

Dependency Court and Removal of Children



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Legal Resource Manual for Foster Parents

Seminar Module Two: Dependency Court

and Removal of Children

*from Legal Resource Manual for Foster Parents
Dependency Court and Removal of Children*

OBJECTIVE:

The objective of this seminar is to provide the participants with information about:

- 1) Dependency court, how it works and the role of the foster parent in it, and
- 2) How to respond when a child is removed from a foster home for reasons other than maltreatment allegations.

CAUTION TO THE TRAINER:

It is advised that this training be conducted by an attorney versed in child welfare issues.

Participants may have questions about a personal situation. The answers to those questions may go beyond the scope of the included materials. The trainer is cautioned to not try to answer questions beyond material included here or in the *Legal Resource Manual for Foster Parents*. It will be helpful to the participants if the trainer knows specifics of the laws in the jurisdiction in which the training is being held. At various locations throughout the curriculum are notations suggesting what specific information the trainer would be advised to research in preparation for doing this training.

LENGTH OF TRAINING:

3 hours

MATERIALS/EQUIPMENT:

- * PowerPoint Presentation or overhead projector
- * LCD projector, if using PowerPoint
- * Computer for PowerPoint
- * Screen
- * Flip chart and markers
- * Masking tape
- * *Legal Resource Manual for Foster Parents*
- * Handouts

This curriculum, developed by the National Foster Parent Association, is based on the *Legal Resource Manual for Foster Parents*, authored by Cecilia Fiermonte, J.D., American Bar Association Center on Children and the Law and Regina Deihl, J.D., Legal Advocates for Permanent Parenting. The information in the manual and this curriculum is based on laws in effect in September, 2004. Participants should be advised that federal and state laws can change at any time. This information is not a substitute for legal advice or counsel. For questions related to specific cases, participants should contact an attorney in their state with experience in child abuse and neglect cases.

LEARNING OUTCOMES:

Participants will be able to:

- 1) Discuss the purpose of dependency court and how it differs from criminal court
- 2) List the sequence of court processes, the purpose of each phase and the role of foster parents in each
- 3) List five circumstances for which a child might be removed from the foster home
- 4) Discuss the responsibilities of the foster parents when a child is removed
- 5) Identify the rights and protections that foster parents may have when a child is to be removed from their home for reasons other than maltreatment allegations

Trainer Preparation:

1. Read chapter two of the *Legal Resource Manual for Foster Parents*, or the Reference Notes sections included in the curriculum.
2. Review overheads or PowerPoint presentation.
3. Reproduce handouts.
4. Obtain equipment.
5. The Reference Notes are intended as material for the presenter to impart to the attendees. Please be sure to incorporate the information.
6. Research state/local laws and/or regulations in areas identified in the curriculum.
7. Review the PowerPoint slides. They provide a comprehensive outline of the material.



is used to call your attention to trainers notes to review before the training, or additional research you should do prior to the training

MATERIALS/NOTES

OUTLINE/INSTRUCTOR ACTIVITY

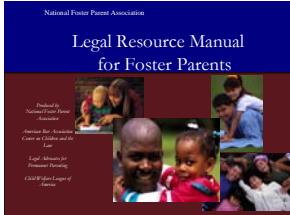
Slide #1



Slide #2



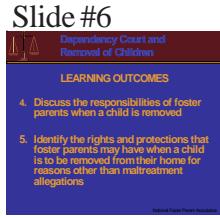
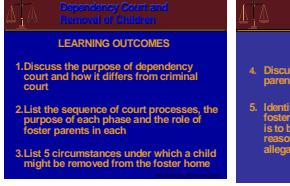
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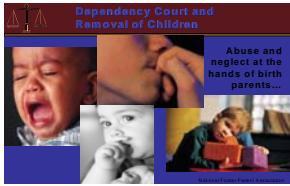
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Slide #7



Slide #8



I. Introduction

- A. (Slide #1-2) Welcome
- B. (Slide #3) Explain that this training is module two of a four-part series of trainings based upon the *Legal Resource Manual for Foster Parents*. Explain that the purpose of the manual, and of the trainings, is to educate foster parents about the legal process, giving them the knowledge and confidence they need to become active participants in the system.
- C. (Slide #4) Display a copy of the manual and identify the four chapters of which it is composed.

1. Permanency , Foster Parents and the Law
2. Dependency Court and Removal of Children
3. Court Participation for Foster Parents
4. Allegations of Maltreatment

D. (Slides #5-6) Learning Outcomes

Using the slides, tell the participants that you expect that by the end of the session they will be able to...

1. Discuss the purpose of dependency court and how it differs from criminal court.
2. List the sequence of court processes, the purpose of each phase and the role of foster parents at each.
3. List five reasons why a child might be removed from the foster home.
4. Discuss the responsibilities of the foster parents when a child is removed.
5. Identify the rights and protections that foster parents may have when a child is to be removed from their home for reasons other than maltreatment allegations.

- E. (Slide #7) Personal Background: Tell the group a little about yourself, your job, your training, what experiences you bring to the following discussion.

- F. (Slide #8) Read the **Reference Notes** page 5.

REFERENCE NOTES

Abuse and neglect at the hands of birth families happens. You know that. That is why you are a foster parent. It is what brings children into “the system.” Everyone who works with child welfare knows that sometimes the system works just fine; other times it does not. Whichever way it works in the case of a particular child, that child’s journey through the system is going to be traumatic. The goal is to minimize the trauma in any way possible.

This chapter focuses on what happens in dependency court when a child is removed from the birth home and the foster parent role at each stage of the process. It also addresses the removal of foster children from their foster homes and the circumstances under which that occurs as well as foster parent responsibilities, rights and protections in that situation.

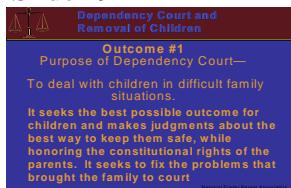
Transition Statement: We will begin with the processes that take place in dependency court, what happens at each phase, and what to expect when you go to court. There are stages for which you are required to receive notice and have an opportunity to be heard and other phases for which you are not required to receive notice. You will see that there are hearings for which you are not likely to have any information for the court and others at which you will not participate unless you obtain party status.

II. Outcome Number One: Dependency Court

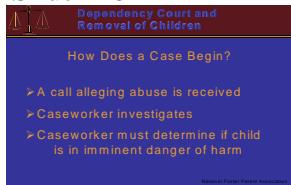
- A. (Slide #9) Say, “Dependency court has as its sole function dealing with children in difficult family situations. It seeks the best possible outcome for children and makes judgments about the best way to keep them safe while honoring the constitutional rights of the parents. It also seeks to fix the problems that brought the case to court.”
- B. (Slide #10) How Does a Dependency Court Case Begin?
 - 1. Initiated when a call alleging abuse is received
 - 2. The caseworker investigates the allegation and meets with the child.
 - 3. The caseworker needs to determine if the child is in imminent danger of harm. She has two options:
 - a. (Slide #11) Provide services to the family and continue to monitor the situation.
 - b. Remove the child and file a petition of neglect with the court.
 - c. Close the case.

Transition Statement: There are a few terms and general procedures it will be helpful for you to know regarding dependency court.

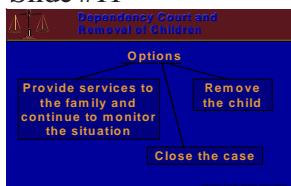
Slide #9



Slide #10



Slide #11



REFERENCE NOTES

The Purpose of Dependency Court

A dependency case, one that may lead to removal of a child from the birth parents, often begins long before it enters the court system. A case is initiated when a call regarding suspected maltreatment is made to the state's child abuse hotline for investigation. A caseworker investigates the allegations and usually has a specified period of time to meet with the child. The full investigation must be completed within a specified period of time, typically two months or so, again as defined in state statute.

The caseworker not only determines whether abuse or neglect has occurred, but also whether the child is at risk of future harm if allowed to remain with the birth parents. In dependency cases, a child can be removed if the risk of future of harm is imminent, which means that the situation creates a risk with a high likelihood of harm to the child. The caseworker must decide whether services would reduce the risk and allow the child to remain in the home safely. The caseworker has the option to provide services, perhaps a parent aide, to see if that reduces the risk of harm to the child. She must then continue to monitor the situation. If the situation does not improve, the caseworker may file a petition of neglect asking the court to remove the child. As discussed in chapter one, the judge will have to make a finding that reasonable efforts were made to prevent removal. For example, when one parent has sexually abused the child, a court order may mandate that the offender be removed from the home. The court will order no contact with the child by the offender. That may constitute reasonable efforts to allow the child to remain safely in the home.

When a caseworker removes a child, the law requires a court hearing (often referred to as a shelter care or removal hearing) very quickly, typically within one to three days. The agency must also file a petition, which is a document with fact-specific allegations that the parent (or other person legally responsible for the child) mistreated the child. In court, the judge "hears" the petition, that is, she hears evidence regarding the allegations in the petition. The judge can order the agency to return the child home, place the child temporarily in foster care, or, in some states, order the child be placed with a relative or other suitable individual, such as a grandparent or non-custodial parent.

MATERIALS/NOTES

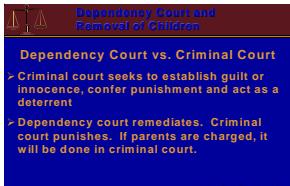
Slide #12



OUTLINE/INSTRUCTOR ACTIVITY

- C. (Slide #12 line 1) Hearings vs. Trials
1. "Hearing" is term most often used in dependency cases
 2. Structure of the hearing may be formal, strictly adhering to "rules of evidence," or less formal with rules somewhat relaxed
 3. Judges have different personalities and impart different tones to their courtrooms
- D. (Slide #12 line 2) Rules of Evidence May Apply
1. Rules of evidence complex in nature
 2. Say, "'Hearsay'" is an example of a rule of evidence foster parents may encounter. Hearsay means repeating something someone else has told you. Because that person is not available for cross-examination, hearsay is generally not allowed in court. However, there may be exceptions in dependency court."
- Examples:
- a. Statements by the child
 - b. Statements to a caseworker by the alleged perpetrator or parent
- E. (Slide #12 line 3) Foster parents may be subpoenaed to testify or may voluntarily go to court to provide input for the court to consider, as will be discussed in the Court Participation training.
1. A subpoena requires an appearance.
 2. Testifying involves swearing an oath.
 3. Direct questioning will be done by the attorney who asked that they testify.
 4. Cross-examination, designed to "poke holes" in the testimony is done by the opposing counsel.
 5. Written information provided to the court can be the basis of both direct questioning and cross-examination.
- F. (Slide #13) Say, "Dependency courts seek to protect children and rehabilitate families when possible."
1. In dependency court criminal charges would not be

Slide #13



REFERENCE NOTES

The court process in a dependency case revolves around how to keep the child safe and how to fix the problems that caused the abuse or neglect. Many times, the maltreatment will not rise to the level of a criminal action, so the whole case is handled in dependency court. If the district attorney presses criminal charges, both cases may proceed at the same time, in both criminal and dependency court. The two cases proceed in two separate courts because the dependency court and criminal court serve two different functions. The criminal process punishes and deters criminal acts. Dependency court does not punish parents, but strives to provide safety, permanence and well-being to children while rehabilitating the parents, where possible.

The agency petitions the dependency court to obtain a court order directing an uncooperative parent to participate in services and to place the child in foster care when necessary. The agency's role is to rehabilitate the family, and to obtain permanency for the child.

After the shelter care hearing, the case proceeds through the following stages: adjudication, which determines whether abuse or neglect occurred; disposition, which determines what services the family requires; the permanency hearing, discussed in chapters 1 and 2; and, if the family cannot be reunited, termination of parental rights (TPR). Each phase is described in detail below.

At the first court appearance after a petition for neglect is filed, the judge will assign the parents an attorney. The judge may assign an advocate for the child, often referred to as a guardian ad litem, or a similar term. The advocate may be an attorney, or, if not, may work under the supervision of the attorney. A government attorney will typically represent the agency in court. Some jurisdictions use CASA (Court Appointed Special Advocate) representatives to advocate for the children, in addition to legal advocates. The role of the CASA representative is to be another set of eyes and ears for the court and to be sure the child's interests are protected.

All attorneys in the case have ethical obligations to their clients. Those obligations include the duty to keep their confidences, and to provide zealous advocacy.

Our system is adversarial, and it can sometimes seem that the parties are unwilling to cooperate. But the adversarial system is meant to protect all parties by allowing them to present their case, and to refute evidence presented by others. Many dependency courts are less formal and less adversarial, recognizing that the dependency court serves a unique function, and that the adversarial model, which evolved before the relatively recent development of dependency law, does not always serve the purpose of promoting cooperation.

The term "trial" means a formal proceeding where the judge takes or hears evidence presented by the attorneys in accordance with the state laws of evidence, most commonly referred to as "rules of

notes continued page 15...

MATERIALS/NOTES

Slide #14



Trainer Note:

There are television shows that demonstrate the difference between dependency and criminal court quite well.

Judging Amy is based on the day to day operations of a real juvenile court judge. Some of her cases are dependency cases. The atmosphere is similar to what foster parents might experience. *Law and Order* demonstrates criminal court in action.

Handout:
Dependency Court Flowchart to be completed by participants

OUTLINE/INSTRUCTOR ACTIVITY

pressed against parents for abuse or neglect of their children.

2. If charges are filed, that will be handled by criminal court. Both cases may proceed at the same time.

G (Slide #14) Comparisons Between Criminal and Dependency Courts

1. Both adversarial system.
 - a. Tell the participants that our system is adversarial in nature to ensure that all parties are protected by allowing them to present their cases and refute evidence presented by others.
 - b. Dependency court can be less formal and less adversarial, depending on the court
2. Attorneys have the same ethical obligation to their clients
 - a. Keep confidences
 - b. Provide zealous advocacy
3. Jury trial--rarely used in a dependency case

Transition Statement: If the caseworker decides that, based upon what she knows, the child is in imminent danger of harm, she will remove the child from the home and place him in emergency foster care or with a relative. There is a length of time, typically two months as specified by state law, during which a complete investigation must be completed by the caseworker. We are going to walk a case through dependency court and identify the role of the foster parent at each phase.

III. Outcome Number Two:

Phases of Dependency Court and the Role of Foster Parents

- A. Read Jimmy's story to the group (**Reference Notes** p.11)
- B. Distribute the handout (Appendix) of the partially completed flowchart of dependency court to the participants. Use it and

REFERENCE NOTES

JIMMY

Jimmy is a 4-year-old living with his parents. The neighbors have reported that they have heard him scream, “Mommy, help me” more than once. They have heard the parents shouting at each other. They report seeing Jimmy crying at the door of his house, unable to get in. The woman living next door called the Department of Social Services to report the situation.

A Child Protective Services caseworker was sent out to the house. The father was not there but the mother denied all the allegations. The caseworker asked to see Jimmy alone. She noticed a large red mark on his face and substantial bruises on his arms. He wouldn’t talk about how he got either. The father came home and the CPS caseworker noticed that Johnny cowered when he came in. She decided to take him into protective custody.

We are going to take Jimmy and his parents through the dependency court process.

MATERIALS/NOTES

OUTLINE/INSTRUCTOR ACTIVITY

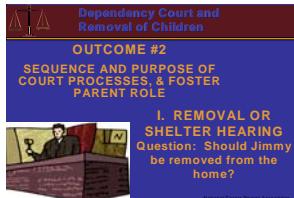
the slides to go through the phases of dependency court.

(**Reference Notes** p. 13 shows a completed form.) Ask that the participants fill in the chart as Jimmy's case proceeds through the court. There is a completed form in the Appendix to distribute for the participants to keep.

- C. Point out that with Jimmy's removal from his home we are in the upper left box. Note that he will have to be placed either with another family member or as an emergency foster care placement.

Transition Statement: It's here that a case begins in dependency court. Jimmy can be removed without a court order because the caseworker felt that he had been abused by his father and it wasn't safe to leave him in the home. However, the first phase of the dependency court process has to begin within typically one to three days after removal.

Slide #15



Slide #16



Trainer Note: Keep referring to the flowchart as you walk Jimmy through each phase.

- D. (Slide #15) Removal or Shelter Hearing

Say, "The first step for Jimmy and his family is called "removal" or "shelter" hearing.

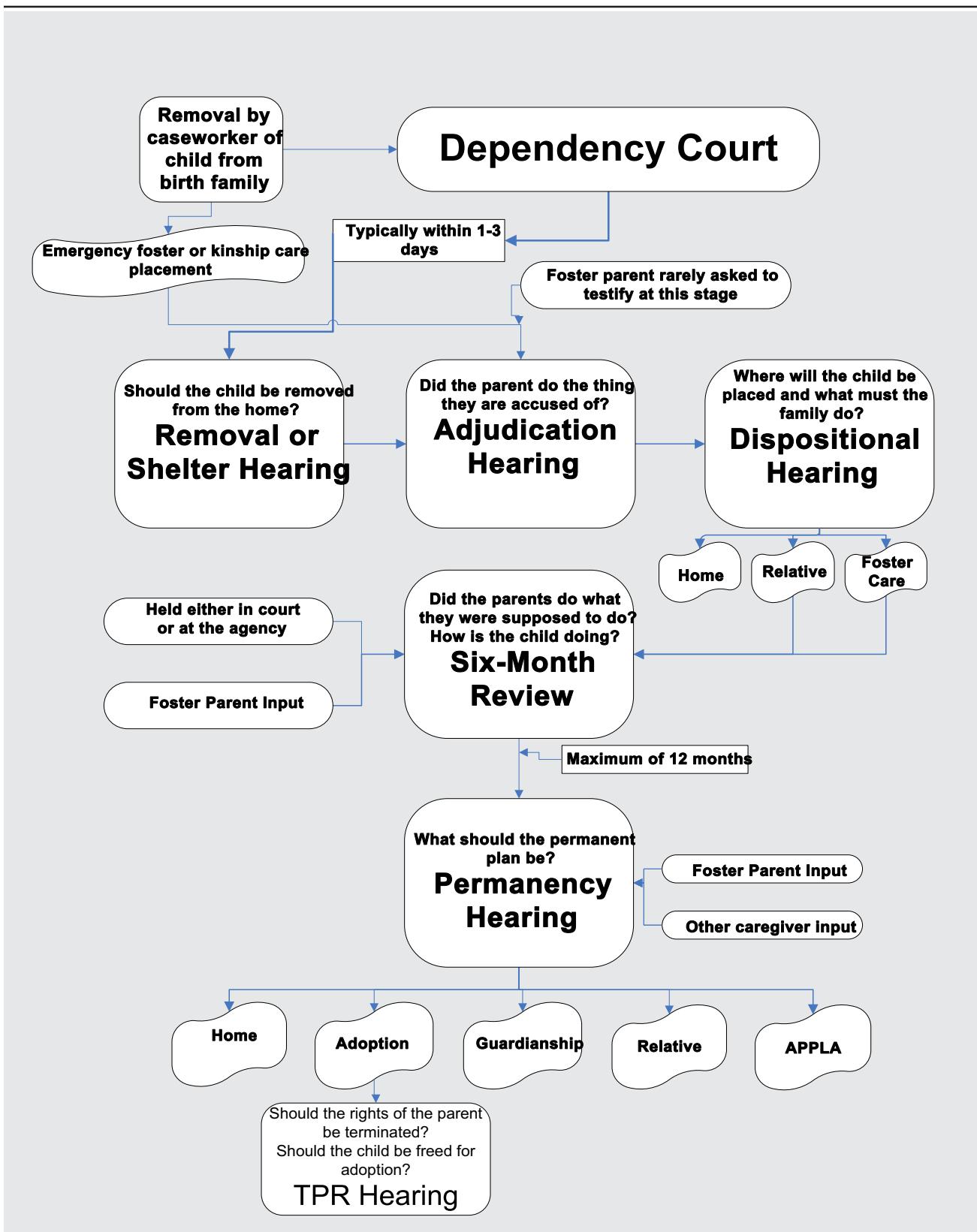
1. Required by law to be held quickly, typically within one to three days after removal from the home
2. What Happens?

- a. The agency must file a petition with fact-specific allegations that the parent mistreated Jimmy
- b. (Slide #16) Judge hears the evidence and determines Jimmy's immediate need for protection.

Ask the group what options the judge has at this stage:

- 1) Return Jimmy home
- 2) Leave Jimmy in emergency foster care
- 3) Order Jimmy to be placed with a relative

REFERENCE NOTES

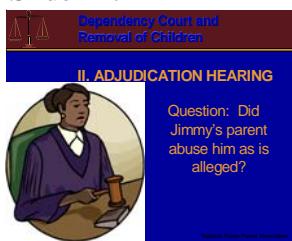


MATERIALS/NOTES

OUTLINE/INSTRUCTOR ACTIVITY

- c. Say, "If the judge rules that Jimmy is not to return home, she may assign an attorney to the family and an advocate for him. This advocate may be an attorney, a non-attorney guardian ad litem or a volunteer from CASA (Court Appointed Special Advocate.)"
- d. Agency's role is to rehabilitate the family and to make sure Jimmy has a permanent, safe home
3. Foster Parent Role--Typically none

Slide #17



Transition Statement: We are going to assume, for our purposes, that the judge has placed Jimmy in foster care. He will remain there until the next phase, which typically occurs within 60 days.

Slide #18



E. (Slide #17) Adjudication Hearing

1. Say, "Stated simply, the purpose of this hearing is to determine if Jimmy's parent did the bad thing of which they are accused."
2. How soon this must occur is dependent on state law, but is typically within 60 days
3. (Slide #18) What Happens?
 - a. Jimmy's parents may admit to the allegations or they may ask for a full trial
 - b. Burden of proof is on the agency
4. Foster Parent Role
Say, "Typically a foster parent will not have input at this phase because they would normally have no way of knowing what went on in the home. However, if Jimmy has told the emergency care foster parent anything about the alleged abuse, the court will want to hear that. In that case, rules of evidence will be relaxed and hearsay is usually allowed."

REFERENCE NOTES

evidence.” Evidence includes testimony of witnesses under oath, documents, photographs, or physical objects (for example, a weapon). The attorneys may object to evidence presented by an opponent. The judge may overrule or sustain an objection. If a judge sustains an objection, the evidence is excluded and the judge (or jury) may not consider it. Jury trials are rarely held in dependency cases. Judges make decisions based on the evidence presented. Some states do provide for jury trials, usually in TPR cases.

A foster parent may be asked to testify by any of the parties in the case: the agency, parents or child. Testifying involves swearing to an oath and being questioned by the attorney who requested the testimony, referred to as “direct questioning.” The opponent may then cross-examine, which is questioning meant to “poke holes” in the testimony given on direct.

Judges have different personalities, and courtrooms tend to take on the tone of the presiding judge. Some judges may allow the parties to speak informally, without having to take an oath and be subjected to cross-examination. Some judges may insist on always taking formal evidence, i.e., swearing the witness to an oath, subjecting them to cross- examination, and having their testimony recorded. Whether to hold a formal or informal proceeding usually is based on whether the proceeding results in a final, appealable order. Generally, TPR hearings and adjudicatory hearings that determine whether abuse or neglect occurred are hearings that will most likely be appealed and will be held formally, to protect all parties’ rights. Permanency hearings are often held informally.

Because a shelter care hearing must occur shortly after the child is removed, under emergency circumstances, the rules of evidence are often relaxed, and hearsay is usually allowed. Hearsay is an out-of-court statement. It usually applies when a witness in court quotes something they heard someone else say. For example, if the caseworker quotes a statement made by the child’s doctor, that is hearsay. The rules generally do not permit hearsay during a formal trial, unless an exception applies. The most common hearsay exceptions in dependency court include statements made by the child, and sometimes, the parent or perpetrator, which allows caseworkers or others to testify to those statements.

The Adjudication Hearing

After the shelter care hearing, which determines the child’s immediate need for protection, the court must decide whether the parent abused or neglected the child. That proceeding is commonly referred to as the adjudicatory or fact-finding hearing. In some states, the court must hold an adjudicatory hearing within a relatively short time frame, usually 60 days. Many states do not have any time frames for adjudication, but since the passage of ASFA, courts are more aware of the need to

MATERIALS/NOTES

OUTLINE/INSTRUCTOR ACTIVITY

Slide #19



5. If the judge “rules from the bench,” meaning immediately after hearing all the evidence, the dispositional hearing may follow immediately.

Transition Statement: The judge determined, after hearing all the evidence, that Jimmy has suffered extreme abuse at the hands of his father. Looking at the chart, what will happen next?

F. (Slide #19) Dispositional Hearing

- Ask what the purpose of the dispositional hearing is.
1. Main purpose is to determine where the child is going to live
 2. Agency will supply the court with a disposition plan that lists what the parents must do. In this case, the agency may recommend that the family go through anger management and parenting classes, or may recommend that the father must be out of the home in order for Jimmy to be returned.
 3. Parents also have input into the plan
 4. The court may adopt the agency plan or amend it
 5. Court may order the agency to provide specific services to Jimmy and his family
 6. Visitation schedules will be established
 7. Court order is in effect until modified by the court and both the birth parents and the agency are bound by it. If either party violates the order, they can be held in contempt of court.
 8. Foster Parent Role
Say, “The temporary foster parent will usually not have a role at this stage.”
 9. Ask what options for placement the court has at this stage (Slide #20)

Slide #20



REFERENCE NOTES

determine whether abuse or neglect occurred well before making a permanency decision, which typically occurs 12 months after the child enters foster care.

The parent may admit to the allegations or request a full trial. At the trial, the agency has the burden of proof, which means they must offer enough evidence to establish that the allegations are true. The agency would probably not call the foster parents to testify at this stage of the proceedings, since they typically have no first-hand knowledge of the incidents which led to the agency placing the child in foster care. However, sometimes the foster parents gain knowledge that one of the parties may wish to provide to the court. For instance, the child may disclose details of the abuse or neglect to the foster parents. The foster parent may be asked to testify to the child's statement under an exception to the hearsay rule. Attorneys have an obligation to prepare their witnesses for court, so foster parents should receive assistance in preparing and presenting their testimony.

In order to secure the foster parent's presence at the trial, the attorney may serve the foster parent with a subpoena, an order mandating that they attend court. A subpoena should never be disregarded, as that could lead to court imposed sanctions.

Foster parents should keep in mind that the purpose of an adjudicatory hearing is to determine whether abuse or neglect occurred. The judge will not be ruling on other matters, such as the permanent plan for the child. The adjudicatory hearing is sometimes merged with the dispositional hearing, explained further below.

Dispositional Hearing

If the judge rules that the parent abused or neglected the child, the case then proceeds to a dispositional hearing. The judge can "rule from the bench," meaning immediately after hearing all the evidence, or can take the matter under consideration, and issue a written order at a later date. If the judge issues a ruling on the abuse or neglect from the bench, the dispositional hearing may be held immediately following the adjudicatory hearing. Or the court may adjourn (postpone) the matter, so that the parties may prepare reports or gather evidence from current service providers.

The dispositional hearing results in an order of disposition, which contains provisions the parents must follow. Often, this part of the proceeding is more informal, meaning hearsay is admissible, and the parties may be able to provide information to the court without swearing to an oath.

Often, the parent will agree to the disposition proposed by the child welfare agency, or may dispute only a portion of the agency's disposition. The court may adopt the agency's plan, or may choose to amend portions of it.

Transition Statement: By the end of this phase in the court process, it has been determined that there is adequate reason to believe the birth parents need help with some aspect of family or personal life and that Jimmy is best served by living out of the home for the time being. The parents have an improvement plan that they need to be serious about working on and the agency has its assignments to rehabilitate the family, and to provide certain services to Jimmy and the family. Jimmy has been placed in foster care and will remain there until the next phase of the dependency court process.

Trainer: Refer to the flowchart. Note the shadowed shapes. This indicates where foster parents should be having input, as mandated by ASFA. This is where they should be receiving notice and having an opportunity to be heard. Emphasize as you go through the next two phases how important it is for them to be involved. They are the people who spend the most time with the children and their input is important to a positive outcome. Involvement also serves as a preventative technique for unwarranted removals from foster homes, as will be discussed later.

Slide #21

Dependency Court and Removal of Children

IV. SIX-MONTH REVIEW

Questions:

- > Did the parents do what they were supposed to do?
- > How is Jimmy doing?

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Slide #22

Dependency Court and Removal of Children

Six-Month Review

Foster Parent Role:

- > Provide input to the agency and the court
- > Adoption and Safe Families Act (ASFA) requires foster parents to be notified of the review and have an opportunity to be heard

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G (Slide #21) Six-Month Review

Ask what the main purpose of this review is.

1. Must be held within six months of out-of-home placement
2. Main Purpose: Assess how the child is doing and the progress birth parents have made on their plan
3. (Slide #22) Foster Parent Role
 - a. Provide input to the agency and the court
 - b. ASFA requires foster parents to receive notice and have an opportunity to be heard at this phase
4. This review is done at the agency, or in court, depending on the state

REFERENCE NOTES

Typically, the disposition is a specific list of services with which the parent must comply. The order may also contain specific conditions for the parent, for example, that the parent demonstrate an ability to maintain a stable residence. The agency is under an ongoing obligation to provide reasonable efforts to reunify the family, which includes helping the parent meet the conditions of the dispositional order. The court may also order the agency to do specific things, such as transport the parent to counseling visits. Additionally, the judge may order the agency to provide specific services to the child. Typically, the dispositional order will contain a visitation schedule. The order could contain a “stay away” provision sometimes called an “order of protection” ordering an individual to stay away from the child. The order remains in effect until amended by the court. The parties cannot agree, without the court’s consent, to disregard any provisions of the dispositional order.

Before issuing an order of disposition, the court hears evidence about what services and reunification efforts will be most helpful in rehabilitating the family. The court may also hear evidence regarding the child’s status in order to make a decision regarding visitation and services for the child.

Transition Statement: By this stage of the process

Jimmy's foster parents have a significant amount of knowledge about how he is doing, his personal relationships and his adaptation to his foster home. The birth parents have had six months to work on those areas the court has required them to improve, with the agency's help and support. The goal is still reunification. The next stage of the official dependency court process is the permanency hearing.

Slide #23

Dependency Court and Removal of Children

Permanency Hearing

What is the purpose of this hearing?

When must it occur, according to ASFA?

Do foster parents have a right to have input?

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Slide #24

Dependency Court and Removal of Children

Permanency Options

Purpose: To determine where Jimmy is going to live permanently

When: Within 12 months of Jimmy's coming into care

FP Rights: Foster parents have a right to receive notice and have an opportunity to be heard

National Foster Parent Association

Slide #25

Dependency Court and Removal of Children

Permanency Options

- >Return to birth family
- >Adoption
- >Guardianship
- >Relative placement
- >Another Planned Permanent Living Arrangement (APPLA)

National Foster Parent Association

H. (Slide #23) Permanency Hearing

Ask the following questions:

What is the purpose of the permanency hearing?

When does ASFA say it must occur?

Do foster parents have the right to be involved at this phase?

What are the court's options with regard to Jimmy?

1. (Slide #24-25) Main Purpose: To determine Jimmy's permanency options: return home, be released for adoption, be placed with a relative, be placed with a guardian or go into some other planned, permanent living arrangement.
2. The court may extend the stay in foster care if the agency feels Jimmy's parents are genuinely working on correcting the reasons for which he was removed but need a little more time.
3. The permanency process was thoroughly covered in training module one and chapter one of the *Legal Resource Manual for Foster Parents*. The trainer should refer participants to that information rather than taking the time here to go over the information in depth again.
4. If the court feels that Jimmy's parents are not making

REFERENCE NOTES

Permanency Hearings

Discussed in chapters one and three.

Termination of Parental Rights (TPR)

When and how the agency may move to terminate parental rights depends on state law.

Discussed here are some general provisions which apply in most states.

The agency must have grounds which are basic facts that must be proved in order to terminate parental rights. Those grounds are contained in state statutes and vary from state to state.

The most common TPR ground is the parent's failure to plan for the child. That means that the parent has failed to attend required programs, or has failed to demonstrate an ability to care for the child, despite reasonable reunification efforts on the part of the agency. For example, the agency may allege the parent obtained a substance abuse evaluation but only attended half of the recommended counseling appointments, with the result that the parent has failed to remedy the addiction, and is unable to parent the child.

A parent's severe abuse or failure to maintain adequate contact with the child may be grounds for TPR. Other grounds may include an inability to parent due to mental illness, mental retardation or chronic substance abuse.

TPR proceedings tend to be more complex than other phases of the dependency process because the agency usually must prove incidents that occurred over a longer period of time. And the agency must carefully present the case, as TPRs are more likely to be appealed, given the serious final nature of the resulting order. The agency may call a number of witnesses, including service providers who worked with the family, agency case workers and expert witnesses, such as psychologists or psychiatrists who can testify to the parent's ability to care for the child. Depending on state law, the agency may not only have to prove the grounds for TPR, for example, the parent's failure to plan, but also that TPR is in the child's best interests.

At the TPR stage, the foster parent may be asked to testify as to how the child is doing in foster care, how visitation affects the child, the needs of the child or other matters which would help the court determine whether it is in the best interests of the child to terminate parental rights. If not asked to testify, foster parents may consider attending court in the event the court or any of the parties seeks that information.

The foster parent right to notice and opportunity to be heard does not currently extend to all dependency hearings. However, unless expressly excluded by the judge, a foster parent may attend hearings and ask the judge for permission to speak. During a formal trial, the judge would require a showing that the foster parent's testimony would be material and relevant and would require the

MATERIALS/NOTES

Slide #26

 Dependency Court and Removal of Children

Permanency Hearing

Foster Parent Role:

- > ASFA requires that foster parents receive notice and have an opportunity to be heard
- > Tips
 - > Notify the agency what information you will be providing the court
 - > Attempt to work with the agency in a team approach for the best possible outcome
 - > Notify the court if you are willing to be a permanent resource family for Jimmy

Source: National Resource Center for Permanency Planning



Note to Trainer:
You should specify the grounds for TPR in the state in which you are training.

Slide #27

 Dependency Court and Removal of Children

Termination of Parental Rights (TPR)

General Grounds: (Varies by state)

- > Parents failed to carry out the court-mandated plan for reunification
- > Severe abuse or failure to maintain adequate contact with the child
- > Inability to parent due to severe retardation or mental illness

OUTLINE/INSTRUCTOR ACTIVITY

progress, for example not attending parenting classes or anger management classes, whatever has been included in their improvement plan, the agency may file a motion to terminate their parental rights.

5. Foster Parent Role
 - a. (Slide #26) ASFA requires that they receive notice and have an opportunity to be heard
 - b. To tell the agency, first, and then the court how the child is currently doing
 - c. To provide any information that the court would find helpful in determining where the child is going to be placed on a permanent basis
 - d. Emphasize that it is important that foster parents be open and honest with everyone in the process, telling the agency ahead of time what they intend to tell the court. The agency and foster parents should be working as a team to ensure the best possible outcome for kids.



- I. Termination of Parental Rights (TPR) Hearing
 1. The whys and hows of a TPR are dictated by state law
 2. (Slide #27) General grounds for TPR apply in most states
 - a. Most common is that the parents have failed to carry out the court plan for reunification
 - b. Severe abuse or failure to maintain adequate contact with the child
 - c. Inability to parent due to mental illness, mental retardation or chronic substance abuse
 - d. Most complicated part of the dependency process
 - 1) Burden of proof on agency that parents have failed to change the behavior which brought the child into the system and, in some states, that TPR is in the child's best interest
 - 2) Case must be carefully presented by the agency

REFERENCE NOTES

foster parent to take an oath. At more informal proceedings, the judge has discretion as to whether to allow the foster parent to speak. The attorneys in the case may be willing to assist the foster parent in presenting their information if they believe it will benefit their client.

Foster parents should share important information first with the agency, who, as custodian, has responsibility for the child's care and well-being. If the foster parent feels the information is important to the court, the foster parent should inform the agency that they wish to make a statement, or provide the information to the child's advocate or the parent's attorney. Keeping information from the agency may damage a foster parent's credibility in the courtroom, as they may be seen as trying to circumvent the agency. Therefore, foster parents should take care to deal openly and honestly with all parties involved in the court process. Foster parents may sometimes feel as though they shouldn't have to share information when information is routinely kept from them. But the rules governing information sharing and confidentiality are complex, and often parties are not free to share information with the foster parents. As discussed earlier, only parties to the proceeding are entitled to information provided to the court, and foster parents are rarely awarded party status. Foster parents should concentrate on getting their own message across in an effective way, and should not attempt to hide or conceal from parties, who have the right to all information provided to the court.

In addition to the phases of dependency proceedings described above, the court is free to schedule as many appearances as necessary. An appearance (sometimes called a status check, or other similar term) is a scheduled return to court, usually to check on the status of the case. The judge may schedule an appearance to consider new reports or home studies, or to monitor the case in order to be sure the parties are complying with the court's orders. The frequency and length of appearances vary, according to the judge's preference. Appearances can be confusing, because they often do not have a clearly defined purpose, yet they may result in the judge issuing an important order. For example, at an appearance scheduled to review service provider recommendations, the judge, after receiving the recommendation of a mental health counselor, may change visitation from supervised to unsupervised.

Important changes in court orders can occur at any type of hearing or appearance, since the judge has a lot of discretion in how and when to make orders protecting children. Even the agency cannot be certain of the outcome of any given court proceeding. That can make it difficult for foster parents to determine whether they should attend court proceedings.

Going to court to give information is discussed in depth in chapter three of the *Legal Resource Manual for Foster Parents*. Foster parents should be aware that testifying as a witness in a court proceeding involves other considerations. Being asked to take the stand and swear to an oath can intimidate even trained and experienced caseworkers.

MATERIALS/NOTES

OUTLINE/INSTRUCTOR ACTIVITY

as TPRs are likely to be appealed

- e. Witnesses may be called

Transition Statement: We have just completed the mandatory phases of dependency court. However, the judge may schedule as many appearances, or status checks, as it deems necessary along the way. These can be confusing because they have no defined purpose as the other phases do, but cannot be ignored by concerned foster parents.

J. Other Proceedings or Appearances

- 1. Possible Purposes
 - a. Consider new reports or home studies
 - b. Monitor compliance with court orders
 - c. Change visitation schedule
- 2. Important changes in court orders can occur
- 3. Foster Parent Role: Provide information to the court.

K. Court Orders

- 1. Go into effect as soon as the judge speaks it from the bench.
- 2. Will usually be reduced to writing eventually
- 3. May contain provisions that affect foster parents, for example, a change in visitation
- 4. Only parties are entitled to receive court orders
- 5. Foster parents affected by the order may be able to get on the distribution list by asking the court clerk.
- 6. Best way to get the information in the shortest amount of time is to attend court.

REFERENCE NOTES

Court Orders

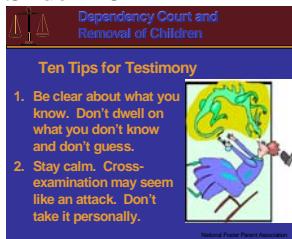
A court order can be verbal or written. The order goes into effect as soon as the judge speaks it from the bench. Most orders get reduced to writing, but the time during which that occurs varies widely from jurisdiction to jurisdiction. Only parties to a case are entitled to receive the court orders, but in some cases, courts may be willing to add foster parents to the distribution list. Very often, court orders contain provisions which affect the foster parent. For example, an increase in visitation will affect a foster parent who provides transportation to visits. Sometimes a judge may specifically order a foster parent to take a particular action, for example, to notify the court of any change in a child's medical condition. If the court orders contain provisions affecting the foster parents, foster parents should ask the court clerk to add them to the court order distribution list. If the court is concerned about the foster parents receiving confidential information contained in court orders, the court may be willing to redact (delete) confidential information, but allow the foster parent to receive the rest of the court's order.

However, even if the court sends written orders to the foster parents, prompt receipt depends on the court's ability to issue written orders quickly. Since caseworkers rarely have time to carefully explain court orders to foster parents, or may not attend court proceedings themselves, attending court is the best way for foster parents to keep aware of court action.

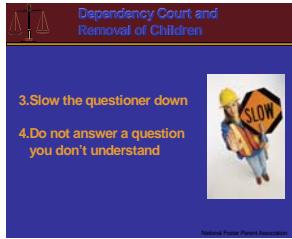
MATERIALS/NOTES

Handout: Top Ten Tips for Testimony

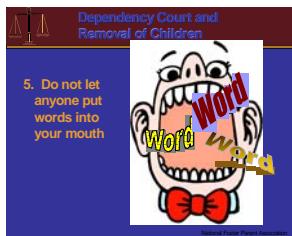
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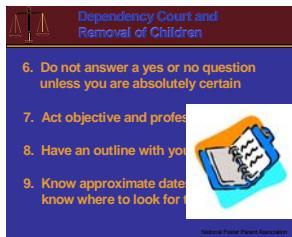
Slide #29



Slide #30



Slide #31



Slide #32



OUTLINE/INSTRUCTOR ACTIVITY

- L. Say, "In some courts, the parties are allowed to speak informally at a permanency hearing. In other, more formal courtrooms, the judge requires anyone providing information to the court to take an oath and testify as a witness."

Witnesses are subject to cross examination by opposing parties. If you are called as a witness, the following tips will be helpful."

1. Distribute the handout, "Top Ten Tips for Testimony."
2. (Slides #28-32) Go through the slides to touch on each of the tips.

Transition Statement: We have seen that foster parent input is valued at the very least in the six-month review and the permanency hearing, as well as other appearances the judge may have. How to provide this input is thoroughly discussed in chapter three of the *Legal Resource Manual for Foster Parents* and in training module number three. Because of the busy schedules foster parents have, we are going to take the next few minutes to discuss how to decide when to pack the kids off to a caregiver and go to court, and the written alternative.

REFERENCE NOTES

TOP TEN TIPS FOR TESTIMONY

1. Be clear about what you do know, do not dwell on what you do not know.
2. Stay calm and try not to take “attacks” personally.
3. Slow the questioner down.
4. Do not answer a question you do not understand.
5. Do not let anyone put words in your mouth.
6. Do not answer a yes or no question if you are not absolutely certain
7. Act objective and professional
8. Have an outline with you
9. Know approximate dates or know where to look for them
10. Tell the judge if you need to explain something- do not let them cut you off.

REMEMBER- Nobody LIKES this. Think of why you are doing it.

M. Deciding Whether to Go to Court

Handout:
Should I Go to Court?

1. Say, “Foster parents should always attend permanency hearings because it is there that they have a right to give input, and can add important information about the child’s safety, permanency and well-being to help the agency and court make a sound decision. At other hearings, foster parents may not have as great a role. In some jurisdictions, it may not be realistic to attend court every time it is scheduled. For example, it is not unheard of to have a contested termination of parental rights trial that lasts over a week. Following are some factors to consider if you are unable to attend every court date:”
2. Distribute the handout, “Should I Go to Court?”
3. Note to the participants that the handout provides some questions to ask of themselves in deciding whether to go to the additional appearances that the judge may have.
 - a. What is the purpose of the court date?
 - b. Do I have an important message for the court?
 - c. Is there important information I could get from attending court?
 - d. Will this be a rare opportunity to speak to the judge?
 - e. Does the child need your support and assistance?

REFERENCE NOTES

SHOULD I GO TO COURT?

It can be difficult to get to every court date, especially if you care for multiple children. In some courts, it is not uncommon to wait for hours before your case is heard. Sometimes, after much waiting, not much happens in the courtroom. There are no hard and fast rules for determining when you should go to court, but following are some factors to consider:

What is the purpose of the court date?

It can be difficult for non-lawyers, even caseworkers, to determine the purpose of a particular court proceeding. Some courts schedule frequent appearances just to check on the status of a case. One way to determine whether a substantive hearing will occur, (vs. a brief status check) is to look at how much time is allotted for the case. A brief appearance will typically be scheduled for 15 minutes or so, while a hearing will typically be scheduled for a half-hour or more. You can usually get that information from the court clerk.

If a case is scheduled for a hearing, try to determine the stage of the case (as discussed in chapter 3), which will indicate the issues on which the judge is likely to rule. For example, at an abuse/neglect hearing, the judge will rule on whether the parent is guilty of maltreatment. (refer to chart on the dependency process) The permanency hearing chooses the plan based on the needs of the child. As discussed in Chapter 2, foster parents have an important role to play at the permanency hearing stage.

Do I have an important message for the court?

If you have new information about the child's status, you should consider going to court. You should share important information with the agency and child's advocate. Even if the caseworker or advocate relays your message to the court, the judge will most likely have questions for you, since you are the source of the information.

Also keep in mind that even if you have submitted a written report, it may be beneficial for you to attend to ensure the judge considers your report and has accurately interpreted it. Being there to clarify points and answer questions will aid the court in making a thorough decision.

Is there important information I could get from attending court?

Attending court can be a good way to learn more about the case. By attending court, you may be able to learn more about the child's needs, his family, and other background information. You may also gain a clearer understanding of the position of the parties, including the agency.

Will this be a rare opportunity to speak to the judge?

Because of strained resources, in some jurisdictions, cases are scheduled only when absolutely necessary. If you are in one of those jurisdictions, you should carefully weigh the need to go to court. If the judge makes an important decision without the benefit of your input, it may be a long time before the

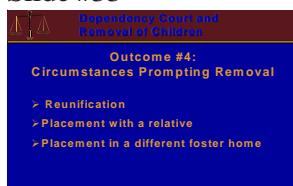
Transition Statement: We can all understand why a child is removed from a home where abuse or extreme neglect has taken place. You, as foster parents, are as prepared as anyone can be for the child rescued from that situation. In all likelihood there will come a time when that child who waltzed into your home, and then perhaps into your heart, is removed from your home, too. This could be a time of trauma not just for the child, but for you. It is important to be prepared for that time and know that you may not always support the decision of the agency or the court or their reason for removing the child.

IV. Outcome Number Three: Circumstances Which Prompt Removal of a Child From the Foster Home

A. Removal From a Foster Home

1. Say, “When foster children come into your home, you have no expectation that they will stay permanently. In many cases they will bond with you and you with them, making eventual parting difficult. One more hat you need to wear as a foster parent is that of a counselor in helping prepare children for the transition to wherever they are going. There are obvious reasons for a child to be removed and some you might not be prepared for.”
2. (Slide #33) Circumstances Prompting Removal
 - a. Reunification
 - b. Placement With a Relative
 - c. Placement in a Different Foster Home

Slide #33



REFERENCE NOTES

court has an opportunity to revisit the issue.

Does the child need your support and assistance?

Above and beyond legal strategy, the most important reason for going to court may be to support your foster child. Even older children sometimes find it difficult to be in the courtroom, especially if they have to testify. Don't let other parties discourage you from attending court if you feel your presence will help the child.

Learn the local practice

You should familiarize yourself with local practice and customs, which will help you make decisions about attending court. Local practice and custom can affect how often a judge schedules cases, whether the judge encourages parties to resolve disputes, and how the judge prefers to receive input from foster parents.

If you can't go to court

If you cannot attend court, but have information to give to the judge, be sure to submit a written report, and provide a copy to each party, as discussed in Chapter 2. You may consider indicating in your report that you are unable to appear in court, but would be happy to appear at a future date to answer any questions, or provide further information. If you do not attend a hearing and the court does not hear from you, they will assume that you have nothing important to add, and will proceed without your input.

Transition Statement: The last reason is one you may not be prepared for. It may come with little or no warning. Though biological parents have constitutional protections against unwarranted removal, foster parents do not have those same protections. Most states, however, have some minimal protections for foster parents faced with a removal they don't agree with.

V. Outcome Number Four: Foster Parent Responsibilities When a Child is Removed

Slide #34



Dependency Court and Removal of Children

Outcome #5: Foster Parent Responsibilities When a Child is Removed

- Provide written information...food preferences daily routine, preferred activities, fears, etc.
- School information
- Foster parent contact information
- Photos...send with Jimmy as a connection to that part of his life

Slide #35



Dependency Court and Removal of Children

- Keep the social worker informed about Jimmy's reaction to the impending move
- Be an active team member and follow the transition plan
- Update Jimmy's life book and be sure it goes with him
- Prepare for grief/separation loss issues within your family

- A. Say, "Foster parents have responsibilities when a child is going to be removed. Some, though this is not an exhaustive list, include..." (Slide #34-35)
 - a. Providing written information: Food likes and dislikes, daily routine, preferred activities, fears, etc.
 - b. Providing school information.
 - c. Providing foster parent contact information
 - d. Giving the child photos--send these with the child as a connection to that part of his life.
 - e. Keeping the social worker informed about how he is reacting to the impending move.
 - f. Being an active team member and follow the transition plan.
 - g. Updating the child's lifebook and making sure it goes with him.
 - h. Preparing for grief/separation/loss issues within your family.

REFERENCE NOTES

When a Child is Removed

Foster parents often become very attached to children in their care and fear that a child will be removed from their home with no warning. As discussed earlier, a number of protections exist to protect the biological parent's right to raise their child. Foster parents do not have the same protections, as their relationship to the child is of a different nature, stemming from a contract with the state, and not from a biological relationship protected by the U.S. Constitution. But most states have at least some minimal protections for foster parents when the custody of the child changes.

This part of the chapter explores situations where the court or agency changes the child's placement, based on a determination that the child would be better off in another environment. This can be done for reunification with birth parents or the court may order a child to be placed with a relative. Sometimes the child is moved to a different foster home, or is being placed with an adoptive family. This may happen after the child has been living with the foster family for a significant period of time. This chapter does not address the situation where the agency has charged the foster parents with maltreatment of the child, which will be addressed in chapter four.

As in removal from the birth home, this will also likely be a traumatic event for the child. Foster parents frequently also suffer the pain of separation, but their role is to help the child prepare for the change. Foster parents know that the primary goal for their foster child is always reunification, whenever possible. They can be a valuable resource for the child in helping to make the transition back to the birth home.

This is also true if birth parents are unable or unwilling to do what the court has ordered be done to get their child back. If that happens early on, foster parents can again serve as a resource to help ease the transition. This is also true if the child is released for adoption and an adoptive family is identified.

However, there may be times when the foster parent feels the move is neither the correct one for the child, nor justified by the circumstances. As with any parent, they feel the need to protect an already bruised child from situations they feel are not in the child's best interest. The rest of the chapter addresses this type of circumstance.

Foster parents should understand that protections and remedies vary widely from state to state. Foster parents are cautioned to seek their state-specific information regarding removal. Foster parents should become knowledgeable about their states' rules regarding removal before a situation arises where the child might be moved. Foster parents should devote time to finding, reading and understanding the applicable laws and policies. Once removal is imminent, time to react is often very limited. Once removal becomes a possibility, emotions may run high, which can make it harder for the foster parent to concentrate on finding solutions.

MATERIALS/NOTES

Handout:
Non-Emergency
Removal Checklist



Trainer Note: You will want to research the protections afforded by state law and regulation concerning foster parent rights and remedies when a child is removed from the home for reasons other than allegations. This would include answers to all the questions in the handout, "Non-Emergency Removal Checklist." Reference Notes pg. 35 and handout

Slide #36

Dependency Court and Removal of Children

What do I need to know if I disagree with an agency decision to remove a child from my home?

Slide #37

Dependency Court and Removal of Children

Protections may be provided to you by state law or regulation

1. Whether you have a right to receive advanced notice
- ✓ Whether the notice has to be in writing
- ✓ Whether you are entitled to reasons for the removal
- ✓ How much time you have to respond
- ✓ Whether your response must be in writing

OUTLINE/INSTRUCTOR ACTIVITY

VI. Outcome Number Five:

Rights and Protections for Foster Parents When a Child is Removed for Reasons Other Than Maltreatment Allegations

Note to Trainer: Use either Part A or B below.



A. INSERT STATE SPECIFIC INFORMATION

Distribute handout "Non-Emergency Removal Checklist" (Reference Notes facing page and Appendix)

Say, "This checklist provides a list of information you will need about your specific situation. I have obtained as much of this information as I could for our specific situation. For the items I was unable to obtain, I would suggest that you approach your foster parent association and ask that this information be compiled for distribution."

B. (Slide #36) What Do I Need to Know if I Disagree With an Agency Decision to Remove the Child from my Home?

1. (Slide #37) ...The protections that are provided to you by state law, regulation or child welfare policy
2. ...Whether you have a right to receive advanced notice, whether it has to be in writing, whether you are entitled to reasons for removal, how much time you have to respond and whether your response must be in writing
 - a. Most important right afforded to foster parents
 - b. May be granted by state statute or by agency regulation or policy
 - c. Advance notice sometimes provides very little time to react, if you do not agree with the move, usually one to two weeks, but can be even less
 - d. Say, "When an agency removes a child without giving required notice, few remedies exist. Courts

REFERENCE NOTES

NON-EMERGENCY REMOVAL CHECKLIST

(Note: Foster parent associations may wish to gather this state-specific information and make it available to foster parents in their state.)

- Have I researched state law, regulation and policy?
- Do I have a right to notice?
- Does the notice have to be in writing?
- Am I entitled to reasons for the removal?
- How much time do I have to respond to the notice?
- Must I respond in writing?
- Do I have a right to an interagency grievance process? When must I request it?
- Can I submit a written statement?
- Can I bring an advocate?
- Can I challenge the decision produced by the grievance process?
- Am I entitled to a fair hearing (also called administrative review)?
- At what point must I request a fair hearing?
- Must my request for a fair hearing be in writing?
- What must I bring with me to the hearing?
- What can I bring with me to the hearing? (Bear in mind, you may want to bring an advocate or attorney to the fair hearing.)
- How do I appeal a fair hearing decision? What is the time limit to file the appeal?
- Can the agency remove the child while the dispute is pending?
- Is there an ombudsman program in my state that can help me in the event of a dispute with the agency?

MATERIALS/NOTES

Slide #38



Dependency Court and Removal of Children

2. Your right to an agency grievance process

- ✓ How soon you must request it
- ✓ Whether a written statement may be submitted
- ✓ Whether you may bring an advocate

Slide #39



Dependency Court and Removal of Children

3. Whether you may challenge the agency decision in an administrative review, also called a "fair hearing"

- ✓ How soon it must be requested
- ✓ Whether the request must be in writing
- ✓ What you must bring with you
- ✓ What you may bring with you, including an advocate

Slide #40



Dependency Court and Removal of Children

4. How you can appeal a fair hearing decision and how long you have to do it

5. Whether the agency can remove the child while the dispute is going on

6. If there is an ombudsman program in your state to help in the event of a dispute with an agency

OUTLINE/INSTRUCTOR ACTIVITY

are more reluctant to change a child's placement after he has been moved to a new home. It is important for foster parents to know their state's practice before the need arises."

3. (Slide #38) ...Your right to an agency grievance procedure, how soon you must request it, whether you can submit a written statement and whether you can bring an advocate
 - a. This process may be available to foster parents in this circumstance
 - b. If state law does not provide for appeal, the foster parent may consider taking their concerns "up the chain" to a higher level of agency personnel
 - c. Agency decision is not appealable to dependency court
4. (Slide #39) ...Whether you may challenge the agency decision in an administrative review, also called a fair hearing, before an administrative law judge (ALJ), how soon it must be requested, whether that request must be in writing, and what you must and can bring with you, including an attorney or an advocate
5. (Slide #40) ...How you can appeal a fair hearing decision and how long do you have to do it
6. ...Whether the agency can remove the child while the dispute is ongoing
7. ...If there is an ombudsman program in your state to help in the event of a dispute with an agency

Transition Statement: If you have exhausted all the remedies and appeals available through the agency, or you feel that the agency appeal is not proceeding the way you want, you can approach the dependency court through several avenues.

REFERENCE NOTES

Protections for Foster Parents

Any protections foster parents have stem from specific provisions in state law granted to them by legislatures, or from state policies enacted by child welfare agencies. Their protections do not stem from a constitutional right to raise their foster child. Because of the biological parent's constitutionally recognized liberty interest in raising their child, they are entitled to procedural protections such as party status, the right to counsel and the right to appeal decisions of the court. These protections are often referred to as Due Process of Law, or Due Process. Foster parents are not automatically entitled to due process, so they must look to laws to see whether their state has granted them specific protections, such as the right to ask the court for party status, or the right to notice of removal. In a few cases, some state courts have found foster parents have a greater interest in the relationship with the child where special circumstances exist, such as a blood relationship to the child, long term placement, or pre-adoptive status.

State agencies enact regulations that clarify how the agency intends to implement the statutes. Where there is a conflict between the state statute and the regulation, the statute is the controlling authority.

Agencies write their own policies. They vary as to how strictly they implement and enforce their own policies. Some agencies may see violation of policy as a serious breach, whereas other agencies may regard policy merely as a suggested practice, rather than a mandate. Agency policy cannot contradict law or regulation. Agencies are not required to make their policies public, though they sometimes choose to do so. The most common place to look for policy is on the Internet. Law and regulation are available to the public through libraries, or sometimes, the Internet by state. Agencies policies are difficult to enforce, as there is no right to challenge an interagency breach of policy.

Remedies When a Child is Removed

The remedies available to foster parents when a child is removed vary depending on whether the change of placement is pursuant to the court's order, or whether it is purely an act of the agency, though some protections may be available in either situation. The most common protections, discussed more thoroughly below, include: the right to notice; the right to an agency grievance procedure; the right to a fair hearing (also called an administrative hearing); right to party status ; the right to due process of law.

MATERIALS/NOTES

OUTLINE/INSTRUCTOR ACTIVITY

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Dependency Court and Removal of Children

Access to Dependency Court When a Child is Removed

➤ Direct Access

- ✓ Exercising right to statutory notice, IF notice was not received and IF the right to notice is granted by state statute vs. agency regulation or policy

Slide #42



Dependency Court and Removal of Children

Access to Dependency Court When a Child is Removed

➤ Direct Access

- ✓ Filing a petition with the court
 - Generally requires party status
 - Judge MAY allow the petition to proceed without party status, thereby granting party status for purposes of that proceeding.

Slide #43



Dependency Court and Removal of Children

Access to Dependency Court When a Child is Removed

➤ Direct Access

- ✓ Filing a temporary injunction or stay of proceedings
 - Generally requires party status
 - Judge MAY sustain it
 - Alerts parties of need for immediate action to prevent removal

C. Access to Dependency Court When a Child is Removed by the Agency

1. This avenue may be pursued at the same time as the agency remedy

2. (Slide #41) Foster parents may be able to use the following methods to gain direct access to the court:

a. Exercising right to statutory notice

Say, "This is available IF the right to notice is one granted by state statute vs. agency regulation or policy."

Say, "If state statute vs. agency regulation or policy, requires advance notice of removal and that notice is not given, you can go to court. This may give you the right to challenge the removal if you act quickly."

b. (Slide #42) Filing a petition with the court

1) Requires party status, but if a judge allows a petition to proceed, the foster parent becomes a party for purposes of that proceeding

2) Some states allow foster parents to file for a TPR under certain circumstances

c. Filing for party status, covered extensively in chapter two of the Legal Resource Manual for Foster Parents and the training module on court participation

Say, "You will recall that party status, in most states, grants the right to file motions and receive notice of all court hearings."

d. (Slide #43) Filing a temporary injunction or stay of proceedings

Say, "Generally this can only be done by parties but, if you feel the agency may remove the child while you are challenging the removal, this is an avenue that may help. The judge may sustain it. If she does not, it still alerts the parties of the need for immediate action to prevent removal."

REFERENCE NOTES

Right to Notice

The right to notice of a proposed removal of a child from the foster home may be the most important right afforded to foster parents. With adequate notice, the foster parent can take steps to prevent the removal, and may successfully challenge the decision to the agency or court. Even with advance notice, the time frame during which to act is often short, ranging from as little as 48 hours (by law in the District of Columbia) to a comparatively generous 30 days (according to the Kansas Child and Family Services Policy Manual), with most states that provide notice falling around the one to two-week range. Some states only specify that the agency provide notice, not specifying the time frame.

When an agency removes a child without giving required notice to a foster parent, few remedies exist. Once the agency has moved a child, the foster parent's chances for successful challenge diminish, as administrative law judges and courts are more reluctant to change a child's placement after he has been moved to a new home. The short time frames and lack of remedy underscore the need for foster parents to learn their state's practice before the need arises.

Not all notices are required to be in writing, making it difficult to prove when inadequate notice has been given. Even when written notice is required, the agency isn't always mandated to give a reason for the removal. Lack of detail in the notice makes it more difficult to prepare a challenge. Foster parents should attempt to gain as much as information as soon possible after receiving notice. Ideally, the foster parents should communicate regularly with the caseworker about the case and the permanency plan for the child.

The service of notice to the foster parent may trigger the foster parent's responsibility to take action. For example, in Texas the foster parent has 10 days after receipt of notice in which to request a review of the agency's decision.

Many states require the agency to give notice before the agency removes a child from their home. Provisions contained within state statutes sometimes require the agency to give notice to the child, parents, child's advocate and other parties, as well as the foster parent. When the agency violates a foster parent's right to receive notice under state statute, the foster parent should be able to challenge the violation in court. However, the ability to challenge is limited only to the statutory right to receive notice, unless the foster parent is granted party status or the statute specifically provides that the foster parent may challenge the merits of the placement. That is, the foster parent may seek the court's assistance on the notice issue, but may not present evidence on the appropriateness of the change in custody. As mentioned earlier, there is no real remedy for failure to provide notice, but alleging an agency violation in court may serve the purpose of alerting the other parties, who have more standing than the foster parent to challenge the removal in court. For example, once alerted, the child's advocate may choose to present

MATERIALS/NOTES

Slide #44



Dependency Court and Removal of Children

Access to Dependency Court When a Child is Removed

Indirect Access

- ✓ The child has party status and thus has the right to challenge placement decisions. The GAL or advocate may intervene... if they know of an impending move.

Slide #45



Dependency Court and Removal of Children

Best Practices to Prevent Removal

1. Work with the agency
2. Participate to the fullest extent possible in permanency planning



Slide #46



Dependency Court and Removal of Children

Ombudsman

27 states have ombudsman programs to provide resources and assistance to foster parents



Trainer Note:

Research whether your state has an ombudsman program and, if so, what its mandate is and how to make contact.

OUTLINE/INSTRUCTOR ACTIVITY

e. (Slide #44) Indirect access to the court

Say, “The child has party status and thus has the right to challenge placement decisions. If the child’s advocate or GAL knows of an impending move they may be able to intervene.”

D. (Slide #45) Best practices to prevent removal

1. Participate to the fullest extent possible in permanency planning
2. Work with the agency
 - a. Establish good communication
 - b. Consider sending a short, friendly note to the case worker, for inclusion in the child’s file, about every quarter to report on the child’s health, school progress, participation in family and community events, etc.



E. (Slide #46) Ombudsmen

1. Say, “There are 27 states with ombudsman programs to provide resources and assistance to foster parents.”
2. Washington State has a statute that allows foster parents to file complaints of retaliation with the state ombudsman if they feel that their active advocacy has become a cause for retaliation by the agency

F. Model Program

The Foster and Adoptive Parenting Advocacy Center in the District of Columbia provides a good working model of a program that provides advocacy for both individual foster parents and systemic reform

REFERENCE NOTES

evidence to the judge that the child's placement should be maintained. If the notice requirement is contained in regulation or policy only, the provision cannot be enforced through a court, but the foster parent may be able to use other methods to gain the court's assistance, discussed below. Some notice requirements specify that a foster parent receive notice only if they have had the child for a specified amount of time. For example, in Oklahoma the foster parent is entitled to 5 days notice only if the child has resided in the foster home for at least six months.

Exceptions to Notice

All laws and policies exempt the agency from providing notice when the agency must remove the child in order to protect the child from imminent harm. In such cases, the removal might lead to formal charges of maltreatment, discussed in chapter four of the *Legal Resource Manual for Foster Parents*.

Using the Statutory Right to Notice

In some states, foster parents have a right to notice of the child's removal pursuant to state statute (as opposed to agency regulation or policy.) It can be argued that within the right to notice is an implied right to challenge the removal. Foster parents should seek a remedy with the court as soon as becoming aware of the removal. It cannot be stressed enough that challenges to a removal are more likely to succeed before the child has adjusted to a new placement. The court clerk should be able to guide the foster parents on what type of documents to file to challenge the removal.

Court vs. Agency Removal

Sometimes it is the court, not the agency, that decides to remove the child from the foster home. Usually courts make a change in custody based upon recommendation of one of the parties, most commonly the agency. If the court orders the change in custody, the agency is generally not responsible to provide notice to the foster parents. If the foster parents were not present in the courtroom, they may have little information about the reasons for the removal, and little notice before the child is actually removed.

Agency Grievance Procedures

After an agency gives the foster parent notice, the foster parent may be entitled to an intra-agency grievance process. The foster parent may have to file a grievance within a certain period of time. If the foster parent hesitates and misses the deadline, they may lose the right to file for a review of

MATERIALS/NOTES

OUTLINE/INSTRUCTOR ACTIVITY

Slide #47

 **Dependency Court and Removal of Children**

Review

Outcome #1 Who remembers the purpose of dependency court and how it differs from criminal court?

Outcome #2 Who remembers the sequence of court processes in dependency court? What is the major purpose of each step?--yes, you can totally guess! Under which of the hearings will foster parents be able to be fully involved?

Slide #48

 **Dependency Court and Removal of Children**

Review

Outcome #3 You all remember what responsibilities foster parents have to the child when he is to be removed. Would someone name a few of those so I know I did my job here today?

Outcome #4 What are the 5 circumstances under which a child might be removed from a foster home

Slide #49

 **Dependency Court and Removal of Children**

Review

Outcome #5 Here are the toughies. Can we remember some of the ways in which foster parents can challenge a move?

What are some steps foster parents might take to prevent unwanted agency action?

Slide #50

 **Dependency Court and Removal of Children**

Additional modules in this series:

- ✓ Permanency, Foster Parents and the Law
- ✓ Court Participation for Foster Parents
- ✓ Allegations of Maltreatment

Slide #51

 **Dependency Court and Removal of Children**

 Thank you for your attention and participation

Review

- A. (Slides #47-49) Using the slides, review the outcomes for the training by soliciting responses from the audience. Refresh their memories by adding to the comments if the audience seems to not remember.

Conclusion

- A. (Slide #50) Say, "This concludes our seminar on Dependency Court and Removal of Children. It is the second in a series of four developed on the *Legal Resource Manual for Foster Parents*.
- B. Say, "*The Legal Resource Manual for Foster Parents* is available for free download from the National Foster Parent Association website or a hard copy may be purchased from NFPA. The other trainings in this series are also available from the National Foster Parent Association at www.NFPAinc.org."
- C. (Slide #51) Thank everyone for their kind attention and participation.
- D. Evaluation

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their grievance, so it is best to notify the agency, both verbally, and in writing, of the desire to challenge the agency's removal. Even if not required, the foster parent should request review of a removal decision in writing, keeping a copy, to address possible questions about whether deadlines have been met.

The grievance process typically includes a meeting with the agency staff to discuss the removal. This process is less formal than an administrative hearing, discussed below. Agencies set their own policies determining how the meetings are conducted. Ideally, those not involved in the original decision will review the agency decision so that a certain degree of impartiality is ensured. However, many regulations and policies do not specify who will oversee the process and make the final determination. And, even where the policy clearly sets forth requirements, some agencies may not adhere strictly to their own policy, as discussed above.

Steps foster parents can take to make their advocacy stronger include: bringing an advocate, submitting a written statement, and researching whether the agency must consider certain factors in the removal.

Most provisions are silent on the issue of whether the foster parent can bring an advocate. An advocate may be helpful where the foster parent feels they are too emotional to express themselves, or feels the advocate can help the foster parent get their point across more effectively.

Tips given in chapter three of the *Legal Resource Manual for Foster Parents* regarding effective presentation of facts to the court also apply when presenting facts to the agency. A child-focused and fact-based message is more likely to be received by the agency, and will help the foster parent appear more objective and professional. Preparing a written statement serves several purposes: it helps the foster parent organize their thoughts, can be used to jog the memory during the meeting, and serves as a record of the foster parent's objections.

Knowing whether the procedure requires the agency to consider certain factors in the removal will help the foster parent craft a stronger argument. For example, according to the Indiana policy manual, the agency must consider specific issues related to how the foster parents treat the child, for example, whether the child is kept sequestered from the rest of the family.

The foster parent should attempt to learn the reasons for the removal even if the agency is not required to explain them before the meeting. Knowing the agency's reasoning ahead of time will help the foster parent address the agency's concerns more effectively.

Some grievance procedures can be appealed to an administrative law judge, a specialized judge who hears appeals of agency decisions. Even if the state doesn't provide for appeal of a grievance decision, the foster parent may consider taking their concerns "up the chain," to a higher level of agency

REFERENCE NOTES

personnel. Though the agency response to the grievance is not appealable to the dependency court, foster parents may consider simultaneous court action, as discussed below.

The Administrative Hearing

Some states allow the foster parent to challenge the agency decision in an administrative hearing, or fair hearing, as it is sometimes called. The right to request an administrative hearing may depend on the length of time the child has lived with the foster family. The hearing is held by an administrative law judge (sometimes called an ALJ), usually hired by the state. The administrative law judge serves only to review agency decisions. She does not serve the same function as a dependency court judge.

An administrative hearing is typically held at a state agency office, not in a courtroom. The proceedings are held informally, though some of the structure of the courtroom may be used. For instance, the judge may give the parties the opportunity to make opening and closing statements. The judge will usually accept documents as evidence, so the foster parents should bring any documents that support their position. Examples of useful documents include a letter from the child's therapist saying the child is doing well in the foster home, a recent favorable report card with positive teacher comments, or past agency case plans stating the foster home is a good placement for the child. Too many documents can dilute a positive message, so it is important to carefully choose documents that make important points, rather than trying to admit everything ever written about the case. Upon request, the administrative law judge may assist the foster parent in obtaining documents in the possession of the agency.

The parties will also be allowed to testify, and to bring witnesses with them. The proceedings are typically recorded, creating a record.

While administrative hearing decisions are appealable to a state court, an appellant has to prove the agency's decision was arbitrary and capricious, which is a very high legal standard. And the procedure can be complicated, requiring the assistance of a lawyer. Because of the likely finality of the administrative law judge's decision, the foster parent should approach the administrative hearing very seriously, and should prepare thoroughly. Foster parents may also consider hiring an attorney with experience in dependency, foster care and adoption issues to assist them. If the foster parent fails to appear and does not notify the court of a good reason beforehand, the judge may issue a default decision, which essentially means that the agency has won. So any difficulties attending proceedings should be reported immediately directly to the judge's office (and not to the caseworker.)

REFERENCE NOTES

Foster parents charged with maltreatment of a child may also be entitled to an administrative hearing, which is explained in further depth in chapter four.

Access to Dependency Court When a Child is Removed

Even when pursuing the agency remedies described above when an agency removes or proposes to remove a child, the foster parent may also pursue remedies in the dependency court at the same time. As discussed in chapter two, foster parents do not have the same rights as parties, so they do not have automatic standing to seek the assistance of the court. But foster parents may be able to use the following methods to gain direct access to the court: using the right to statutory notice, filing a petition, making a motion to intervene as a party and requesting an injunction. Methods for gaining indirect access to the court include: contacting the child's advocate, making a report to the court, and participating in permanency hearings.

Regardless of the method, foster parents should keep in mind the rules about providing information to the court discussed in chapter two. Child-focused and rational arguments will have a greater chance of success.

Filing a Petition

A foster parent must have standing in order to file a petition with the court. If the judge allows the petition to proceed, and does not dismiss for a lack of standing, the foster parent becomes a party for the purpose of that proceeding. A foster parent may be able to file a petition for termination of parental rights, adoption or custody.

Some state laws specifically give the foster parent the right to file a TPR petition. For example, in New York the law states that the foster parent can file a petition for TPR if they have had the child for 12 months. Some laws are less specific, but could be used by foster parents. For example, in Florida, any person who has knowledge of the alleged facts and believes them to be true can file a TPR petition.

Following through after the filing of a TPR petition may be impractical, especially without help from an attorney. The court may require the foster parent to present their own evidence and make their own arguments (usually, the agency attorney presents a TPR case on behalf of the agency.) However, the court might require the agency to "adopt" the petition and finish the case.

Filing for adoption is only an option where the parents' rights have been terminated and the foster parents have a genuine interest in adopting the child. Filing an adoption petition may make the court more willing to allow the foster parents to participate as a party and challenge placement decisions. In some states, foster parents may be able to file a custody petition in order to present evidence on the issue of the child's custody. However, often courts do not hear custody petitions where a dependency

REFERENCE NOTES

case is pending. Courts are often reluctant to grant custody orders to foster parents, which would give them additional rights beyond those granted by their contract with the agency and those conferred by the state legislature.

Filing for Party Status

Party status for foster parents varies by state, as discussed in chapter two. Gaining party status allows the foster parent to make arguments and present evidence to the court. It also allows the foster parent to appeal decisions of the dependency court, especially important when seeking an injunction, explained below. Applying to the court for party status may be a confusing or complicated process for foster parents. If foster parents live in a state that allows them to gain party status, such as California's defacto parent status (discussed in chapter 3 of the *Legal Resource Manual for Foster Parents*), they should seek that status before an emergency arises. Having party status makes it easier for foster parents to immediately approach the court for assistance if a child is removed.

In some states, laws may grant foster parents an automatic right to party status when the child has lived in the foster home a specified amount of time. For example, in New York a foster parent who has had the child for 12 months may intervene as a party in any proceeding involving the child.

Foster parents' right to intervene as a party derives from specific state laws. They do not have the same automatic constitutional right to due process that biological parents have because they do not have a constitutionally protected liberty interest in their relationship to the child. Foster parents have had some limited success in alleging that they have a protected liberty interest in certain situations. Courts are more likely to find a liberty interest where the foster parent also has a biological connection to the child or where the foster parent has begun adoption proceedings. Generally, courts are less willing to recognize foster parent rights where the biological parent is still working on reunification efforts.

If state law lacks statutory protections, foster parents may have to rely on Constitutional Due Process arguments. Formulating Constitutional arguments goes beyond most non-lawyers' abilities. Retaining a lawyer may be necessary where foster parents have no statutory remedies, and they wish to gain direct access to the court.

Agency vs. Court Removal

When it is the court, not the agency, removing a child, whether because of an agency's recommendation, or other evidence presented to the court, the foster parent has fewer options available. The agency administrative remedies do not apply to court removals. If a foster parent was absent from court and is surprised by a court decision, they should attempt to get information to the court as soon as

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possible. A court that has already made a decision is unlikely to overturn itself without compelling new evidence. This underscores the need for foster parents to keep the court regularly informed of important information regarding the child.

Temporary Injunction or Stay of Proceedings

Some agency regulations and policies provide that once a foster parent challenges a proposed removal, the child will remain in the home until the agency makes a final decision. If the foster parent fears the agency will move the child while the foster parent goes through proper agency grievance procedures, they may consider filing a motion for an injunction, (sometimes also called a stay) which is a court order directing the agency not to move the child until a final decision is issued. Generally, it is only parties that have the right to seek a stay, but even if the foster parents are unsure whether they qualify for party status, a request for an injunction, even if not sustained by the court, will alert the parties and the court of the need for immediate action to prevent removal of the child.

Indirect Access to the Court

The child has party status in a child dependency proceeding, and thus has the right to challenge placement decisions. Yet, often children's advocates do not learn of placement changes until the agency has moved a child. Sharing information with the child's advocate allows the advocate to make a timely decision about whether to challenge the removal. The child is a party, so even if too young to participate, the advocate can present information to the court, seek an injunction on the child's behalf and present the child's position. If the child is old enough to express himself, the foster parent should facilitate the child's communication with the advocate, so the advocate can make a decision that considers the child's wishes.

Making a Report to the Court

Especially if the agency has not yet removed the child, making a report to the court can effectively put the court and other parties on notice that the child's placement may change. A proactive judge may call a hearing *sua sponte* (on its own motion) to gather more facts and determine whether a change in placement is in the child's best interests. However, some judges are more likely to defer to agency decisions unless challenged by the parties. Additionally, in a minority of states, statutes do not allow judges to choose the specific foster home.

Prevention

Participate in Permanency Hearings

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The foster parent's right to participate in permanency hearings was discussed fully in chapter two. Permanency hearing participation may be a means of challenging a removal, if the timing coincides with the agency's decision. But, more likely, it is a preventive measure. If the foster parent has been regularly providing information to the court, the court and other advocates in the case will have a clearer picture of the child's situation, and better able to formulate an opinion of whether the removal meets the child's needs. Hearing regularly from the foster parent may make the court more likely to entertain their arguments, especially if the court feels the foster parents know how to effectively present child-focused information. In the same vein, establishing good on-going communication with the agency will help prevent the agency from making removal decisions without full information from the foster parent.

Working with the Agency

Foster parents should establish good communication with the agency. If the agency hears from the foster parent only when problems arise, the caseworkers might tend to see only the negative side of the placement. Foster parents should use a balanced approach to presenting information. Caseworkers deal with high caseloads and demands from many different system participants, while trying to make good decisions regarding the children. Foster parents should be mindful of the lack of time and resources that face caseworkers on a daily basis. But that shouldn't stop foster parents from sharing information that will help caseworkers stay aware of their cases.

Foster parents should consider sending a short, friendly letter to the caseworker every quarter or so, bringing him up to date on the child's health, well-being and progress. Including things like good school grades, attendance at family events and participation in community activities will give the caseworker a positive, more thorough picture of the child. Those letters should become part of the agency file and provide good information to anyone reviewing the case in the future. Child welfare caseworker turnover tends to be much higher than in other fields, so an established record for new caseworkers can be very useful during periods of worker transition.

Case Planning

Federal law requires the child welfare agency to provide case planning to every child in foster care. Agencies hold case plan meetings in conformance with federal and state requirements. "Case plan" may be referred to by different terms, such as "treatment plan," "service plan" or "placement plan." If possible under state rules, foster parents should consider attending and participating in case plan meetings. As mentioned in chapter one of the *Legal Resource Manual for Foster Parents*, many states, pursuant to their Program Improvement Plans are including foster parents in case planning. The case planning meeting

REFERENCE NOTES

presents an opportunity for the foster parent to share and receive information. By providing a forum for communication, it also promotes understanding and cooperation among the participants, including the biological family and the caseworkers. The agency often relies upon information presented at the case plan meeting to make important decisions. Foster parent input contributes to the quality and thoroughness of those decisions.

In many states, the caseworker has the right to either a copy of the plan or portions of the plan. The case plan is a formal document that is often sent to the court and the other parties in the case. The foster parent should obtain the case plans, if their state allows it. The plan usually specifies the services which the family and the child will receive. Staying informed about the case can help foster parents formulate specific, pointed questions for the agency, rather than requiring the agency to reiterate details contained in the case plan.

Retaliation

Foster parents often fear that the agency will retaliate against them if they assert their rights, ask for services, express a desire to adopt, or contradict the agency in any way. There are no good statistics on how often retaliation occurs. However, regardless of how often it actually happens, many foster parents perceive that agencies often take harsh and punitive measures against foster parents.

Twenty-seven states use child welfare ombudsmen programs to deal with complaints about child welfare agencies. Some states use their ombudsmen programs to provide resources to foster parents. The programs differ in their mandates, roles and functions. Some programs respond to all complaints about the child welfare system, while some respond specifically to foster care problems. In some states, the programs do not fall under the direct control of the child welfare agency, allowing for greater autonomy.

Ombudsmen provide information and assistance to foster parents, but not all programs directly advocate for them. Some may take on a more neutral, or intermediary role. In contrast, in a few states, the ombudsman actually has power to file suit on behalf of the foster parent. An ideal program would provide advocacy for foster parents, while maintaining decision-making independence from the agency.

A Model Program

The Foster and Adoptive Parenting Advocacy Center in the District of Columbia provides a good working model of a program that provides advocacy for both individual foster parents and systemic reform. With private funding obtained in collaboration with others, including the local foster parent association, the program provides a variety of services. They inform, advise, and directly advocate for foster parents when necessary. That direct advocacy might include scheduling a meeting with the agency

REFERENCE NOTES

to discuss concerns, or perhaps accompanying the foster parent to court. The program and the agency maintain a good working relationship, and are often able to resolve disputes. In addition to professional, paid advocates, the program also uses peer advocates, who are foster parents with specialized training.

When disputes cannot be resolved, and the foster parent requires legal counsel, the program relies on resources they have developed in the community. The Children's Law Center, as well as local pro bono attorneys provide representation in some cases.

By working closely with partners in the community and engaging in thoughtful advocacy work, the program has been successful in gaining important reforms for foster parents. For example, the District of Columbia agency policy now requires the agency to provide the foster parent with a case-specific packet of information about the child.

The program shows how, through the spirit of leadership and collaboration, foster parents can rise to the level of community stakeholder.

Legislation

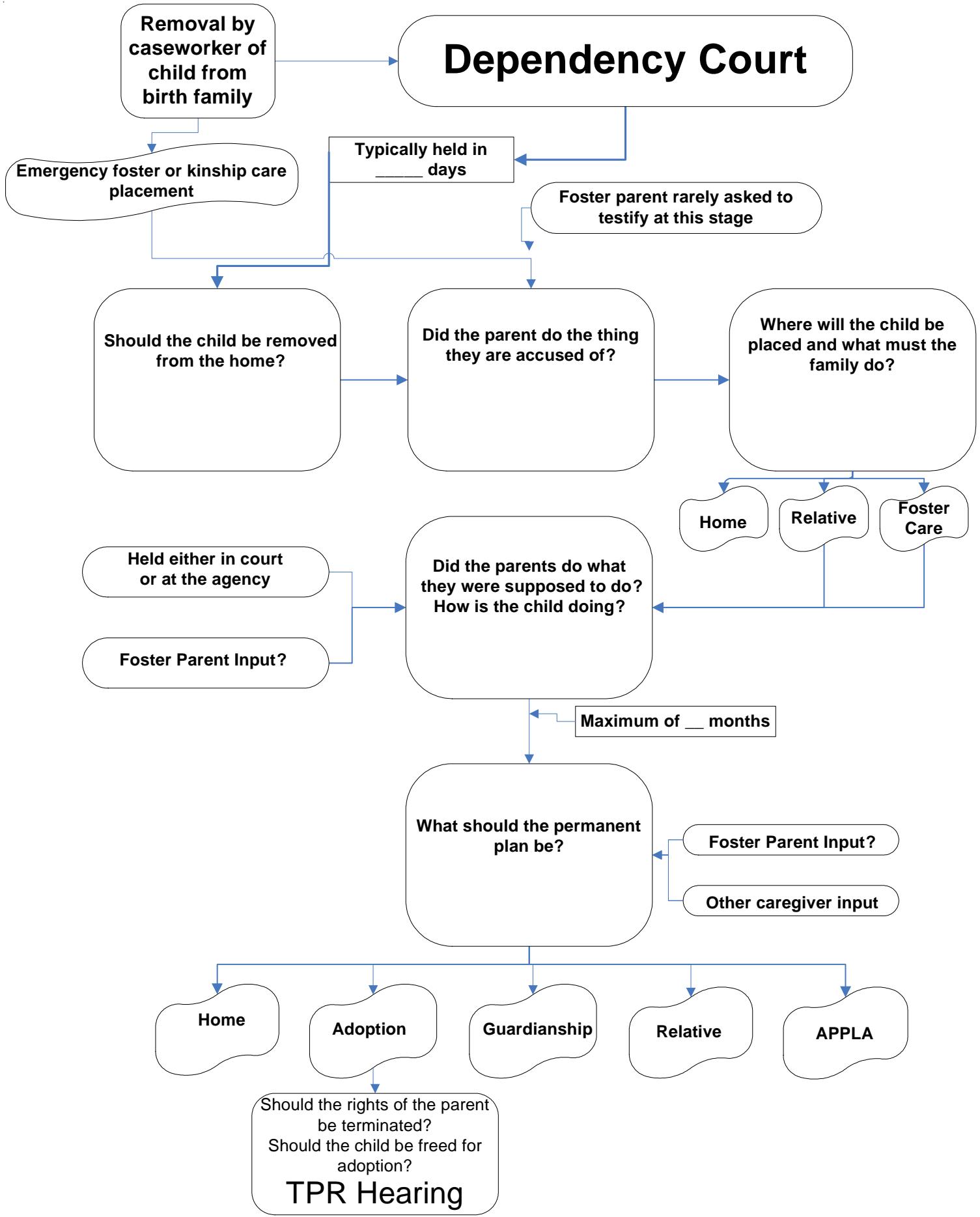
Washington State recently enacted legislation that addresses the concern that agencies may sometimes retaliate against foster parents. The law allows foster parents to file complaints of retaliation with the state ombudsman and directs the ombudsman to identify trends and mandates the agency develop procedures for responding to recommendations from the ombudsman's office. The law represents an acknowledgement that foster parents should be treated fairly.

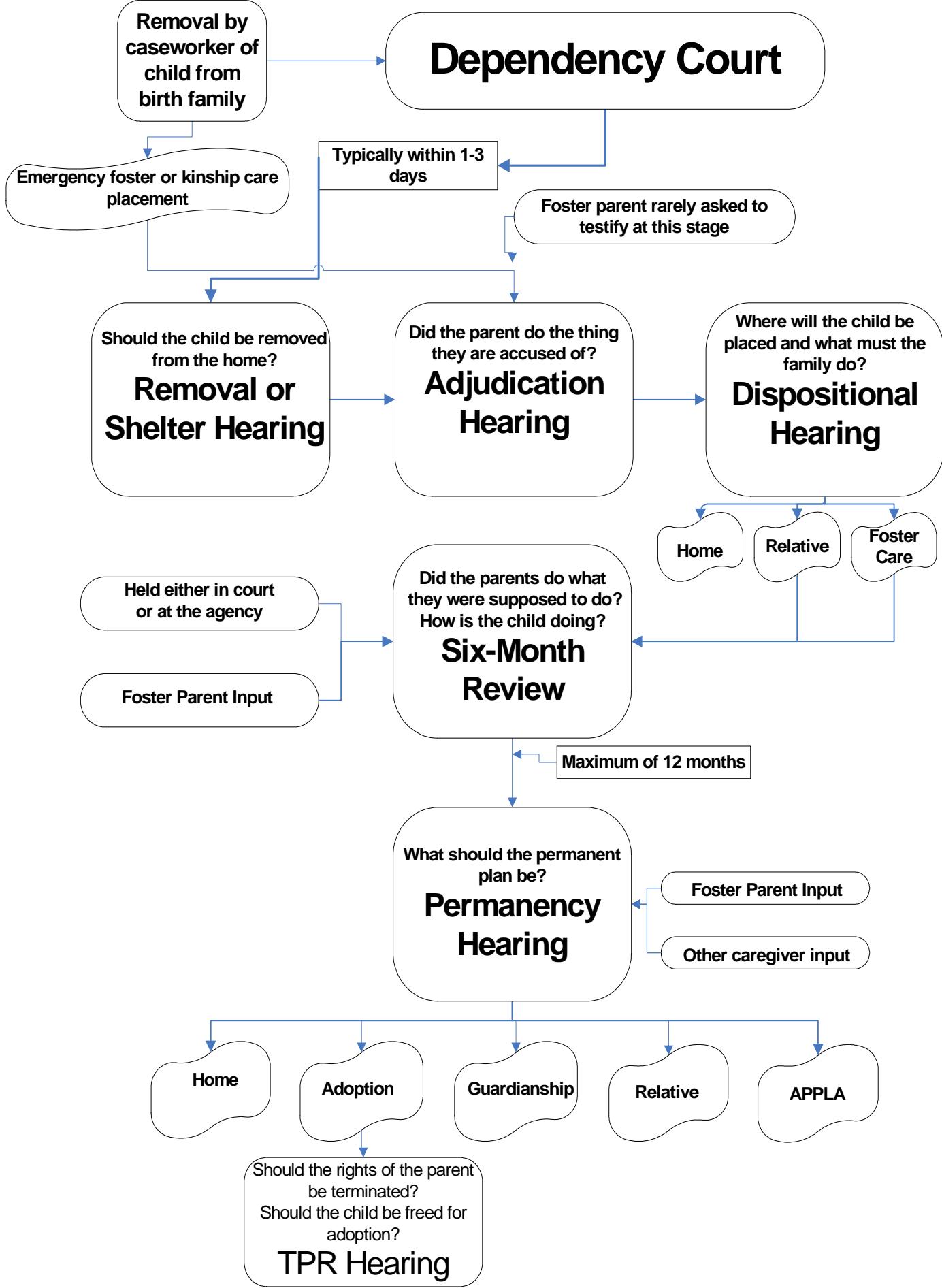
Foster Parent Bill of Rights

Some states have incorporated a foster parent bills of rights into their child welfare law. The bills vary in their content and emphasis. Examples of common provisions include the foster parent right to be treated with dignity, receive training, and know agency policies and procedures. Current bills of rights could be strengthened with more specific language addressing important needs of foster parents. For example, laws providing adequate notice in the case of removals, or allowing for party status in certain situations to allow foster parents to participate more fully in court proceedings. A national model of laws could provide guidance to the states on effective legislation for foster parents.

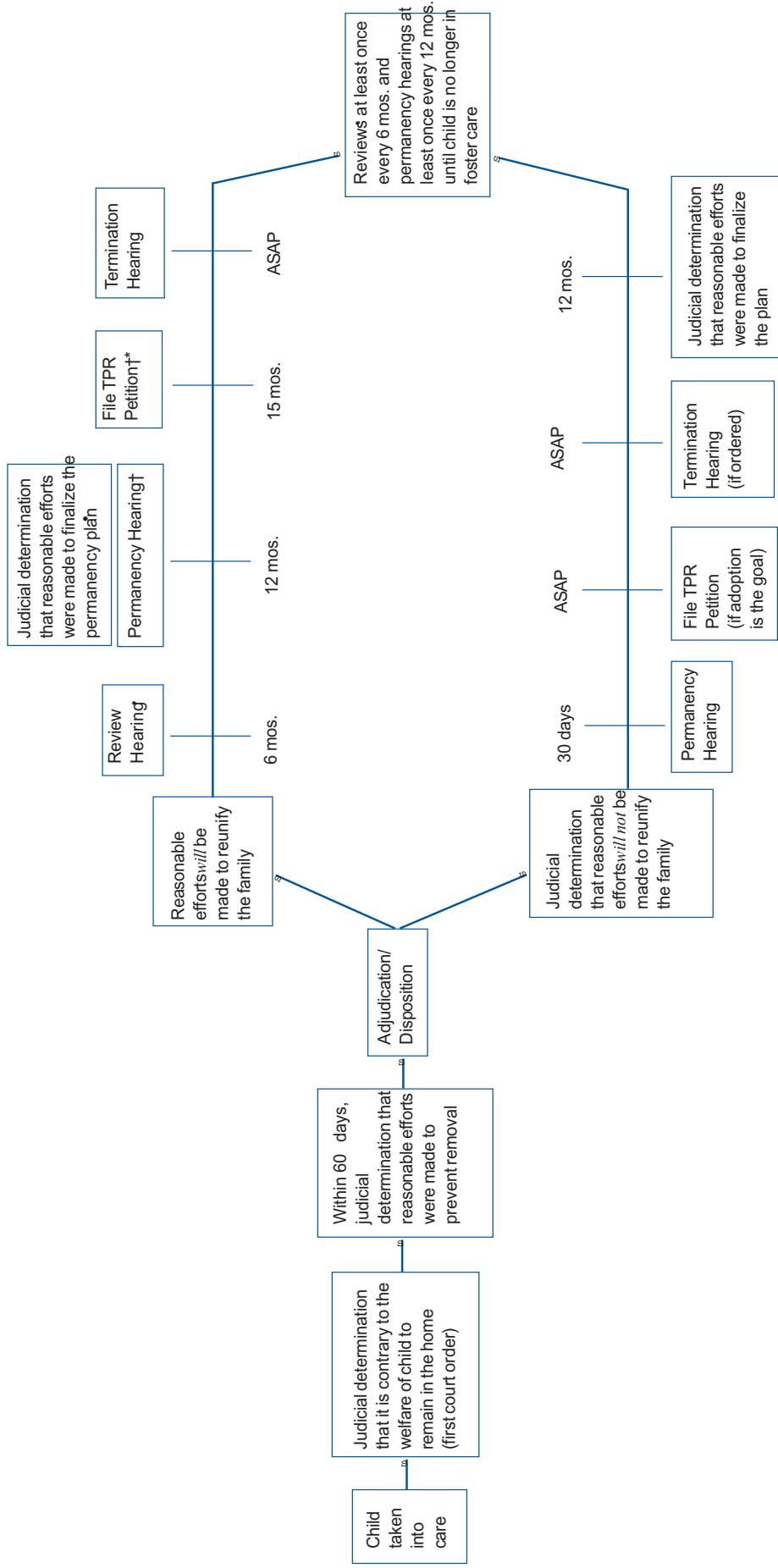
In most states, foster parent rights are limited. Laws and policies regulating their ability to challenge agency decisions and fully participate in the court process are difficult to find and use. There is a need for clear laws, procedures and policies that take into account the important role foster parents play in children's lives. While no child should be maintained in an unsafe home, removals should be given careful consideration, with input from all the parties, to minimize unnecessary removals that could damage the child's developmental progress and cause unnecessary disruption to families.

APPENDIX





ADOPTION AND SAFE FAMILIES ACT TIMELINE



*If the review hearing is held by the court, it must be held at least once every six months.

• The determination that reasonable efforts to finalize the plan be made at the permanency hearing, although decided at another point in the proceedings as long as the 12 month deadline is met.

† When calculating when to have the permanency hearing or the 15 of 22 months, use the earlier of the date of adjudication or the date the child is removed from the home.

* Unless one of the following exceptions is documented: child is being cared for by a relative, agency has not provided reasonable efforts to rehabilitate the family, or a compelling reason exists.

NON-EMERGENCY REMOVAL CHECKLIST

(Note: Foster parent associations may wish to gather this state-specific information and make it available to foster parents in their state.)

- Have I researched state law, regulation and policy?
- Do I have a right to notice?
- Does the notice have to be in writing?
- Am I entitled to reasons for the removal?
- How much time do I have to respond to the notice?
- Must I respond in writing?
- Do I have a right to an interagency grievance process? When must I request it?
- Can I submit a written statement?
- Can I bring an advocate?
- Can I challenge the decision produced by the grievance process?
- Am I entitled to a fair hearing (also called administrative review)?
- At what point must I request a fair hearing?
- Must my request for a fair hearing be in writing?
- What must I bring with me to the hearing?
- What can I bring with me to the hearing? (Bear in mind, you may want to bring an advocate or attorney to the fair hearing)
- How do I appeal a fair hearing decision? What is the time limit to file the appeal?
- Can the agency remove the child while the dispute is pending?
- Is there an ombudsman program in my state that can help me in the event of a dispute with the agency?

SHOULD I GO TO COURT?

It can be difficult to get to every court date, especially if you care for multiple children. In some courts, it is not uncommon to wait for hours before your case is heard. Sometimes, after much waiting, not much happens in the courtroom. There are no hard and fast rules for determining when you should go to court, but following are some factors to consider:

What is the purpose of the court date?

It can be difficult for non-lawyers, even caseworkers, to determine the purpose of a particular court proceeding. Some courts schedule frequent appearances just to check on the status of a case. One way to determine whether a substantive hearing will occur, (vs. a brief status check) is to look at how much time is allotted for the case. A brief appearance will typically be scheduled for 15 minutes or so, while a hearing will typically be scheduled for a half-hour or more. You can usually get that information from the court clerk.

If a case is scheduled for a hearing, try to determine the stage of the case, which will indicate the issues on which the judge is likely to rule. For example, at an abuse/neglect hearing, the judge will rule on whether the parent is guilty of maltreatment (refer to chart on the dependency process). The permanency hearing chooses the plan based on the needs of the child. As discussed in chapter 3 of the *Legal Resource Manual for Foster Parents*, foster parents have an important role to play at the permanency hearing stage.

Do I have an important message for the court?

If you have new information about the child's status, you should consider going to court. You should share important information with the agency and child's advocate. Even if the caseworker or advocate relays your message to the court, the judge will most likely have questions for you, since you are the source of the information.

Also keep in mind that even if you have submitted a written report, it may be beneficial for you to attend to ensure the judge considers your report and has accurately interpreted it. Being there to clarify points and answer questions will aid the court in making a thorough decision.

Is there important information I could get from attending court?

Attending court can be a good way to learn more about the case. By attending court, you may be able to learn more about the child's needs, his family, and other background information. You may also gain a clearer understanding of the position of the parties, including the agency.

Will this be a rare opportunity to speak to the judge?

Because of strained resources, in some jurisdictions, cases are scheduled only when absolutely necessary. If you are in one of those jurisdictions, you should carefully weigh the need to go to court. If the judge makes an important decision without the benefit of your input, it may be a long time before the court has an opportunity to revisit the issue.

Does the child need your support and assistance?

Above and beyond legal strategy, the most important reason for going to court may be to support your foster child. Even older children sometimes find it difficult to be in the courtroom, especially if they have to testify. Do not let other parties discourage you from attending court if you feel your presence will help the child.

Learn the local practice

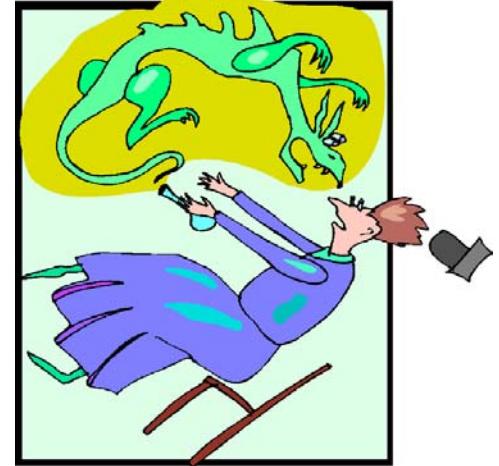
You should familiarize yourself with local practice and customs, which will help you make decisions about attending court. Local practice and custom can affect how often a judge schedules cases, whether the judge encourages parties to resolve disputes, and how the judge prefers to receive input from foster parents.

If you cannot go to court

If you cannot attend court, but have information to give to the judge, be sure to submit a written report, and provide a copy to each party, as discussed in chapter two of the *Legal Resource Manual for Foster Parents*. You may consider indicating in your report that you are unable to appear in court, but would be happy to appear at a future date to answer any questions, or provide further information. If you do not attend a hearing and the court does not hear from you, they will assume that you have nothing important to add, and will proceed without your input.

TOP TEN TIPS FOR TESTIMONY

1. Be clear about what you do know,
do not dwell on what you do not know.
2. Stay calm and try not to take “attacks” personally.
3. Slow the questioner down.
4. Do not answer a question you do not understand.



5. Do not let anyone put words in your mouth.
6. Do not answer a yes or no question if you are not absolutely certain.
7. Act objective and professional.
8. Have an outline with you.
9. Know approximate dates
or know where to look for them.
10. Tell the judge if you need to explain something- do not let them cut you off.



REMEMBER- Nobody LIKES this. Think of why you are doing it.