

Understanding the Child Abuse and Neglect Legal System

A Resource for School Staff, Service Providers,
Law Enforcement, Foster Parents, Advocates, and
Others Who Work With Children and Families

Why Is the Court Involved?

The purpose of Children's Court is to keep children safe, to help families create a safe home for their children, and to create permanency in children's lives, either in their own homes or through adoption or another permanency plan. The Children's Court is not designed to punish parents. The Children's Court does not deal with criminal charges that are sometimes filed in these cases.

In New Mexico, we have Children's Courts that are responsible for making critical decisions in child abuse and neglect cases. When these cases are brought to the Children's Court, the Judge decides whether or not child abuse or neglect, in fact, exists and whether the child may safely remain at home. The Children's Court Judge also decides whether custody of the child should be given temporarily to the state child welfare agency, the Children, Youth, and Families Department (CYFD).

If the child is placed in CYFD custody, the Children's Court Judge will monitor the case. The Judge will order the family to get help and to comply with their case plan. The Judge will hold a number of judicial hearings and reviews to make sure the child is safe and to make sure the family is complying with their case plan. At each hearing, the Judge will make a determination about whether or not efforts are being made to return the child home or to some other permanent arrangement, such as adoption, as soon as possible. Each of these hearings and reviews is described in this booklet.

Before we discuss those hearings, however, we need to present some information about how the existence of abuse or neglect might affect the child and the family.



How Does Abuse/Neglect Affect the Child and Family?

The Child

Children who have been abused or neglected may respond in many different ways – there is no standard profile. Typically, an abused or neglected child feels sadness, grief, and loss. The child may also feel responsible and guilty. For some children, it is difficult to trust or find comfort from any adult; other children may be extremely needy. An abused or neglected child is often angry and that anger may be turned outward (in the form of tantrums, violence, aggressiveness) or inward (in the form of depression, self-destructive behaviors, substance abuse, even suicide). Sometimes the child may feel a sense of relief that someone knows what has been happening.

The Family

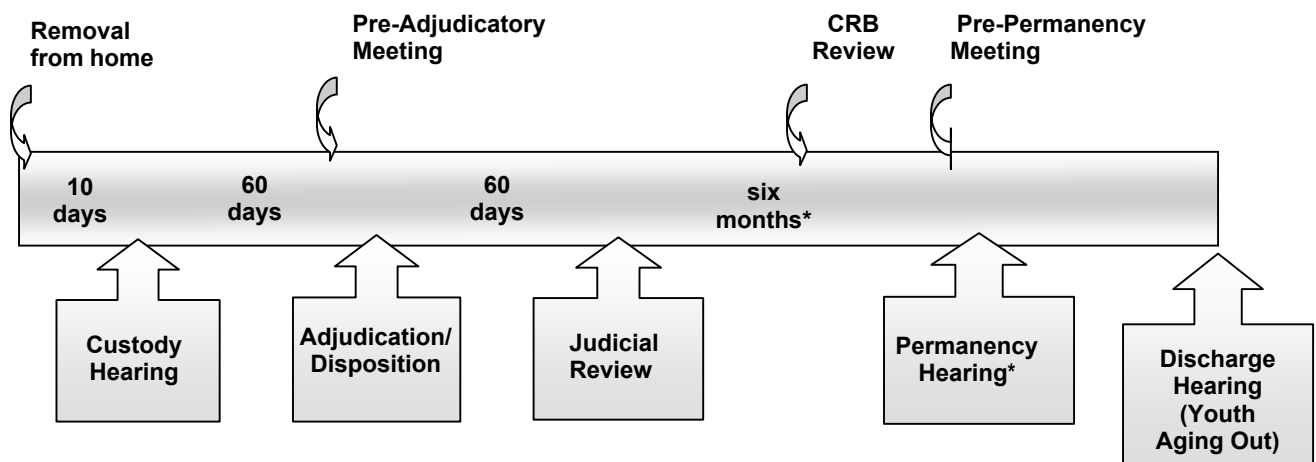
Child abuse or neglect in a family tends to be a secret. When abuse or neglect is reported, the family's secret is exposed and family functioning disrupted. The family's response at first may be denial and blaming. The parents may express anger at the CYFD Worker or look to another adult to blame, perhaps a teacher or someone else they suspect may have reported the abuse or neglect. Even the child victim could be blamed for "causing" the problem. When a child is removed from the family home, the disruption to the family is intensified. For everyone in the family there is a great deal of sadness and loss. *It is important to remember that most parents who abuse or neglect their children still love them.*

What can you do?

Mostly, be observant. Watch the child's behavior and listen. If you notice that the child is having difficulty, you might talk to the child's CYFD Worker, the child's foster parents, or a professional working with the child. Don't talk to anyone else about the specifics of the case, however. It is important to protect the confidentiality of the child and the family.

What Happens in Court in an Abuse/Neglect Case?

Most child abuse and neglect cases have at least four Court hearings during the first year. The time lines for these events are spelled out in New Mexico's Children's Code.



*The law requires a Permanency Hearing within six months of the initial judicial review of a child's dispositional order or within twelve months of a child entering foster care.

The Custody Hearing

Within ten working days of when a petition is filed in Children's Court, the Judge will hold a Custody Hearing. At that hearing, the Judge will decide if the child should stay in the temporary custody of CYFD until the trial (adjudication) is held.

The Adjudication and Disposition

The Adjudication (or Adjudicatory Hearing) is a trial before the Judge on the allegations involved in removing the child from home. It must be held within 60 days of the date that the respondent is served the petition. At this trial the Judge decides whether or not there is reason to find that the child has been abused or neglected. The Disposition (or Dispositional Hearing) is usually held at the same time as the Adjudication. If not, it must be held within 30 days of the Adjudicatory Hearing. At this hearing, the Judge orders the case plan that the parents must follow in order to have the child returned home.

The Judicial Review

Within 60 days of the Disposition, there will be a Judicial Review. At that time, the Judge will review the case and make sure the case plan is being followed and that the parents and CYFD are all doing what has been ordered. The Judge may order changes in the case plan at that time.

The Permanency Hearing

The Permanency Hearing is an extremely important event. It is held within six months of the initial Judicial Review or within twelve months of a child entering foster care, whichever occurs first. Before the case goes to the Permanency Hearing, the local Citizens Review Board (CRB) meets to review the case and make recommendations to the Judge. At the Permanency Hearing, the Judge hears from CYFD, the GAL or Youth Attorney, the respondent's attorney, and possibly the Court Appointed Special Advocate (CASA) and others about whether or not the child can be safely returned home.

Subsequent Hearings

If the Judge decides the child's permanency plan should be reunification (return home), and the child is not returned home within three months, a Permanency Review Hearing will be held to decide if the permanency plan should be changed to adoption or some other permanent arrangement.

If a child remains in custody after the Permanency Hearing, there will be a Judicial Review in Court six months thereafter, and a Permanency Hearing every twelve months until the case is dismissed. At each review, the Judge will consider the appropriateness of the child's permanency plan and make sure that reasonable efforts are being made to implement the plan. The local Citizen Review Board will also continue to review the case approximately every six months for the life of the case.

The Discharge Hearing

At the last judicial review or permanency hearing held prior to a youth's eighteenth birthday, the court reviews the youth's transition plan and determines whether CYFD has made reasonable efforts to implement various requirements, including providing the youth with written information about the family as well as official documents like a birth certificate and social security card, arranging for Medicaid, and setting up a guardianship if the youth is incapacitated. If the court determines that reasonable efforts to meet these requirements have not been made, and that termination of jurisdiction would be harmful to the youth, the court may continue jurisdiction for a up to a year from the youths eighteenth birthday if the youth agrees.

Pre-Hearing Meetings

The Children's Code requires that a mandatory meeting be held before both the Adjudicatory Hearing and the Permanency Hearing. The parents and their attorneys, the GAL or Youth Attorney, and CYFD must be there. At the Pre-Adjudicatory Meeting, the child's placement, the case plan, and the issues to be addressed at the Adjudicatory Hearing will be discussed. At the Pre-Permanency Meeting, participants will discuss what the child's permanency plan (for example, reunification or adoption or other planned permanent arrangement) should be. This plan will then be recommended to the Judge.

Who Else Might Be Involved in an Abuse/Neglect Case?

In addition to the oversight of the Children's Court Judge, other individuals may be involved in different aspects of a child abuse or neglect case, including:



- the CYFD Worker
- the Guardian ad Litem (GAL) or Youth Attorney
- the parents' attorney (Respondent Attorney)
- the Children's Court Attorney
- the child's foster family
- the Court Appointed Special Advocate (CASA)
- the local Citizen Review Board (CRB)

The CYFD Worker

There are usually three CYFD Workers involved in different stages of an abuse/neglect case. The Investigation Worker investigates reports of abuse or neglect and decides whether or not the report should be substantiated. He or she will make a recommendation about removing the child from the home and write an affidavit explaining the circumstances of the case for the Children's Court. The Investigation Worker may also make preliminary recommendations about what the family will need in order to be reunified. The Permanency Planning Worker works with the family to develop a case plan, which lists the steps that must be taken for the child to return home. The Permanency Planning Worker visits the child and the family regularly and monitors progress on the case plan. The Permanency Planning Worker reports on that progress to the Children's Court Judge. The Placement Worker helps find a relative, foster family, or other placement when the decision is made to place the child outside the home. The Placement Worker provides support to the foster family or other placement resource.

The Guardian ad Litem (GAL) or the Youth Attorney

If the child is under age 14, the Court will appoint a Guardian ad Litem (GAL). The GAL's job is to represent the child's best interests, in other words, to tell the Court what is best for the child. If the child is age 14 or older, the Court will appoint a Youth Attorney. The Youth Attorney will meet with the child and represent him or her in Court.

The Parents' Attorney

Parents involved in abuse/neglect cases are named as *respondents*. Respondents have the right to have an attorney and, if they cannot afford one, the Court will appoint an attorney. The Respondent Attorney is required to meet with the parents, help them understand their rights, and represent their wishes in Children's Court.

The Children's Court Attorney

The Children's Court Attorney represents CYFD. The Children's Court Attorney puts the basic facts of the case into writing and presents them to the Judge. In Court, the Children's Court Attorney presents CYFD's case as to why the child should, or should not, be in custody.

The Foster Family

When a child's safety requires that he or she be removed from home, CYFD must find a placement for that child. The Department's first choice is to place the child with relatives when possible. If that's not possible, the child will likely be placed in a family-like setting with foster parents who have been trained and licensed to provide safe and stable care for the child.

The Court Appointed Special Advocate (CASA)

The Judge may appoint a Court Appointed Special Advocate (CASA) in a child abuse/neglect case. The CASA is a trained volunteer who meets with the child and others involved in the case. The CASA prepares a report to the Court about how the child is doing and makes recommendations about what is believed to be in the child's best interest.

The Local Citizen Review Board (CRB)

The Citizen Review Board (CRB) is a group of trained volunteers from the community. If an abuse/neglect case stays in Court long enough to reach a Permanency Hearing, the CRB will meet to review the case and make recommendations to the Judge. Everyone involved with the case, including the parents and all attorneys, will be invited to talk to the CRB at that review or to send in written comments. Input from foster parents, service providers, and school staff is also invited.

Why This Booklet? How Might I Be Involved?

As an advocate for children, a foster parent, teacher, counselor, health or mental health provider, or other professional working with a child or family, you could be an important person in the life of an abused or neglected child.

As such, it may be helpful for you to become more familiar with the child abuse and neglect legal system and the other systems involved with these children and their families. This booklet is intended to explain the major judicial events in a child abuse or neglect case. The legal time frames are outlined and the purpose of each hearing is summarized. The various people who could be involved in the case are described. Perhaps most importantly, the potential impact of child abuse and neglect and foster care on the child and the family is discussed.

Here's how to reach some organizations that may be of assistance:

- CYFD Statewide Central Intake (SCI): 1-855-333-SAFE [7233] or #SAFE from a cell phone
- New Mexico CASA Network: 1-505.217.0232; email: nmcasa@nmcan.org; website: <http://nmcasa.org/>
- New Mexico Citizen Review Board Project: 1-866-857-2976 or 1-505-217-0226; email: info@nmcrb.org; website: <http://www.nmcrb.org/>



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For more information about the New Mexico Court Improvement Project, go to <http://www.nmcourts.gov/CourtImprovement/> or contact the Administrative Office of the Courts, 505-827-4800.

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