

# **A HANDBOOK FOR PARENTS AND GUARDIANS IN CHILD ABUSE & NEGLECT CASES**

## **What You Need To Know About The Court Process**

**Being involved in a child abuse and neglect case can be confusing and stressful. Not knowing what to expect can make it even harder. This guide will help you understand what will happen and why. Keep this handbook with you so you can write the names of the people involved in your case, and the dates of meetings and court hearings.**

**Please note that this handbook is not intended to give legal advice or to function as a substitute for an attorney. You should seek the advice of your attorney to answer any questions you may have.**

CONTACT NUMBERS

Parish Office of Community Services	
Parish Juvenile Court	
Parish District Attorney, Juvenile Division	
Parish Public Defender Office, Juvenile Division	
Parish Juvenile Probation Services	
Parish Juvenile Clerk of Court	
Parish Juvenile Detention Center	

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## 1. Why Was Your Child Removed From Your Home?

If your child has been removed from your home, it was most likely done so by an **Instant Order**, an Order of the Juvenile or District Court in your Parish.

When allegations are made that a child has been abused or neglected, the Office of Community Services (“OCS”) must investigate. If that investigation shows abuse or neglect, OCS may file paperwork with the Juvenile Court and the Judge can order the removal of your child by an **Instant Order**.

You should have been served with a copy of the Order when the child was taken. It should contain allegations explaining what happened and reasons why your child needs to be removed from your custody.

If your child has been removed from your home, and you were not provided papers at the time, you will receive a copy of the paperwork that has been filed with the court.

## 2. What Happens After Your Child Is Removed From Your Home?

Within three days of removing the child, OCS must present evidence of abuse and/or neglect to a Judge at a hearing called the **Continued Custody Hearing**. (The three days does not include weekends).

You have the right to be notified of all court hearings and the right to attend all court hearings and meetings.

At the **Continued Custody Hearing** you have the right to an attorney. If you cannot afford an attorney, the Court will provide an attorney for you free of charge. If you have any questions about the allegations of abuse and/or neglect, ask your attorney to explain.<sup>1</sup> Your attorney should be present for all remaining hearings.

At the **Continued Custody Hearing** OCS must show “reasonable grounds”<sup>ii</sup> that the child is in need of care and that continued custody, or removal from the home, is necessary for the child’s safety and protection. Your attorney can explain what constitutes “reasonable grounds.”

At the **Continued Custody Hearing** you have the right to provide evidence or to call witnesses to prove that the child does not need to be removed from the home. Tell your attorney about any such witnesses or evidence.

At the **Continued Custody Hearing** you have the option of stipulating, or agreeing, that the child is in need of care for purposes of this hearing only, without admitting to any of the allegations. That means the child will stay in the State's custody until the **Adjudication Hearing** (the trial in Juvenile Court).

At the **Continued Custody Hearing**, if you stipulate or the Judge determines that the child is in need of care, the Judge must also decide where the child will stay until the **Adjudication Hearing**. Tell your attorney about any relatives in the area with whom you would like the child to stay.

### **3. If Your Child Remains In The Custody Of The State**

If the child remains in the custody of the state after the **Continued Custody Hearing**, the state must file a **Petition** for adjudication within thirty days of that hearing.<sup>iii</sup>

The **Petition** names you as a “respondent.” This is the term used by the OCS for the parent or guardian in a child abuse and neglect case.

The **Petition** lists one or more allegations that the child has been abused or neglected and is in need of care and protection. If you do not understand the **Petition** or any other paperwork, ask your attorney to explain it.

After the **Petition** is filed, the Judge will schedule an **Appearance to Answer**, a hearing at which you have the right to admit or deny the allegations made about you and your family. If the allegations are denied, the Judge will schedule an **Adjudication Hearing**.

## **These Are Some Of Your Responsibilities If The Child Remains In The Custody Of The State:**

Take this seriously. Unless you do what the Judge requires, you could lose custody of your child forever.

Attend all court hearings and meetings.

Stay in touch with your attorney and your caseworker. Be sure they always have a current address and telephone number for you. Remember they may be busy with someone else when you call. Be sure to leave a message with a phone number where you can be reached or try to call them again. Keep track of the best times to call them.

### **4. Who Is Caring For My Child?**

Your child's safety is always important. Please tell your attorney and the OCS caseworkers about any allergies your child has or any medication he or she is taking. Also, let your attorney and the OCS caseworkers know about any doctor's appointments scheduled for your child or any special needs he or she has at school.

#### **Relative Placement**

Louisiana law provides that a child removed from his or her parents should be placed in the home of a suitable relative if one is available.<sup>iv</sup> If a suitable relative is not available, the child will be placed in a certified foster home.

#### **Foster Home Placement**

Foster Care is a short term living arrangement for your child while you, the Judge and OCS decide what is best for your child. Foster Parents are certified through the State of Louisiana and they are regularly supervised by OCS.

#### **Visitation**

You may be given the opportunity to visit with your children. Depending on the circumstances, it may be supervised by OCS. It is better that you use this visitation to enjoy the time with your child rather than discuss the case or the allegations against you.

## 5. The Adjudication

The “**Adjudication**” is the trial in Juvenile Court. The **Adjudication Hearing** must start within forty-five days of the filing of the **Petition**.<sup>v</sup>

At the **Adjudication Hearing** the state has to prove by a preponderance of the evidence the allegations alleged in the **Petition**.<sup>vi</sup> The preponderance of the evidence means simply “more likely than not.” That is, the Judge will be deciding whether the allegations of abuse and/or neglect are more likely than not to have occurred.

At the **Adjudication Hearing** you have the right to call witnesses and produce any evidence to prove your case, as well as cross examine the state’s witnesses.

At the **Adjudication Hearing** you have the option of stipulating, or agreeing, that the child is in need of care, without admitting to any of the allegations. If you stipulate at trial, it places your child in state’s custody. The state can then determine whether to help you reunite with your child or to terminate your parental rights. This is a very important decision and you should consult with your attorney.

At the **Adjudication Hearing**, if the Judge determines by a preponderance of the evidence that there are facts which show that the child was abused or neglected, your child will be placed in state’s custody. The state can then determine whether to help you reunite with your child or to terminate your parental rights.

If the child is placed in state’s custody as a result of the **Adjudication Hearing**, the child will likely remain in the same placement until the **Disposition Hearing**, unless there is reason to change the placement. If you know of any reason to change the placement, consult with your attorney.

The decision of whether you will be able to reunite with your child or to terminate your parental rights will depend on the facts of the case. Your OCS caseworker and your attorney will talk to you about this determination.

The same problems that brought you to the Juvenile Court could also result in

criminal charges against you or someone else in your family. In that case, you may also have to go to District Court to see another judge. This handbook does not deal with criminal cases. You should speak with your attorney about any possible criminal charges.

## **6. The Disposition Hearing**

If the Judge decides that your child was abused or neglected, (or if you stipulate that your child is in need of care) the Judge will also set a date for the **Disposition Hearing**.

At the **Disposition Hearing**, the Judge will decide who should have custody of your child. The Judge may return custody to you with certain conditions and requirements, place your child with a relative, or keep your child in foster care with Social Services.

If the decision is made to work toward reunification, you will be given a **Family Case Plan**. Your **Family Case Plan** is an agreement which will include all that you will be required to do to have your child returned to your custody. For example, you may be required to complete an anger management program, or parenting classes, depending on the allegations against you.

The **Case Plan** will be written at the **Family Team Conference**, a meeting with OCS employees, you and your attorney. The **Family Case Plan** will state the time given for you and Social Services to complete this Plan.

You need to start doing what the Judge orders in the **Family Case Plan** right away. This is very important, because after one year, if you fail to comply with the **Case Plan** you could lose custody of your children.

The Judge will set a **Foster Care Review Hearing** to be held in about 3 months to hear how you are doing from all the people involved in your case.

## **7. Foster Care Review Hearing**

Approximately 3 months after the **Disposition Hearing**, there will be a **Foster Care Review Hearing** in Court. The Judge will review your case to make sure

that you are doing what the **Family Case Plan** requires. Be sure to bring any evidence or witnesses necessary to prove that you are following the **Family Case Plan**.

The Judge will also make sure the Social Worker and others are doing what is ordered in the plan.

If the **Family Case Plan** needs to be changed, the Judge will order those changes.

Depending on the circumstances, additional review hearings can be scheduled by the Court.

The next hearing the Judge will set is the **Permanency Hearing**. It should be held approximately 1 year after the removal of the child to see if you have completed what is required in the **Family Case Plan**.

## **8. Permanency Hearing**

The Permanency Hearing will be held approximately 1 year after the child was removed. At the **Permanency Hearing** the Judge will decide what should be the permanent plan for your child, including whether or not your child can be safely returned home.

If the Judge decides that you have sufficiently followed the **Family Case Plan** and it is safe for your child to return home, a transition plan will be developed to return your child to your home.

Your child may be returned before the **Permanency Hearing** if you complete your **Case Plan** earlier, or if the Judge otherwise determines the child's return to be appropriate.

If the Judge decides that your child cannot be safely returned home, the **Family Case Plan** may be changed to adoption or some other permanent arrangements outside of your home.

## **9. What is OCS?**

Office of Community Services (OCS) is a part of the Louisiana Department of Social Services (DSS), a State Agency set up by law to make sure children are safe at all times.

The services provided by OCS are legally mandated, specialized investigations and social services for children who are alleged to be neglected, abused, exploited, or without proper custody or guardianship.

The investigation process begins with a report of child abuse and/or neglect of a child. Reports are received by the local office which has the responsibility to investigate the report. Reports are screened to determine if the reported information constitutes a report of child abuse and/or neglect that OCS should investigate.

If the investigation performed by OCS determines that the allegations are true, that a child is being abused or neglected, OCS may file the Instant Order requesting the removal of the child from the unsafe situation and the case is brought to court.

In deciding these cases, the actions of the Judge are intended to keep the children safe and to ensure that you and your child receive the help you need.

The Judge can require you and your family to get help. Also, the Judge can order that your child stay in the custody of OCS and be placed in foster care. This means that OCS is legally responsible for your child and, with the approval of the Judge, can make decisions about where your child should live and what you need to do to have your child returned to you.

You remain financially responsible for your child and may be ordered to pay child support.

## **10. How Does Louisiana Law Define Abuse and Neglect?**

Louisiana Children’s Code Article 606 provides “[a]llegations that a child is in need of care must assert one or more of the following grounds:

(1) The child is the victim of abuse perpetrated, aided, or tolerated by the parent or caretaker, by a person who maintains an interpersonal dating or engagement relationship with the parent or caretaker, or by a person living in the same residence with the parent or caretaker as a spouse whether married or not, and his welfare is seriously endangered if he is left within the custody or control of that parent or caretaker.

(2) The child is a victim of neglect.

(3) The child is without necessary food, clothing, shelter, medical care, or supervision because of the disappearance or prolonged absence of his parent or when, for any other reason, the child is placed at substantial risk of imminent harm because of the continuing absence of the parent.

(4) As a result of a criminal prosecution, the parent has been convicted of a crime against the child who is the subject of this proceeding, or against another child of the parent, and the parent is now unable to retain custody or control or the child's welfare is otherwise endangered if left within the parent's custody or control.

(5) The conduct of the parent, either as principal or accessory, constitutes a crime against the child or against any other child of that parent.”

La. Children’s Code Article 606B provides, however, that “[a] child whose parent is unable to provide basic support, supervision, treatment, or services due to inadequate financial resources shall not, for that reason alone, be determined to be a child in need of care.”

Ask your attorney to explain any part of this law that you do not understand.

## 11. Who Will Be Involved in Your Case?

### OCS Investigator

When your child is removed from your home, you will be given a notice of removal and the name and phone number of the OCS investigator.

Your OCS investigator's contact information is:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Best time to call: \_\_\_\_\_

Supervisor: \_\_\_\_\_

### Foster Care Caseworker

After approximately two to three weeks, your investigator will transfer the case to Foster Care Caseworker. The caseworker should:

- Contact you to give you more information and ask you some questions;
- Visit your child regularly;
- Help you understand the problems that brought you to court, and
- Help you develop your **Family Case Plan**, which lists the steps you must take to have your child returned to you.

If you do not hear from your OCS caseworker for a while, or if you have questions or problems, call him or her. It is up to you to make sure your caseworker can find you.

Your OCS foster care caseworker's contact information is:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Best time to call: \_\_\_\_\_

Supervisor: \_\_\_\_\_

## **Your Attorney**

When you go to Court, the Judge will ask if you have an attorney. You have the right to an attorney. If you cannot afford to pay for an attorney, the Court will appoint an Attorney for you. If you so choose, you may want to hire your own attorney. Your attorney represents your rights and your wishes in the case.

Your attorney should:

- Talk with you before every hearing;
- Speak for you in court;
- Help you understand your rights;
- Tell you about the hearings you will attend; and
- Tell you what to expect at each hearing.

If you do not hear from your Attorney for a while, or if you have questions or problems, call him or her. It is up to you to make sure your attorney can find you.

Your Attorney's name, address, and phone number are:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Best time to call: \_\_\_\_\_

Things I want to discuss or ask about:

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## **Your Child's Attorney**

The Court will appoint an attorney for your child. It is his or her job to meet with your child and tell the Judge what is best for your child or, depending on their age and ability to explain, what your child wants. You should cooperate with your child's attorney by answering his or her questions.

You should speak with your attorney before talking to your child's attorney and then speak to your child's attorney only with your attorney present.

Your child's attorney represents your child's interests, which may not be your

interests.

Write the name of your child's attorney, address and phone number here:

Name: \_\_\_\_\_

Phone: \_\_\_\_\_

Address: \_\_\_\_\_

Best Time To Call: \_\_\_\_\_

Things I want to discuss or ask about:

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### **The Court Appointed Special Advocate (CASA)**

The Court may also appoint a Court Appointed Special Advocate (CASA) for your child. The CASA is a trained volunteer who will meet with you and your child, as well as others involved in this case. The CASA reports to the Judge about how your child is doing and what the CASA believes is best for your child. You should cooperate with the CASA by answering the CASA's questions and letting the CASA visit with you or your child. You should speak with your attorney before talking to the CASA and then speak to the CASA only with your attorney present.

Write the name of the CASA volunteer, address and phone number here:

Name: \_\_\_\_\_

Phone: \_\_\_\_\_

Address: \_\_\_\_\_

Best Time To Call: \_\_\_\_\_

Things I want to discuss or ask about:

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### **The OCS Attorney**

OCS will have an attorney who helps to present what OCS believes the Judge

should do.

OCS's attorney represents the interests of OCS, which may not be your interests. Only speak to OCS's attorney with your attorney present.

Write the name of OCS's attorney, address and phone number here:

Name: \_\_\_\_\_

Phone: \_\_\_\_\_

Address: \_\_\_\_\_

Best Time To Call: \_\_\_\_\_

Things I want to discuss or ask about:

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## **COURT DATES**

**Continued Custody** (within 3 days (not including weekends) of removal of the child)

Time & Date: \_\_\_\_\_

Place: \_\_\_\_\_

Things I want to discuss or ask about:

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**Appearance to Answer** (scheduled by the Court)

Time & Date: \_\_\_\_\_

Place: \_\_\_\_\_

Things I want to discuss or ask about:

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**Adjudication Hearing** (within 45 days of the filing of OCS's Petition)

Time & Date: \_\_\_\_\_

Place: \_\_\_\_\_

Things I want to discuss or ask about:

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**Disposition Hearing** (scheduled by the Court)

Time & Date: \_\_\_\_\_

Place: \_\_\_\_\_

Things I want to discuss or ask about:

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**Foster Care Review Hearing** (3 months after disposition or otherwise scheduled by the Court)

Time & Date: \_\_\_\_\_

Place: \_\_\_\_\_

Things I want to discuss or ask about:

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**Permanency Hearing** (1 year after removal of the child)

Time & Date: \_\_\_\_\_

Place: \_\_\_\_\_

Things I want to discuss or ask about:

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- i. The Grounds which can establish that a child is in need of care are outlined in Louisiana Children’s Code, Article 606. See Page 8.
  - ii. See La. Children’s Code, Articles 624 and 626. Louisiana law has interpreted “reasonable grounds” to be the legal equivalent of “probable cause.” See La. Ch. C. Art. 626 (Author’s Note); *State ex rel. D.H.*, 906 So.2d 554, 557 (La. App. 1 Cir. 2005).
  - iii. See La. Children’s Code, Article 632.
  - iv. See La. Children’s Code, Article 622.
  - v. See La. Children’s Code, Article 659.
  - vi. See La. Children’s Code, Article 665.