversight to begin addressing the case plan and to be held accountable for inappropriate behavior.

2. **COURT NOTICE TO FOSTER PARENTS**

Principle:

The Court shall ensure that a notice is sent to foster parents inviting them to attend all review hearings, pursuant to CIP Chapter 10, Protocol 2. In a co-occurrence case, if a foster parent attends a review hearing, Court security officers should be prepared to implement additional safety precautions if needed.

Context:

An adult perpetrator of domestic violence may perceive that not only is DCYF interfering with custodial rights, but a foster parent as well. The security risk may be increased when there has been a history of violence toward another parent, and this risk may also be extended to a foster parent.

3. **GATHERING COURT FILES**

Principle:

Court staff shall gather all related files from all Courts within the Courthouse prior to any hearing. Where Odyssey is available Court staff shall search the statewide database for related files. Staff shall identify all related case titles on the jacket of the abuse and/or neglect case. Related files are those having as parties any of the parents, children or household members in the child abuse and/or neglect petition. Such files may include:

- RSA 169-C (Child Abuse and/or Neglect)
- RSA 169-B and RSA 169-D (Delinquency and CHINS)
- RSA 173-B and RSA 633:3-a (Domestic Violence and Stalking)
- RSA 458 and 461-A (Divorce and Parenting Petitions)
- RSA 463 (Guardianship of Minors)
- Criminal cases, including pending bail orders

Context:

Accessing the related files will allow the Court to review pertinent information to issue consistent orders between different cases. The Court needs to avoid issuing conflicting and inconsistent orders.

4. ISSUING CONSISTENT ORDERS

Principle:

In a co-occurrence case related files must be reviewed by the Court in light of the safety concerns raised in the petition prior to issuing any order. However, review of related files shall be for the purpose of determining what, if any, current orders are outstanding against the parties and not for the purpose of determining the outcome of the abuse and/or neglect case. Particular attention should be paid to “no contact” provisions that are currently active against any of the parties. Care should be taken to replicate the conditions of “no contact” that are required to ensure the safety of the child. The Court should also pay attention to orders for visitation and contact any other Court to advise of superseding orders. The Court shall indicate on the record which Court files have been reviewed and state that the Court intends to use this information only to issue consistent Court orders that impact the safety of the child.

Context:

After the Court has made its findings, a review of the related files will allow the Court to issue orders that are not inconsistent with orders issued in other cases or, if they are, to reconcile the differences so the parties will understand which governs.

5. CONTENT OF DCYF’S REPORT

Principle:

The Court should ensure that DCYF’s report indicates the extent to which each parent has engaged in and benefited from the services outlined in the case plan. In a co-occurrence case, DCYF’s report should thoroughly address the domestic violence and include the following:

- a. Whether there is a safety plan for the adult victim and if not, why;
- b. Update of any incidents of domestic violence that have come to light since the last hearing;
- c. Compliance with domestic violence related and other services, if ordered; and
- d. Any barriers to progress, including if one parent has interfered with the other parent’s efforts to participate in Court ordered services.

Context:

In a co-occurrence case the parent/victim's safety and both parents' participation should be addressed in DCYF's report. Additionally, the DCYF report may identify for the first time the case as a co-occurrence one. If so, the Court will need to carefully review the provided services and may need to modify dispositional orders pursuant to RSA 169-C:22 and CIP Chapter 8, Protocol 11.

6. **THE COURT'S INQUIRY AT THE REVIEW HEARING**

Principle:

Consistent with CIP Chapter 10, Protocol 7(2), the Court shall engage in a meaningful inquiry with each parent about the progress each has made toward compliance with the dispositional orders. If, upon reviewing the various reports filed in anticipation of the hearing, the Court has reason to believe that one parent may present safety risks to the other, the Court should consider conducting a separate inquiry of each parent, on the record, without the other parent present.

7. **VISITATION**

Principle:

The Court shall engage all parties in a meaningful inquiry to determine whether there is a need for a modification of the dispositional visitation orders. The Court shall determine whether visitation restrictions should be relaxed, whether separate visitation continues to be appropriate, or whether ongoing safety concerns necessitate maintaining or increasing visitation restrictions. Factors to guide the Court's inquiry include:

- Are the terms of the current visitation order being followed by each parent?
- If supervised visitation was ordered, does this need to continue for one or both parents? Do emotional and safety concerns for the child continue to warrant this restriction? Is the child afraid of or intimidated by either parent?
- Has the child been used as a conduit for information, threats or messages?
- Has the visitation structure provided a safe experience, i.e., frequency, location, length of the visit and visitation supervisor, if applicable? Would a change in structure be appropriate?

- Has visitation with siblings occurred? If so, has it been safe? If not, should sibling visitation begin?

Context:

In the context of a child abuse and/or neglect case, safe and successful visitation of a child with a parent from whom the child has been removed is one of the primary predictors of reunification. The safety of the child can be promoted by enhancing the safety of the parent/victim. The Court should focus on what is safe and appropriate for the child given the nature of the child abuse and/or neglect the child has suffered, the age of the child, and the child's relationship with each parent and the history of the relationship between the parents.

8. REUNIFICATION AND CASE CLOSING

Principle:

At any review hearing, it may be appropriate for the Court to contemplate reunifying the child with only one parent. Where reunification with one parent is contemplated in a co-occurrence case, the Court should pay particular attention to the safety concerns for the child. In assessing the child's safety, the Court should consider:

- Whether an order establishing parental rights and responsibilities under RSA 461-A has been obtained;
- Whether a domestic violence protective order under RSA 173-B is in place;
- Whether the parent with whom the child is to be returned is committed to and capable of ensuring the child's safety;
- The current status of the parties' relationship; and
- Whether any other assistance should be provided to the parent or child by DCYF prior to closing the case.

Context:

Reunification with one parent is legally possible and in some cases may be appropriate when one parent corrects the conditions that led to the finding of abuse and/or neglect and the other does not. In most cases, and in particular in a co-occurrence case, DCYF may also need to monitor the reunification to make sure the return home is safe and there are no unmet service needs.

9. INDIVIDUAL PARENT'S SURRENDER

(To be drafted)

CHAPTER 9

PERMANENCY HEARING

Introduction

For reference see Court Improvement Project Protocols Chapter 11.

In a co-occurrence case the requirement for a 12-month permanency hearing does not change. The dynamics of the family, however, may be such that the Court may determine that a post-permanency hearing is appropriate. This section offers guidance around scheduling the hearing, the Court's inquiry, the standard for return of the child, and the Court's permanency hearing orders.

KEY ISSUES:

1. SCHEDULING THE HEARING

Principle:

Consistent with CIP Chapter 11, Protocol 2, the permanency hearing shall be held 12 months from a finding of abuse and/or neglect in which a child has remained in an out-of-home placement for 12 or more months.

Context:

The purpose of conducting a timely permanency hearing is to ensure that the child has a permanent plan identified by the Court. Courts shall conduct timely permanency hearings even in cases where one parent's ability to progress and correct the conditions which led to removal have been adversely impacted by the other parent. If this has occurred, the Court should consider allowing that parent additional time to correct the conditions that led to the finding.

2. COURT'S REVIEW OF DCYF AND GAL OR CASA GAL REPORTS

Principle:

The Court should ensure that the permanency hearing reports from DCYF and the GAL or CASA GAL include information on whether either parent has interfered with the other's ability to comply with the dispositional orders. Additionally, the Court should ensure that the reports address whether either parent presents a safety risk to the other.

3. **COURT'S INQUIRY AND ORDER**

Principle:

Consistent with RSA 169-C:23 and CIP Chapter 11, Protocols 12 and 13, the Court must determine whether each parent is in compliance with the dispositional orders (paragraph I of sec. 23), whether the child will not be endangered in the manner adjudicated (paragraph II), and whether return of the child is in the child's best interests (paragraph III). The Court shall make these inquiries regarding each parent, independent of the other.

(a) If the Court finds that one parent has not complied with the dispositional orders and further finds that this is because the other parent has interfered with the parent's ability to comply, the Court may approve reunification as the permanent plan but still provide additional time to correct. In such case, the Court should conduct the post-permanency hearing within 60 days of the permanency hearing order. If, at this hearing, the parent has corrected, the Court may proceed to implement the permanent plan of reunification either immediately or after determining that continued out-of-home care is needed for a defined period of time.

(b) If the Court determines that the parent has complied with the dispositional orders but has not demonstrated behavioral change necessary to satisfy paragraph II, the Court may determine that the child should not be returned home and that a permanent plan other than reunification is appropriate.

(c) If the Court determines that a parent has complied with paragraphs I and II, and is able to demonstrate that s/he can provide proper parental care and thus return home is in the child's best interests, the child should be returned home. However, if the child is not ready to be returned home due to his/her own need for out-of-home care (such as continued therapeutic residential placement to address the child's trauma), the Court may adopt as the permanent plan reunification with the parent but defer implementation pending the child's readiness.

The Court shall, nonetheless, adopt the permanent plan of reunification at the permanency hearing; the permanency hearing decision should not be deferred. If the Court determines that the child continues to need out-of-home care irrespective of the parent's satisfaction with the Court orders and demonstrated ability to care for the child, the Court may schedule periodic post-permanency hearings to monitor the child's status and timing of return home.

Context:

It is important for the Court to distinguish a parent's compliance with all requirements for return of the child from the child's need for out-of-home care. Some children have mental health issues that arise from the abuse and/or neglect that necessitate therapeutic placement beyond the 12 months given to the parent to correct. The Court may find that it is in the child's best interests to return to the care of the parent, following the determination that the parent has satisfied the requirements of Section 23, but defer physical reunification until the child is ready to be transitioned home. The child's lack of readiness should not cause the Court to adopt an alternative permanent plan, even though the child may remain temporarily in out-of-home care.

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