

Parents, Guardians, and Custodians in Child Abuse and Neglect Cases (Overview)

Why Do I have to go to Court?

When the Juvenile Court has an abuse or neglect case, the purpose of the court is to keep children safe and help families have safe homes for their children. If possible, the Juvenile Judge will allow the children to remain in the home if they can be safe and protected from harm. The Juvenile Judge takes children out of the home when they cannot be safe and protected in the home. Children are not removed from their home to punish their parents, guardians, or custodians.

The Juvenile Judge can order you and your family to get help. The Judge can also order that your child be taken from your custody and placed in the temporary custody of the Arkansas Department of Human Services (DHS). This means that, for the time being, DHS is legally responsible for your child and, with the approval of the Juvenile Judge, can decide where your child should live and what you need to do to have your child returned to you.

If your child is removed from your home, the Juvenile Judge may order you to pay child support. This is because you are still the parent, guardian, or custodian, and you still have a duty to support your child, even if your child is living outside your home.

It is very important for you to know that the same problems or actions that brought you to Juvenile Court may cause criminal charges to be brought against you, your partner, someone else who lives in your house, someone else in your family who does not live in your house, or anyone who has harmed your child or put your child in danger.

What happens if my child is removed from my home?

If your child is removed from your home, you will receive a copy of the papers that have been filed with the court. One of the papers is called a Petition for Emergency Custody. The petition was written after DHS received and investigated a report of abuse and/ or neglect concerning your child.

The Emergency Hearing must be held within five (5) working days from the date of the filing of the order that the Judge signs taking custody from you. The petition lists you as a defendant. This means you are the parent, guardian, or custodian in a child abuse and neglect case. The child is also listed as a defendant. An affidavit is attached to the petition. The affidavit contains one or more allegations, which are sworn statements of what is believed to have happened and the reasons that the Department of Human Services believes that your child needs to be in the custody of the Department of Human Services.

When the petition is given to you, it will have a paper called a summons attached to the front of it. The summons tells you the date, time and place where the court hearing will take place, so that you can be present for the hearing. It also tells you about *your right to have an attorney represent you, and how to get an attorney if you cannot afford to pay for an attorney.*

Types of Court Hearings

You may have to go to several court hearings during the dependency/ neglect case so that the Judge can listen to information presented from all the parties and decide what will happen. These are the types of hearings in child abuse and neglect cases and the time frames in which they should happen:

- **Emergency Hearing** (within 5 days)
- **Adjudication Hearing** (within 30 days)
- **Disposition Hearing** (6 months or less)
- **Review Hearing**
- **Permanency Planning Hearing** (Held no later than 12 months from the date the child was removed from the home)
- **Termination of Parental Rights Hearing** (Held no later than 150 days from the date of the Permanency Planning Hearing)

Each court hearing has a different purpose. The hearings listed above are described on the next page. Read through these descriptions so that you will know when each hearing should be held, what to expect at each hearing, and why it is very important for you to be present at each hearing.

The Emergency Hearing: The Emergency Hearing must be held within five (5) working days from the date of the filing of the order that the Judge signs taking custody from you.

The purpose of the Emergency Hearing is for the Judge to decide whether there is reason to continue the emergency order removing the child from your custody.

At the Emergency Hearing, the Judge will decide whether your child can safely live with you, stay in the temporary custody of the Department of Human Services, or live with someone else until the adjudication hearing (trial) is held. The Judge's decision is based on what is necessary for your child's safety and best interest.

If your child does not return to your home at this hearing, the Judge will make a decision about visitation between you and your child. The Judge may also make decisions about any services that the Department of Human Services will provide to your family.

The attorney for the Department of Human Services will present information about the case to the Judge. You can give information to the Judge at this hearing. If you have an attorney at that hearing, your attorney will also be able to present information. If you don't have an attorney, and cannot afford to hire one, the Judge will appoint an attorney to represent you if you ask.

At the Emergency hearing, the Judge will give you the time and date of the next hearing, which is called the Adjudication hearing

Adjudication Hearing (Trial): The Adjudication Hearing is sometimes called a trial. It must be held within thirty (30) days after the Emergency Hearing, unless there is a good reason for having the hearing at a later date. But, the Adjudication hearing cannot be held later than fifty (50) days from the date that the Emergency Hearing was held.

The purpose of the Adjudication hearing is for the Judge to decide if your child has been abused or neglected. At this hearing, the Judge listens to evidence about why the case first came to court.

Witnesses will tell what they know about the facts of the case. Your attorney can ask them questions. Your attorney can have you and any other people you want to tell the Judge about the facts of the case.

After the Judge hears all the witnesses and other information, he or she will decide if your child is dependent/ neglected (abused or neglected). If the Judge decides that your child is not dependent/ neglected, the case will be dismissed, and your child will be returned to your custody and can go home with you.

If the Judge decides that your child is dependent/ neglected, then the Judge will decide what needs to happen to you, your child, and your family so that your child can be returned to you. This decision is called the disposition.

The Disposition Hearing: The Disposition Hearing is usually held at the same time, or immediately after the Adjudication Hearing. If not, the Disposition hearing must be held within fourteen (14) days from the date that the Adjudication Hearing was held.

At the Disposition Hearing, the Judge decides if it is in your child's best interests to stay in the custody of the Department of Human Services, be placed in the custody of someone else, or be returned to you.

At this hearing, the Judge will make some orders and approve a case plan for you and your child. These court orders and the case plan require that the Department of Human Services give some services to you, your child and family so that you can keep your child safely in your home or work toward having your child returned to you.

It is very important that you work with the Department of Human Services, and obey the Judge's orders. If you don't do these things, the Judge can hold you in contempt of court, and it could take longer for your child to be returned to you. In fact, if you don't obey the Judge's orders, you could go to jail, and even lose your rights to your child forever. *In order for your child to be returned to you, you must show that you can protect and care for your child.*

The Review Hearing: The first Review hearing must be held within six (6) months from the date your child was taken out of the home. The next Review hearing must be held within six months after the first Review Hearing. The Judge may have the Review hearing sooner if it is needed. You could be ordered to attend more than one Review hearing during the whole time that your case is under the Judge's direction.

The purpose of a Review Hearing is for the Judge to make sure that everyone is obeying the court orders and the case plan, to see how your child is doing in his or her placement, what you are doing to work on the problems that brought the case to court, whether the case plan needs to be changed, whether the case plan needs to be changed, whether the Department of Human Services is giving you, your child and family the right kind of services to make it possible for your child to return to your home, and if it is now safe for your child to return to your home.

The Permanency Planning Hearing: The Permanency Planning Hearing is a hearing for the Judge to decide on a plan for permanent placement for your child.

The Permanency Planning hearing must be held no later than twelve (12) months from the date your child was removed from the home. But the Judge can decide to hold the Permanency Planning Hearing before that twelve (12) month time period.

At this hearing, the Judge listens to all the information about what has happened since the case first came into court. The Caseworker for the Division of Children and Family Services has to say what he or she thinks is best for your child as far as the permanent plan for placement. Then the Judge has to decide which one of these goals is in your child's best interests for your child's permanent:

- Return your child to your custody.
- Continue the goal for your child to be returned to your custody if you are making the right kind of progress and the Judge determines that other things are being done that the law demands.
- Approve a plan for termination of your parental rights (This means your child can be adopted by someone else)
- Approve a plan to place your child in the permanent custody of someone else
- Keep your child in foster care for a long time so that your child can learn how to be independent and can take care of himself or herself when grown and out of foster care

If the Judge decides that your child can be returned to you, then the Judge can order your child be returned to you at this hearing or at another specific date. Depending on what the Judge decides, you may have to come back

to court for one or more hearings. Remember, it is very important for you to be present at every hearing.

Termination of Parental Rights Hearing: The purpose of a Termination of Parental Rights Hearing is for the Judge to decide whether to end the legal relationship between a parent and child. The court action to terminate parental rights starts with the filing of a Petition to Terminate Parental Rights. The Attorney can only file this petition for the Department of Human Services or by the Attorney and Litem (the Child's Attorney).

The Petition to Terminate Parental Rights is usually filed after the Permanency Planning Hearing is held, and the Judge has decided that the child's permanency planning goal shall be adoption. But, it is important to know that the Petition to Terminate Parental Rights can be filed at any time-even before the Permanency Planning hearing is held.

If a Petition to Terminate Parental Rights is filed, you will be given a copy, which will list the reasons that the Attorney for the DHS or the Attorney and Litem (the Child's Attorney) thinks your parental rights should be terminated. You will also be given information about the time, date and place where the Termination of Parental Rights Hearing will be held. A Termination of Parental Rights hearing is a very serious hearing, because you could lose your rights to your child forever if the Judge does terminate parental rights. To terminate parental rights, the Judge must have information that is **clear and convincing** that the legal relationship between parent and child should end.

In a Termination of Parental Rights Hearing, the Judge must decide these things:

- (1) if a parent is unfit, and
- (2) if it is in the child's best interests to terminate parental rights.

There are many reasons that the Judge can decide that you are an unfit parent and terminate your parental rights. This does not mean that you are a bad person.

You can be found to be an unfit parent because twelve (12) months or less have gone by since the Adjudication Hearing (trial) and even though you have been offered help, you still have not done the things required by your

case plan. There are other legal reasons that can cause the Judge to terminate your parental rights.

If the Judge does terminate your parental rights, the legal relationship between you and your child will end. This means that, even though you will always have a blood relationship to your child, you will no longer be a legal parent to your child. This also means that everyone in your family will no longer be legally related to your child. Your child will be free for adoption. You will no longer be able to visit your child, talk to your child, write your child, or get any information about your child. The Department of Human Services-not you-will be responsible for your child and will make decisions about where your child will live and about who can adopt your child.

People Involved in Dependency/ Neglect Proceedings and What They Do

- **The Judge:** The Judge hears all the information presented by the attorneys in court and makes decisions based on that information. It is the Judge's job to decide what is legally right and necessary to protect your child.
- **The Department of Human Services Attorney:** The Attorney for the Department of Human Services brings the case involving your child to the court. It is also this attorney's responsibility to present evidence to the court about any harm or danger to your child.
- **The Parent, Guardian, or Custodian's Attorney (Parent Counsel):** Your attorney is the person who represents your interests and rights concerning your child. Your attorney should meet with you before every hearing and should be with you in court at every hearing. Your attorney will speak for you in court. Your attorney will help you understand your rights and tell you about the hearings you will attend and what to expect at each hearing. You should keep in contact with your attorney throughout the case so that he or she can answer any of your questions.
- **Your Child's Attorney (the Attorney and Litem):** The court appoints your child's attorney, who is called an Attorney and Litem. It is the Attorney and Litem's job to meet with your child, talk to your child if your child is old enough, and find out as much information as possible about your child. Your child's attorney should be at all the court hearings. Your child's attorney is supposed to represent your child's best interests and should tell the Court what he or she thinks is best for your child. If your child disagrees with what the Attorney and Litem thinks is best for your child, then the Attorney and Litem must

tell the Court what your child's wishes are even if the Attorney and Litem does not think it is in your child's best interests.

- **Caseworker (Division of Children & Family Services):** The Caseworker works with families and children. A Caseworker will be assigned by Children and Family Services to work with your family. It is the caseworker's job to see that children are kept safe, and appropriate services are provided to you and your children.

Your Caseworker should help you understand the problems that brought you to court, and help you get services to fix those problems. Your caseworker has to make a case plan, which shows all the things that you must do to have your child returned to you. Your Caseworker has to give you a copy of the case plan, and should help you work on our case plan.

Your Caseworker's job in court is to give the Judge information about what has been done to help you and your family, what you have done to help your family, where the Caseworker thinks your child should live, and what kind of visits you should have with your child.

- **Court Appointed Special Advocate (CASA):** Some children have a Court Appointed Special Advocate (CASA). This person is a trained volunteer appointed by the Judge. The CASA will meet with you, your child and other people who may know your child. It is the CASA's job to get information about your child and report to the Court what he or she thinks is best for your child.

The information and statements of law in this fact sheet should not be considered legal advice. This fact sheet is provided as a broad guide to help you understand how certain legal matters are handled in general. Courts may interpret the law differently. Before you take action, talk to an attorney and follow his or her advice. Always do what the court tells you to do.

You must remember at all times that these court hearings are very important, and that you only have a short amount of time to do what the Court orders so that your child can be safely returned to your home.

This fact sheet is just a guide to tell you about the Juvenile Court abuse and neglect process, and what your rights and responsibilities are. This fact sheet should not take the place of an attorney. If you can pay for an attorney, you need to hire an attorney as soon as your child is removed from your custody. If you do not have the money to hire an attorney, the Court will appoint one for you if you ask.

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