Caregivers & the Courts

A Primer on Juvenile Dependency Proceedings for California Foster Parents and Relative Caregivers

Judicial Council *of* California

INTRODUCTION

A Primer for California Foster Parents and Relative Caregivers

Federal law gives foster parents (including preadoptive parents) and relatives caring for children the right to be heard in court, subject to certain restrictions. As a foster parent or relative caregiver, you are an important member of the team caring for a dependent child. You may have valuable information that would help the court make its decisions. If you want your information to have the greatest chance of being heard by the court, it is important for you to understand the legal issues judges face at different types of hearings about the child, how to assess whether certain information is appropriate for the court process, and how best to present it to the court.

This brief manual provides general information about the court process as well as, in the last section, some specific suggestions on how you can participate in the process. By providing the juvenile court with current, detailed information, you can help the court to make the best possible decisions about the child in your care.

Photo: Jonathan Alcorn

THE COURT PROCESS

How a Case Gets to Court

The dependency process begins when someone reports suspected child abuse or neglect. An investigation is done by the Department of Social Services. If the social worker believes that the child's safety requires court protection, then the social worker files a petition to declare the child a dependent of the court (see the timeline on page 13). This petition is called a *section 300 petition* and alleges facts that the social worker believes are the basis of the need for protection.

Initial Hearing

Shortly after a child is removed from a parent,[1] the juvenile court holds an initial court hearing, sometimes called the *detention hearing*. This hearing is the court's first chance to hear about the situation that brought the family to the attention of the Department of Social Services. At the initial hearing, the judge decides whether the child's safety requires that she be removed from her home until legal proceedings take place on the allegations of abuse or neglect filed against the parent(s), and whether she should stay in the temporary custody of the Department of Social Services (i.e., be *detained)*.

This hearing happens as soon as possible after the child is removed from her home and before the end of the next court day after the petition is filed.

> Since the initial hearing happens very quickly after the child is removed from her home and most caregivers do not have firsthand knowledge about the events addressed by the court, you probably will not have information to submit at the initial hearing.

Jurisdiction Hearing

The child's parents have a right to a trial on the allegations of abuse or neglect charged against them. At this hearing, the court receives evidence and determines whether the allegations of abuse or neglect are true. If it decides that they are, then the court sustains, or upholds, the petition. To do so, the court must determine whether the child fits one of the descriptions in Welfare and Institutions Code section 300, which authorizes the court to intervene for a child's protection.

[1] Some children live with a legal guardian. If a child is removed from a legal guardian, the court follows the same process as if the child were removed from a parent.

The jurisdiction hearing must be held within 15 days of the court's order detaining the child.

> Most relative caregivers and foster parents will not have information on whether the child falls within one of the categories that authorize the court to take charge of the child.

Disposition Hearing

If the juvenile court finds at the jurisdiction hearing that the child was abused or neglected, one of several things can happen. The court can dismiss the case if it finds that dismissal is in the interest of justice and that the welfare of the child requires dismissal; the court may order informal services for the family; or the court may decide to make the child a dependent of the court.

If the court declares that the child is a court dependent, the judge then decides whether the child should remain with a parent or be legally removed from the parents' care. If the child is removed from the parents, the court then considers who should care for the child. The court must consider relatives as the first placement alternative. If placement with a relative is not possible, the child is usually placed in a foster home.

In most cases, the court orders a reunification plan for the parents so that the child can return home. A reunification plan describes the responsibilities and duties of both the social services department and the parents to remedy the problems that caused the child's removal. At the disposition hearing the court can also make orders about visitation, issue restraining orders, and make any other orders the judge finds are in the best interest of the child.

The jurisdiction hearing and disposition hearing are sometimes held on the same day for the convenience of the court and the people attending the hearings.

> The decisions that are made at the disposition hearing focus on the parents' ability to provide care for the child and on services the child and family need in order to reunify as soon as possible; input by a foster parent or relative caregiver is usually not appropriate. However, in cases where the child has been in your home for many months, you may have information about the child's needs that could assist the court.

Six-Month Review Hearing

The juvenile court must review the cases of all children placed in foster or relative care at least once every six months. At the first review hearing, information is given on the parents' progress with their reunification plan and on how the child is doing in foster care. The court may return the child to his home or may order that the child continue to live in a relative's home or a foster home.

As the child's foster parents or relative caregivers, you must be given notice at least 15 days before the date of the hearing. The notice must tell you that you may attend all hearings or submit to the court, in writing, information you believe to be relevant. At least 10 days before the hearing, the social worker must provide you with a summary of his or her recommendations to the court.

> Foster parents or relatives caring for a child often have valuable information about the child's physical, emotional, educational, and social development. This kind of information may help the court to understand the child's needs. If you have been supervising visits between the child and a parent, you may also have some information about the parent's progress to relay to the court at the review hearing.

Permanency Hearing

A permanency hearing must be held within 12 months of the date the child entered foster care.[2] The court will decide if the child can safely be returned home or if efforts to reunify the child with her birth family should end. In some cases, the court may decide to continue trying to reunify the family. It is important to remember that terminating reunification services does not terminate parental rights. The child's parents are often able to continue visits and other involvement with the child even if the court terminates reunification services.

If the child cannot return home, another permanent plan will be selected at the permanency hearing. That plan could be adoption, legal guardianship, placement with a fit and willing relative, or continuation in foster care while one of these plans is pursued. The preferred choice is the most permanent home possible for the child, so the court considers first adoption and then legal guardianship. If neither of those options is possible or neither is in the child's best interest, and pacement with a fit and willing relative is not possible, then the judge orders continuation in foster care with a goal to achieve one of these plans.

Foster parents and relative caregivers are given notice of the permanency hearing in the same way they are given notice of the review hearing.

[2] A child is considered to have entered foster care (1) on the date of the jurisdiction hearing or (2) 60 days after the child is removed from her home, whichever is earlier.

You may have information about the child's physical, emotional, educational, and social development while in foster care that will be helpful to the court at this stage of the proceedings.

Selection and Implementation Hearing

Within 120 days of termination of reunification services for the child's parents, a selection and implementation hearing must be held. (This is sometimes called the *.26 hearing* because the law governing it appears in Welfare and Institutions Code section 366.26.) The social worker prepares a report for this hearing that includes information about the child and a preliminary assessment of whether the child is likely to be adopted, and identifies any prospective adoptive parent or guardian.

At the selection and implementation hearing, the court can permanently terminate parental rights and order that the child be placed for adoption. If no adoptive home has been identified, the court can order adoption as the permanent plan and order the social worker to find an appropriate adoptive home for the child. If adoption is not possible, the court can appoint a legal guardian and issue letters of guardianship, order placement with a fit and willing relative, or order continuation in foster care with the goal of achieving one of the other plans.

Information similar to that provided at the review and permanency hearings is appropriate for presentation if the judge agrees. If adoption is the permanent plan and you would like to adopt the child, the attorney from the Department of Social Services will usually present that information to the court. As always, the information you present should focus on the child.

Post-Permanency Review Hearings

A hearing is held every six months to update the court on the child's progress and needs. These hearings continue until either the child is adopted, a legal guardianship is established in which court supervision is no longer necessary, or the case is dismissed for some other reason. Foster parents and relative caregivers are given notice of the hearings in the same way they are given notice of review and permanency hearings.

Once a year, the court must address whether the permanent plan for the child continues to be appropriate. The court can add or modify orders until the child turns 18 (or 21, if the child chooses and participates in extended foster care) or the case is dismissed.

Information focused on the child's physical, emotional, educational, and social progress may assist the court in deciding issues having to do with the child's placement, services to the child, and visitation.

HOW YOU CAN PARTICIPATE IN COURT HEARINGS

Federal Law

The Adoption and Safe Families Act, passed by Congress in 1997, says that foster parents, preadoptive parents, and any relative providing care for a child must be given notice of, and the opportunity to be heard in, any review or hearing to be held with respect to the child. It does not require that foster parents, preadoptive parents, or relatives providing care for a child be made *parties* to the action (that is, interested people designated by the law or the court to participate in the proceedings). This means that, although caregivers can go to court and present information, they do not have the same legal rights as the Department of Social Services, the child's birth parents, or the child. Caregivers are not *required* to attend court hearings under the law.

Information the Court May Consider Helpful

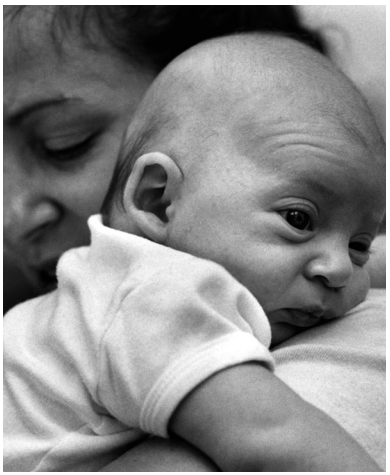
The information you provide is meant to assist the court in making decisions about the child in your care. Following are some types of information that the court may find useful. You do not need to address them all, only the ones important to the child's case. It is helpful to provide factual information, describe behavior you have observed in the child, and present information about the child's needs. In general, you should focus on giving firsthand information about the child in your care and not offer opinions about other people involved in the court process (for example, the social worker, the child's birth parents, and the attorneys involved in the case).

1. PLACEMENT INFORMATION

- The date the child came to your home and a brief description of the child's physical and emotional condition at that time

2. MEDICAL INFORMATION

- Doctor visits or hospitalizations since the last court hearing, and the results of those visits
- Any medications the child is taking, and the dosages
- Any adverse reactions the child has had to medical procedures or medications
- A brief description of the child's physical development, and any developmental lags you have observed



3. DENTAL INFORMATION

- Visits to the dentist since the last court hearing, and the results of those visits

4. EDUCATIONAL INFORMATION

- The child's grade in school, and whether the child is performing at grade level
- The dates of any school conferences you have attended, and the results of those conferences (especially if the child is in special education classes)
- Any educational testing the child has had, who administered the testing, and the results of the testing

5. BEHAVIORAL INFORMATION

- A brief description of the child's behavior in your home
- Any services the child is receiving to address behavioral difficulties, who is providing the services, and how often the child goes for the services
- A brief description of how the child expresses his needs and feelings and how he calms himself
- A brief description of the child's eating and sleeping patterns, and any difficulties the child has eating or sleeping

6. CHILD'S SPECIAL INTERESTS AND ACTIVITIES

- A brief description of any special activities the child participates in (Scouts, music lessons, church groups, etc.) and how often the child participates in them
- A brief description of any talents, interests, hobbies, or skills you have observed in the child

7. VISITATION

- The dates of visits between the child and her parents or other family members
- If you supervised the visits, a brief description of the behaviors of the child and the other family members present at the visits *(Carefully describe only the behavior. Do not comment on the reason for the behavior.)*
- A brief description of any arrangements for sibling visitation
- The dates of any telephone contacts between the child and the child's parents or other family members

8. PROFESSIONAL CONTACTS

- All in-person and telephone contacts between you and the child's social worker
- All in-person and telephone contacts between you and the child's attorney
- All in-person and telephone contacts between you and the child's Court Appointed Special Advocate (CASA)

9. RECOMMENDATIONS

- A brief description of any services you believe the child would benefit from, and why

Written Reports or Court Attendance?

Remember that judges have a small amount of time to listen to the people attending the court hearing and to make decisions about the child. Some judges prefer to have information from caregivers submitted in writing to the court before the hearing. Any reports you submit will be distributed to all the other people involved in the case. Written reports should be short (a few pages) and well organized, with headings. Reports should present only facts—never opinions. If you want to submit a written report, send it to the court as soon as possible after you receive notice of the hearing. You may also want to send a copy to the child's social worker, attorney, and CASA (if the child has one).

Photo: Jason Doiy

Some judges may limit your attendance at court to answering any questions he or she has about the child. Others may allow you to make a short statement. Remember, *the court has a limited amount of time, and your comments should be short and to the point.*

De Facto Parent Status

As a foster parent or relative caregiver, you may provide information about the child for court hearings without first obtaining de facto parent status. However, if you want a participatory role in the court case, you may want to seek de facto parent status. A *de facto parent* is a person who is the current or recent caretaker of a child and who has been found by the court to have assumed, on a day-to-day basis, the role of a parent to the child. In other words, the person has been fulfilling the child's physical and psychological needs for care and affection for a substantial period of time. A person who seeks de facto parent status has the burden of proving by a preponderance of the evidence (in other words, proving that it is more probable than not) that he or she meets the criteria for receiving such status.

Whether a person is entitled to receive that status depends on the individual and on the unique circumstances of the case. One approach that some courts have taken emphasizes the nature of the relationship between the child and the person seeking de facto parent status. This view holds that the special nature of a positive psychological parent-child relationship carries enough weight legally

that only the current adult caregiver should be awarded de facto parent status. Other courts grant de facto parent status without a showing that a positive psychological parent-child relationship currently exists between the child and the person seeking the status. These courts believe they can only benefit from the additional information provided by a de facto parent, even when there is no current positive relationship.

The status of de facto parent does not give a person the same rights and responsibilities as a parent or guardian, but it does give caregivers a more significant role in the case. De facto parents can participate as parties in disposition hearings and any later hearings, can be represented by a lawyer, and can present evidence, but they do not have an absolute right to reunification services, custody, or visitation. The juvenile court may appoint a lawyer for de facto parents. To terminate someone's de facto parent status, the child welfare agency must show that the circumstances no longer support the status, such as when a psychological bond no longer exists between the adult and the child.

Local Court Culture

The information presented here is a general overview of the dependency process and how you can participate in it. It is important to understand, however, that each judge has procedures and rules about what happens in his or her courtroom. Before submitting written material or attending court proceedings, you should check with your social worker or the child's attorney about appropriate procedures in your local juvenile court.

Foster parents and relative caregivers are important members of the team providing care for dependent children. Your goal should be to give the juvenile court current, detailed information about the child. In doing so, you can assist the court in making the best possible decisions about the child in your care.

TESTIFYING IN COURT

Foster parents and relatives caring for children are sometimes called as witnesses in dependency court proceedings. If you are to be called as a witness, one of the attorneys involved in the case will usually contact you to tell you that he or she plans to ask you some questions in court. In some cases, you may receive a *subpoena* (a legal document the court issues telling you when and where you must come to court).

In court, after taking an oath to tell the truth, a witness sits in the witness stand and answers questions from one or more attorneys about what he or she saw or (sometimes) heard.

Here are some tips for testifying in court:

- Tell the truth.
- Dress professionally (as you might for a job interview).
- Be organized and prepared.
- Be calm and sincere, especially if you are challenged or criticized.
- Be serious and polite.
- Listen carefully to each question, pause, think, and then respond directly to the question.
- Wait until the question is completed before you answer.
- When an objection is made about a question, wait to speak until the judge decides whether you should answer the question.
- If you do not understand a question, ask the lawyer to rephrase it.
- Answer each question completely.
- Be sure of the answer you are giving.
- Offer to explain your answer, if necessary.
- Use language you are comfortable using.
- Listen carefully when the other people in the courtroom are talking.
- Always show the highest respect for every person in the courtroom.

For more information on dependency proceedings, please see *www.courts.ca.gov/selfhelp-childabuse.htm*. You can read the federal and California state laws and rules of court that relate to foster parents' and relative caregivers' participation in juvenile court dependency hearings.

Federal

Adoption and Safe Families Act (ASFA): section 675(5)(G) of title 42 of the United States Code (42 U.S.C. § 675(5)(G))

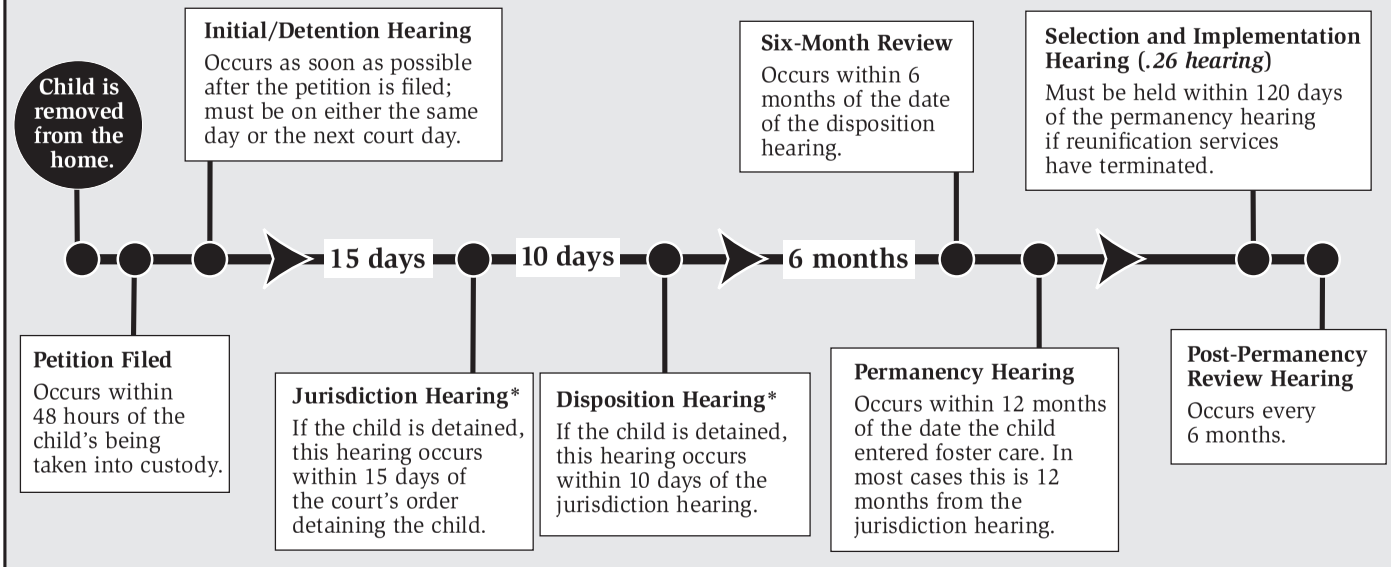
California

Welfare and Institutions Code section 366.2

Rules 5.710, 5.715, 5.720, and 5.740 of the California Rules of Court

These materials are based on laws in effect at the time of publication (October 2000; revised February 2016). Federal and state laws can change at any time.

DEPENDENCY PROCEEDINGS TIMELINE



The proceedings represented in this timeline are shortened when they involve children under the age of three years. In special cases, reunification services may not be provided to parents.

*Disposition and jurisdiction hearings are often held on the same day.

For additional copies of this booklet, please call the
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