

CHAPTER 6

LEGAL MATTERS THAT INVOLVE CHILDREN IN LICENSED HOMES



INTRODUCTION

As a foster parent, you have the opportunity to participate in juvenile court hearings regarding children that are residing in your home. Pursuant to Connecticut General Statutes Section 46b-129(o), a foster parent, prospective adoptive parent or relative caregiver shall receive notice and have the right to be heard for purposes of this section in Superior Court in any proceeding concerning a foster child living with you. Under this section of the statute, you also have the right to be heard and comment on the best interests of a child which is brought not more than one year after the last day that you provided care for the child.

The juvenile court is responsible for making critical decisions in child protection cases. For instance, the juvenile court will decide whether the child is safe in the home, whether the child has been abused or neglected, whether it is safe for a child to return to the parents' custody etc... The purpose of this chapter is to provide you with a general overview of the juvenile court proceedings in which you may choose to exercise your rights described above.

INVESTIGATION OF ABUSE, NEGLECT, AND THE RISK OF ABUSE

DCF is required to investigate reports of suspected abuse or neglect of children under the age of 18 in Connecticut. All such reports are made to the Child Abuse and Neglect HOTLINE at 1-800-842-2288.

Some people in the community are "mandated reporters". It is important to note that a licensed foster parent is a mandated reporter. Other mandated reporters include but are not limited to medical doctors, teachers, therapists, and police officers.

Mandated reports are obligated by state statute to make an oral report by telephone or in person to the DCF or a law enforcement agency as soon as practicable but not later twelve hours after the mandated reporter has reasonable cause to suspect or believe that a child has been abused or neglected or placed in imminent risk of serious harm. Reports are made to the Child Abuse and Neglect Hotline at 1-800-842-2288.

Others, such as family members or neighbors are encouraged to report abuse and neglect. The reporter can request that his/her name be available only to DCF staff and not be given to those persons being reported.

In order for a report to the hotline to be accepted for investigation, the allegations made in the report must meet the statutory definitions of abuse or neglect and the alleged perpetrator must be the parent/guardian, a caretaker, someone who was given access to the child by the

parent/guardian or a person who has been entrusted with the care of a child, such as a teacher or coach.

According to Connecticut General Statutes Section 46b-120 a child is abused who is less than 18 years old and has been inflicted with physical injury or injuries other than by accidental means; has injuries that are at variance with the history given of them; or is in a condition that is the result of maltreatment, including, but not limited to, malnutrition, sexual molestation or exploitation, deprivation of necessities, emotional maltreatment or cruel punishment

According to Connecticut General Statutes Section 46b-120 a child may be found neglected who has been abandoned; is being denied proper care and attention, physically, educationally, emotionally or morally; is being permitted to live under conditions, circumstances or associations injurious to the well-being of the child or youth; or has been abused.

Depending upon the severity of the reported abuse/neglect, an investigations social worker is assigned to commence an investigation within two hours, twenty-four hours, or seventy-two hours of the receipt of the report. The investigation will include home visits to the family, interviews with the child and all household members, contacts with doctors, school, other community services, domestic violence and substance abuse assessments, criminal record checks on all adults, etc. The investigation should be completed within 45 calendar days.

COURT PROCEEDINGS

The following is a brief explanation of hearings typically held in the juvenile court.

THE ORDER OF TEMPORARAY CUSTODY (OTC) HEARING PROCESS

During the course of an investigation or anytime throughout the life of a case, if there is probable cause to believe that the child is in imminent risk of physical harm from the child's surroundings and immediate removal from such surroundings is necessary to ensure the child's safety, the Department has the responsibility and the authority to remove that child and any other child similarly situated from that family/environment for a period not to exceed 96 hours without a court order. DCF must then pursue an order of temporary custody "OTC" from the court within that 96-hour period if continued placement is necessary to ensure the child(ren)'s safety. The 96-hour hold is taken when the court is not available or when there is not a reasonable amount of time to obtain a court order.

In the situations described above, DCF will file a Neglect Petition and a Motion for an Order of Temporary Custody (OTC) with the Superior Court for

Juvenile Matters. In support of the OTC, DCF will file an affidavit explaining the facts of the situation. The Judge will make a determination based solely on the facts supplied in the affidavit. The parents do not have an opportunity to contest the facts at this time. If there is reasonable cause to believe that (1) the child or youth is suffering from serious physical illness or serious physical injury or is in immediate physical danger from the child's or youth's surroundings, and (2) that as a result of said conditions, the child's or youth's safety is endangered and immediate removal from such surroundings is necessary to ensure the child's or youth's safety, the court has the authority to vest temporary custody of the child to DCF. This is called an *ex parte* order of temporary custody.

The Court will schedule a preliminary hearing on the Order of Temporary Custody within 10 days of the granting of the *ex parte* order of temporary custody. At the preliminary hearing, the Court will formally advise the parents of their rights including the right to an attorney, to remain silent and the right to request an evidentiary hearing that will be held within 10 days of the preliminary hearing. The parents also have the option to not contest the order of temporary custody. If the parents do not contest the order of temporary, the child will remain in the custody of the Department. The Court will provide "Specific Steps" that the parent(s) must make to regain custody of the child. The Department must refer the parent to appropriate services as outlined in the specific steps. Except for specified circumstance, the Department is obligated to make "reasonable efforts" to reunify the parent with their child.

If the parents decide to contest the order of temporary custody, the Court will schedule an evidentiary hearing within ten (10) days of the Preliminary Hearing. The evidentiary hearing will be held on consecutive days except for compelling circumstances or at the request of the parent. At the hearing, DCF presents evidence to the Court through witnesses and documentation to prove that the child was in imminent risk of physical harm from the child's surroundings and immediate removal from such surroundings was necessary to ensure the child's safety. The parents have the ability through their attorneys to cross-examine witnesses and to present their case. The attorney for the child and guardian ad litem, if applicable, represents the child's legal interests at the hearing. The Court after hearing all of the evidence renders a decision and either sustains the OTC or vacates the OTC and returns custody to the parent(s).

Once the issue of temporary custody is resolved, the Court will address the neglect petition.

NEGLECT PLEA HEARING

DCF has the legal authority to file "neglect petitions" whenever it believes a child is being abused, neglected or is uncared for. In situations where the

neglect or abuse places the child in imminent risk of physical harm as described above, the Department will file a Motion for Order of Temporary Custody along with the neglect petition. However, the Department often files neglect petitions without seeking temporary custody.

After a neglect petition has been filed, a plea hearing is scheduled at which time the Court formally advises the parent/guardian of their right to remain silent and to counsel. The parent(s) again have the opportunity to admit to or deny the allegations presented in the neglect petition. In most cases, the parents will enter *pro forma* denials and the case will be scheduled for a case status conference.

CASE STATUS CONFERENCE / CASE MANAGEMENT CONFERENCE

The conference is an opportunity for all of the parties to discuss the case outside of the presence of a judge. Several issues are discussed such as whether the parents are going to request an evidentiary hearing on the neglect petition or whether they are going to enter a plea agreement. The parties will also discuss the steps the parents must take to regain or retain custody of the child. The parties may address whether a psychiatric or psychological evaluation is needed. The case will be assigned further court dates based upon the outcome of the conference.

PLEA AND DISPOSITION HEARING

In situations where the parents decide not to contest the allegations in the neglect petition, the parent(s) often enter a "*nolo contendere*" plea. The "*nolo contendere*" plea means that they are waiving their right to an evidentiary hearing and they are not contesting the allegations in the petition. The Court will then find that the child has been neglected or abused or is uncared for. An adjudication is the court's determination of the validity of the abuse or neglect allegations in the petitions.

DISPOSITION

After the adjudication there must be a "disposition", or determination of what is in the best interest of the child. The Court may enter an order committing the child to the care and custody of DCF until further order of the Court. DCF is the child's guardian under an order of commitment. If the child is committed to DCF, the court will order specific steps that the parent must take to facilitate the return of the child to custody of the parent. Another alternative is for the Court to return the custody of the child to parent(s) under a period of Court ordered Protective Supervision. The third alternative is for the Court to transfer guardianship of the child to a third party.

It is important to note that state statute section 17a-111b requires the Department to make reasonable efforts to reunify a parent with a child unless the court determines that such efforts are not required or if the Court has approved a permanency plan other than reunification.

PERMANENCY PLAN HEARING

The Court will hold a permanency plan hearing within twelve months of the child entering the care and custody of DCF. DCF must file a permanency plan that is in the child's best interests. The permanency plan may include the goal of revocation of commitment and reunification of the child with the parent(s); transfer of guardianship; termination of parental rights and adoption; long-term foster care with a relative licensed as a foster parent; or other planned permanent living arrangement ordered by the court. At a permanency hearing, the court shall review the status of the child, the progress being made to implement the permanency plan, determine a timetable for attaining the permanency plan, determine the services to be provided to the parent if the court approves a permanency plan of reunification and the timetable for such services, and determine whether the commissioner has made reasonable efforts to achieve the permanency plan.

TERMINATION OF PARENTAL RIGHTS (TPR):

The Court will schedule another plea hearing when the Department files a Petition for the Termination of Parental rights. The Court will again advise the parent(s) of his/her rights to remain silent, to an attorney and to contest the petition. The case will then be set down for a case management/case status conference as described above. At this conference, the parties will focus on whether the parent(s) are going to contest the TPR or if he/she will consent. The parties will also discuss the potential for a cooperative post adoption agreement. If no agreement is reached, the Court may set trial dates to have a full evidentiary hearing.

The Court may grant the TPR petition if it finds by clear and convincing evidence that the Department has made reasonable efforts to locate the parent and to reunify the child with the parent unless the court finds in this proceeding that the parent is unable or unwilling to benefit from reunification efforts. The Court must find one of the adjudicatory grounds enumerated in C.G.S. §17a-112, for example, that the child has been abandoned by the parent. Lastly, the Court must find that the termination of parental rights is in the best interests of the child.

CONFIDENTIALITY OF COURT PROCEEDINGS

It is important to understand that Juvenile Court proceedings are confidential. Under Conn. General Statutes Section 46b-124, all records of cases of juvenile matters are confidential and can only be disclosed to any third party upon a court order. Some of the records covered by the statute are medical, psychological, psychiatric, social studies and reports by public or private institutions, social agencies and clinics .

CONFIDENTIALITY OF DCF RECORDS

It is also important to understand that records maintained by the department are confidential and shall not be disclosed. Any unauthorized disclosure shall be punishable by a fine of not more than one thousand dollars or imprisonment for not more than one year or both. See C.G.S. § 17a-28(b). In addition, Department policy compels foster parents to maintain confidentiality in all matters pertaining to the child. The Appellate Court in the case of *Abrue v. Leone*, 120 Conn. App. 390 (2010), found that the mandate stated above applies to records of the foster parent. In addition, the Court found that the term “records,” as used in § 17a-28 encompasses a foster parent's personal knowledge, including observations and opinions, of the child.

LEGAL STATUS OF CHILDREN PLACED IN DCF LICENSED HOMES

It is important for licensed families to know the legal status of each child placed with them. The child's legal status determines what you can do for and with the child.

Each child's legal status will be one of the following:

- **Voluntary Placement**

Voluntary Placement occurs when the birth parent/guardian gives permission for the out-of-home placement of the child. The parent/guardian is given the name and address of the person with whom the child is living. Voluntary placement can last no more than 90 days. During the 90-day maximum voluntary placement, the parent(s) retain rights and responsibilities to and for the child, including authorization of medical care, educational placements, consent to marriage, enlistment in armed forces, baptism, and other legal decisions. DCF may authorize necessary medical care if the parent(s) cannot be reached but may **not** authorize any procedures requiring anesthesia. At any time during the 90 days, the parent(s) have the right to the return of the child. If returning home places the child in immediate physical danger, DCF will take appropriate legal action.

- **96-Hour Hold**

A 96-hour occurs when DCF or a hospital exercises the responsibility and authority, without court involvement, to take immediate temporary custody of the child. The parent remains the legal guardian. Therefore, the parents have the right to make medical and other types of decisions for the child. However during a 96 hour hold, DCF shall provide the child with all necessary care, including medical care, which may include an examination by a physician or mental health professional with or without the consent of the child's parents, guardian or other person responsible for the child's care, provided reasonable attempts have been made to obtain consent of the child's parents or guardian or other person responsible for the care of such child.

If it is determined that the child should remain in care beyond 96 hours, DCF must file a motion for an Order of Temporary Custody with Juvenile Court.

- **Order of Temporary Custody (OTC)**

An Order of Temporary Custody (OTC) occurs when the juvenile court makes a decision to assign immediate care and custody of the child to the Commissioner of the Department of Children and Families. DCF or another suitable agency or person has custody of the child but the parent remains the legal guardian.

- **Commitment**

Commitment may occur after the juvenile court has determined that a child has been abused, neglected or is uncared for. The court places the child under the guardianship of the Commissioner of DCF until commitment is revoked by the court. DCF has authority to make all decisions for the child, although parents are consulted when appropriate. The commitment is reviewed at least annually.

- **Termination of Parental Rights (TPR)**

Termination of Parental Rights (TPR) occurs when the parental rights of the child's parents have been legally severed by the court in order to free a child for adoption. Juvenile court generally appoints DCF as the statutory parent. The parents whose rights have been terminated have 20 days to appeal the decision. The child is legally free for adoption after the appeal period has run or after the appeal has been concluded by the court. DCF has authority over all decisions and parents have no rights nor are they consulted about decisions.

PEOPLE YOU MAY MEET IN THE LEGAL PROCESS:

Judge:

Each Superior Court for Juvenile Matters has one or more judges assigned to hear and decide the cases that have been filed in that court.

Attorney for the child:

An attorney is appointed by the court for every child. Typically, siblings will have the same attorney. The role of this attorney is to represent the wishes of the child(ren). The attorneys are assigned by the Commission on Child Protection. The attorneys are expected to interview and observe the child(ren) depending on the child's age and maturity. They may also wish to meet with the child's foster parents to learn more about the child.

Guardian Ad Litem:

Occasionally, a court will appoint a "Guardian Ad Litem," an attorney whose role is to represent the "best interests" of a child, as a child's best interests may be different than what a child says he/she wants.

Attorney for the Parent:

A parent whose child is alleged to be neglected/abused or whose rights the department is trying to terminate has the right to be represented by an attorney. If a parent is unable to afford his/her own attorney, the court will appoint an attorney to represent the legal rights and wishes of the parent.

Psychological Evaluator (Court Ordered):

A judge may want additional information about the mental status of a child or parent or about the relationship between the two in order to reach a conclusion in the matter before the court. In such situations, the judge may order the parent and child to participate in an evaluation conducted by a psychologist or psychiatrist. The psychologist and/or psychiatrist will then issue a report to the court. There have been limited instances where licensed foster parents have been requested to participate in an interview as well.

Assistant Attorney General:

The Office of the Attorney General represents the Department of Children and Families in court proceedings.

LICENSED PARENT INVOLVEMENT IN COURT

As noted above Connecticut General Statutes Section 46b-129(o) provides that a foster parent, prospective adoptive parent or relative caregiver shall receive notice and have the right to be heard for purposes of this section in Superior Court in any proceeding concerning a foster child living with you. Under this section of the statute, you also have the right to be heard and comment on the best interests of a child which is brought not more than one year after the last day that you provided care for the child. In practical terms, this means that you have a right to be heard and comment on the best interest of the child by making an unsworn statement to the court. The foster parent making the statement is typically not subject to cross-examination, in other words, not subject to questioning by the lawyers based upon your statement. When giving a statement, you may wish to inform the court about factual information about the child's needs. You may wish to include education, medical, and behavioral information as well. Remember, the court is making a decision based upon the best interests of the child.

The right to be heard is very different from being called as a witness to testify at a hearing. Any of the above parties may call you as witness to testify. The party calling you as a witness will ask you questions first. This is called direct examination. These questions are open ended and do not suggest an answer. An example is "please describe the child's behaviors when he returns home from school" After you have finished direct examination, the other parties then have the opportunity to "cross-

examine" you. The parties may ask you leading questions. These are questions that suggest an answer. An example is "isn't true that after school the child displays aggressive behaviors?" In addition to the parties, the Judge may also ask you questions.

If you are required to testify in court, the following suggestions may be helpful:

- Know the type of hearing i.e. OTC, neglect, permanency plan, TPR trial etc...
- Know who is calling you as a witness;
- Before the court date, ask your child's social worker to help arrange a time for you to meet or talk with the attorney for DCF (the assistant attorney general: the AAG) and with the attorney for your child.
- Prepare ahead of time so that you know the key facts about the case;
- Dress appropriately;
- Speak clearly and slowly;
- Use appropriate language;
- Answer the questions to the best of your knowledge;
- Answer only the question that you were asked;
- Listen carefully to the question. Don't answer it unless you understand it. If you do not understand, ask to have it repeated or clarified;
- Don't guess; it is okay to state that you do not know;
- State only what you remember;
- If an objection is made to a question being asked of you, wait until the judge makes a ruling on the objection before answering;
- Show respect to the court and the parties;
- Do not argue with the judge or the attorneys;
- Always tell the truth; Always tell the truth; Always tell the truth.