
CHILD WELFARE SERVICES

WHAT PARENTS SHOULD KNOW ABOUT COURT

Children's Law Center and South Carolina Department of Social Services
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Overview of the Child Welfare Court System

Not every family involved with DSS has court involvement, however, in the event that your family does become involved with the Family Court through a DSS action, this document provides an overview of what you can expect for each court hearing.

Foster care is a temporary living arrangement for children in the custody of the South Carolina Department of Social Services (DSS). DSS has legal custody of foster children with the child's legal custodian retaining some rights. A child who is in foster care typically enters this system by being placed into emergency protective custody. The number of child welfare hearings that follow varies, depending on the nature of the case and the length of time a child remains in foster care.

If you cannot afford an attorney, one will be appointed to you. Visit the Clerk of Court's Office in the county in which your case is being heard and request an attorney be appointed to you.

Note: Terms with an asterisk (*) are noted in the glossary at the bottom of the document.

Emergency Protective Custody

DSS cannot make the decision to remove a child from the child's home. In South Carolina, only law enforcement officers and family court judges may take emergency protective custody* of a child, and to do so, they must have probable cause* to believe that the child's life, health, or physical safety is in immediate and substantial danger due to abuse or neglect. After a law enforcement officer or family court judge takes emergency protective custody of a child, the child is placed in the care of DSS. DSS then places the child in a licensed or court-approved placement within a reasonable amount of time.

Probable Cause Hearing

Within 72 hours of a child being placed into emergency protective custody, there will be a probable cause hearing in family court. The judge will decide whether there was probable cause to take the child into emergency protective custody and whether, on the date of the hearing, there remains probable cause for DSS to keep custody of the child. During the probable cause hearing, DSS may present witnesses, and the legal custodian or biological parent may ask these witnesses questions. The legal custodian or biological parent is not allowed to present witnesses at the probable cause hearing; however, they may submit a sworn statement in support of their position. Sworn statements must be typed and notarized prior to being submitted to the court.

At the probable cause hearing, the judge does not have to decide whether the child was actually abused or neglected. The judge will issue a written order deciding the following:

- whether there was probable cause to take the child into emergency protective custody;

- whether there remains probable cause, on the date of the hearing, to keep the child in protective custody;
- whether continuation of the child in the legal custodian or biological parent's home promotes the child's well-being; and
- whether the placement of the child has been identified with relative or fictive kin.

If the judge determines that there was and remains probable cause to take emergency protective custody, the judge will appoint a guardian ad litem (GAL)* to represent the child's interests at all subsequent hearings. An attorney will also be appointed to represent the child's GAL at all subsequent hearings. The judge may also appoint an attorney for any legal custodian or biological parent who wants representation but cannot afford to hire an attorney. If that does not happen, the legal custodian or parent is responsible for requesting an attorney from the Clerk of Court's Office.

Merits Hearing

A merits hearing is scheduled to occur within 35 days of DSS filing its legal paperwork. At the merits hearing, a judge hears all the facts and determines whether a child has been abused or neglected. DSS, the child's parent, and the guardian ad litem* may present witnesses and other evidence at a merits hearing.

Prior to the merits hearing, the child's legal custodian or biological parent, and the guardian ad litem will be served with legal paperwork. The legal paperwork notifies these parties that a child protection case has been initiated and that the parties have the right to respond. The legal paperwork describes the nature of the alleged abuse or neglect and states the relief DSS has requested of the parties. In addition, the parties will receive notice of the date, time, and place of the merits hearing.

At the merits hearing, the judge may decide the child cannot return home. If that happens, DSS will present a family permanency plan* at the merits hearing or within 10 days after the hearing. The family permanency plan must be in writing and should be prepared with the participation of the parents, the child (if age appropriate), and any other agency that may be required to provide services. The judge will make the family permanency plan a part of the merits hearing court order.

After the merits hearing, additional hearings may follow to include: the permanency planning hearing, the termination of parental rights hearing, and the judicial review hearing.

Permanency Planning Hearing

The purpose of the permanency planning hearing is to ensure that a child who has been placed in DSS custody receives a safe and permanent home as soon as possible. The initial permanency planning hearing must be held within 12 months of a child entering foster care, although it may occur earlier, and multiple permanency planning hearings may be held. At each permanency planning hearing, the judge will review the child's status in Foster Care and will review the parents' progress and compliance with the family permanency plan.

If a child cannot be reunited with their family and termination of parental rights is not in the best interest of the child, DSS may pursue a plan of Subsidized Legal Guardianship (SLG). DSS enters into a written agreement to provide Subsidized Legal Guardianship Benefits on behalf of a child to kin or fictive kin who have assumed legal guardianship of the child. The kin or fictive kin must have committed to care of the child on a permanent basis.

Judicial Review Hearing

Judicial reviews are optional and may be used to monitor the progress of the parent or legal custodian towards goals listed on the family permanency plan. During these hearings, the plan can be adjusted or updated, or the child can be returned home if appropriate. They often occur at 90-day intervals and can be requested by anyone.

Termination of Parental Rights (TPR) Hearing*

Under South Carolina law, there are 12 reasons upon which a judge may base a decision to terminate parental rights. The judge must find that at least one of those reasons exists and that TPR is in the best interest of the child. The reasons for termination of parental rights are:

- Severity or repetition of abuse or neglect, and the home cannot be made safe in 12 months;
- Parent has not remedied the conditions of the child's removal, and the child has been out of the home for six months following the issuance of a court-ordered placement plan or by agreement between DSS and the parent;
- Willful failure to visit for six months;
- Willful failure to support for six months;
- Presumptive legal father is not the biological father, and termination of parental rights best serves the welfare of the child;
- The parent has a diagnosable condition unlikely to change in a reasonable period of time and, because of that condition, is unlikely to provide minimally acceptable care for the child (except that a parent's rights cannot be terminated solely on the basis of a disability);

- Abandonment;
- Child in foster care for 15 of the most recent 22 months;
- A child, as a result of physical abuse, has died or been admitted to the hospital and the parent has been convicted of an offense against the child;
- Child's parent is convicted of the murder of the child's other parent;
- Conception of a child as a result of criminal sexual conduct of a biological parent; or
- Child's parent has been convicted of the murder, voluntary manslaughter, or homicide by child abuse, of another child of the parent.

Paperwork may be filed seeking termination of parental rights. The legal paperwork must be filed with the family court and provided to the parents, the child (or the child's guardian ad litem if the child is under 14), and DSS. A TPR hearing will be held within 120 days of the filing of court paperwork. The family permanency plan may be reviewed at the TPR hearing.

When considering the best interest of the child the judge weighs many factors like stability, safety, permanency, bonding, attachment, the child's needs, and whether an adoptive resource has been identified. TPR ends the legal relationship between the parent and child.

Frequently Asked Questions

Your attorney should be included in court-related conversations. Please reach out to your attorney prior to court if you have questions regarding your upcoming hearing or legal process.

Will I be notified of the hearing?

You have the right to be notified of hearings concerning your child. DSS is required to give written notice of the time, date, and place of any hearings. If you have an attorney, your attorney will receive notice of the upcoming hearing, and they are required to provide you with that information.

Who will be at the hearing?

The judge will be there to conduct the hearing. There will be an attorney for DSS, your attorney, and the Guardian ad Litem (GAL). There may also be an attorney for the GAL. A DSS case manager will be there to give their report and what they recommend. There may also be law enforcement officers if they were witnesses in the case. Other people may also be there as witnesses in the case. If other agencies or people, like foster parents, have been helping provide services, they may come to the hearing, too.

Can I appeal the court's decision to terminate my parental rights?

Yes, you can appeal if you and your attorney think you have a good legal reason to disagree with the decision.

Should I get an attorney?

At any time, you have the right to obtain an attorney.

Where can I find an attorney?

If you are not involved in a DSS legal case, you can hire a private attorney.

South Carolina law says you can get a free attorney appointed in a legal case if you cannot afford to pay for an attorney.

Do not wait until your court date to get an attorney. If you want to hire an attorney and you do not know one, call the South Carolina Bar's Lawyer Referral Service at (803) 799-7100 or 1-800-868-2284. If you have little or no income and cannot afford an attorney, go to the county in which your case is being heard and ask the Clerk of Court's Office to appoint an attorney for you for free. Please ensure that if you are involved in a DSS court case, you bring this booklet with you when requesting an attorney.

What should I wear to court and when should I arrive?

If you are attending court, consider wearing business casual clothing such as, but not limited to:

- Collared shirts
- Blouses or sweaters
- Dresses
- Slacks

It is recommended to avoid wearing items such as:

- Shorts
- Short dresses or skirts
- Flip-flops

Before entering the courtroom, be sure to remove hats and sunglasses. Arrive early to plan for finding parking and security checkpoints which may cause delays.

What are some rules in the courtroom?

- Turn off your cellphones and other electronic devices.
- Stand anytime the judge enters or leaves the courtroom.
- Unless you are seated on the witness stand, always stand up when the judge is asking you questions, or you are addressing the judge.
- Always address the judge as "Your Honor" or Judge (last name).

- Do not chew gum.

Glossary

Child and Family Team (CFT): A group of family members, fictive kin, friends, professionals, and others who join to strengthen a family and provide protection and a Family Permanency Plan for the child or youth to achieve safety, permanency, and well-being. The family chooses the members of the team. The team can also include the child or youth when appropriate.

Emergency Protective Custody: When law enforcement or a judge puts the child in the physical custody of DSS without the permission of the child's parent or guardian.

Ex Parte Order: The family court may order that a child be taken into emergency protective custody without permission of the parent or guardian of the child if the court determines there is probable cause to believe the child is in immediate or substantial danger due to abuse or neglect.

Family Permanency Plan (FPP): The plan for a family that is developed with the child or youth and family team (CFT)* to describe the reasons for agency involvement, the actions, and services required to change behaviors and reduce safety concerns and risks, and promote the safety, permanency, and well-being of the child or youth and family. The FPP is also known as a treatment plan, placement plan, case plan, or service plan.

Guardian ad Litem (GAL): a person who will assess the case, make a report to the court, and look out for the best interests of the child or youth. The GAL is a volunteer and not a DSS employee.

Probable Cause: facts and circumstances, including out of court statements, that would cause a judge to believe that a child or youth is abused or neglected.

Termination of Parental Rights: ends the legal relationship between biological parent and child through a formal court action.