

CHILD PROTECTIVE SERVICES (CPS) and DEPENDENCY ACTIONS

This memo provides general information about your rights and responsibilities. It is not intended as a substitute for legal advice.



Legal Information &

Referral: 206-621-7691

Toll-Free: 1-866-259-7720

TTY: 206-521-4317

Web: www.legalvoice.org

If you are involved with Child Protective Services, but no court action has been filed, see the first section of this memo, The Role of CPS.

If the State of Washington (through DSHS/CPS/Prosecutor/Attorney General's Office) has filed a court action to remove your child from you, see the section of this memo titled Parents' Rights in a Dependency Action, beginning on page 4. But you may also find the first section on the role of CPS helpful.

The Role of CPS

What is Child Protective Services (CPS)?

Child Protective services (CPS) is a statewide government agency. It is part of the Department of Social and Health Services (DSHS). The Office of the Attorney General of the State of Washington represents DSHS and CPS. The people who work at CPS are called caseworkers or social workers.

When does CPS get involved with a family?

When someone reports child abuse or neglect, the law requires CPS to investigate. If there is an immediate danger of harm to the child, CPS must begin an investigation within 24 hours of receiving the report. If there is no immediate danger of harm, CPS has up to 90 days to respond to the report.

What is child abuse?

The definition of child abuse is physical abuse, neglect, sexual abuse, or bad treatment to the point that the child's health, welfare, or safety is in danger.

Can CPS interview my child without my permission?

Yes. During the investigation, the caseworker may interview your child and anyone else who can provide useful information. The CPS caseworker can interview the child at any suitable place, like school,

home, or day care. They don't need to get your consent or notify you. This is true whether you are the suspected abuser or not. CPS may interview the child alone or with a third person there. The CPS caseworker can also photograph the child.

How Can I Get Information from CPS?

CPS must notify both parents of the investigation, if both parents can be found, and must make reasonable efforts to find both parents.

You have the right to see records and information collected by CPS about your child, with some exceptions. See the Washington State law RCW 13.50.100 for more information.

DSHS (the Department of Social and Health Services) is the state agency responsible for these records. You may ask a caseworker at CPS to explain how the agency's public records request process works. The agency is required to give you the necessary information and help to get the records.

DSHS may remove or "black out" information that the agency has decided is confidential, like the names of the foster parents. Often the person who made the referral to CPS wants to remain anonymous. CPS is not required to disclose witness statements or other parts of the record that would identify the source of the referral.

What Happens After the Investigation?

CPS has 90 days from the date the report is made to finish its investigation. After the 90 days, CPS must make one of the following choices:

- 1) end the investigation and close the file;
- 2) file a dependency petition; or
- 3) enter into a voluntary contract with the parents.

However, CPS can reopen a closed case for a good reason.

What is a Voluntary Contract?

The caseworker or social worker will usually offer a voluntary contract for services or a voluntary placement agreement to the parents. A contract with CPS means that you and the caseworker have both agreed to complete a list of requirements and responsibilities. You may be asked to participate in drug or alcohol treatment, parenting classes, counseling, or some other services. CPS must make reasonable efforts to provide the required services to try to keep families together.

You might think that the voluntary contract is over once you have done the things that you agreed to do. But this doesn't always happen. This issue is not specifically addressed in the laws and regulations; see page 3 – What If I Feel That CPS is Treating Me Unfairly?

If you do not do what you said you would do in the contract, CPS may start a dependency court case and ask the judge to order you to use the services in order to keep your child. If the caseworker feels that the child is in danger, the court has the authority to have the child removed from your care.

What is the best way to work with CPS?

Make sure that you fully understand the terms of the voluntary contract. Do all you can to understand what caseworkers say. You will be provided with an interpreter if you need one.

When you meet with or call a caseworker, try to speak calmly and clearly. You can ask to have a trusted friend or relative at your side as long as the person does not interfere with and is not involved in the case. You can ask the caseworkers questions, ask them to repeat what they have said, and then restate the important issues in your own words so that there is no misunderstanding. You can take notes when you meet with a caseworker.

You should write down the dates and times of all your calls to CPS and record how you have tried to do what you agreed to do in the voluntary contract.

What if I feel that CPS is treating me unfairly?

You should write down every time you call CPS. If your calls are not returned within several days, you should try to reach the caseworker's supervisor. If you still do not hear from the caseworker, then you should call the DSHS regional manager.

The Office of the Family and Children's Ombudsman (OFCO) is an independent voice for families and children who are under state supervision because of allegations or findings of child abuse or neglect. OFCO can help with complaints involving government services to state-supervised families and children. OFCO asks that you first try to solve the problem by contacting the agency directly. If it is not in the best interest of the family or child to contact the agency, or if you have made a contact, but have not received a satisfactory response, then it is time to contact OFCO. See the Resources list on the last page of this memo for the contact information.

OFCO has complete access to official files. If it is necessary, OFCO will contact key officials or people in upper management to investigate a complaint and see that action is taken.

Do I Need an Attorney?

In general, during the beginning stages of an investigation or when the parents and CPS have agreed to a voluntary contract, the parents deal with caseworkers on their own. If the children have been removed from the home by CPS, or if a caseworker files a dependency petition, then a court case begins.

Once a dependency petition has been filed, it is a good idea to have an attorney to represent you. See the section of this memo called Parents' Rights in a Dependency Action, below. Parents may

hire one attorney to represent them both or, if you are not living together or have different interests, then you may each want your own attorney. Some parents may be eligible for a court-appointed attorney. This depends on each person's financial situation and is reviewed by the court. The court-appointed attorney is usually called a Public Defender.

Parents' Rights in a Dependency Action

What is a Dependency Action?

The law allows the state to step in to protect a child from harm within the family in a court procedure known as a "dependency action." A dependency action is started by filing a petition (written request) in Juvenile Court. The petition claims that the child is "dependent." A "dependent child" is a child who: a) has been abandoned by his or her parent, guardian, or other custodian; b) has been abused or neglected by a person who is legally responsible for care of the child; or c) has no parent, guardian or custodian able to take good care of the child so that there is a danger of serious damage to the child's psychological or physical development.

Who Can File a Dependency Action?

Any person, including a relative of a child, can file a Dependency Petition. Usually, petitions are filed by the Department of Social and Health Services (DSHS). The Juvenile Division of the Superior Court will hear the case' except that in some counties some dependency cases are heard in Unified Family Court. See the last section of page 10 for more information about Unified Family Court.

What will happen and when?

See the chart on page 11 for an overview of the proceedings once a child is removed or a petition is filed.

1) The Petition is Filed and/or the Child is Removed from the Home

DSHS workers can file dependency petitions when the child is still in your home. If DSHS thinks your child is in danger, however, they will go to court to get an order allowing them to take the child into custody and place the child in temporary care. DSHS must try to serve a copy of the petition on you to notify you that your child has been removed by CPS. DSHS must try to place the child with a relative or other suitable person requested by the parent.

Law enforcement officers may take a child into custody without a court order if they believe that a child is abused or neglected and that the child will be injured if they don't remove the child immediately. Hospitals and health care workers can hold children they think have been abused or neglected, even if the parents object.

2) Shelter Care - 72-Hour Hearing

If your child is removed from your home, a "shelter care hearing" must be held within 72 hours of the removal. If the child is not removed, the hearing must be held within 72 hours of filing the dependency petition. At the 72-hour hearing, the court decides whether the child should have been removed from your home and whether it is safe for the child to return to (or stay in) the home. The court can also dismiss the case, but it is extremely rare to dismiss a case at a 72-hour hearing.

If the child is to remain out of your home, the court decides where the child will live until a later, more in-depth hearing is held. The court will ask DSHS what they have done to try to place the child with a relative. The court also decides if visitation is proper, what social services should be provided to the parents, and if medical, mental health, or drug/alcohol evaluations are needed. The focus is on protecting the child and offering appropriate services to help the parents. The court cannot order you to take exams, be evaluated or use services unless you agree, but the court can remove your child if you don't agree.

3) Shelter Care - 30-Day Hearing – Case Conference

A second hearing is held 30 days after the 72-hour hearing to determine whether there have been any changes in the situation. This is called a 30-day shelter care hearing. Your child cannot be placed in shelter care for more than 30 days without a court order.

A case conference may also take place after the 30-day hearing. A case conference must be offered to you unless you don't want one or you didn't appear for the 72-hour hearing. At the case conference, you will meet with your attorney, the department social worker and any other people involved in the dependency case. You will discuss the service plan, possible settlement negotiations, and any other topic that would help the case move forward in a positive direction.

4) Fact-Finding - Trial

A trial date will be set for no later than 75 days after the petition was filed (although these trials are often delayed). But most dependency cases are settled by agreement between DSHS and the parents and a trial is unnecessary. Both DSHS and you can present testimony and evidence at the trial. There may be more hearings after the trial, before disposition.

5) Disposition

The settlement agreement or court ruling (if there is a trial) will state whether or not the child is "dependent". If the child is dependent, there will also be a "dispositional order". The dispositional order states where your child will live, what social services you must complete to get your child back or keep your child, and what DSHS must do to help you complete the services. The goal at this stage is to have the child reunited with the parents. If the child is staying in the home, the goal is to get rid of risks to the child's safety and well-being.

In the dispositional order, the court will usually allow you to visit your child regularly unless the child is being harmed by the visitation. Visitation may be supervised and relatives may be chosen as supervisors. In general, the court cannot limit your visitation as a punishment if you don't follow court orders or use services. Only when the health, safety or welfare of a child is at risk will the court consider limiting visitation.

The court may also require you to pay child support; but if you are very low-income, the Division of Child Support may delay collection.

6) Initial Progress Review Hearing

The court must review a dependent child case 90 days after a dispositional order has been entered or six months after the child has been removed from the home, whichever is sooner. At the hearing, the court will determine whether you and DSHS have made progress towards completing the dispositional plan requirements. If a child has been removed from your home, the court will return the child only if the court finds that the reason for removal no longer exists. The court must also set a date when a "permanency plan of care" will be put in place.

7) Permanency Planning Hearing – Final Result

When a child has been removed from home, the law requires that the court put a permanency plan in place as soon as possible -- no later than 12 months from the time the child was removed from the home, if possible.

There are 6 possible outcomes.

- 1) Dismissal - In most cases, all the issues are addressed, the child is returned to the parent's care, and the case is dismissed.
- 2) Dependency Guardianship - The child is placed long-term with a guardian, someone who is not the child's parent. The guardian could be a relative or a foster parent. The guardian has the legal responsibility to take care of the child. The parent's rights are not terminated. Once the guardianship is set up, the dependency case may be dismissed, but usually, it isn't and DSHS continues to provide services.
- 3) Permanent Custody Order – Sometimes a relative or another person who is not the parent files a Nonparental (Third-Party) Custody Petition, asking the court to order that the child live with them. If you and the third person agree to this custody order, the court may order this and then dismiss the dependency. See the Resources at the end of this memo for more information.
- 4) Long Term Foster Care - This usually happens when the child is near 18 and needs to live outside the parent's home. The dependency is not dismissed and the child grows up in foster care. It may also happen when the child is severely disabled and needs long-term medical or therapeutic care outside the home.

- 5) Termination - In a few cases, a parent's rights to the child are completely cut off or terminated. This means the child is free to be adopted, and the parent no longer has any rights or responsibilities. The court will terminate parental rights only in cases with serious abuse or neglect.
- 6) Independent Living - If the child becomes emancipated, they no longer have to live with a parent or guardian.

What if the situation changes after the final orders?

- 1) Dismissal - If someone reports abuse or neglect after a dependency case is dismissed, a new dependency case may be filed.
- 2) Guardianship – Any party may petition (ask) the court to modify (change) or end a guardianship.
- 3) Permanent Custody Order – A petition to modify the parenting plan may be filed if there is a “significant change in circumstances” – if there has been a big change in the non-parent's or the child's life.
- 4) Long Term Foster Care – A review hearing will be held once every six months that the child is dependent.
- 5) Termination – The terminated parent has no legal rights concerning the child once their rights are terminated. However, a child 12 years old or older can petition to reinstate their parents' rights if the child is still not in a permanent home 3 years after the termination.

What is a Guardian ad Litem or CASA?

In many cases the court will appoint a "guardian ad litem" or “court-appointed special advocate” (CASA) for the child. The guardian ad litem's role is to represent the best interests of the child, not necessarily what the child wants. The guardian ad litem may or may not be a lawyer. In King County most CASA's are volunteers from the community. If the child is 12 or older, the court will appoint a lawyer to represent the child. For more information, see the memo Working with GAL's and Parenting Evaluators: 20 Tips for Parents in Family Law Cases on the Washington Law Help website.

What if my child is Native American?

Under federal law, special rules apply to Native American children in dependency actions. The Indian Child Welfare Act (ICWA) describes an "Indian child" as an unmarried person under age 18 who either a) is a member of an Indian tribe, or b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe. The law defines "Indian tribes" as those tribes recognized by the federal Bureau of Indian Affairs. Certain Alaska Native villages also qualify.

The court will ask if the Indian Child Welfare Act applies at the 72-hour shelter care hearing.

The ICWA affects dependency cases in different ways. Depending on the tribe, the case may have to be tried in a tribal court instead of the state court. The child's tribe must be given notice of the case and may have the right to "intervene in" (join in) the case. The ICWA makes it more difficult to remove an Indian child from home and also makes it more difficult to take custody away from the child's parents or to terminate their parental rights. The law requires that a child be placed with relatives or in Indian foster care approved by the child's tribe rather than non-Indian foster care unless there is a good reason not to do so.

For more information, see the memo Indian Child Welfare Act on the Washington Law Help website.

What are My Rights and Responsibilities in a Dependency Action?

- **YOU HAVE A RIGHT TO A LAWYER**

If a dependency petition has been filed, you have a right to be represented by a lawyer, and you will probably want a lawyer. If you want a lawyer, but cannot afford to pay, you can tell the judge. The judge may either appoint one for you or direct you to the office of the public defender. In King County, the Office of Public Defense (OPD) screens people who are looking for legal representation to determine if they qualify for public defense services.

If your case is transferred to Unified Family Court (see page 10), you may lose your right to a public defender.

If you can pay for a lawyer, you are expected to hire one on your own. You can call a lawyer referral service to get the names of lawyers who practice in this area of law.

See Resources, page 12.

- **YOU HAVE A RIGHT TO BE KEPT INFORMED**

CPS must try to notify you that your child has been taken into custody, why the child was taken into custody, and your legal rights, as soon as possible. The notice must be understandable, considering your primary language, level of education, and cultural issues.

You have a right to information about your child's health, progress in school, and behavior. You have the right to work with your CPS worker in making plans for you and your child. You have the right to know what CPS expects you to do before your child is returned to you.

You have the right to see records and information collected by CPS about your child, with some exceptions. See the Washington State law RCW 13.50.100 for more information.

- **YOU HAVE THE RIGHT TO SERVICES**

You have the right to services to help your family. Some services are provided directly by DSHS for free. If you are referred to another agency that charges a fee, you may have to pay that fee. Your

CPS worker may be able to help you find housing, clothing, financial assistance, medical care, child care, employment services, parenting classes, family planning services, transportation services, mental health services, drug and alcohol abuse programs, and/or domestic violence or sexual assault programs.

- **YOU HAVE A RESPONSIBILITY TO SUPPORT YOUR CHILD**

You will be expected to contribute to the cost of your child's care, if your child is placed outside your home. You should also provide your child with necessary clothes and personal items to help your child be more comfortable if he or she is in care outside of your home.

What Else Can I Do to Help Myself and My Child?

- Try to get other kinds of support – Try to form a network of support – family, friends, and community professionals who care about you and your family and who can help out, if necessary. It often makes a difference in court when parents have statements from family, friends, church members, counselors and others to tell the judge helpful things about you and your family.
- Keep Records – Be sure to keep copies of all records that show your family's medical and dental care, any services you are using, that you are following the court orders, and any other proof which could show how you are caring for yourself and your children.
- Follow advice and use services – Follow the advice of teachers, medical providers, and counselors who work with you and your children, when possible.
- Keep in touch – Try to visit your child regularly, as allowed by the court order. If you cannot make it to a visit, notify the caseworker before the scheduled visit. Keep in regular contact with your attorney and caseworker and tell them about changes in address, telephone number, job, income, or living arrangements. If you cannot keep an appointment with your attorney, caseworker, or service provider, let them know in advance.
- Get more legal information – You can read state laws, called the Revised Code of Washington (RCW) in law libraries, some public libraries, through your lawyer, or at www.legalwa.org. See Chapters 13.34, 26.44, and 74.13.

You can read agency rules, called administrative codes. The section of the Washington Administrative Code (WAC) about CPS is Chapter 388-15.

You can read the Children's Administration Case Services Manual online. This manual has the written agency rules to be followed by CPS staff when investigating a case or providing CPS services.

See Resources, page 12.

What is Unified Family Court?

If you have another case involving your child going on at the same time that you are involved in a dependency action, your case could be transferred to Unified Family Court in certain counties (including Clallam King, Snohomish, and Thurston). For example, if you are involved in a divorce or parenting plan action with the other parent, then both the juvenile court and the family (Superior) court are making decisions about your child. If both cases are moved to Unified Family court, the issues about your children are decided by the Unified Family Court judge and the dependency case is usually dismissed. The Unified Family Court does not decide child support or property matters, but can approve a parenting plan.

If your case becomes a Unified Family Court case, the attorney appointed for you in the dependency may not be able to help you work out a parenting plan with the other parent. You may need to use other resources, such as court facilitators, to come up with a plan that the court will accept. Although DSHS will not be a party to that plan, the court may appoint a DSHS worker to represent the children's interests or may ask their opinion on the plan proposed by the parties.

JUVENILE COURT DEPENDENCY PROCEEDINGS				
SHELTER CARE HEARING	FACT-FINDING HEARING	DISPOSITION HEARING	INITIAL PROGRESS REVIEW HEARING	PERMANENCY PLANNING HEARING
<u>Time Frame:</u> Within 72 hours of placement	<u>Time Frame:</u> Within 75 days of filing of petition.	<u>Time Frame:</u> At Fact-Finding or within 14 days of Fact-Finding	<u>Time Frame:</u> 90 days after the entry of the dispositional order or 6 months from out-of-home placement, whichever is earlier. An in-court hearing.	<u>Time Frame:</u> Between 9-18 months (depending on child's age) after child's out-of-home placement
<u>Issues:</u> Placement: Home Relative Responsible Adult Foster Care Group Care Visitation: Supervised Unsupervised Frequency <u>Parent Choices:</u> Agree/cooperate Compromise/negotiate Disagree: Shelter care hearing Judge decides above issues	<u>Issues:</u> Determine facts as alleged in petition Determine legal sufficiency <u>Parent choices:</u> Agree/cooperate Compromise/negotiate Disagree/go to trial <u>Types of dependency:</u> In-home with services Out of home with services	<u>Issues:</u> Placement: Home Relative Responsible Adult Foster care Group Care <u>Example of Services:</u> Evaluations Parenting classes Counseling Substance abuse counseling Anger management Domestic violence classes Sexual offender treatment Victim/survivor treatment Visitation: Supervised/Unsupervised Frequency/Time/Place	<u>Issues:</u> Progress & compliance with court order Services Placement Visitation if not returned home Continue Dependency or Dismissal	<u>Issues:</u> Permanent Plan determined by Court: Continue Dependency Dismissal Return Home Long-term foster care Permanent (3rd-Party) Custody Order: Proceed with Guardianship Proceed with Termination

Resources

General Legal Information:

- Legal Voice statewide Legal Information and Referral Line: 206-621-7691; 206-521-4317 TTY; Toll-Free 1-866-259-7720
 - For legal information and referral to legal services, private attorneys, or self help methods in many areas of law.
- Related Publications from Legal Voice: www.LegalVoice.org or call.
 - Placement of Minor Children in Case of Death
 - Options for Unmarried Parents
 - Options for Grandparents and Other Nonparental Caregivers
- Washington Law Help website www.washingtonlawhelp.org for legal information about many areas of law, including:
 - Emancipation of Minors
 - Working with GAL's and Parenting Evaluators
 - Indian Child Welfare Act
- “Alcohol, Drugs, and Domestic Violence: What a Woman Should Know Before Going to Court”, Managing Your Divorce: A Guide for Battered Women, National Council of Juvenile and Family Court Judges Family Violence Department, Toll-Free 1-800-527-3223. Also at www.ncjfcj.org/images/stories/dept/fvd/pdf/managing_divorce.pdf

Services for Parents:

- Washington State Domestic Violence 24-hour Hot Line 1-800-562-6025
- Alcohol/Drug 24-hour Help Line: 206-722-3700; 206-722-3724 TTY; Toll-Free 1-800-562-1240
- King County Child Care Resource and Referral Network, Seattle: 206-329-5544 www.childcare.org
- For referral to social services such as counseling, parenting classes, daycare assistance, and employment assistance, dial 2-1-1, in most parts of Washington State.

Your Rights with CPS:

- Office of the Family and Children's Ombudsman: 206-439-3870; 206-439-3789 TTY; Toll-Free 1-800-571-7321
- www.dshs.wa.gov/ca/pubs/mnl_case/chapter1.asp for Children's Administration Case Services Manual
- www.legalwa.org for Washington State law and administrative codes
- King County Office of Public Defense: 206-296-7662

Rev. June Krumpotick 5/09