

## FACT SHEET:

### Required Legal Findings and Standards of Proof

Attorneys in D.C. child welfare proceedings may litigate a variety of issues throughout their practice. This fact sheet summarizes the key legal findings and standards of proof that must be met at each stage of a case.<sup>1</sup>

#### Neglect Trial

- i. **Required Finding:** Government has the burden to show that the child was abused neglected pursuant to D.C. Code
- ii. **Statutory source:** D.C. Code § 16-2301(9)(A); D.C. Code § 16-2317
- iii. **Evidentiary Standard:** preponderance of the evidence

#### Motion to Change Permanency Goal from Reunification to Adoption

- i. **Required Findings:** *The moving party (typically, the government) has the burden to show that:*
  - a. the government provided the parent with a reasonable and appropriate plan for achieving reunification;
  - b. the government expended reasonable efforts to help the parent ameliorate the conditions that led to the neglect adjudication;
  - c. the parent failed to make adequate progress towards satisfying the plan's requirements; and
  - d. other vehicles for avoiding the pursuit of termination of parental rights, e.g. kinship placements, have been adequately explored.

***The court must then find that***

  - a. the District has in fact expended reasonable efforts to reunify the family as it is statutorily obligated to do, in accordance with 42 U.S.C. § 675 (5)(E)(iii);
  - b. the goals set for the parents were appropriate and reasonable; and
  - c. other vehicles for avoiding the pursuit of termination, e.g., kinship placements, 42 U.S.C. § 675 (5)(E)(i), have been adequately explored.
- ii. **Case law:** *In re Ta.L.*, 149 A.3d 1060 (D.C. 2016)
- iii. **Statutory source:** D.C. Code § 16-2323
- iv. **Evidentiary Standard:** preponderance of the evidence

#### Guardianship Trial

- i. **Required Findings:** *The guardianship movant has the burden to show that:*
  - a. the guardianship in the child's best interests;
  - b. adoption/ TPR/ return to parent is not appropriate for the child;
  - c. the proposed guardian is suitable and able to provide a safe and permanent home for the child.

***When determining the child's best interest, the court must consider:***

  - a. The child's need for continuity of care and caretakers, and for timely integration into a stable and permanent home, taking into account the differences in the development and the concept of time of children of different ages;
  - b. The physical, mental, and emotional health of all individuals involved to the degree that each affects the welfare of the child, the decisive consideration being the physical, mental, and emotional needs of the child;
  - c. The quality of the interaction and interrelationship of the child with his or her parent, siblings, relatives, and caretakers, including the proposed permanent guardian;

<sup>1</sup> The cases included in this outline are not exhaustive, but rather are intended as a starting point for research.

- d. To the extent feasible, the child's opinion of his or her own best interests in the matter; and
  - e. Evidence that drug-related activity continues to exist in a child's home environment after intervention and services have been provided pursuant to section 6-2104.01. Evidence of continued drug-activity shall be given great weight.
  - f. If the child is 14 years of age or older, the court shall designate the permanent guardian selected by the child unless the court finds that the designation is contrary to the child's best interests.
- ii. **Statutory source:** D.C. Code §§ 16-2383; 16-2388 (f)
  - iii. **Case law:** *In re A.G.*, 900 A.2d 677 (2006); *In re D.S.*, 88 A.3d 678 (2014)
  - iv. **Evidentiary Standard:** Preponderance of the evidence

## Adoption Trial

### When the parent(s) have consented:

- i. **Required Findings:** *The adoption petitioner must show that:*
  - a. the child is physically, mentally, and otherwise suitable for adoption by the petitioner;
  - b. the petitioner is fit and able to give the prospective adoptee a proper home and education;
  - c. the adoption will be for the best interests of the prospective adoptee; and
  - d. the adoption form has been completed pursuant to section 10 of the Vital Records Act of 1981.

***When determining the child's best interest, the court must consider:***

  - a. The child's need for continuity of care and caretakers, and for timely integration into a stable and permanent home, taking into account the differences in the development and the concept of time of children of different ages;
  - b. The physical, mental, and emotional health of all individuals involved to the degree that each affects the welfare of the child, the decisive consideration being the physical, mental, and emotional needs of the child;
  - c. The quality of the interaction and interrelationship of the child with his or her parent, siblings, relatives, and caretakers, including the proposed permanent guardian;
  - d. To the extent feasible, the child's opinion of his or her own best interests in the matter; and
  - e. Evidence that drug-related activity continues to exist in a child's home environment after intervention and services have been provided pursuant to section 6-2104.01. Evidence of continued drug-activity shall be given great weight.
- ii. **Case law:** *In re J.D.W.*, 711 A.2d 826, 830 (D.C. 1998); *In re T.J.*, 666 A.2d 1, 16 (D.C. 1995); *In re D.I.S.*, 494 A.2d 1316, 1325–26 (D.C. 1985.)
- iii. **Statutory source:** D.C. Code § 16-304; D.C. Code § 16-309 (b); D.C. Code § 16-2353
- iv. **Evidentiary standard:** preponderance of the evidence

### When the parent(s) has not consented:

- i. **Required Findings:** *adoption petitioner must:*
  - a. Overcome the parental presumption by showing that the parent is either unfit or that exceptional circumstances exist that would make continued relationship detrimental to the child's best interest.
  - b. Show that the parent is withholding consent contrary to the best interests of the child OR the parent has abandoned the child;
  - c. Prove the petitioner's fitness and best interest factors described above.
- ii. **Case law:** *In re P.S.*, 797 A.2d 1219 (D.C. 2001); *Santosky v. Kramer*, 455 U.S. 745 (1982); *Troxel v. Granville*, 530 U.S. 57 (2000); *In re D.S.*, 88 A.3d 678 (2014); *In re J.J.*, 111 A.3d 1038; *In re S.L.G.*, 110 A.3d 1275 (D.C. 2015).
- iii. **Statutory source:** D.C. Code § 16-304; D.C. Code § 16-2353
- iv. **Evidentiary standard:** clear and convincing evidence

**Where the parent has named a proposed caregiver:**

- i. **Required Findings: *In addition to proving the factors listed above:***
  - a. The court must give weighty consideration to a parent's choice of caregiver. Prior to considering the adoption petition of a non-favored caregiver, the non-favored Petitioner must show that the parent's proposed caregiver is unfit, or that placement of the child with the caregiver would be contrary to the best interests of the child.
  - b. **Case law:** *In re T.J.*, 666 A.2d 1 (D.C. 1995) and its progeny
  - c. **Statutory source:** D.C. Code § 16-2353
  - d. **Evidentiary standard:** clearly contrary to the child's best interest by clear and convincing evidence