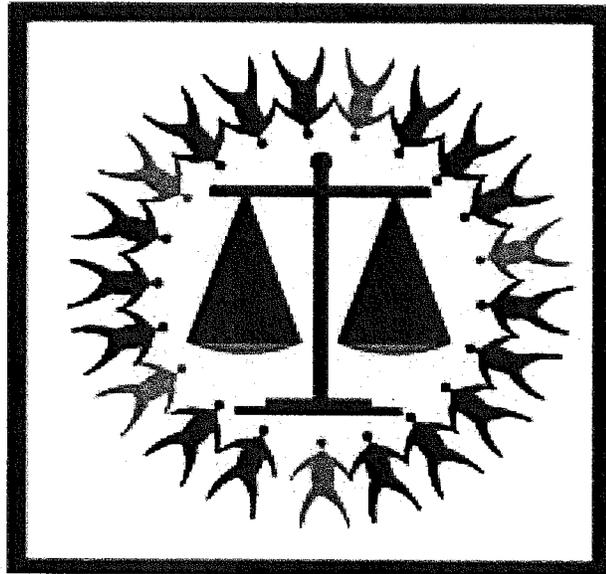


Massachusetts Trial Court
Juvenile Court Department

Handbook for Parents in Care and Protection Cases



October 2011

I. Important Names, Addresses and Telephone Numbers

COURT NAME:

ADDRESS:

TELEPHONE NUMBER:

YOUR ATTORNEY:

ADDRESS:

TELEPHONE NUMBER:

This handbook was paid for with Court Improvement Funds made available by the Federal Government and distributed by the Supreme Judicial Court.

YOUR DCF CASEWORKER:

ADDRESS:

TELEPHONE NUMBER:

YOUR ASSIGNED PROBATION OFFICER:

ADDRESS:

TELEPHONE NUMBER:

YOUR CHILD'S ATTORNEY:

ADDRESS:

TELEPHONE NUMBER:

*****There is space in the back of this book to log phone calls that you have made or received. It is important to track your contact so that you can be prepared to answer questions from your attorney, social worker or treatment providers.**

II. Court Dates

- Write down all court dates and where hearings are scheduled.
- Remember that it is your responsibility to know when the hearings are scheduled and to get to court for the hearings.
- A hearing may take place without you if you do not go to court and you may compromise your rights as a result.
- It is important to keep track of the hearing dates because you will not receive written notices of hearings after the first time your case is heard.
- You should be prepared to attend all hearings unless your attorney tells you that you do not have to be at court that day.

TEMPORARY CUSTODY HEARING:

DATE: _____

PLACE: _____

TIME: _____

MOTION/STATUS CONFERENCE:

DATE: _____

PLACE: _____

TIME: _____

PRE-TRIAL CONFERENCE:

DATE: _____

PLACE: _____

TIME: _____

HEARING ON THE MERITS:

DATE: _____

PLACE: _____

TIME: _____

OTHER HEARINGS:

DATE: _____

PLACE: _____

TIME: _____

III. Care and Protection Time Frame

Day 1 – Filing of a Care and Protection case. If it is an emergency, only the Department of Children and Families (“DCF”) will be there.

Day 3 – 72 Hour Hearing to review custody.

Day 45 – DCF to draft and present a Service Plan to family outlining the services that will assist in correcting the issues that brought the family to the attention of the court.

Day 60 – Court Investigation Report due.

Day 90 – Motion/Status Conference.

Day 120 – Pre-Trial Conference.

6th Month – Foster Care Review (for children in DCF custody and placed outside of the family home).

9th Month – DCF internal Permanency Planning Conference.

11th Month – DCF files a Permanency Plan Report with the clerk’s office.

12th Month – Permanency Hearing; Foster Care Review.

12-15 Months – Hearing on the Merits.

IV. The Basics

A. Common Questions

What is a care and protection case?

- A care and protection case begins when someone, usually the Department of Children and Families (DCF), claims in a petition to the court, that your child is at risk of abuse or neglect while in your care.
- The care and protection case will be heard in Juvenile Court by a judge.
- A care and protection case is not a criminal case.
- A care and protection case can result in the termination of your parental rights to your child. You must address the abuse and neglect allegations immediately because the length of a Care and Protection case is only 12-15 months. If you do not complete services and address your issues, your parental rights may be terminated.
- Termination of rights is a very serious result. You will lose the right to parent your child forever and your child may be adopted without your consent. Even if your child is not adopted after a termination of parental rights, you do not have the option of requesting reunification in the future.

What is the Department of Children and Families (DCF)?

- The Massachusetts Department of Children and Families is the state's child protection agency. It is DCF's responsibility to protect children from abuse and neglect.

How was my child removed from my care?

- Usually, a DCF caseworker files a report in court, telling the judge that he/she believes your child is in immediate danger of abuse or neglect if your child remains with you.
- Based on the information in the report, the judge orders your child removed from your care as an emergency.
- After your child is removed from your care, your care and protection case is scheduled for an initial hearing, normally called a '72 hour hearing'.

What should I wear to court?

- Dress appropriately as you will be appearing before a judge.
- Do not wear hats, including baseball caps, into the courtroom.

Courtroom Behavior

- Be respectful to all parties.
- Be on time. If you will be late, call your attorney, so he/she can let the court know.
- Do not speak out or use foul language during a hearing.
- Do not make faces or roll your eyes.
- Do not chew gum.
- Listen to Court Officer instructions.
- Turn off all electronic devices (cell phones, pagers, etc.).
- Ask your attorney about other rules of the courthouse and courtroom.

Courtroom Setup

- The Judge sits at the front of the courtroom. It is a raised platform that is called "the bench".
- The attorneys sit at tables facing the judge.
- The client sits in the rows behind the attorney tables on the same side of the courtroom as his/her attorney.

What happens at the 72 hour hearing?

- This hearing is closed to the public.
- You will have the opportunity to read the DCF caseworker's report and hear the reasons why your child was removed from your care.
- You will be able to respond to the report and tell your side of the story to the judge.
- You have the right to an attorney at this hearing and all hearings for the care and protection case.
- After hearing from DCF and you, the judge must decide what to do with your child.
- The judge can order that your child be placed in the temporary custody of DCF, a relative of your child's, a family friend, a biological parent or back to your custody.
- If your child is returned to your custody, this does not mean that the care and protection case is over.
- If your child is placed with DCF, DCF is responsible for the care of your child, deciding where your child lives, who can visit with your child and when and how your child's educational and medical issues will be addressed.

Will an attorney represent me?

- Yes. You have the right to an attorney.
- The court may appoint an attorney to represent you, if you do not have enough money to hire one.

- You must answer some questions about your income or benefits in order to have the court appoint an attorney for you.
- A Juvenile Court probation officer will ask you the necessary questions and ask you to sign a form containing the financial information you provided.
- Do not speak to the probation officer or any other person about the facts of your case until you have met with your attorney and he/she advises you how to proceed.
- The judge will then decide if you are eligible to have an attorney appointed to represent you.
- The court may order you to pay a \$150.00 counsel representation fee if you are appointed an attorney.
- You will be responsible to pay this fee while the case is open with the court.
- If the judge decides that you are not eligible to have an attorney appointed to represent you, you may hire your own attorney or you may act as your own attorney.
- You are expected to abide by all the rules of the court as your attorney would be, if you decide to act as your own attorney.

Will my children have an attorney?

- Yes. The judge will appoint an attorney to represent your children.
- This attorney will **not** be the same attorney who represents you.
- He or she will speak to your children and represent him/her at all hearings.

Will all parents be notified of the case?

- Yes. The mothers and fathers of all children involved in the case will get notice of any court hearings, have the right to come to court, the right to have an attorney present, and the right to participate in all hearings.

When should I come to court?

- You should come to court for any scheduled hearing.
- Arrange to meet with your attorney before your scheduled hearing and talk about the issues and what you should expect.
- Be prepared to wait for your case to be called. Make employment and child care arrangements as you could be there for an entire day.
- Be sure you bring copies of any documents that you want your attorney to see, such as school records or letters from DCF.

What is Expected of Me Before Court?

- Set up child care for any children in your home and set up transportation to court.
- Speak with your attorney before the court hearing. If you don't see your attorney, he/she may be involved in a conference with the judge before the hearing.

- Find the courtroom where your hearing will be held.
- Make sure your attorney knows where you will be waiting for your case to be called.
- Bring your written questions.
- Be prepared to wait for your case to be heard, sometimes for the entire day.
- Wait outside the courtroom until your case is called and your attorney says that it is time to go in.
- Friends or family may come to court with you. However, keep in mind that Care and Protection cases are 'closed' proceedings. This means that the judge decides who is allowed in the courtroom.
- Make copies of documents you want your attorney to have and bring them to court with you. Show them to your attorney.

Who attends court hearings?

- Parents, attorneys for parents, the child's attorney, the DCF attorney, the DCF caseworker, potential witnesses, the probation officer, a clerk to help record the hearing, and the judge may all be present for the court hearing.
- Your child will not be present at hearings. Your child has an attorney who will have already spoken to your child about the hearing and will represent him/her.

Do I have to say anything in court?

- No. You have the right to respond to the allegations that the DCF has made, but talk to your attorney about how this will be done.
- If you hear something you do not agree with, write it down and wait for an opportunity to speak to your attorney about it.
- Do not speak out during the hearing.

B. Rights

Rights of Parents and Guardians

Parents and guardians have many rights when a Care and Protection petition is filed in the Juvenile Court. You should ask your attorney to explain them to you. Here are some of the most important rights parents have:

- You have the right to be represented by an attorney.
- You have the right to attend all court hearings.
- You have the right to a language interpreter and/or a sign language interpreter if you do not speak or understand English very well.
- You have the right to have your attorney explain the allegations made against you, advocate for your position and present evidence, including

having witnesses testify on your behalf. You also have the right to testify on your own behalf.

- You may be able to see and visit with your child if he or she has been placed outside your care. Visits with your children will not be allowed during scheduled court time. If DCF has custody of your child, DCF will control when and where you may visit your child. If you want to change your visitation schedule, speak to your attorney.
- You have the right to have another court review the decisions a Juvenile Court judge makes on your case. Speak to your attorney about this right.
- You have the right to suggest to DCF that your child be placed with a relative or other individual if the judge orders that your child be removed from your home.

You have all the rights listed above. If you do not understand any of them, speak to your attorney and he or she will explain them to you.

Rights of Non-custodial Parents

If you are a parent who did not have physical or legal custody of your child when the case was filed in the Juvenile Court, you still have the right to have an attorney represent you. You also have all the rights of a parent listed above. If you do not understand them, speak to your attorney and he or she will explain them to you.

Tribal Membership/Rights of Parents of Indian Children

- The petitioner, usually DCF, has the responsibility to determine whether a child is a member (or is eligible for membership) in an Indian tribe. It is the responsibility of all parties to inform the court if the subject child is an Indian or eligible for membership in an Indian tribe.
- The tribe must be notified and may get involved in the case at any point during the proceeding. The tribe may request that the case be sent to a tribal court instead.
- The petitioner, usually DCF, must notify parents and custodians of any proceeding that involves an Indian child and their right of intervention.
- The grounds for any case under the Indian Child Welfare Act (ICWA) must be proven at a higher standard than other non-ICWA cases.

C. Responsibilities

Service Planning

- DCF creates a service plan for a parent in a care and protection case.
- The plan consists of tasks and services the parent is responsible for completing. The parent can request that he/she be part of the plan development.
- Your DCF caseworker will ask you to sign the service plan created for you. Do not sign the plan until your attorney tells you to do so.
- The goal of the service plan is to help the parent address the issues that led to the removal of the child from the parent's care.
- It is important to understand your plan and what is expected of you.
- You should ask your social worker about available services. You should ask your social worker to make referrals for services you would like to participate in.
- You should discuss your plan with your attorney.

Attorney Contact

- It is important to speak often to your attorney about your case.
- Almost everything you say to your attorney is private.
- Contact your attorney to speak about upcoming hearings and your progress toward goals.

- Give your attorney information on potential witnesses that may testify on your behalf.
- Contact your attorney several days before your hearing and prepare the questions and concerns you want to speak about.
- Update your attorney with telephone numbers and addresses so he or she knows how to reach you.
- Only your attorney can file motions with the court on your behalf.
- If you have concerns about your court appointed attorney, you should contact the Committee for Public Counsel Services at (617) 482-6212 for assistance.

Court Hearings

- It is your responsibility to know when court hearings are scheduled and to make arrangements to attend.
- You will not receive notice of most hearings so you should find out after each hearing when you need to return to court.
- Your parental rights may be terminated at any hearing except for the 72 hour hearing.

V. The Court Process

- It is common to feel nervous about coming to court. At certain hearings the judge will make very important decisions about your family. If you

do not understand what is happening at any time, be sure to ask your attorney to explain it to you.

- Not all cases end up in termination of the parent-child relationship.
- Problems often get resolved and the child is returned home.
- Several court hearings will take place over the course of your case. You will have the opportunity to be present for each hearing.
- It is your responsibility to be aware of the dates and make arrangements to get to court.
- Speak to your attorney before each hearing about what may happen in court and what you should do to prepare.

A. Emergency Hearing

- This hearing often takes place in the Juvenile Court when you are not present.
- The law permits this type of hearing to remove custody of a child from a parent or guardian in emergency circumstances.
- If the judge allows DCF's request for custody, DCF may remove your child from your care.
- The case must then be scheduled for a hearing within 72 hours to review the order of custody.
- You will receive notice of this hearing and have an opportunity to be present and represented by counsel.

B. Temporary Custody Hearing

- This hearing is also called a 72 hour hearing.
- This hearing is referred to as a 72 hour hearing because it is scheduled to take place within 72 hours of the removal of your child from your care.
- You have the right to be present and have an attorney represent you.
- Your attorney may present witnesses about the allegations being made and ask questions as to why your child was removed from your care.
- The judge will hear the evidence, decide who will have temporary custody of your child and in most cases, give his or her decision as soon as the 72 hour hearing ends.
- This is a temporary decision of the court and you will have the opportunity to come back to court for other types of hearings.

C. Motion/Status Conference

- This is a hearing that takes place in front of a judge within ninety (90) days after the case is opened.
- Your attorney may ask the judge to have DCF give him or her all of the agency's records on your family.
- Your attorney may also ask the judge to give you longer or more frequent visits, or for other things that will help you with your case.

D. Pre-Trial Conference

- This is a hearing in front of a judge that takes place within one-hundred and twenty (120) days after the case is opened.
- All attorneys involved in the case will meet with one another before the hearing and discuss the issues of the case.
- The attorneys prepare a pre-trial conference report and give it to the judge.
- The report will list the documents that may be entered in evidence during a trial and list witnesses that may testify at trial.
- The report will also discuss the possibility of settlement of the case.
- It is important to meet with your attorney prior to his or her meeting with the other attorneys so he or she can prepare for this important meeting, prepare the pre-trial report and be prepared to tell the judge what you would like to see happen in your case.

E. Hearing on the Merits

- The trial, also known as the "hearing on the merits," will occur within 12-15 months from the time your case was filed.
- The petitioner, usually DCF, must prove that you are not fit to parent your child.
- DCF will then present a plan for where your child will live.

- You will have an opportunity to tell your side of the story, present your own witnesses and testify on your own behalf.
- You can ask the judge to return custody to you or offer another plan for where your child should live.

F. Possible Outcomes of the Hearing on the Merits

- Return the child to your custody.
- Place the child with another parent.
- Place the child with a relative or family friend.
- Order a “guardianship” for your child if someone files a guardianship petition.
- Place the child in DCF’s legal custody until the child is eighteen.
- Terminate your parental rights. Termination of parental rights means that you will lose your right to parent your child forever and another family will have the opportunity to adopt your child.

G. Possible Options Available Other than Going to Trial

- Not all cases go to trial.
- Some settle by agreement of the parties.
- Some go to a mediator for help settling trial issues.
- Some result in open adoption agreements.
- Some result in guardianships.

- Speak to your attorney well in advance of the hearing on the merits and ask questions about what may occur and what your options are.

H. Other Hearings

Other types of hearings will also be scheduled while your case is open and you have the right to attend all of them. You also have certain rights to appeal decisions the judge has made. Speak to your attorney about all the rights and options you have regarding your case.

I. What if I Have Questions or Concerns About DCF?

For questions or concerns, you can contact the DCF Ombudsman’s Office. This office is available to provide information if you are having a problem with DCF or concerns with respect to services. The Office number is 617-748-2444.

VI. Who’s Involved

A. The Judge: The judge is the person who conducts the court hearings. He or she will listen to all attorneys and will make a decision that is in the best interest of the child.

B. Your Attorney: The court process is complicated. Your attorney is a person who is hired or appointed to represent your interests, speak for you in court and speak to DCF on your behalf. If you cannot afford an attorney, the court may appoint one for you at no cost to you. If the court appoints an attorney to represent you, that attorney

will have received specialized training to handle these types of cases.

Your attorney will advise you and advocate for you at every stage of the court process. He or she can help you get services you may need to correct any problems you are having, explain the legal process, speak to people on your behalf, and advise you at every step of the process.

You should meet with your attorney before every hearing and ask him or her to help you understand your rights. Your attorney will tell you about the hearings you are going to attend and what to expect. He or she will advise you about decisions you will need to make.

Your relationship with your attorney is confidential and private. You must be honest with your attorney so that he or she has all the necessary information to advocate for your position and advise you appropriately.

C. Your DCF Caseworker: If an allegation of child abuse or neglect is reported, one of the first people you will meet is a “caseworker” from DCF. If the reports of abuse or neglect are serious, the caseworker is responsible for investigating these allegations. If the reports of abuse or neglect are less serious, the caseworker is responsible for completing an initial assessment.

The caseworker will meet with you and your family and gather information about your past and current situation. He or she will write a report for the DCF file.

If the DCF investigation is unsupported or the initial assessment shows minimal concern, the case will not open. You can request voluntary services if you feel that your family would benefit from them.

If the DCF investigation is supported or the assessment shows “substantiated” concern, DCF may open a Care and Protection case against you. A social worker will be assigned. The DCF social worker should assist you in making sure the needs of your child are being met.

The ongoing social worker has the job of providing and coordinating services on your case and keeping in contact with your family on a regular basis. The on-going caseworker will attend all hearings and will make recommendations about what kinds of services should be provided to your family. Speak to your attorney about what to say to each of your DCF caseworkers.

D. Attorney for the Child: An attorney is always appointed to represent your child in a Care and Protection case. The attorney will meet with your child and represent your child’s position in the case, for example, where your child wants to live. Your child’s attorney may want to speak to you. Speak with your attorney before talking to your child’s attorney. Your attorney may want to be present for any conversation you have with your child’s attorney.

E. Attorney for DCF: The attorney for DCF represents the caseworker for the Care and Protection case. This

attorney represents the position of DCF and presents a plan of who they believe should have custody of your child.

F. Probation Officer: A juvenile court probation officer may be assigned to your case and will be one of the first people you speak with when you come to court for the first time. A Care and Protection case is not a criminal case and you are not on probation. The probation officer may play a role for the court by talking to you about your financial situation. This information is collected in order to help the Judge determine if you are eligible for a court appointed attorney. Be careful not to speak to the probation officer about the facts of your case. Speak to your attorney, not the probation officer, about the facts of your case. The probation officer may visit you in your home or visit your child in his or her placement.

G. Court Investigator: A court investigator will be appointed to your case. It is his or her job to gather facts and information about the case and write a report for the court. The report is not confidential. The original will be given directly to the judge and copies will be provided for all attorneys on the case.

The investigator will write down everything that is discussed at your meeting. If you do not know an answer it is okay to respond that you do not know the answer. Do not be defensive as the investigator will pick up on your body language. As this report is directly provided to the judge and all attorneys, you should not provide any information that you do not want shared with the other

people involved. You can tell the investigator if you do not want to discuss certain topics.

The investigator does not work for DCF or for you. The investigator works for the court. The court investigator will look at DCF records, medical records and school records. The investigator will speak to teachers, daycare workers, family members and others and then write a report about why you and your family are before the court.

The investigator will want to speak to you. Speak to your attorney before meeting with the court investigator. Your attorney will give you advice on how to proceed with this meeting. Tell your attorney if there are people you want the investigator to talk to. Ask your attorney to assist you in drafting a list of people and a limited release for the investigator. Do not sign releases for the investigator until your attorney reviews the releases. You and your attorney will review the court investigator's report when it is completed.

VII. Definitions of Common Terms

Some of the words you will hear in court and read in reports are listed below with a brief definition of what they mean. There may be many other terms you hear that you do not understand and if so, ask your attorney to explain what they mean.

Allegations: These are statements of what DCF believes to have happened in your family and reasons why DCF believes your child may have been abused or neglected.

Appeal: When you or one of the other parties in the case asks a higher court to review your case because one or more of you disagree with the judge's decision.

ASFA: The Adoption and Safe Families Act contains federal regulations that govern foster care law. ASFA was enacted to remedy problems with the child welfare system.

CASA: Court Appointed Special Advocate. These are volunteers who interview the child, the parents and others and then write a report for the judge indicating what they believe is in the child's best interest. Not all cases have CASA volunteers appointed.

Guardian ad Litem: A Guardian ad Litem, or G.A.L., is a person, usually an attorney, who is appointed by the court to report on specific issues. A Guardian ad Litem may be appointed if your child has special education needs, takes anti-psychotic medication, or needs special medical attention.

Due Process: Refers to fairness in the court process as required by law.

Evidence: Documents or testimony that the judge uses to decide the facts of a case.

Finding: A decision made by a judge, usually written, about the facts in your case.

Foster Care: Out-of-home care provided to a child who is involved in an abuse or neglect case, and has been removed from his/her home.

Foster Home: A foster care family. This may include a child living with a relative or with a family the child does not know.

Hearing: A formal proceeding where issues of fact or law are to be argued in court before the judge.

ICWA: The Indian Child Welfare Act is a federal law which regulates placement proceedings involving Indian children involved in a tribal membership. If your child is or may be a member of an Indian tribe, tell your caseworker and attorney.

