

YOUR CHILD WELFARE CASE: A GUIDE FOR PARENTS

FAMILY COURT PROCESS

If the Administration for Children's Services (ACS) has removed your child, they must immediately file a petition in Family Court. You should receive a written notice from ACS to appear in Family Court on a specific date in the Intake part for the first court appearance.

FIRST COURT APPEARANCE

At this initial court appearance you have the right to:

- **an attorney.** If you're assigned an attorney, get his/her card or name, address and telephone number.
- **a copy of the petition** that contains the charges against you (abuse or neglect petition).
- **names** of the ACS caseworker, ACS attorney, and law guardian for the child(ren).
- **name, location, and telephone no. of foster care agency** where your child(ren) are placed and name of the foster care agency caseworker.
- **immediate agency visitation** unless specifically restricted by court order. Every other week is the minimum amount. You can ask the agency or judge for more visits.
- **ask that a relative be immediately investigated** as a foster parent or custodian for your child(ren).
- **ask the court to order services** that would help with the return of your child(ren).

1028 HEARING

You have the right to request the immediate return of your child(ren) and to have a hearing (called a 1028 hearing) within 3 days. At this hearing, the court decides if your child(ren) may be immediately returned to you while the rest of the case continues. In order to keep your child(ren) in foster care, ACS must show that the child(ren) would be in "imminent danger" if returned to you now.

You can help your lawyer prepare for a 1028 hearing by getting important information to your lawyer quickly.

- try to get children's medical records, school records, letters from doctors, clergy, or teachers who know you and can talk about your ability to safely care for your children.
- if you're in a drug or alcohol rehabilitation or treatment program and your sobriety is an issue, consider getting letters/urine or blood screens from your counselor/program about your sobriety. If you're not in a program, you can ask the court to send you for an immediate drug test.
- if concerns have been raised about your emotional or physical health, consider getting letters from your therapist, doctor, or clinic about your health status.

At the hearing: ACS will present their case first. Usually, the ACS caseworker testifies about why the children were removed. Then, the parent presents his or her case. If the judge decides that the children cannot come home at this time, this doesn't mean that they will never come home. You should keep working with the agency to get them home. The case will now continue to fact-finding and disposition.

FACT-FINDING HEARING

At this next stage, the court decides whether you have neglected or abused your children under the law. ACS must "prove" the charges that they have made against you in the petition. You have several options: you can (a) admit to the charges, (b) submit to the jurisdiction of the court without admitting to the facts (this means your children can be placed in foster care and the judge can order you to comply with services), or (c) go to trial. At the end of the hearing, the judge will either (1) make a "finding" of abuse or neglect against you or (2) find that ACS did not prove their case and dismiss the petition. If so, the case will be over and the children returned unless the decision is appealed and the court orders that the children stay in foster care until the appeal is decided.

ACS may also agree to Adjourn your case in Contemplation of Dismissal (ACD). This means that the neglect petition would be dismissed in a year if you comply with the terms ordered by the judge. The child(ren) may be returned to you upon specific conditions.

You should discuss your options with your attorney and make sure that you understand them before deciding what to do. **To prepare for trial or to help with settlement:** Work with your attorney by getting documents and witnesses that support you and can be used as

evidence in any hearing. A hearing may continue over several days and may even be continued over a period of several months. Be on time for all court proceedings or the case may go on without you.

If you admit to the charges, submit to the jurisdiction of the court, or the judge makes a finding against you, then the judge has the power to place your child(ren) in foster care. The next stage is the dispositional hearing, where the judge decides what is best for the child(ren).

DISPOSITIONAL HEARING

At the dispositional hearing, the judge must decide whether the children should stay in foster care (usually for a year) or be returned to you. The judge should consider the steps you have taken to address any problems or to plan for the return of your children. The judge may order you to be examined by a mental health professional. Usually, the judge will order an I & R (Investigation and Report). This is a report made by ACS that recommends what should happen to your children. It is important to cooperate with the ACS worker. You can agree to the ACS recommendation or ask for a hearing if you do not agree. Ask your lawyer what ACS is recommending. You can help your attorney prepare for this stage by getting witnesses and letters of support as described in the section on 1028 Hearings.

You should ask the judge to order any services you need to help reunite your family if the agency is not providing them.

You can also ask the judge to increase your visitation and work out a plan to gradually increase visitation. (A foster care agency may also increase your visitation as long as this does not violate a court order. They do not need to get ACS approval to increase visits.)

At disposition, the children may be returned home under ACS supervision, they may be continued in foster care or the children may be placed in the custody of another person (family or not).

There will be a dispositional order. Any placement order should state your visitation plan and tell you of your right to be notified of service planning conferences. The judge may order the agency to provide services and may require you to comply with services within certain time frames. Make sure you get a copy of the order.

EXTENSION OF PLACEMENT

If your child(ren) are placed in foster care after disposition, you will have to go to court again when the placement is over unless your child(ren) are returned home first. A petition for extension of placement means that ACS is asking the court to keep your child(ren) in foster care, usually for another year. The petition must explain why this is necessary.

You have a right to object to the extension and to have a hearing. This is also your chance to explain to the court the steps you have taken to get your child(ren) home and to let the judge know if you're not getting services that were ordered or you need. You can also ask for more visits at this time.

PERMANENCY HEARING

At a permanency hearing, the court decides what the "permanency plan" should be for your child(ren). You are entitled to written notice that a hearing will be held. The notice should say what ACS' plan is and should have a copy of your latest service plan. The permanency hearing is usually part of the extension of placement hearing, but it could be heard as part of disposition or at some other time. A permanency hearing must be held within one year of 60 days after your

child was removed or within one year of a Court finding abuse/neglect, whichever is earlier.

At this stage, the judge can decide that the children should be:

- returned home,
- freed for adoption by ordering a "termination of parental rights" case to be filed against you,
- sent to live permanently with a legal guardian,
- placed permanently with a relative, or
- placed in another permanent living arrangement.

You have a right to

- prior written notice of this hearing.
- an attorney at this hearing (to help you decide whether to agree with plan or not).
- be present to say whether you agree with the plan or not.

The judge will then decide on the permanency plan for your children. The judge should also review your latest service plan prepared by the agency and decide whether it needs any changes. If your children are not returned to you immediately, this is a chance to get the court to order services for you and your family.

You should know before you go to court what the agency's plan is. Attend a case conference to find this out. (See below)

TERMINATION OF PARENTAL RIGHTS

Sometimes the court can permanently take away all of your rights as a parent. This is called the **Termination of Parental Rights**. If the court does this, you may never be able to see or hear from your children ever again. If your parental rights are taken away from you,

your children may be adopted without your consent. You will not have the legal right to seek custody of your child(ren) or to visit or contact them.

To terminate parental rights, the agency must file a petition in Family Court. You must appear in court or you could lose your rights without even being there. You have the right to a hearing and to have an attorney represent you. If you don't have your own attorney, you may ask the court to assign one for you.

There are five reasons (or "grounds") to terminate parental rights: mental illness, mental retardation, severe and repeated abuse, abandonment (no contact or planning by the parent in the last six months), and permanent neglect (limited contact and planning by the parent, despite diligent efforts on the part of the agency to reunify the family). To prevent a termination on grounds of abandonment or permanent neglect, you must maintain contact with your children and plan with the agency for their return. (See Out-of-Court Advocacy section below.)

In a Termination of Parental Rights proceeding, there is a factfinding and a dispositional hearing. At factfinding, ACS and/or the foster care agency must prove one of the above grounds exists to terminate your parental rights. You may choose to go to trial or admit to the allegations. Sometimes the agency will offer a suspended judgment. If you agree to a suspended judgment, you will have to admit to permanent neglect and you will have one year to meet certain conditions, such as completing a drug treatment program, maintaining consistent visitation, or finding appropriate housing. If you do not comply, the court may be able to enter a judgment terminating your parental rights without another hearing.

If you go to trial and the judge finds that there are grounds for termination of parental rights, a dispositional hearing may be required. At disposition, the judge may enter a suspended judgment or may terminate your parental rights and free your children for adoption.

You can also choose to **surrender** your parental rights and give up your right to a termination of parental rights trial. You can sign a conditional surrender that says you surrender your rights on the condition that a specific person adopts your children and/or that you keep the right to contact or visit your children. If you are interested in this option, speak to an attorney.

LAW REQUIRES STRICT TIME FRAMES FOR TERMINATION

The law now requires the agency to file a petition (a "request") to terminate your parental rights, when:

- your children have been placed in foster care for 15 months out of the last 22 months.
- you "abandoned" your children.
- you have been convicted of voluntary murder or manslaughter of one of your children.
- you have been convicted of certain serious crimes involving your children.

Even if any of the above circumstances exist, the agency can decide not to file a petition to terminate your parental rights, if:

- ACS and/or the foster care agency have documented in the case record that there is a "**compelling reason**" not to terminate your parental rights. A compelling reason might be:

1. the current Family Court abuse or neglect case against you regarding

your children is not yet finished.

2. the children's permanency goal is not adoption.

3. a child who is 14 years old or older will not consent to his/her adoption.

4. there are insufficient legal grounds to file a "termination of parental rights" case against you.

- The children are being cared for by a relative.
- ACS and/or the foster care agency have not provided you with the services that they said they would (in the "service plan/permanency plan") and are required to give you to reunite your family.

OUT OF COURT ADVOCACY

When you have children in foster care, ACS has legal custody of your children. Although you do not have custody of your children, you still have rights.

ACS AND FOSTER CARE AGENCIES

In most cases, ACS contracts with a foster care agency to provide case planning services to the family. This agency is called the foster care or "contract" agency. You should know the names and phone numbers of your foster care agency caseworker and supervisor. Your case will also be monitored by a case manager at ACS, who supervises the agency and will have to make certain decisions about your case. You should know the names and phone numbers of the ACS case manager and his/her supervisor.

REASONABLE EFFORTS

Generally, when you have children in foster care, ACS and the foster care agency have an obligation to help you maintain a relationship with them. This means encouraging visitation and providing you with services. These services may include parenting skills classes, drug treatment, individual and/or family counseling, child care, homemaker, and housing assistance.

YOUR RESPONSIBILITIES

While your children are in foster care, you have an obligation to maintain contact with the agency and your children, including regular visits with them. You also have to plan for your children to return home. This may include complying with recommended services to address the reasons for the children's removal. If you do not plan and maintain contact, the agency can try to terminate your parental rights.

It is a good idea to keep a record of your efforts to visit with your children, meetings you have with the agency, and telephone calls or letters to the agency. If you are in or have finished a drug treatment program, a parenting skills class, or a job training program, you should tell the agency of your progress and provide certificates and letters.

VISITING

Regular and meaningful visitation is important to your relationship with your children. You have a right to visit at the agency every two weeks at a **minimum**. You cannot get less than this amount unless a Family Court Judge has decided that the children's life or health would be in danger. The Family Court Judge can order more frequent visits. You can ask your caseworker to increase visits before you go to court. Visits should be supervised (by the agency worker) only if ordered by the court. If you are dealing with the issues that led to

your children's foster care placement and the visits are going well, you can ask that visitation be increased. You can ask if visits can increase from one hour visits every other week to two hour visits, and gradually to weekly visits, overnight visits, and weekend visitation.

SERVICE PLAN REVIEWS

Foster care agencies must prepare a service plan for every family with a child in foster care. The service plan should list the services that the agency is providing you and the children and the services that you must complete for the children to come home. An agency may require you to complete a parenting class, attend counseling, complete a drug treatment program, find suitable housing, or establish a source of income. You may also ask the agency for help, including counseling referrals, help with housing, homemaker assistance, or childcare. You have a right to participate in making the service plan by attending a case conference. A visiting plan should also be prepared.

The foster care agency must hold a case conference to review the service plan 90 days after your children are removed and every six months after that. You have the right to be at that conference, to receive written notice of the meeting two weeks before it is held, and to bring someone with you. You also have a right to a written copy of the service plan.

If you have not had a service plan review or have not received a written copy of your service plan, then you should write to the agency immediately to request a case conference and copy of the plan.

MEDICAL CARE

You have the right to attend your children's medical appointments, and to participate in their medical care. You should be asked to

consent to non-emergency medical treatment. You can ask your caseworker about your children's medical health, medical care, and psychological health at any time.

EDUCATION

You have a right to know what is happening with your children's education. You may ask for report cards, assessments for special education, and meetings with your children's teachers. You can attend parent/teacher meetings unless a court order says you cannot.

KINSHIP FOSTER CARE

When children are removed from the home, the law requires that they be placed with family members, if possible. If your children are removed from you and there is a relative who can care for them, you or the relative should ask the caseworker if the children can be placed with the relative. The caseworker should investigate relatives and ask whether they want to be a foster parent or a custodian. A foster parent has to be certified by the agency and receives foster care benefits. Certain relatives (including grandparents, aunts/ uncles and siblings) may file for custody instead of being a kinship foster parent.

CONCLUSION

The law requires that children should achieve permanency (a stable home) quickly. To ensure that your children return home as quickly as possible: appear on time for all court dates, stay in touch with your attorney and provide him/her with information, attend all scheduled visits, complete all mandated services, and stay in touch with your foster care worker.

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