



Understanding Child Welfare and the Courts



Families involved with the child welfare system may have some involvement with the court—in most States, this occurs in a family or juvenile court.¹ This factsheet is designed to serve as a quick

¹ In most States, juvenile courts handle cases involving children and youth under 18, including child maltreatment (dependency cases), as well as cases of child delinquency and lesser offenses. Cases involving Tribal children are subject to the Indian Child Welfare Act (ICWA), which gives the child's Tribe and family the opportunity to be involved in decisions affecting the child; the National Child Welfare Indian Association offers resources for families about ICWA at www.nicwa.org/Indian_Child_Welfare_Act.

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guide to the general types of court hearings that a family may experience.²

Court Hearings in Child Welfare Cases

When a child welfare agency receives a report of suspected child abuse, neglect, or abandonment, the reported family can expect the following sequence of actions:

1. Child protective services (CPS) or law enforcement investigators follow up on the report of child abuse, neglect, or abandonment. Investigators may seek a court order if they need to search a home, interview a child, or arrange for a child to have a medical exam.
2. If the investigator determines that the child or children cannot remain safely at home, the investigator may file a motion with the court for temporary custody (an **emergency protection order**) and remove the children. In some States, the agency's attorney may file the motion, and in some States, the children may be removed without a court order. The children may be placed with kin or in a foster home until there is further action in the case.

² A more detailed description of how the court process works in child welfare cases can be found in "The Court Experience" in Section 5 of McCarthy et al.'s *A Family's Guide to the Child Welfare System* at <http://gucchd.georgetown.edu/72140.html>

LAWYERS?

Some States recognize that parents have a right to a lawyer at all child welfare hearings; others do not. Ask about your rights.

3. If the children are removed from the home, there is a **preliminary protective hearing** (sometimes called an **emergency removal** or a **shelter care hearing**) before a judge or judicial hearing officer. The CPS or law enforcement investigator presents evidence regarding the abuse or neglect, as well as information about the family and possible services. Based on the judge's determination of risk for the children, the judge either allows the children to return home until the trial or places them elsewhere, such as with a kin caregiver, until the trial. If the children are placed outside the home, the judge also addresses visitation and other issues. Generally, at least one person will be appointed to represent the best interests of the child. This representative may be a lawyer, a guardian *ad litem* (usually a lawyer), or a community volunteer called a court-appointed special advocate (CASA).³
4. At the **trial** (also called the **adjudicatory, jurisdictional, or fact-finding hearing**), the judge listens

³ See Child Welfare Information Gateway's *Representation of Children in Child Abuse and Neglect Proceedings* at www.childwelfare.gov/systemwide/laws_policies/statutes/represent.cfm

to the facts of the case and decides whether there is enough evidence to prove, under State law, that child abuse, neglect, or abandonment actually happened. This is conducted without a jury. At this point, the judge may dismiss the case because of a lack of evidence, or the judge may decide that there is enough evidence to prove that maltreatment occurred.

5. If the case is not dismissed, the judge must again decide whether the child or children should be removed from the parents or guardians, even temporarily. That decision occurs at a **dispositional hearing**, which may also take place at this time or may be scheduled for later. At the dispositional hearing, the judge may allow the children to return home under agency supervision, or the children may be placed in the custody of the State or county child welfare agency (legal custody) and then placed with kin in kinship foster care or in other foster care. The judge will also determine what services the children and parents should receive and will likely review the children's case plan in which the agency has indicated what requirements the parents need to meet in order to have the children returned to their home.
 6. At least every 6 months after that, there will be **review hearings** before the judge or before a review panel or other court members (such as hearing officers) to determine whether an appropriate case plan is in place and whether progress is being made toward meeting the plan's goals.
- If the goal involves reuniting the children with their parents, the court or panel will consider how the parents are progressing with their plan (for treatment, parenting classes, or other requirements), how the children are doing in their placement, and whether the case plan or goals for the children should be revised.
7. In addition to the reviews and hearings, a **permanency hearing** should be held 12 to 14 months after a child is removed from the home and every 12 months after that. A permanency hearing may be combined with the review hearing. At the permanency hearing, the judge makes decisions about where the child will live permanently. The permanency hearing in court may involve a number of individuals with an interest in the child, including parents, caseworkers, relatives, foster parents, and the guardian *ad litem* or CASA, as well as the lawyers for any of the parties.
 8. Another type of hearing that may or may not occur is a **termination of parental rights** hearing. Under the Federal Adoption and Safe Families Act (ASFA) and most State laws, there is a specific timeframe for parents to meet the goals in their case plan in order for their child to move back home with them. If parents are unable to do this and a child spends 15 out of 22 months in foster care, the child welfare agency is required to seek termination of parental rights or to document compelling reasons for requesting a

time extension. A termination hearing may be scheduled sooner when a court determines that reunification of the child with the parents is not an appropriate permanency goal. When parents' rights are terminated in court, the parents no longer have any legal relationship to the child, and the child is free to be adopted by someone else. However, if the child is living with a relative and the State has decided that this is an acceptable permanency plan, then the agency does not need to ask the court to terminate the parents' rights.

Who Should Attend Hearings and Reviews?

Parents should attend every hearing and be prepared to present their story to the court. They should also work closely with their lawyer and other members of their legal team. Children and youth should also attend permanency hearings and periodic reviews whenever possible. Older children may have views, opinions, and concerns to express, and judges may wish to observe the well-being of younger children firsthand. Some judges take time to speak with children and youth privately in their chambers to make sure the children understand what is happening and to ask questions about how they are doing.

Grandparents or other relative caregivers should make arrangements to attend court hearings; they may even be asked to testify. It is important for kin caregivers to give their view of the situation and to get a full understanding of the court's decisions. It is also important for the caregiver to be there

to support the children if they appear before the judge.

Child Welfare Laws in Your State

Child welfare laws vary from State to State. To find more State-specific information about schedules of court hearings, who may be present at hearings, determinations made at hearings, and permanency options, read Child Welfare Information Gateway's *Court Hearings for the Permanent Placement of Children*, which includes a summary of each State's statutes on these topics: www.childwelfare.gov/systemwide/laws_policies/statutes/planning.cfm

Questions to Ask the Child Welfare Caseworker About Court Hearings

- When and where is the hearing?
- What will be decided at the hearing?
- Who will be present?
- Who will have a lawyer?
- Am I entitled to a lawyer? Who can help me find a lawyer?
- Who will represent the child or children? When can I speak to that person?
- When can I speak at the hearing?
- What is the schedule of future hearings?

Resources to Help Prepare a Child or Youth for Court

- *Children and Youth Involved in the Court Experience*—special issue of the *Judges' Page Newsletter* from the National CASA Association at www.casaforchildren.org/atf/cf/%7B9928CF18-EDE9-4AEB-9B1B-3FAA416A6C7B%7D/0702_children_and_youth_involved_in_the_court_experience_issue_0119.pdf
- *Home Court Advantage* (DVD), prepared by the National Children's Advocacy Center at www.nationalcac.org/professionals/index.php?option=com_content&task=view&id=118&Itemid=61
- "Seen and Heard: Involving Children in Dependency Court" by Andrea Houry appeared in *Child Law Practice* and is available at www.americanbar.org/content/dam/aba/publications/center_on_children_and_the_law/empowerment/seenandheard.authcheckdam.pdf
- *What's Happening in Court? An Activity Book for Children Who Are Going to Court in California* at www.courts.ca.gov/documents/cab.pdf
- *Hearing Your Voice: A Guide to Your Dependency Court Case* (for youth) at www.americanbar.org/content/dam/aba/migrated/child/PublicDocuments/booklet_v3_2.authcheckdam.pdf

For More Information

- Child Welfare Information Gateway's Courts webpage at www.childwelfare.gov/systemwide/courts
- Child Welfare Information Gateway's database of State laws and statutes on child abuse and neglect and child welfare at www.childwelfare.gov/systemwide/laws_policies/state
- National Child Welfare Resource Center on Legal and Judicial Issues at <http://apps.americanbar.org/child/rcjji/home.html>
- National Quality Improvement Center on Child Representation in the Child Welfare System at www.improvechildrep.org
- National Quality Improvement Center on Non-Resident Fathers and the Child Welfare System at <http://fatherhoodqic.org>
- The National Project to Improve Representation for Parents Involved in the Child Welfare System at www.americanbar.org/groups/child_law/projects_initiatives/parentrepresentation.html
- State Guides for Families, when available. NOTE: Some of these can be accessed through the Court Improvement Progress Report at <http://apps.americanbar.org/abanet/child/home.cfm>

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