

Understanding Child Welfare and the Courts

Involvement with child protective services often includes the court system, especially if your child is removed from your home or at risk for removal. In most States, if a child welfare case requires court involvement, it will come before either a juvenile or a family court. 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.

This publication is not a substitute for a lawyer. A lawyer can provide more information on the hearings you will attend and explain your options and other details about your State's child protection laws.

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LEGAL REPRESENTATION FOR PARENTS AND CHILDREN

If you qualify for financial assistance, a lawyer may be assigned to you by the court when a petition is filed. If you are not assigned a lawyer and cannot afford one, the following organizations may be able to help:

- The [Legal Services Corporation](#) ("America's Partner for Equal Justice") may help you find a legal aid organization near you.
- Your county or local department of assigned counsel may help you find a private attorney to represent you in court (serve as your lawyer).
- A State or city [LegalAid](#) office may also be able to help you find an attorney who can represent you.

Most court cases dealing with children and youth under the age of 18 are heard before juvenile or family courts. Children who are enrolled or enrollable members of a federally recognized Tribe, however, fall 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 [NICWA](#).

State laws specify when a State court must provide legal representation for a child involved in child abuse and neglect proceedings and whether that representative must be an attorney, guardian ad litem, or a court-appointed special advocate. The qualifications, training, specific duties, and compensation of the representative required by State law are addressed in our publication, [Representation of Children in Child Abuse and Neglect Proceedings](#).

COURT HEARINGS IN A CHILD WELFARE CASE

Depending on the State, child welfare cases are legal disputes between a child welfare agency or a prosecutor or attorney general's office and a parent, parents, or guardian of a child. These are not criminal cases. The purpose of court hearings is to determine whether the child is safe, not to prosecute parents or guardians.

In some States, anyone can file a **petition**. The use of and/or definition of "legal dispute" also varies by State. Usually, the agency files a case when a child is removed from the home of their parents or guardians due to allegations of child abuse or neglect. A caseworker helps parents and guardians develop a **case plan**.

A petition is a formal request to begin a child protection proceeding. This occurs after a child welfare agency receives a report of suspected child abuse, neglect, or abandonment—also referred to as "maltreatment."

Two central pieces of a child welfare case are the case plan and hearings.

- A **case plan** outlines the steps designed to ensure the safe return of your child. Steps include actions, goals, and tasks that the parent or caregiver must complete with expected results. Case-planning documents vary from State to State and agency to agency. For more information, see Child Welfare Information Gateway's [Case Planning for Families Involved With Child Welfare Agencies](#).
- **Hearings** are scheduled after a child has been removed or is at risk of being removed from their home. A hearing is the formal questioning before a judge that provides facts and evidence to assist the judge in making decisions about the progress of the case.

Types of Court Hearings

Hearings vary according to different courts and State laws. The following hearings are common in family courts across the country.

Preliminary Protective, Emergency Removal, or Shelter Hearing



- This hearing is typically held when a child is initially placed outside of their parent's care. Both the parent(s) and the agency may present evidence to the court.
- A judge decides where the child should stay temporarily.
- Parents/caregivers get a lawyer.

Fact-Finding or Adjudicatory Hearing



- Evidence is heard specifically about whether the child is abused or neglected as alleged in the petition to determine if the court will continue to be involved in the case.
- A judge dismisses the case or rules that the child was abused or neglected.

Dispositional Hearing



- This type of hearing may take place immediately after the fact-finding hearing.
- A judge will, among other things, decide the visitation plan, order services, and determine where the child will be placed while the case is ongoing.

Review Hearing



- Courts usually hear evidence and make findings regarding whether the agency has offered and provided services to assist the parents in making progress in safely parenting their child and providing permanency and well-being. It also addresses various well-being issues related to the child.

Permanency Planning Hearing



- A judge will determine where the child will live while the case is ongoing; what services will be provided; whether the agency has made reasonable efforts to finalize the permanency plan; and whether the parent has addressed any safety or risk concerns.

WHO IS INVOLVED IN CHILD WELFARE COURT HEARINGS?

Several people will attend your hearing. Some will be responsible for making the in-court or online procedure run on time. Others will ensure that the hearing is recorded or translate it for you if you make that request. The following people will be directly involved in your hearings.

- **Judge:** The 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 decide that certain conditions must be met for the child to return home (for example, enrolling parents in parenting classes or other treatment services, such as mental health or substance use disorder treatment). The judge also decides whether the agency properly interfered in the parent's right to parent their child, and whether it has provided services to prevent removal according to State and Federal law.
- **Parent's attorney:** Your attorney will navigate the legal process for you (or "represent" your interests). If possible, the attorney should be appointed before the first hearing to allow them to become familiar with your case and prepare you for the court hearing. Your lawyer will inform you about what to expect before each hearing and provide explanations during and after. It is important to work closely with your lawyer. Ask questions if you don't understand what is happening. Spend time with them before and after the hearing, if possible, and take notes so you can remember what you need to do before the next hearing. (For more information on how to work with your lawyer to prepare for your case, read [Tips on How to Work With Your Lawyer](#).)

The court determines:

- Where the child will live while the case is ongoing
 - What services will be provided
 - Whether the agency made reasonable efforts to finalize the permanency plan
 - Whether the parent addressed any safety or risk concerns
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- **Children's representatives:** The court will appoint a lawyer and/or a trained volunteer to speak for your child throughout the legal process. You can assist your child's representative by providing helpful information and talking about what might be useful to share. Your child's representative(s) may be one or more of the following:
 - Children's attorney: Depending on the State, an attorney may represent the child, explain procedures to the child and answers questions, and advocate in court as the child desires. In other States, the child's attorney may represent what they believe to be in the child's best interest. Some States' rules provide a mixture of these approaches.

- Guardian ad litem (GAL): A person appointed by a court who looks out for the child's best interests and advocates for those interests in court. A GAL may also refer to a traditional children's attorney. (For more information on GALs, read [What Is a Guardian Ad Litem?](#))
- Court-appointed special advocate (CASA): A trained volunteer appointed by the court to represent the child's best interests and needs. This may include investigating certain issues and bringing evidence before the court, performing fact finding for the judge, monitoring, facilitating services, and advocating for your child. (For more information on how a CASA and GAL can help your child, refer to [The CASA/GAL Model.](#))
- **Agency's attorney:** The child welfare agency will be represented by an attorney. The State or agency's attorney is responsible for bringing the case before the court. They will submit the petition to the court (a social worker or caseworker may assist with this). They will participate in hearings, prepare witnesses to testify, and present evidence to the judge. They may be involved in the case until your child achieves permanency.

CONCLUSION

Juvenile and family courts are intended to protect children and help their parents or caregivers provide for their child's safety and well-being. As you begin and progress through the court process, please remember that you are not alone and are not expected to take on this challenge by yourself. They are also meant to hold the child welfare agency accountable for what it is required to do and to serve as a neutral decision maker regarding what happened factually in a case or how the law should be applied. Professionals like caseworkers and lawyers have helped many parents and guardians in the past, and they can help you too. Although processes vary from State to State, there are resources available to help you. Look at the Resources section below for examples of resources provided by State child protective services as well as other types of resources that may be useful to you.

RESOURCES

Information Gateway's [State guides and manuals](#) page provide links to publications created by State agencies or posted on their websites to provide guidance on a range of child welfare-related topics.

[Child Abuse and Neglect Under West Virginia Law](#) provides an easy-to-read question-and-answer resource, offering straightforward answers to questions about child protection services and the court process in the State of West Virginia.

[Child Welfare – A 3-Part Series](#) (Maryland Courts) is intended for parents whose children have been removed from the family home. This resource includes a three-part video series: "Part 1: The Court's Roll," "Part 2: Hearings," and "Part 3: People You Will Meet."

[A Family's Guide to the Child Welfare System](#) (National Technical Assistance Center for Children's Mental Health at Georgetown University Center for Child and Human Development) helps parents better understand the child welfare system and answers questions many parents have. [Chapter 18](#) provides young adults with information about their right to participate in case-planning meetings and in court. It also gives them information about their lawyer's role and tips for how to work with a lawyer to help achieve goals.

[Finding Your Way: Guides for Fathers in Child Protection Cases](#) (National Fatherhood Initiative) provides tips for noncustodial fathers who want to be active participants in their children's child protection cases. The resource focuses on topics such as fathers' legal rights, child support, and courtroom expectations.

["Navigating Your Child Welfare Case: A Guide for Parents Involved in the Utah Juvenile Court System"](#) [Video] includes parents' discussions of their experiences in court and the voices of the others involved in child welfare court hearings.

[A Parent's Guide to CPS and the Courts: How It Works and How You Can Put Things Back on Track](#) (San Francisco Unified Family Court) includes insights from parents with previous experience with the child welfare system for parents currently involved with child welfare.

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