

Dependency

A dependency is an assertion by the state or a third party that a parent is unfit or unable to care for their child or children. Department of Child Safety (DCS) is usually the party who requests the state file a dependency petition to remove the children from the custody of the parents. DCS may request removal based upon suspected physical abuse, sexual abuse, mental abuse, abandonment, neglect or the parents' inability to control the child.

The DCS hotline receives a report regarding possible neglect or abuse of a child. A DCS investigator will look into the matter and possibly remove the child and serve a temporary custody notice to the parent. Typically DCS will hold a Team Decision Making Meeting (TDM) within seventy-two hours of removal. A TDM is an opportunity for the parents and DCS to discuss safety concerns, possible placement issues and potential services. Parents are entitled to retain and have an attorney present during the TDM. Even if the parents are unable to obtain an attorney they may bring supportive family and friends to the TDM. If the child are not returned within seventy-two hours of removal, DCS will request that the Attorney General file a dependency petition.

Once a petition is filed requesting that the children be found dependent wards of the state, the court schedules a pre-hearing conference and a preliminary protective hearing and appoints counsel for the parents and a Guardian ad litem for the children. The pre-hearing conference and the preliminary protective hearing will be held in five to seven days of the removal of the child from the home. On the day of the pre-hearing conference the parents will meet with their attorneys to discuss the case. After the meeting all parties will be ushered into a conference room for the pre-hearing conference. The purpose of the pre-hearing conference is to facilitate the resolution of issues, custody, placement, visitation, in a non-adversarial manner. After the pre-hearing conference the parties will have a formal hearing before the judge where the agreements reached at the prehearing are entered on the record. Also, the preliminary protective hearing is where the parent may dispute the removal of their children and request a hearing to determine whether the children require out of home placement. If a parent does not appear for the pre-hearing conference and the preliminary protective hearing, the matter will be set for an initial hearing.

An initial hearing is set 21 days from service of a dependency petition. At the initial hearing the parents can deny or admit the allegations in the petition regarding inability to parent. If the parents deny the allegations the court will set the matter for an adjudication hearing (trial) where the state must prove to the court by a preponderance of the evidence that the children are dependent and in need of state care. Prior to the adjudication (trial) hearing the court will may hold a settlement conference with a mediator in hope of resolving some matters in a non-adversarial. After the settlement conference, the court will hold a Pre-adjudication conference to discuss adjudication issues and schedule the adjudication dates.

The adjudication will take place within 90 days from service of the petition. The state, represented by the Attorney General's Office, has the burden of proving the children were not adequately being cared for. The state's witnesses will be the DCS worker who conducted the investigation of the home and the parents, any family or friends who can testify about the treatment of the children, police (if they were called to the residence), anyone familiar with the neglect or abuse and both parents. Since a finding of dependency is a civil matter, the parents do not have a constitutional right to remain silent; they must answer the states questions, unless they are pending criminal charges on the same allegations. The parents will have an opportunity to call witnesses to refute the allegations presented by the state. After all of the witnesses testify the judge will make a ruling regarding dependency. If the state fails to prove the children are dependent the petition will be dismissed and the children will be ordered returned to the parents' custody. If the children are found to be dependent the court will hold a Disposition hearing within 30 days of the trial to determine the appropriate placement of the children, establish a case-plan and outline services the parents and children will receive. DCS will be required to submit a case plan to the court regarding the long term goals for the children, family reunification or severance and adoption.

At the Disposition the court will order the mother and father to fully comply with the case plan outlined by DCS. Usually, the goal of DCS is to return the children to their parents. Before that can happen the parents may be required to participate in counseling, drug test, work with a parent mentor/ aide and actively participate in visitation. The court will schedule a Report and Review within six months of the Disposition Hearing. At the Report and Review the court will assess the parent's progress in removing the barriers to their children's return home. The children may be returned home at the review hearing if the parent(s) has proven the danger to the child has been removed.

A Permanency Planning Hearing will be held within six months of removal from the home if the child is under three years of age and one year of removal from the home if the children are over three years of age. At the hearing the state may request the case plan be changed to severance and adoption or permanent guardianship if the parents are not making progress towards re-unification with their children. If the court changes the case plan to severance and adoption or permanent guardianship the parents may lose all rights to their children forever.

Severing a parent's right to their children requires the court to find one of the following grounds: (1) Abandonment- the parent has failed to maintain regular contact and reasonable support, (2) Willful abuse, neglect or failure to protect, (3) Mental deficiency, mental illness or substance abuse –the parent's condition renders them unable to discharge parental duties, (4) Incarceration or felony conviction – the felony is of such a nature that it is obvious the parent cannot parent or the length of incarceration is at a minimum more than two years, (5) Failure to file a paternity action, (6) Consent to adopt, (7) Time in care – nine months if the parents have

substantially neglected or refused to follow through on services or fifteen months if the parent has been unable to remedy the situation while participating in services and (8) Previous Dependency – within eighteen months of the return of the children, the children are again removed by the state. Also, the court must find that it is in the children's best interest to terminate the parents' rights. Once a parent's rights have been severed their children are free to be adopted by others.

The court may choose to order a Permanent Guardianship rather than adoption if the parents' rights are severed. Permanent Guardianship is usually offered in cases involving older children who are placed in the care of a relative or family friend. The permanent guardian is responsible for the children and may not return them to the care of their parent without a court order.

A parent may appeal a finding of dependency or severance. An appeal is a request by the moving party to the Court of Appeals to find that an error of law or procedure occurred during the case and therefore the trial court must reconsider its decision. The Court of Appeals will not reweigh the evidence or take new testimony; it will only review the trial court's record to determine if a mistake occurred. The Court of Appeals presumes that the trial court acted appropriately and will only overrule the trial court if there is a clear mistake of law or procedure.