



Understanding Child Welfare and the Courts

Involvement with child protective services often includes the court system, especially if your child is removed from the home or at risk for removal. In most States, if a case requires court involvement, it will come before either a juvenile or a family court.¹ The court experience can be intimidating or overwhelming. This factsheet is designed to answer parent and caregiver concerns about the court process and provide resources regarding legal action and parental rights.

¹ Most cases dealing with children and youth under age 18 come before juvenile or family courts. Tribal citizen children are treated separately and come under the jurisdiction of the Indian Child Welfare Act, which empowers the child's Tribe and family in decisions affecting the child. Visit the National Indian Child Welfare Association for more information at www.nicwa.org.

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A Parent's Rights and Responsibilities

When a parent or caregiver is contacted by child protective services (CPS) because of alleged child abuse or neglect, he or she may be asked to answer questions and attend court to determine the best course of action. The court decides whether the child will stay in the home or be removed. The child may be allowed to stay home if services can be provided or if other actions can be taken to ensure the child's safety. It is important to remember that as a parent or primary caregiver, you have certain rights and responsibilities while your child welfare case is being investigated. It is also helpful to keep in mind that most cases *do not* result in a child being removed from the home and that services may be available to help your family.

Child welfare laws vary by State. It may be helpful to consult Child Welfare Information Gateway's State Statute Search for your State's specific requirements (https://www.childwelfare.gov/systemwide/laws_policies/state/).

Many court systems offer an alternative to traditional court proceedings, referred to as mediation. This may allow you to settle the issues and avoid court. For more information about mediation and other forms of alternative dispute resolution, visit Information Gateway at <https://www.childwelfare.gov/topics/systemwide/courts/specialissues/alternative/>.

Your rights include the following:

- In most States, the right to an attorney (appointed by the court or hired by you)
- The right to notice, which is a legal term referring to your right to be informed about the reason you are being investigated, the outcome of the investigation, and details regarding upcoming court hearings
- The right to ask questions (e.g., "Why am I being investigated?")
- The right to a hearing
- The right to play an active role in planning for your case

- The right to suggest a relative or other placement if your child cannot remain in your care
- The right to appeal decisions within a certain timeframe

A directory of attorneys in each State and extensive legal resources are available on the American Bar Association's website at <http://apps.americanbar.org/legalservices/findlegalhelp/home.cfm>.

Your responsibilities include the following:

- Asking questions to help you understand your role and the court process, including whether your area provides parent partners or peer advocates who have been in your position and can help you understand and navigate the legal process
- Attending and being well prepared for all appointments and court hearings (bring documentation, keep a personal journal of your progress during the case, etc.)
- Cooperating with the case plan you help develop and communicating any difficulties you may be experiencing

Consult your caseworker or lawyer—or parent partner, if relevant—if you have specific questions about your case or the court process. Remember that asking for help is a sign of strength. A list of State parent advocacy groups is available on the Child Welfare Information Gateway website at https://www.childwelfare.gov/organizations/?CWIGFunctionsaction=rols:main.dspROL&rolType=Custom&RS_ID=138.

For more information, consult the National Coalition for Parent Advocacy in Child Protective Services at <https://strengthening-families.org/parentadvocacy/>.

Court Hearings in Child Welfare Cases

The primary role of a juvenile or family court in child welfare cases is to protect children and help their parents provide a safe environment. This is a civil court, not a criminal court, and the hearings are often less formal than those you might have seen on TV. In most cases, everyone in court has the same goal—to make sure the child is safe.

The case planning and court hearing processes work together to determine what changes need to be made to return a child home or reach some other goal, such as placement with a relative. Parents might be ordered to partake in specific services before children can be returned to their care. These services may include mental health or substance use treatment. It may be challenging, but these services are designed to enable you to keep your child safe and ultimately back at home.

After a child welfare agency receives a report of suspected child abuse, neglect, or abandonment—also referred to as “maltreatment”—the legal process typically progresses through the following steps.

Child Welfare Court Process

<p>1 Court order</p> <p>After a petition has been filed on behalf of a child, a court order is issued in most jurisdictions to investigate suspected or reported abuse or neglect—but a court order is not required in all jurisdictions to launch an investigation.</p>	<p>2 Emergency protection order</p> <p>If the initial investigation finds that the child is unsafe, the court files this order to temporarily remove the child from the home.</p>	<p>3 Preliminary protective, emergency removal, or shelter hearing</p> <p>The investigator will present evidence regarding the suspected abuse or neglect. The parents can also present their own evidence to challenge the petition. Based on this information, the judge will either allow the child to stay or return home until the trial or determine a temporary out-of-home placement, such as with a family member or with a foster family.</p>	<p>4 Fact-finding hearing or adjudicatory trial</p> <p>This is a trial to determine whether enough evidence exists to conclude that the reported abuse or neglect has occurred. The judge may decide to dismiss the case based on lack of evidence or decide that enough (“sufficient”) evidence exists to suggest there was maltreatment.</p>
<p>5 Dispositional hearing</p> <p>This hearing will determine whether the child can remain at home and, if not, where the child will live. If the home is found unsafe, the child may be placed in the custody of the agency and then placed with family members or in foster care. The judge will determine a visitation plan for the parents or caregivers, and the case manager will work with them to draft a case plan.</p>	<p>6 Review hearings</p> <p>Review hearings are held at least every 6 months to determine case plan progress and assess whether the child can return home safely. The parents or guardians must successfully complete the case plan before they are allowed to regain custody of the child(ren).</p>	<p>7 Permanency hearing</p> <p>After 12–18 months, the court will determine the child’s permanent living situation, which can be a return to the parent(s) and/or caregiver (referred to as reunification), guardianship, permanent placement with a relative, or the termination of parental rights (TPR) and adoption.</p>	<p>8 Termination of parental rights hearing</p> <p>After a reasonable amount of time (12–24 months), parental rights may be terminated. This may be based on specific conduct or failure to meet case plan goals. Parents may also opt to voluntarily give up their parental rights. In some States, this will release the child for adoption. The TPR hearing may happen sooner in instances of very serious maltreatment, often called “aggravated circumstances.”</p>

The length of time between each of these steps varies by State. You can familiarize yourself with your State’s specific rules by consulting Gateway’s State Statute series at https://www.childwelfare.gov/systemwide/laws_policies/state/.

Who Should Attend Court Hearings and Reviews?

Parents and caregivers are strongly encouraged to attend every hearing and be well-prepared to share their story with the judge and the court. If you are being investigated, it is important to work closely with your lawyer and caseworker. Children and youth should attend permanency hearings and the reviews whenever possible and appropriate. Older children may wish to share thoughts or concerns, and judges may wish to observe the well-being of younger children. Some judges may ask to speak with youth and children in private to see how they are doing and to make sure they understand the process and why decisions are being made.

Grandparents and involved relatives or caregivers—as well as family acquaintances—may be encouraged to attend court hearings. In addition to supporting the children and/or their parents in court, family members and other caregivers can provide an important view of the situation, and the hearings can help them to better understand the court's decisions.

Parents should consult their attorney if they feel that other supportive contacts—such as close friends, work colleagues, teachers, their child's sports coach, mentor, or pastor—might help their case in court. If a child is in out-of-home care, it is a good idea for parents to build a relationship with the child's caregivers so they can be a support to the parents as the case proceeds.

Parents who maintain physical custody of their child(ren) but who have an active court case—as well as those whose children have been placed in out-of-home care—will be notified of the hearings and are expected to attend. As mentioned earlier, children may be required or encouraged to attend, depending on their age. Child care arrangements should be made for young children not involved in the investigation. The following is a list of others who may attend court hearings.

Who Can You Expect in the Courtroom?

Judge: Presides over the courtroom and decides whether abuse or neglect has occurred and whether the child needs to be removed from the home. The judge may rule that certain conditions must be met for the child to remain at home (e.g., monitoring by child protective services, enrolling in parenting classes or other treatment services).

Parents' attorney: Legal representative for the parents' interests. The attorney may be a court-appointed lawyer that the court assigns at the time a petition is filed (if the family qualifies for financial assistance) or one that is hired by the parent. The attorney should be appointed in advance of the initial hearing in order to prepare parents for the court hearing.

Children's representatives: The court will appoint a lawyer and/or a trained volunteer to represent a child throughout the legal process. You can assist your child's representative by providing any information that will help them represent your child(ren). It is a good idea to talk to your attorney about what might be useful to share. Terms and laws vary, but your child's representative(s) may be one of the following:

- **Children's attorney:** A lawyer that represents the child like a regular attorney – explaining things to the child and advocating in court as the child desires.
- **Guardian ad litem (GAL):** A lawyer or layperson who presents what they think is in the best interests of the child to the court. A GAL may also refer to a traditional children's attorney.
- **Court-appointed special advocate (CASA) or lay volunteer GAL:** A trained volunteer appointed by the court to represent the child's best interests and needs, including serving as a factfinder for the court, monitor, facilitator of services, and advocate for the child (refer to the National Court Appointed Special Advocate Association at <http://www.casaforchildren.org/> for more information).

Agency attorney: The lawyer who represents the child welfare agency and brings the child abuse or neglect charge before the court.

Witnesses: People who provide evidence of abuse and neglect or those who challenge the allegations with evidence of their own (e.g., physicians, psychologists, teachers, school guidance counselors, neighbors, eye witnesses).

Social/caseworker: May be the person who is addressing or investigating the abuse or neglect (the petitioner), or could also be someone who works on behalf of the child welfare or other local agency with either the parents or the child.

Interpreter: A person who translates from one language to another. Let your caseworker or attorney know if you don't feel comfortable or have trouble understanding or communicating in English.

Court reporter: Court staff person responsible for recording each hearing.

Bailiff or other law enforcement official: Although this is not a criminal hearing, there are usually security staff in court.

Frequently Asked Questions About Court Proceedings

What is expected of me in court? You are expected to be on time; dress appropriately; avoid inappropriate language; and leave food, drink, or chewing gum outside the courtroom.

How can I prepare for court? Talk with your lawyer, the GAL or CASA volunteer (if relevant), parent partner (if you have one), or caseworker before the hearing. You should also arrange for transportation and child care, bring important papers and documents, arrive at least 15 minutes early and locate the hearing room, check in with the court officer outside the courtroom, and be prepared to wait.

What should I do if I don't have a way to get to the courthouse? Make sure you consult your lawyer or caseworker in advance of the hearing so they can assist with transportation.

What is likely to happen at the initial hearing? The court must assess the child's safety and whether the child will be allowed to remain in your care if he or she has not already been removed from the home under a court-ordered emergency removal. If not done already, the court will appoint counsel for the parents or caregivers and a GAL, CASA, or lawyer for your child(ren).

How long will my hearing take? The judge is responsible for listening to many cases throughout the day. You should plan on it taking several hours and ask your caseworker or lawyer for more information.

What happens after the hearing? The judge makes a decision and issues a court order, either immediately or within a specified timeframe. The judge will explain the expected course of action that the case will take, ranging from dismissal to—at a much later date in the court process—a potential termination of parental rights, or TPR (see *explanation on page 8*). Ask for written copies of all court papers and orders before you leave the courthouse, and ask your lawyer or caseworker to explain what's next.

What happens at a disposition hearing? This is often part of the adjudicatory hearing (see above) or may be conducted soon thereafter with a child who has been found to have been abused, neglected, or delinquent. The disposition hearing addresses where the child should be placed—in foster care or some other placement—or whether the child should be allowed to remain at home.

Can I participate if I am detained by Immigration and Customs Enforcement (ICE)? ICE policy requires ICE staff to consider how they can help parents and caregivers participate in court hearings.² If you cannot come in person, you should be able to participate by phone or in writing. Talk to your immigration attorney, caseworker, and ICE staff well before your hearing to allow them enough time to come up with a plan that will ensure your participation in the court process. You are entitled to translation and interpreter services, so it is important to let your caseworker and lawyer know if English isn't your primary language.

For more information, consult *Parental Rights Toolkit: Detained or Deported: What About My Children? What to Do if You Can't Be With Them*, a 2014 guide prepared by the Women's Refugee Commission at <https://www.womensrefugeecommission.org/rights/resources/1022-detained-or-deported-parental-toolkit-english-interactive>.

Can I participate if I am in jail or prison? You have a right to be included in your child's case management process, including notification about court hearings and interviews about your child's safety and potential placement with relatives. You should let your case manager know you want to be as involved as possible with your child's case, including visits with your child, if allowed, and participation in court. If it is not possible for you to make a physical appearance in court, your lawyer or case manager can help coordinate your participation by telephone or by videoconference.

² U.S. Immigration and Customs Enforcement. (n.d.). *ICE parental interests directive*. Retrieved from <http://www.ice.gov/parental-interest>

For additional information, see *Guide for Incarcerated Parents Who Have Children in the Child Welfare System* (U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, Administration for Children and Families, U.S. Department of Justice, & Federal Bureau of Prisons) at <http://youth.gov/sites/default/files/COIP-Parent-Guide-508.pdf>.

What happens if the judge orders my child to be removed from my care? You can request that your child be placed with a relative, or, if you have more than one child, you can ask that all your children be placed together. Your caseworker will work with you to develop a case plan for regaining custody of your child (referred to as reunification) or toward achieving another permanency goal, such as adoption or guardianship by a relative or other suitable caregiver. Pursuing both reunification and an alternative permanency goal at the same time is referred to as concurrent planning and is a required practice in many States to eliminate delays in attaining permanency for children.

What kind of support will I need during this experience? Interacting with the child welfare system and the court can be stressful and overwhelming. It is important for you to take care of your mental and physical health during this process. There are many State and local organizations available for counseling or peer support listed on Information Gateway's Behavioral Health and Wellness webpage at https://www.childwelfare.gov/organizations/?CWIGFunctionsaction=rols:main.dspROL&rolType=Custom&RS_ID=35.

Federal law requires your child welfare agency to make reasonable efforts to prevent your child from being removed from the home, and—if your child is removed—the agency is required to make reasonable efforts to support your family's reunification. For more information, see *Reasonable Efforts to Preserve or Reunify Families and Achieve Permanency for Children* in Information Gateway's State Statutes series at <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/reunify/>.

What happens at review hearings? The court will check on case plan progress, determine whether reasonable efforts are being made toward reunification and whether the child should be returned home, establish a reunification timetable if relevant, and set the date for the next hearing if needed.

What is a permanency plan hearing? This is the hearing where the judge decides the living plan that ensures both the child's safety and best interests. Possible options include keeping the child in care for a limited time; allowing the child to return home; awarding custody or guardianship to a relative; preparing the child, if an older youth, to identify a support system of caring individuals that will help them be successful in living on their own; or TPR followed by adoption. For more information on how best interests are determined—which are different in every State—see Information Gateway's *Determining the Best Interests of the Child* at <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/best-interest/>.

What about possible mediation? In mediation, a person trained in resolving differences and who is not personally involved with the case meets with all parties to resolve the case. This allows those involved to have an active voice in the case. Parties in the case can request mediation, or the court can order it. Mediation can take place in or outside of court, or by phone call, at any point during the case. When parties reach a resolution, it is referred to as a settlement agreement and made part of the court record.

Mediation is frequently used as an alternative to formal termination proceedings. The parties explore the child's best interests, and the parents may opt to voluntarily relinquish their parental rights (with the potential for an open adoption and ongoing contact with the child). For more information, see Information Gateway's *Postadoption Contact Agreements Between Birth and Adoptive Families* at <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/cooperative/>.

What are the grounds for TPR? While each State has its own TPR rules, the Federal Adoption and Safe Families Act requires a TPR when parents have failed to meet the goals of their case plan within a specific timeframe. If parents don't achieve these goals and a child has spent 15 of the most recent 22 months in foster care, the child welfare agency is required to seek a TPR or provide a reason for requesting an extension. The court may schedule a termination hearing sooner if it determines that reunifying the child with the parents is not an appropriate goal. Parents may also voluntarily relinquish their rights.

A TPR signifies the official and permanent termination of the parent-child relationship and parental rights with respect to the child (unlike custody rights, which can be changed based on circumstances). While States have differing grounds for what constitutes an involuntary TPR, in general, parental rights are terminated when a child cannot safely be returned home without risk of harm or when the parent is not able to meet the child's basic needs. For more information, see Gateway's *Grounds for Involuntary Termination of Parental Rights* at <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/groundtermin/>.

How to File an Appeal

Parents or youth may file an appeal in child maltreatment and TPR cases with the assistance of an attorney or GAL if they believe the judge has acted in error. Appeal procedures differ by State, and a GAL or attorney will be able to explain the appeal process to you. Every State also has a judicial board with the authority to investigate complaints of judicial misconduct and impose discipline and removal if appropriate. Contact information for each State office is available through the clerk of the court. State-specific contact information is available at <http://www.justice.gov/usao/find-your-united-states-attorney>. For more information on challenging a court ruling, see Information Gateway's *From Complaint to Resolution: Understanding the Child Welfare Grievance Process* at <https://www.childwelfare.gov/pubs/factsheets/cw-grievance/>.

Glossary of Court Terms

The following terms may come up in child welfare court proceedings. If you are unfamiliar with a term, or something is not clear, always ask your caseworker or lawyer.

Adjudicatory hearing: Held by the juvenile and family court to determine if there is enough evidence to prove that a child was actually abused, neglected, or abandoned or whether another legal basis exists for the State to intervene to protect the child. Also referred to as a fact-finding hearing.

Best interests of the child: The debate the court has when deciding what type of services, actions, and orders will best serve a child.

Caregiver: One who provides for the physical, emotional, and social needs of a dependent person. The term most often applies to parents or parent surrogates; child care and nursery workers; health-care specialists; and relatives caring for children, elderly, or ill family members.

Case permanency plan: The casework document that outlines the outcomes, goals, and tasks necessary to ensure the safe return of the child.

Child abuse and neglect: Any nonaccidental physical injury or failure to act on the part of a parent or caretaker that results in death or serious physical or emotional harm.

Child protective services (CPS): The social services agency designated (in most States) to receive reports, conduct investigations and assessments, and provide intervention and treatment services to children and families in which child maltreatment is reported to have occurred.

Concurrent planning: Working toward the safe return of a child to his or her family while also developing an alternative plan in case a return to home is not possible.

Corporal punishment: Inflicting physical pain to discipline a child (e.g., spanking).

Court-appointed special advocate (CASA): A person, usually a volunteer appointed by the court, who works to ensure that the needs and interests of a child are fully protected.

Custody: Refers to the legal right to make decisions about children, including where they live. Parents have legal custody of their children unless they voluntarily give custody to someone else or a court takes this right away and gives it to someone else such as a relative or a child welfare agency.

Dispositional hearing: Hearings to determine what needs to happen with the child and the family while the case is in discussion (e.g., where the child will live, who will have legal custody, and what services are needed to reduce the risk and to address the effects of maltreatment).

Due process: The principle that every person is entitled to a fair and unbiased legal process.

Fictive kin: People not related by birth or marriage who have an emotionally significant relationship with an individual.

Foster care: A substitute care for children placed away from their parents or guardians and for whom the State agency has placement and care responsibility.

Foster parent: Adults who provide a temporary home and everyday nurturing and support for children who have been removed from their homes. The individual(s) may be relatives or nonrelatives and are required to be licensed in order to provide care for foster children.

Full disclosure: Information provided to the family by the child welfare agency regarding the steps in the intervention process, the requirements of the case plan, the expectations of the family, the consequences if the family does not fulfill the expectations, and the rights of the parents to ensure that the family completely understands the process.

Guardian ad litem (GAL): A lawyer or layperson appointed by the court who represents a child in any case involving child abuse. Usually this person considers the best interests of the child and may perform a variety of roles, including those of independent investigator, advocate, advisor, and guardian for the child. A layperson who serves in this role is sometimes known as a court-appointed special advocate (CASA).

Jurisdiction: The legal authority of a court to hear and decide a certain type of case.

Legal guardian: An adult to whom the court has given parental responsibility and authority for a child. Appointment as guardian requires the filing of a petition and approval by the court and can be done without terminating the parental rights of the child's parents.

Mediation: A voluntary process that allows the parties involved to agree on a permanency decision in the best interests of the child with the help of a trained, neutral, third party. Mediation generally avoids confrontational court hearings.

Paternity: Legal or biological fatherhood.

Perpetrator: The person who has been determined to have caused or knowingly allowed the maltreatment of a child.

Physical abuse: Child abuse that results in physical injury to a child.

Physical neglect: Failure to provide for a child's basic survival needs, such as nutrition, clothing, shelter, hygiene, and medical care.

Protective custody: A form of custody required to remove a child from his or her home and place in out-of-home care. Law enforcement may place a child in protective custody based on an independent determination that the child's health, safety, and welfare is jeopardized. A child can also be placed in protective custody via court order.

Putative father: Legal term for a man who is not married to the child's mother and who is alleged or claims to be the biological father of a child.

Relinquishment: The voluntary termination or release of all parental rights and duties that legally frees a child to be adopted. This is sometimes referred to as a surrender or as making an adoption plan for one's child.

Review hearing: Held by the juvenile or family court to review case progress (usually every 6 months) and to determine the need for continued court oversight.

Safety plan: A casework document developed when it is determined that a child is in imminent or potential risk of serious harm. In the safety plan, the caseworker targets the factors that are causing or contributing to the risk of imminent serious harm to the child and identifies, along with the family, the interventions that will control the safety factors and assure the child's protection.

Service agreement: The casework document developed between the caseworker and the family that outlines the tasks necessary to achieve case goals and outcomes. A service agreement may also be known as a case plan.

Substantiated: A CPS determination that means credible evidence exists that child abuse or neglect has occurred. An unsubstantiated finding means that there is not enough evidence to prove that child abuse or neglect occurred.

Termination of parental rights (TPR): The voluntary or involuntary relinquishment of parental legal rights for the care, custody, and control of a child.

Helpful Resources

National Parent and Family Organizations

Be Strong Families is a national parent-run organization dedicated to helping parents keep their families and communities strong. <http://www.bestrongfamilies.net/>

National Coalition for Parent Advocacy in Child Protective Services is a group of parent leaders who have come together to uphold the rights of families whose children have been removed, and promote the return of children to their families. <https://strengthening-families.org/parentadvocacy/>

Parents Anonymous uses mutual support and shared leadership to empower, inspire, and create long-term positive changes in families. <http://www.parentsanonymous.org>

Publications

The Parents' Get Real Guide to Getting Your Kids Back (Be Strong Families/Strengthening Families Illinois) is written by parents who have successfully reunified with their children in the foster care system to support other parents who are currently in that situation. http://www.strengtheningfamiliesillinois.org/mirror/downloads/Parents_Get_Real_Guide_lores.pdf

Finding Your Way: Guides for Fathers in Child Protection Cases (American Bar Association and American Humane Association) provide tips for noncustodial fathers who want to be active participants in their children's child protection cases. They focus on topics such as fathers' legal rights, child support, and courtroom expectations. http://site.americanhumane.org/fatherhooddocs/father_guide.pdf

A Family's Guide to the Child Welfare System (National Technical Assistance Center for Children's Mental Health/Georgetown University Center for Child and Human Development) helps parents better understand the child welfare system and answers questions many parents will have. http://gucchd.georgetown.edu/products/AFamilysGuide_English.pdf

Rise magazine seeks to educate families involved with the child welfare system about their rights. <http://www.risemagazine.org/>. One Step at a Time offers parents information about reunifying with their children, including personal essays from parents who have been through the process. <http://www.risemagazine.org/item/one-step-at-a-time/>

Reunification: Bringing Your Children Home from Foster Care (Child Welfare Information Gateway) describes the reunification process, including what parents can expect while their children are in foster care and what they can do to help prepare for the return home. <https://www.childwelfare.gov/pubs/reunification/>

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