

# Dependency Court and Removal of Children

## Understanding the Child Welfare System

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The purpose of this chapter is to help foster parents understand how child abuse and neglect cases proceed through the dependency court system. The first section lays out the dependency structure, and discusses how the foster parent might be involved at each stage. The second section talks about remedies, both through the agency and the dependency court, that might be available to foster parents when a child is removed from their home for reasons other than maltreatment.

## DEPENDENCY COURT

### *Introduction*

Dependency court is both similar to and different from criminal court in structure and operation. Understanding how they are similar, as well as some terminology used, will help foster parents better understand the process.

Dependency court and criminal court are similar in that they both involve attorneys, evidence and courtrooms. In addition, attorneys in dependency or criminal court cases have ethical obligations to their clients. Those obligations include the duty to keep their confidences, and to provide zealous advocacy.<sup>1</sup>

Our legal system is adversarial, and it can sometimes seem that the parties are unwilling to cooperate. However, the adversarial system is meant to protect all parties by allowing them to present their case, and to refute evidence presented by others. Many jurisdictions recognize that the dependency court serves a unique function, and that the adversarial model, which evolved before the relatively recent development of dependency law, does not always serve the purpose of bringing parties together to cooperatively arrive at a solution for the child. As a result, some dependency courts are less adversarial and more informal than criminal courts.

Typically, a foster parent's first exposure to dependency court will be at a trial. The term "trial" means a formal proceeding where the judge takes or hears evidence presented by the attorneys in accordance with state laws, commonly referred to as "rules of evidence." Evidence includes testimony of witnesses under oath, documents, photographs, or physical objects (for example, a weapon).

The rules of evidence are very complex and attorneys devote much time and effort to mastering them. Foster parents need only have a general familiarity with the concepts explained below to understand how the rules of evidence shape court proceedings.

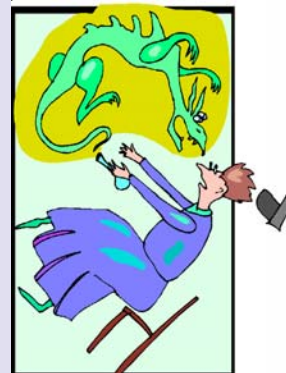
During the trial the attorneys may object to evidence presented by an opponent on the grounds that using such evidence breaks one or more of the rules of evidence. The judge may overrule or sustain an objection. If a judge sustains an objection, the evidence is excluded and the judge (or jury) may not consider it. If the judge overrules an objection, the evidence is admitted, and the judge (or jury) considers it along with all of the other admitted evidence. Jury trials are rarely held in dependency cases. It is typically the judge who makes decisions based on the evidence presented. However, some states do use jury trials, usually in TPR cases.<sup>ii</sup>

A foster parent may be asked to testify by any of the parties in a case: the agency, parents or child. Testifying involves swearing to an oath and being questioned by the attorney who requested the testimony; this is referred to as "direct questioning." The attorney for any other party may then cross-examine the foster parent by asking questions meant to "poke holes" in the testimony given during direct questioning. (See: "Tips for Testifying in Court," page 3 for specific suggestions to use if you are asked to testify.)

The term "hearing" is typically used in dependency court to describe any proceeding where the judge considers evidence. Sometimes, the word "trial" is used to differentiate cases where, in addition to the judge considering evidence, one or more witnesses take the stand and testify under oath, and the rules of evidence are strictly adhered to. Sometimes, in dependency court, the term "hearing" is used to describe both trials and less formal proceedings that do not require strict adherence to the formal rules of evidence.

## TIPS FOR TESTIFYING IN COURT

1. Be clear about what you do know and do not dwell on what you do not know.
2. Stay calm and try not to take “attacks” personally.
3. Slow the questioner down.
4. Do not answer a question you do not understand.



5. Do not let anyone put words in your mouth.
6. Do not answer a yes or no question if you are not absolutely certain.

7. Act objective and professional.
8. Have an outline with you.
9. Know approximate dates or know where to look for them.
10. Tell the judge if you need to explain something- do not let her cut you off.



**REMEMBER-** Nobody **LIKES** this. Remember why you are doing it.

Judges have different personalities, and courtrooms tend to take on the tone of the presiding judge. Some judges may allow the parties to speak informally, without having to take an oath and be subjected to cross-examination. Some judges may insist on always taking formal evidence, by swearing the witness to an oath, subjecting them to cross-examination, and having their testimony recorded. Whether the judge will hold a formal or informal proceeding usually depends on whether the proceeding results in a final order. Only final orders are appealable, and it is necessary to ensure an adequate record is made for the appellate court by taking and recording testimony. Generally, TPR hearings and adjudicatory hearings that determine whether abuse or neglect occurred are the most likely to be appealed and are held formally to protect the parties' rights. Permanency hearing orders, however, are considered final and appealable in only some states.<sup>iii</sup> Therefore, permanency hearings are often held informally.

One of the most important rules of evidence is the rule against admitting "hearsay" evidence. Hearsay is an out-of-court statement. It usually applies when a witness in court quotes something they heard someone else say; that statement is hearsay. For example, if the caseworker quotes a statement made by the child's doctor, that statement is hearsay. The rules of evidence generally do not permit hearsay during a formal trial unless a hearsay exception applies. This is because hearsay is second-hand information introduced by a speaker who is not in court, and not subject to cross-examination; therefore, the information is considered less reliable.

The first hearing in the dependency court process, the dependency court shelter care hearing, must occur shortly after the child is removed under emergency circumstances, so the rules of evidence are often relaxed. In dependency court hearsay statements made by the child, the parent or perpetrator may be admissible. Therefore, caseworkers or others may testify to those statements.

The purpose of dependency court is to keep the child safe and to fix the problems that caused the abuse or neglect. Many times, the maltreatment will not rise to the level of a criminal action, so the whole case is handled exclusively in the dependency system. If the district attorney gets involved and presses criminal charges, both the dependency and criminal cases may proceed at the same time, in both criminal and dependency court.

The two cases proceed in two separate courts because the dependency court and criminal court serve two different functions. The criminal process punishes and deters criminal acts. Dependency court does not punish parents, but strives to provide safety, permanence and well-being to children while rehabilitating the parents, where possible.

## *Stages of the Dependency Court Process*

A dependency case often begins long before it enters the court system.<sup>iv</sup> A case is initiated when a call regarding suspected abuse or neglect is made to the state's child abuse hotline for investigation. A caseworker investigates the allegations and usually must meet with the child within a specified period of time. The full investigation must be completed within a specified period of time, typically around two months.

The caseworker not only determines whether abuse or neglect has occurred, but also whether the child is at risk of future harm. In dependency cases, a child may be removed if the risk of future harm is imminent, which means that the situation presents a high likelihood of harm to the child. The caseworker must decide whether services to the family would reduce the risk and allow the child to remain safely in the home.

A caseworker may provide services, like a parent aide, for example, and continue to monitor the situation. If the situation does not improve, the caseworker may petition the court to remove the child. As discussed in chapter one, the judge will have to make a finding that reasonable efforts were made to prevent removal. For example, when one parent has sexually abused the child, a court order removing the offending parent from the home and ordering no contact with the child might constitute reasonable efforts to allow the child to remain safely in the home.

## *Shelter Care Hearing*

When a caseworker removes a child, the law requires a hearing (often referred to as a shelter care hearing, removal hearing, emergency hearing or other similar term) very quickly; typically within one to three days. The agency must also file a petition, which is a document with fact-specific allegations, that the parent (or other person legally responsible for the child) abused or neglected the child.<sup>v</sup>

During the hearing, the judge “hears” the petition; that is, she hears evidence regarding the allegations in the petition. The judge can order the agency to return the child home, place the child temporarily in foster care, or, in some states, order the child to be placed with a relative or other suitable individual, such as a grandparent or non-custodial parent.

After the shelter care hearing, the case proceeds through the following stages: 1. adjudication, which determines whether abuse or neglect occurred; 2. disposition, which determines what services the family requires; 3. the permanency hearing, discussed in chapters one and three; and, if the family cannot be reunited, 4. termination of parental rights (TPR). Each phase is described in detail below. (See “Stages of the Dependency Court Process” on the opposite page.)

After the shelter care hearing, which determines the child’s immediate need for protection, the court must decide whether the parent abused or neglected the child. That typically happens in a proceeding commonly referred to as the adjudicatory or fact-finding hearing. In some states, the court must hold an adjudicatory hearing within a relatively short time frame, usually 60 days. Many states do not have mandatory time frames for adjudication, but since the passage of ASFA, courts are more aware of the need to determine whether abuse or neglect occurred well before making a permanency decision. This typically occurs 12 months after the child enters foster care.

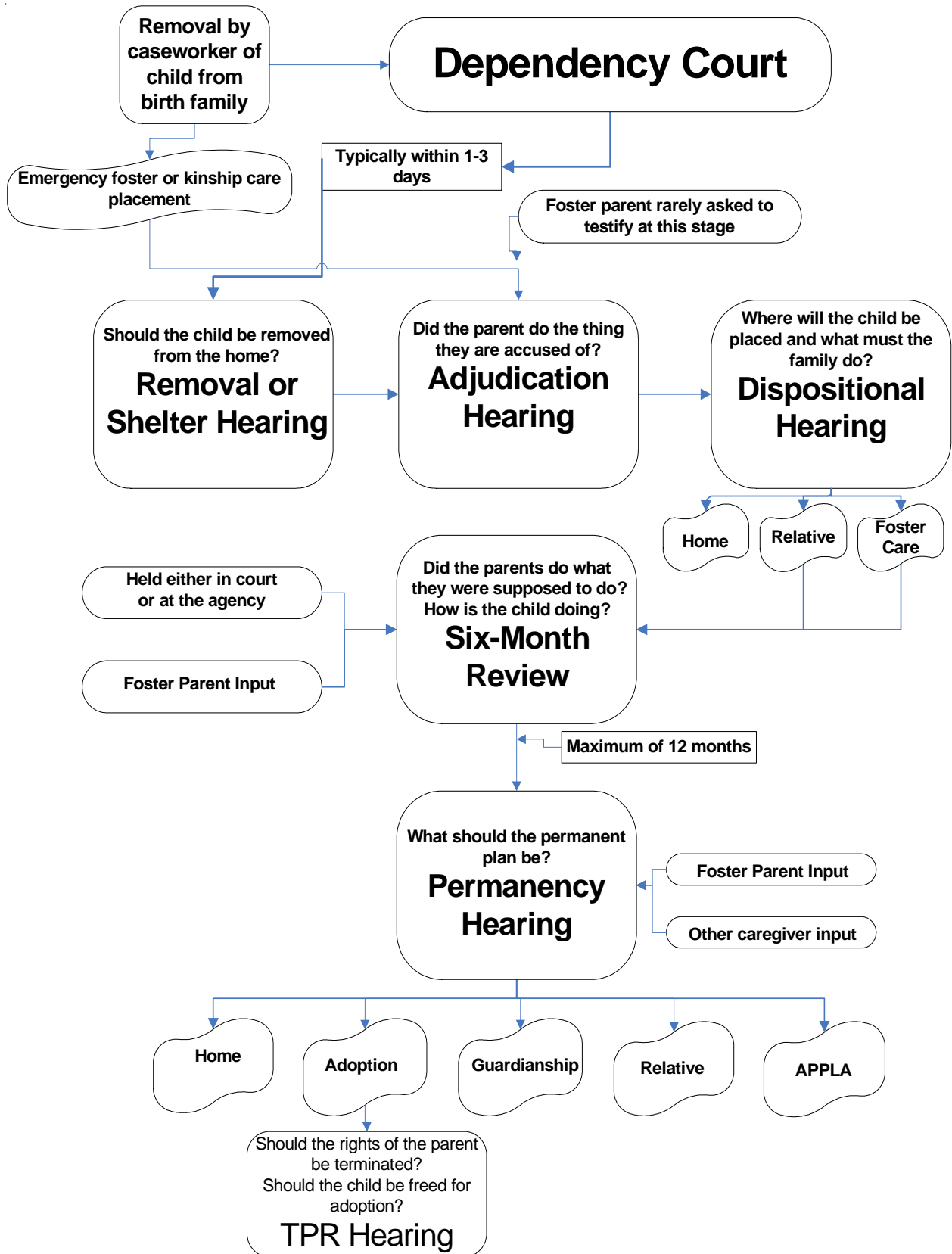
The agency petitions the dependency court to obtain a court order directing an uncooperative parent to participate in services and to place the child in foster care when necessary. The agency’s role is to rehabilitate the family, and to obtain permanency for the child.

### *Adjudicatory Hearing*

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At the first court appearance, the judge will probably assign the parents an attorney.<sup>vi</sup> The judge may also assign an advocate for the child, often referred to as a guardian ad litem, or a similar term. The advocate may be an attorney or work under the supervision of an attorney. The role of the advocate will vary depending on the state. Some jurisdictions use CASA (Court Appointed Special Advocates) representatives to advocate for the children, in addition to legal advocates. The role of the CASA representative is to make recommendations to the court and to be sure the child’s interests are protected. (A government attorney will typically represent the agency in court.<sup>vii</sup>)

# Stages of the Dependency Court Process



The parent may admit to some or all of the allegations or request a full trial. At the trial, the agency must offer enough evidence to establish that the allegations are true. The agency would probably not call the foster parents to testify at this stage of the proceedings, since they typically have no first-hand knowledge of the incidents which led to the allegations.

However, sometimes foster parents gain knowledge that one of the parties may wish to provide to the court. For instance, the child may disclose details of the abuse or neglect to the foster parents. The foster parents may be asked to testify to the child's statement under an exception to the hearsay rule. Attorneys have an obligation to prepare their witnesses for court, so they should help foster parents they call as witnesses prepare their testimony. Foster parents should request help preparing for court as soon as their testimony is requested.

In order to secure the foster parents' presence at the trial, the attorney may serve the foster parents with a subpoena, an order mandating that they attend court. A subpoena should never be disregarded, as that could lead to court imposed sanctions, the most serious of which is imprisonment. (See "Should I Go to Court?" on page 14 for more information.)

Foster parents should keep in mind that the purpose of an adjudicatory hearing is to determine whether abuse or neglect occurred. The judge will not be ruling on other matters, such as the permanent plan for the child. However, the dispositional hearing is sometimes held immediately following the adjudicatory hearing, explained further below.

### ***Dispositional Hearing***

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If the judge rules that the parent abused or neglected the child, the case then proceeds to a dispositional hearing. At the adjudicatory hearing, the judge may "rule from the bench," meaning immediately after hearing all the evidence, or may take the matter under consideration and issue a written order at a later date. If the judge issues a ruling on the abuse or neglect from the bench, the dispositional hearing may be held immediately following the adjudicatory hearing. Or, the judge may adjourn (postpone) the matter, so that the parties can prepare reports or gather evidence from current service providers.

The dispositional hearing results in an order of disposition, which contains provisions the parents must follow. Often, this part of the proceeding is more informal, meaning hearsay is admissible, and the parties may be able to provide information to the court without swearing to an oath.

Often, the parent will agree to the disposition proposed to the judge by the child welfare agency, or may dispute only a portion of the agency’s disposition. If the parties cannot agree, the judge will decide on the disposition.

Typically, the disposition is a specific list of services with which the parent must comply. The order may also contain specific conditions for the parent; for example, that the parent demonstrate an ability to maintain a stable residence. Because the agency is under an ongoing obligation to provide reasonable efforts to reunify the family, they must help the parent meet the conditions of the dispositional order.

The court may also order the agency to do specific things, such as transport the parent to counseling visits. Additionally, the judge may order the agency to provide specific services to the child. Typically, the dispositional order will contain a visitation schedule. The order could contain a “stay away” provision, sometimes called an “order of protection,” ordering an individual to stay away from the child. The order remains in effect until amended by the court. Without the court’s consent, the parties cannot agree to disregard any provisions of the disposition ordered by the judge.

Before issuing an order of disposition, the court hears evidence about what services and reunification efforts will be most helpful in rehabilitating the family. The court may also hear evidence regarding the child’s status in order to make a decision regarding visitation and services for the child.



### *Permanency Hearings*

Federal law specifically grants foster parents the right to notice and opportunity to be heard at permanency hearings.<sup>viii</sup> The law also requires that the judge hear evidence about the child’s permanency plan, safety, and well-being at the permanency hearing. Therefore, permanency hearings, explained in depth in chapters one and three, offer the best opportunity for foster parents to provide information about the child. Foster parents should take full advantage of every permanency hearing by sending a court report and by being present whenever allowed by the court.

## *Termination of Parental Rights (TPR)*

When reunification is not an option, the agency will bring an action to free the child for adoption. Those actions are typically called “termination of parental rights” actions, or TPR. When and how the agency may move to terminate parental rights depends on state law. Some general provisions which apply in most states are discussed here.

The agency must prove grounds (basic facts) in order to prevail on a termination of parental rights. Those grounds are contained in state statutes and vary from state to state. The most common TPR ground is the parents’ failure to plan for their child. That means the parents have failed to demonstrate an ability to care for their child and failed to take steps to improve their ability to care for their child despite reasonable reunification efforts on the part of the agency.

For example, the agency may allege the parent obtained a substance abuse evaluation but only attended half of the recommended counseling appointments, resulting in a failure to remedy the addiction, and a continuing inability to parent the child. A parent’s severe abuse or failure to maintain adequate contact with the child may also be grounds for TPR. Other grounds may include an inability to parent due to mental illness, mental retardation or chronic substance abuse.

TPR proceedings tend to be more complex than other phases of the dependency process because the agency usually must prove incidents that occurred over a longer period of time. In addition, the agency must carefully present the case, as TPRs are more likely to be appealed, given the serious final nature of the resulting order. A carefully presented case is more likely to prevail on appeal.

At the TPR proceeding, the agency may call a number of witnesses, including foster parents, service providers who worked with the family, agency case workers and expert witnesses, such as psychologists or psychiatrists who can testify to the parent’s ability to care for the child.

Depending on state law, the agency may not only have to prove the grounds for TPR, for example, the parent’s failure to plan, but also that TPR is in the child’s best interests.

At the TPR stage, the foster parent may be asked to testify as to how the child is doing in foster care, how visitation affects the child, the needs of the child or other matters which would help the court determine whether it is in the best interests of the child to terminate parental rights. If not asked to testify, foster parents may consider attending court in the event the court or any of the parties decide to seek that information. Or, the foster parent may wish to bring important information to the court's attention even if they have not been asked to testify.

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### *Foster Parent Involvement in the Dependency Process*

The foster parents' right to notice and opportunity to be heard does not currently extend to all dependency hearings.<sup>ix</sup> But unless expressly excluded by the judge, foster parents may attend hearings and ask the judge for permission to speak. Generally, foster parents receive notice of impending hearings on behalf of children in their care. Foster parents can also request notice from the agency or the court, or they can ask to be notified by the child's advocate.

If foster parents request to testify at a formal trial, the law would require a showing that the foster parents' testimony would be material and relevant, which means that the foster parents may have to explain to the judge why they believe their testimony is important. At more informal proceedings, the judge has discretion as to whether to allow foster parents to speak. The attorneys in the case may be willing to assist foster parents in presenting their information if they believe it will benefit their client.

Foster parents should share important information first with the agency who, as custodian, has responsibility for the child's care and well-being. But if the agency does not bring the information to the court's attention, foster parents should inform the court that they wish to make a statement. They may also provide the information to the child's advocate or the parent's attorney.

Keeping information from the agency or other parties may damage the credibility of foster parents in the courtroom, as they may be seen as trying to circumvent the agency. Sharing information is also in the best interests of the child as it allows all the parties to work on effective solutions to problems. Therefore, foster parents should take care to deal openly and honestly with all parties during the court process.

Foster parents may sometimes feel as though they should not have to share information when information is routinely kept from

them. But the rules governing information sharing and confidentiality are complex, and often parties are not free to share information with the foster parents. As discussed earlier, only parties to the proceeding are entitled to information provided to the court, and foster parents are rarely awarded party status. Foster parents should concentrate on getting their own message across in an effective way, and should not attempt to hide or conceal information from parties who have the right to all information provided to the court.

### *Other Appearances*

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In addition to the phases of dependency proceedings described above, the court may schedule as many additional appearances as necessary. An appearance (sometimes called a status check, or other similar term) is a scheduled return to court, usually to check on the status of the case. The judge may schedule an appearance to consider new reports or home studies, or to monitor the case in order to be sure the parties are complying with the court's orders. The frequency and length of appearances vary according to the judge's preference.

Appearances can be confusing because they often do not have a clearly defined purpose, yet they may result in the judge issuing an important order. For example, at an appearance scheduled to review service provider recommendations, the judge, after receiving the recommendation of a mental health counselor, may change visitation from supervised to unsupervised. Important changes in court orders can occur at any type of hearing or appearance, since the judge has a lot of discretion in how and when to make orders protecting children. Even the agency cannot be certain of the outcome of any given court proceeding. That can make it difficult for foster parents to determine whether they should attend court proceedings. (See "Should I go to Court?" on page 14.)

Going to court to give information is discussed in depth in chapter three. Foster parents should be aware that testifying as a witness in a court proceeding involves many considerations. Being asked to take the stand and swear to an oath can intimidate even trained and experienced caseworkers. (See "Tips for Testifying in Court" on page 3.)

### *Court Orders*

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A court order can be verbal or written. The order goes into effect as soon as the judge speaks it from the bench. Most orders

get reduced to writing, but the time in which that occurs varies widely from jurisdiction to jurisdiction. Only parties are entitled to receive the court orders, but, in some cases, courts may be willing to add foster parents to the distribution list. Very often, court orders contain provisions which affect foster parents.

For example, an increase in visitation will affect foster parents who provide transportation to visits. Sometimes, a judge may specifically order foster parents to take a particular action; for example, to notify the court of any change in a child's medical condition. If the court orders contain provisions affecting them, foster parents should receive a copy of the order. If they do not, they should ask the court clerk to add them to the court order distribution list. If the court is concerned about foster parents receiving confidential information contained in court orders, the court may be willing to delete confidential information, but allow them to receive the rest of the order. Even if the court sends written orders to the foster parents, prompt receipt depends on the court's ability to issue written orders quickly.

Because of limited resources, case workers may not have time to carefully explain court orders to foster parents, or may not attend court proceedings themselves. Therefore, attending court is the best way for foster parents to keep aware of court action. (For more information, see "Should I go to Court?" on page 14.)

## WHEN A CHILD IS REMOVED



This section will explain what authority allows a foster parent to challenge decisions to remove a child from the foster parents' home, and how foster parents might use such authority to seek remedies from the agency and/or the dependency court. Sometimes the agency or the court changes the child's placement based on a determination that the child would be better off in another placement. For example, a court may order a child to be placed with a relative or different foster family after the child has been living with a foster family for a significant period of time. This section does not address the situation where the agency has charged the foster parents with maltreatment of the child or licensing infractions; those topics are addressed in chapter four.

Foster parents often fear that a child will be removed from their home with no warning. As discussed earlier, a number of protections exist to safeguard the right of biological parents to raise their children. Foster parents do not have the same

# Should I Go to Court?

It can be difficult to get to every court date, especially if you care for multiple children. In some courts, it is not uncommon to wait for hours before your case is heard. Sometimes, after much waiting, not much happens in the courtroom. There are no hard and fast rules for determining when you should go to court, but following are some factors to consider:

## ***What is the purpose of the court date?***

It can be difficult for non-attorneys, even caseworkers, to determine the purpose of a particular court proceeding. Some courts schedule frequent appearances just to check on the status of a case. One way to determine whether a substantive hearing will occur, (vs. a brief status check) is to look at how much time is allotted for the case. A brief appearance will typically be scheduled for 15 minutes or so, while a hearing will typically be scheduled for a half-hour or more. You can usually get that information from the court clerk.

If a case is scheduled for a hearing, try to determine the stage of the case, which will indicate the issues on which the judge is likely to rule. For example, at an abuse/neglect hearing, the judge will rule on whether the parent is guilty of maltreatment. At the permanency hearing the judge chooses the plan based on the needs of the child. As discussed in chapter three, foster parents have an important role to play at the permanency hearing stage.

## ***Do I have an important message for the court?***

If you have new information about the child's status, you should consider going to court. You should share important information with the agency and the child's advocate. Even if the caseworker or advocate relays your message to the court, the judge will most likely have questions for you, since you are the source of the information.

Also keep in mind that even if you have submitted a written report, it may be beneficial for you to attend to ensure the judge considers your report and has accurately interpreted it. Being there to clarify points and answer questions will aid the court in making a thorough decision.

***Is there important information I could get from attending court?***

Attending court can be a good way to learn more about the case. By attending court, you may be able to learn more about the child's needs, his family, and other background information. You may also gain a clearer understanding of the position of the parties, including the agency.

***Will this be a rare opportunity to speak to the judge?***

Because of strained resources, in some jurisdictions, cases are scheduled only when absolutely necessary. If you are in one of those jurisdictions, you should carefully weigh the need to go to court. If the judge makes an important decision without the benefit of your input, it may be a long time before the court has an opportunity to revisit the issue.

***Does the child need your support and assistance?***

Above and beyond legal strategy, the most important reason for going to court may be to support your foster child. Even older children sometimes find it difficult to be in the courtroom, especially if they have to testify. Do not let other parties discourage you from attending court if you feel your presence will help the child.

***Learn the local practice***

You should familiarize yourself with local practice and customs, which will help you make decisions about attending court. Local practice and custom can affect how often a judge schedules cases, whether the judge encourages parties to resolve disputes, and how the judge prefers to receive input from foster parents.

***If you cannot go to court***

If you cannot attend court, but have information to give to the judge, be sure to submit a written report, and provide a copy to each party, as discussed in chapter two. You may consider indicating in your report that you are unable to appear in court, but would be happy to appear at a future date to answer any questions, or provide further information. If you do not attend a hearing and the court does not hear from you, they will assume that you have nothing important to add, and will proceed without your input.

protections as biological parents. This is because their relationship to the child is of a different nature; it originates in a contract with the state, and not in a legal or biological relationship protected by the U.S. Constitution. However, most states have at least some minimal protections for foster parents when a child is removed from their home.

Foster parents should arm themselves with knowledge about their state's rules regarding removal before a situation arises where the child might be moved. Many agencies routinely provide that information to foster parents. If the information is not readily available from agencies, foster parent associations should help foster parents find and understand the applicable laws and policies.

Once the agency has decided to remove the child, time to react is very limited. In addition, once removal becomes a possibility, emotions may be running high, which can make it harder for the foster parent to concentrate on finding solutions. This chapter discusses broad categories of protections and remedies, and may use some state-specific examples. Foster parents should understand that protections and remedies vary widely from state to state. Foster parents are cautioned to seek their state-specific information. Understanding the broad categories and where to look should make that process somewhat easier. (See "Checklist for Researching Removals" on page 17.)

## *Protections for Foster Parents*

Any protections foster parents have stem from specific provisions in state law passed by legislatures, or from state policies enacted by child welfare agencies. Their protections do not stem from a constitutional right to raise their foster child. Because of biological parents' constitutionally recognized liberty interest in raising their child, they are entitled to procedural protections such as party status (discussed in chapter three), the right to appeal decisions of the court and, in some cases, the right to counsel. These protections are often referred to as "due process of law," or "due process."

Foster parents are not automatically entitled to due process when a child is removed, so they must look to state laws to see whether their state has granted them specific protections, such as the right to ask the court for party status, or the right to notice of removal.<sup>x</sup> In a few cases, some state courts have found that foster parents have a greater interest in the relationship with the child

## CHECKLIST for RESEARCHING REMOVALS

(Note: Foster parent associations may wish to gather this state-specific information and make it available to foster parents in their states.)

- Have I researched state law, regulation and policy?
- Do I have a right to notice?
- Does the notice have to be in writing?
- Am I entitled to reasons for the removal?
- How much time do I have to respond to the notice?
- Must I respond in writing?
- Do I have a right to an interagency grievance process? When must I request it?
- May I submit a written statement?
- May I bring an advocate?
- May I challenge the decision produced by the grievance process?
- Am I entitled to a fair hearing (also called administrative review)?
- At what point must I request a fair hearing?
- Must my request for a fair hearing be in writing?
- What must I bring with me to the hearing?
- What may I take with me to the hearing? (Bear in mind, you may want to bring an advocate or attorney to the fair hearing.)
- How do I appeal a fair hearing decision? What is the time limit to file the appeal?
- May the agency remove the child while the dispute is pending?
- Is there an ombudsman program in my state that can help me in the event of a dispute with the agency?

where special circumstances exist, such as a blood relationship to the child, long term placement, or pre-adoptive status.<sup>xi</sup>

### ***Where to Look for Foster Parent-Specific Protections***

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Protections granted to foster parents can be contained in state laws enacted by the legislature (called statutes), regulations, which are enacted by the agency to explain or clarify state law, or agency policy, which is drafted by the agency to guide practice. Where there is a conflict between the state statute and the regulation, the statute is the controlling authority. Agencies write their own policies. They vary as to how strictly they implement and enforce their own policies, however. Moreover, agency policies are difficult to enforce as there is no right to challenge an agency breach of policy in court.

Some agencies may see violation of policy as a serious breach, whereas other agencies may regard policy merely as a suggested practice, rather than a mandate. Agency policy cannot contradict state law or regulation. Agencies are not required to make their policies public, though they sometimes choose to do so. Many agencies also choose to share their policies with foster parents. The most common place to look for policy is on the Internet. Statutes and regulations are available to the public through libraries and sometimes are found on the Internet as well.

### ***Types of Protection Available***

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The protections available to foster parents when a child is removed vary depending on whether the change of placement is pursuant to the court's order, or whether it is purely an act of the agency, though some protections may be available in either situation. Some of the most common protections found in state laws, discussed more thoroughly below, include: the right to notice, the right to an agency grievance procedure, the right to a fair hearing (also called an administrative hearing), the right to apply for party status, and the right to due process of law.

### ***Right to Notice***

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Receiving adequate notice is very beneficial to foster parents. With adequate notice, foster parents can take steps to prevent the removal, and may successfully challenge the decision within the agency or in court. Even with advance notice, the time frame in which to act is often short, ranging from as little as 48 hours (by

statute in the District of Columbia) to 30 days (according to the Kansas Child and Family Services Policy Manual). However, most states that provide notice fall around the one to two-week range. Some states only specify that the agency provide notice, and do not specify the time frame, or method of notification required.

When an agency removes children without giving required notice to foster parents, few remedies exist. Once the agency has moved a child, the chance for a successful challenge by the child's foster parent diminish, as administrative law judges (explained below) and courts are more reluctant to change a child's placement after he has been moved to a new home. The short time frames and lack of remedy make it important for foster parents to learn their state's policies and procedures before the need arises.

Not all states that provide for notice require it to be in writing, which makes it difficult to prove when inadequate notice has been given. Even when written notice is required, the agency does not always have to give a reason for the removal. Lack of detail in the notice makes it more difficult to prepare a challenge. Foster parents should attempt to gain information as soon as possible after receiving notice. Ideally, the foster parents should communicate regularly with the caseworker about the case and the permanency plan for the child. (Working with the agency and sharing of information is discussed below.)

The service of notice to the foster parents may trigger the foster parents' responsibility to take action. For example, in Texas, foster parents have 10 days after receipt of notice in which to request a review of the agency's decision.<sup>xii</sup> Some notice requirements only apply to foster parents who have had the child for a specified amount of time. For example, in Oklahoma, foster parents are entitled to five days notice only if the child has resided in the foster home for at least six months.<sup>xiii</sup>

Many states require the agency to give notice to the foster parents before removing a child from the foster home. Provisions contained within state statutes sometimes require the agency to give notice to the child, the child's parents, the child's advocate, the foster parents, and other parties. When the agency violates a foster parent's right to receive notice under state statute, the foster parent should be able to challenge the violation in court. However, most statutes do not specifically say that the foster parent may challenge the suitability of the child's new placement. Therefore,

as mentioned earlier, there is no real remedy for the foster parent when the agency fails to provide notice.

However, alleging an agency violation in court may alert the other parties to agency action that is not in the best interests of the child. Those parties who have standing to challenge the removal in court may be prompted to do so when the foster parent brings it to their attention that the removal was abrupt, or without notice.

For example, once alerted, the child's advocate may choose to present evidence to the judge that the child's placement with the foster family should be maintained. If the notice requirement is contained in regulation or policy only, the provision cannot be enforced in court, but the foster parent may be able to use other authority to gain the court's assistance, which is discussed below.

### ***Exceptions to Notice Requirements***

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All laws and policies exempt the agency from providing notice when the agency must remove the child in order to protect the child from imminent harm. In such cases, the removal might lead to formal charges of maltreatment, which is discussed in chapter four.

Sometimes it is the court, not the agency, that decides to remove the child from the foster home. Usually, courts make a change in custody based upon the recommendation of one of the parties, most commonly the agency. If the court orders the change in custody, the agency is generally not responsible for providing notice to the foster parents. If the foster parents were not present in the courtroom, they may have little information about the reasons for the removal, and little notice before the child is actually removed.

### ***Agency Grievance Procedures***

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After an agency gives the foster parent notice, the foster parent may be entitled to an intra-agency grievance process. The foster parent may have to file a grievance within a certain period of time. If foster parents hesitate and miss the deadline, they may lose the right to file for a review of their grievance, so it is best to notify the agency, both verbally and in writing, of the desire to challenge the agency's removal. Even if not required, foster parents should request review of a removal decision in writing and keep a copy to address possible questions about whether deadlines have been met.

The grievance process typically includes a meeting with the agency staff to discuss the removal. This process is less formal

than an administrative hearing, discussed below. Agencies set their own policies determining how the meetings are conducted and reviewed. Ideally, those not involved in the original decision will review the agency decision to remove so that a certain degree of impartiality is ensured.

However, many regulations and policies do not specify who will oversee the process and make the final determination. Even where the policy clearly sets forth requirements, some agencies do not adhere strictly to their own policy, as discussed above.

Some steps foster parents can take to make their advocacy during the grievance process stronger include: bringing an advocate, submitting a written statement, and researching whether the agency must consider certain factors in the removal.

Most policy provisions are silent on the issue of whether the foster parent can bring an advocate to grievance process meetings. An advocate may be helpful where foster parents feel they are too emotional to express themselves, or feel the advocate can help them get their point across more effectively. Foster parents may consider asking a lawyer, a member of their foster parent association, or another knowledgeable person to accompany them to the meeting.

Tips that will be discussed in chapter three regarding effective presentation of facts to the court also apply when presenting facts to the agency. A child-focused and fact-based message is more likely to be received by the agency, and will help the foster parent appear more objective and professional.

Preparing a written statement serves several purposes: it helps foster parents organize their thoughts, can be used to remember important points during the meeting, and serves as a record of the foster parents' objections. Knowing whether the laws or policy require the agency to consider certain factors in the removal will help foster parents craft a stronger argument. For example, according to the Indiana Policy Manual, the agency must consider specific issues related to how the foster parents treat the child; for example, whether the child is allowed to interact freely with the foster family.<sup>xiv</sup>

Foster parents should attempt to learn the reasons for the removal even if the agency is not required to explain them before the meeting. Knowing the agency's reasoning ahead of time will

help foster parents address the agency’s concerns more effectively.

Some grievance procedures can be appealed to an administrative law judge (typically called an “ALJ”) a specialized judge who hears appeals of agency decisions. Even if the state does not provide for appeal of a grievance decision, foster parents may consider taking their concerns “up the chain,” to a higher level of agency personnel. Though the agency response to the grievance is not appealable to the dependency court, foster parents may consider simultaneous dependency court action, as discussed below.

### *Administrative Hearing*

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Some states allow the foster parent to challenge the agency decision in an administrative hearing, or “fair hearing,” as it is sometimes called. The right to request an administrative hearing may depend on the length of time the child has lived with the foster family. The hearing is held by an administrative law judge (ALJ), who is usually hired by the state. The ALJ reviews agency decisions; she does not serve the same function as a dependency court judge. The ALJ is only empowered to review certain agency decisions, as specifically set forth in state law. So an ALJ cannot review any decisions made by the dependency court; for example, a visitation order.

An administrative hearing is typically held at a state agency office, not in a courtroom. The proceedings are held informally, though some of the structure of the courtroom may be used. For instance, the ALJ may give the parties the opportunity to make opening and closing statements. The ALJ will usually accept documents as evidence, so the foster parents should bring any documents that support their position.

Examples of useful documents include a letter from the child’s therapist saying the child is doing well in the foster home, a recent favorable report card with positive teacher comments, or past agency case plans stating the foster home is a good placement for the child. Too many documents can dilute a positive message, so it is important to carefully choose documents that make important points, rather than trying to admit everything ever written about the case. Upon request, the ALJ may assist foster parents in obtaining relevant documents from the agency or other service providers.

The parties will also be allowed to testify and to bring witnesses with them. The proceedings are typically recorded, creating a record to be kept by the state.

While administrative hearing decisions are appealable to a state court (but not to the dependency court), an appellant (the person appealing the case to a court) has to prove the agency's decision was arbitrary and capricious, which is a very high legal standard. The procedure can be complicated, requiring the assistance of a lawyer. Because of the likely finality of the ALJ's decision, foster parents should approach the administrative hearing very seriously, and should prepare thoroughly. Foster parents may also consider hiring an attorney with experience in dependency, foster care and adoption law to assist them.

If foster parents fail to appear and do not notify the court of a good reason beforehand, the judge may issue a default decision, which essentially means that the agency has won. So foster parents should immediately report any difficulties they might have in attending proceedings immediately and directly to the ALJ's office (and not, for instance, to the caseworker). Foster parents charged with maltreatment of a child or licensing infractions may also be entitled to an administrative hearing, which is explained in depth in chapter four.



### *Access to Dependency Court When a Child is Removed*

Even when pursuing the agency remedies described above, when an agency removes or proposes to remove a child, the foster parent may also be able to pursue remedies in the dependency court at the same time. As will be discussed in chapter three, foster parents may not have the same rights as parties, so they do not have automatic standing to seek the assistance of the court. But foster parents may be able to use the following methods to gain direct access to the court: alleging a violation of their statutory right to notice if state law requires it, filing a petition, making a motion to intervene as a party or requesting an injunction. Methods for gaining indirect access to the court include: contacting the child's advocate, making a report to the court, and participating in permanency hearings.

Regardless of the method, foster parents should keep in mind the rules about providing information to the court that are discussed in chapter three. Child-focused and rational arguments will have a greater chance of success.

## *Using the Statutory Right to Notice*

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In some states, foster parents have a right to notice of the child's removal pursuant to state statute (as opposed to agency regulation or policy).<sup>xv</sup> It can be argued that within the right to notice is an implied right to challenge the removal. Foster parents should complain of the lack of notice and seek a remedy with the court as soon as becoming aware of the removal. It must be stressed that challenges to a removal are more likely to succeed before the child has adjusted to a new placement. The court clerk should be able to guide foster parents on what type of documents to file to challenge the removal. (For more information, see "Filing Petitions and Motions with the Court" on pages 26-27.)

## *Filing a Petition*

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Foster parents must have standing in order to file a petition with the court. If the judge allows the petition to proceed, and does not dismiss for a lack of standing, the foster parents become parties for the purpose of that proceeding. This will help determine the merits of the foster parents' petition. Foster parents may be able to file a petition for termination of parental rights, adoption or custody.

Some state laws specifically give foster parents the right to file a TPR petition. For example, in New York, the law states that foster parents can file a petition for TPR if they have had the child for 12 months.<sup>xvi</sup> Some laws are less specific, but could be used by foster parents. For example, in Florida, any person who has knowledge of the alleged facts and believes them to be true can file a TPR petition.<sup>xvii</sup>

For foster parents, following through and proving the case after filing a TPR petition is impractical without help from an attorney. If foster parents are not represented by an attorney, the court may require them to present their own evidence and make their own arguments. (Usually, the agency attorney presents a TPR case on behalf of the agency.) The court could require the agency to "adopt" the petition filed by the foster parents and prove the TPR case.

Another way to gain access to the dependency court is to file an adoption petition. In most states, filing for adoption is only an option where the parents' rights have been terminated and the foster parents have a genuine interest in adopting the child. Filing an adoption petition may make the court more willing to allow the foster parents to participate as parties in the dependency

proceedings and to challenge placement decisions, as some courts see pre-adoptive parents as having a greater stake in the outcome of proceedings.<sup>xviii</sup>

In some states, foster parents may be able to file a custody petition in order to present evidence on the issue of the child's custody. However, courts do not often hear custody petitions when a dependency case is pending. Courts are often reluctant to grant custody orders to foster parents, which would give them additional rights beyond those granted by their contract with the agency or conferred by statute.

If the court has specifically ordered that the child be placed in a specific foster parent's home (as opposed to a blanket order placing the child in agency foster care), the foster parents may be able to file a petition alleging the agency has violated the order by removing the child from the specific home ordered by the court.<sup>xix</sup>

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### *Filing for Party Status*

Party status for foster parents varies by state, as will be discussed in chapter three. Gaining party status allows the foster parent to make arguments and present evidence to the court. It also allows the foster parents to appeal decisions of the dependency court, especially important when seeking an injunction, which is explained below. Applying to the court for party status may be a confusing and complicated process for foster parents. Many states' statutes do not provide for party status for foster parents, but if foster parents live in a state that allows them to seek party status, they should seek that status before an emergency arises.

Having party status makes it easier for foster parents to immediately approach the court for assistance if a child is removed. In some states, laws may grant foster parents an automatic eligibility for party status when the child has lived in their home for a specified period of time. For example, in New York foster parents who have had the child for 12 months may intervene as a party in any proceeding involving the custody of the child.<sup>xx</sup> A foster parent's right to intervene as a party comes from specific state laws, not from constitutional rights.

Foster parents do not have the same automatic constitutional right to due process that biological parents have. Generally, courts have been more likely to recognize a foster parent's interest as constitutionally protected where the following factors are present:

1. Foster parents have a biological relationship with the child,

## **Motions for the Court**

**Requests to the court asking the court to do something specific are called “motions.” If you have made a decision to approach the court about an issue, you may consider filing a motion with the court. Each jurisdiction has its own rules about how papers are to be filed. You should seek guidance from the court clerk or an attorney. The motion below is merely given as an example.**

**Copies of all papers filed with the court must be served upon all parties, including the child’s advocate, as well as the parents. Service of the papers must be made on the parties in accordance with state rules. In many (but not all) cases mailing the papers will be considered sufficient service.**

**Foster parent associations, with the help of an attorney, may wish to draft a sample motion which follows state rules. They may also wish to consult an attorney about appropriate service of papers.**

**The form on the adjoining page is a sample of a form to be used in asking the court to intervene to prevent agency removal of a child in a non-emergency situation. (Note: “Movant” means the person bringing the motion to the court.) This same format may be used for other motions by substituting appropriate language.**



2. The relationship with the child existed before the foster parent became licensed, 3. The permanent plan is no longer reunification, and 4. The foster parents have entered into an adoption agreement with the agency.<sup>xxi</sup>

Basically, courts are more willing to recognize an interest where the foster parents have significant ties to the child and the foster parent-foster child relationship does not interfere with the parents' rights.

If state law lacks statutory protections, foster parents may have to rely on constitutional due process arguments. Formulating constitutional arguments goes beyond most non-attorneys' abilities. Retaining a lawyer may be necessary where foster parents have no statutory remedies, and they wish to gain direct access to the court.

### ***Court Removal***

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When it is the court rather than the agency who removes a child, whether because of an agency's recommendation, or other evidence presented to the court, the foster parent has fewer options available. The agency administrative remedies do not apply to court removals. If a foster parent was absent from court and is surprised by a court decision, they should attempt to get information to the court as soon as possible. A court that has already made a decision is unlikely to overturn itself without compelling new evidence. This underscores the need for foster parents to keep the court regularly informed of important information regarding the child.

### ***Temporary Injunction or Stay of Proceedings***

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Some agency regulations and policies provide that once foster parents challenge a proposed removal, the child will remain in the home until the agency makes a final decision. If foster parents fear the agency will move the child while they are going through proper agency grievance procedures, foster parents may consider filing a motion for an injunction (sometimes also called a "stay"), which is a court order directing the agency not to move the child until a final decision is issued. Generally, only parties have the right to seek a stay. However, even if the foster parents are unsure as to whether they qualify for party status, a request for an injunction, even if not granted by the court, will alert the parties and the court of the need for immediate action to prevent removal of the child.

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### *Indirect Access to Court*

The child has recognized rights in a child dependency proceeding, and thus has the right to challenge placement decisions. Yet, often children's advocates do not learn of placement changes until the agency has moved a child. Sharing information with the child's advocate allows the advocate to make a timely decision about whether to oppose the removal. Even if the child is too young to participate on his own, the advocate can present information to the court, seek an injunction on the child's behalf and present the child's position. If the child is old enough to express himself, the foster parent should encourage the child's communication with the advocate, so the advocate can make a decision on how to proceed that takes the child's wishes under consideration.

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### *Sending a Report to the Court*

Especially if the agency has not yet removed the child, sending a report to the court can effectively put the court and other parties on notice of changes. A proactive judge may call a hearing *sua sponte* (on its own motion) to gather more facts and determine whether a change in placement is in the child's best interests. However, some judges are more likely to defer to agency decisions unless challenged by the parties. Additionally, in a minority of states, statutes do not allow judges to choose a specific foster home for placement.<sup>xxii</sup>

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### *Participating in Permanency Hearings*

The foster parents' right to participate in permanency hearings is discussed fully in chapters one and three. Permanency hearing participation may be a means of challenging a removal, if the timing coincides with the agency's decision to remove. More likely, it can be used as a preventive measure. If foster parents have been regularly providing information to the court, the court and other advocates in the case will have a clearer picture of the child's situation, and will be better able to formulate an opinion about whether the removal is in the child's best interests.

Hearing regularly from foster parents may make the court more likely to entertain their arguments, especially if the court feels the foster parents know how to effectively present child-

focused information. Similarly, establishing good, ongoing communication with the agency will help prevent the agency from making removal decisions without full information from foster parents.

## ***Foster Parents Challenging Removal***

### ***“Rights and Remedies” Johnny’s Best Interests***

*The following scenario is provided as an example of how foster parents might use some of the suggested remedies discussed above.*

*Johnny is seven years old and lives with the Smith foster family. Ten months after he was placed with the Smiths, Mrs. Smith received a phone call from Johnny’s caseworker telling her the agency had decided to remove Johnny to another foster home so that he would be closer to his siblings, as required by state regulations. The Smiths were very upset since they had grown attached to Johnny and Johnny was finally, after a rough adjustment period, starting to settle into their home and express affection toward the Smiths. His grades had gone up, and his teachers commented that he seemed better able to concentrate while in class.*

*The Smiths inquired about their rights from the caseworker, who was not sure how to answer their questions, but said she would check with her supervisor. While the Smiths waited for a response from the agency supervisor, they drafted a report outlining their concerns for Johnny should he be moved, and expressed their interest in adopting Johnny should he be freed for adoption. They also wrote that they would be happy to provide frequent visits between Johnny and his two sisters. They sent the report to the agency supervisor, the court, the child’s advocate and the parent’s attorney.*

*They then contacted their foster parent association. The foster parent association does not give out legal advice, but they did provide the Smiths with general information about remedies available to them through the agency and through the court. They learned that state policy required that they get 10 days advance notice before removal, and that they were entitled to an agency grievance meeting.*

*Having already received notice from the caseworker, the Smiths requested an agency grievance meeting, which was granted. They asked their attorney to accompany them. At*

*the meeting with the caseworker and her supervisor, they discussed their concerns. Their attorney was able to point out to the agency that the regulations requiring Johnny be placed closer to his siblings could be waived under certain circumstances. The agency said they would consider the information the Smiths provided and get back to them.*

*In the mean time, the child's advocate decided to file with the court a request for an injunction to stop the agency from moving the child until the court could hear evidence on the matter. The court scheduled a hearing right away. The advocate interviewed Johnny at his school. He told his advocate that he really liked the Smiths and this was the first time in his life he felt he could relax and just be a kid. He told her he did not want to move.*

*The advocate asked the Smiths to testify during the hearing on the injunction. After hearing evidence presented on all sides, the judge issued a temporary order forbidding the agency from moving Johnny, and scheduled a permanency hearing to be held in one month.*

*The Smiths planned to attend the permanency hearing, and to provide a more detailed report to the court in advance of the hearing, describing issues related to Johnny's well-being. At the permanency hearing, they planned to tell the judge they would not only consider adopting Johnny if he were freed for adoption, but also consider adopting his two younger sisters.*



Foster parents should establish good communication with the agency. If the agency hears from the foster parent only when problems arise, the caseworkers might tend to see only the negative side of the placement. Foster parents should use a balanced approach to presenting information.



Caseworkers deal with high caseloads and demands from many different system participants, while trying to make good decisions regarding the children. Foster parents should be mindful of the limited time and resources that face caseworkers on a daily basis. That should not stop foster parents from sharing information that will help caseworkers stay on top of their cases.

## ***Interacting with the Agency Prior to Removal***

## ***Collaborating to Help Children***

Foster parents should consider sending a short, friendly letter to the caseworker every quarter or so, bringing him up to date on the child's health, well-being and progress.

Including things like good school grades, attendance at family events and participation in community activities will give the caseworker a positive, more thorough picture of the child. Those letters should become part of the agency file and provide good information to anyone reviewing the case in the future. Child welfare caseworker turnover tends to be high, so an established record for new caseworkers can be very useful during periods of worker transition.

### *Case Planning*

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The case plan is a formal document that is often sent to the court and the other parties in the case. Federal law requires the child welfare agency to provide case planning to every child in foster care.<sup>xxiii</sup> Agencies hold case plan meetings in conformance with federal and state requirements. "Case plan" may be referred to by different terms, such as "treatment plan," "service plan" or "placement plan." If possible under state rules, foster parents should consider attending and participating in case planning meetings.

As mentioned in chapter one, many states, pursuant to their Program Improvement Plans (PIPs), are including foster parents in case planning. The case planning meeting presents an opportunity for the foster parent to share and receive information. By providing a forum for communication, it also promotes understanding and cooperation among the participants, including the biological family and the caseworkers. The agency often relies upon information presented at the case planning meeting to make important decisions. Foster parent input contributes to the quality and thoroughness of those decisions.

In many states foster parents have the right to either a copy of the plan or portions of the plan. They should always ask for the case plan. The plan usually specifies the services which the family and the child will receive. Staying informed about the case can help foster parents understand where their input would be helpful and allow them to have more pointed conversations with caseworkers.

## LOOKING FORWARD: IMPROVING FOSTER PARENT/ AGENCY RELATIONSHIPS

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Foster parents often fear that the agency will retaliate against them if they assert their rights, ask for services, express a desire to adopt, or contradict the agency in any way. There are no good statistics on how often retaliation occurs. But regardless of how often it actually happens, the fear of retaliation is very real.

Twenty-seven states use child welfare ombudsmen programs to deal with complaints about child welfare agencies, including complaints about retaliation. Some states use their ombudsmen programs to provide resources to foster parents.<sup>xxiv</sup> The programs differ in their mandates, roles and functions. Some programs respond to all complaints about the child welfare system, while some respond specifically to foster care problems. In some states, the programs do not fall under the direct control of the child welfare agency, allowing for greater autonomy.

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### *Ombudsmen Programs*

Ombudsmen provide information and assistance to foster parents, but not all programs directly advocate for them. Some may take on a more neutral, or intermediary role. In contrast, in a few states, the ombudsman actually has power to file suit on behalf of the foster parent.<sup>xxv</sup> For example, the Connecticut ombudsmen brought suit as next friend to a foster child who was about to age out of the system with several unmet needs after a life in out-of-state institutional care. Ombudsmen in Connecticut also signed on to two suits against the state to recover unpaid medical reimbursements to foster parents, and a suit against the state alleging a failure to create options for kids with special health needs.<sup>xxvi</sup> An ideal program would provide advocacy for foster parents, while maintaining decision-making independence from the agency.

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### *A Model Child Welfare Advocacy Program*

The Foster and Adoptive Parenting Advocacy Center in the District of Columbia provides a good working model of a program that provides advocacy for both individual foster parents and systemic reform. With private funding obtained in collaboration with others, including the local foster parent association, the program provides a variety of services. They inform, advise, and

directly advocate for foster parents when necessary. That direct advocacy might include scheduling a meeting with the agency to discuss concerns, or accompanying the foster parent to court.

The program and the agency maintain a good working relationship, and are often able to resolve disputes. In addition to professional, paid advocates, the program also uses peer advocates, who are foster parents with specialized training.

When disputes cannot be resolved, and the foster parents require legal counsel, the program relies on resources they have developed in the community. The Children’s Law Center, as well as local *pro bono* attorneys provide representation in some cases. By working closely with partners in the community and engaging in thoughtful advocacy work, the program has been successful in gaining important reforms for foster parents. For example, the District of Columbia agency policy now requires the agency to provide the foster parent with a case-specific packet of information about the child.

The Foster and Adoptive Parenting Advocacy Center shows how, through the spirit of leadership and collaboration, foster parents can rise to the level of community stakeholder.

### ***New Legislation***

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Washington State recently enacted legislation that addresses the concern that agencies may sometimes retaliate against foster parents. The law allows foster parents to file complaints of retaliation with the state ombudsman and directs the ombudsman to identify trends and mandates the agency develop procedures for responding to recommendations from the ombudsman’s office. The new legislation represents an acknowledgement that foster parents should be treated fairly.

### ***Foster Parent Bills of Rights***

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Some states have incorporated foster parent bills of rights into their child welfare law.<sup>xxvii</sup> The bills vary in their content and emphasis. Examples of common provisions include the foster parent right to be treated with dignity, receive training, and know agency policies and procedures. Current bills of rights could be strengthened with more specific language addressing important needs of foster parents: for example, laws providing adequate notice in the case of removals, or allowing for party status in certain situations to allow foster parents to participate more fully in court

proceedings. A national model of laws could provide guidance to the states on effective legislation for foster parents.

In most states, the rights of foster parents are limited. Laws and policies regulating their ability to challenge agency decisions and fully participate in the court process are difficult to find and use. While no child should be maintained in an unsafe home, removals should be given careful consideration, with input from all the parties, to minimize removals that could damage the child's developmental progress and cause unnecessary disruption to families. We need clear laws, procedures and policies that take into account the important role foster parents play in children's lives.

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<sup>i</sup>A government attorney may have a greater duty than other attorneys to disclose information to the court. See Renne, J., *Legal Ethics in Child Welfare Cases*, Washington, D.C.: American Bar Association, 2004.

<sup>ii</sup>For example, jury trials are available in AZ, CO, and TX.

<sup>iii</sup>Cecilia Fiermonte, *Determining the Burden of Proof in ASFA Hearings*. 21(2) A.B.A. Child Law Practice 30, 30-31 (2002).

<sup>iv</sup>This chapter will discuss cases involving abuse/neglect by parents. Dependency cases may also encompass “unruly children,” depending on the jurisdiction.

<sup>v</sup>A parent or another person responsible for the care of the child may be charged with abuse or neglect in dependency court.

<sup>vi</sup>Most jurisdictions provide counsel for indigent parents. However, that right is not absolute. See Lassiter v. Dept. of Soc. Servs. of Durham County, NC, 452 U.S. 18 (1981).

<sup>vii</sup>There are different models of agency representation. Sometimes the attorney functions more like a district attorney in that they impose the will of “the people,” rather than serve the agency as a client. For more information, See Laver, Miriam, *Foundations for Success: Strengthening Your Agency Attorney Office*, American Bar Association, Washington, D.C., 1999.

<sup>viii</sup>A bill pending in Congress, H.R. 4504, would give foster parents the right to notice and opportunity to be heard at every proceeding. At this writing, the bill was pending in the Senate after being passed by the House.

<sup>ix</sup>Ibid

<sup>x</sup>The lead case on foster parent rights was decided by the Supreme Court in 1977. See Smith v. Org. of Foster Families for Equality and Reform, 431 U.S. 816 (1977).

<sup>xi</sup>See, e.g., Thelen v. Catholic Soc. Servs., 691 F.Supp. 1179, 1184 (E.D.Wis. 1988); Rivera v. Marcus, 696 F.2d 1016 (2d Cir. 1982); Berhow v. Crow, 423 So.2d, Fla. App. 1 Dist. 1982).

<sup>xii</sup>40 Tex. Admin. Code § 700.1323 (Sept. 30, 2004).

<sup>xiii</sup>Okla. Stat. Ann. tit. 10 § 7208 (Nov. 17, 2003).

<sup>xiv</sup>Indiana Family and Soc. Serv. Admin., Div. Of Family and Children, Child Welfare Policy Manual, §403.4612 (Sept. 2004).

<sup>xv</sup>Some states where foster parents have a statutory right to notice of removal: AL, DC, IL, MD, MS, NM, OK, WA, and WI.

<sup>xvi</sup>N. Y. Soc. Servs. Law 384-b(3) b) (2004).

<sup>xvii</sup>Fla. Stat. ch. 39.501 (2004).

<sup>xviii</sup>See Thelen, 691 F.Supp. at 1179.

<sup>xix</sup>In some states, dependency court judges do not have the power to order children into specific foster homes.

<sup>xx</sup>N. Y. Soc. Servs. § 383(3) (2004).

<sup>xxi</sup>See, e.g., Johnson v. City of New York, finding late post deprivation hearing a deprivation of grandmother’s liberty interest and Brown v. San Joaquin County, 601 F.Supp., 653 (D.C. Cal. 1985), finding a liberty interest where foster parents had filed a petition for adoption and had significant ties to the child.

<sup>xxii</sup>See, for example, Oklahoma statute 10 O.S. 7003-7.1 (B) (1)

<sup>xxiii</sup>42 U.S.C. §§ 671(a)(16), 675(1) (1999).

<sup>xxiv</sup>For example, AK, AR, CA, CT, GA, HI, MI, NV, RI, TN, and WA.

<sup>xxv</sup>Information on ombudsmen programs provided by Mary Meinig, Executive Director of Family and Children Ombudsmen of Washington

<sup>xxvi</sup>Telephone interview with Nickey Kramer, Associate Child Advocate, Connecticut, completed by Kate Whelley McCabe, A.B.A. intern, summer 2004.

<sup>xxvii</sup>Some states with foster parent bill of rights are AL, CO, IL, MD, MO, MS, OK, TN, and WA.