

**Section Three**  
**THE COURT SYSTEM**

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### The Juvenile Court Process

Court is a series of steps, a series of hearings—each building on what has occurred before.

For a typical child abuse case, the steps are as follows:

1. When a case meets the definitions of child abuse or neglect set out in the law, the allegations of abuse or neglect will be listed by CPS in a formal document (petition) and filed in court.
2. At the first hearing the judge will make a series of decisions:
  - Whether the allegations are serious and appear to meet the definitions in the law
  - Whether it is safe for the child to live with the parent while the matter is being resolved
  - If the child won't be living with the parent, whether visits will be allowed
  - When the next hearings will take place
3. Parents will be given a chance to answer the allegations.
  - If they admit the allegations, the judge will make official findings about what has happened to the child. The judge will order the parents to do things that will correct the problems that brought the family to court, such as counseling, parenting classes, or chemical dependency evaluation and treatment. These are things that CPS has laid out in the initial case plan.
4. The parents can deny the allegations and then the case will go to trial.
  - Attorneys will enter documents into evidence.
  - Witnesses will testify about what they have seen or heard.
  - The judge will consider all the evidence and make a decision about whether the allegations have been proven. If not proven, the case will be dismissed. If proven, the judge will order the parents to do things that will correct the problems that brought the family to court.
5. Once the judge orders the case plan, Child Protective Services will monitor the situation and there will be review court hearings to see how things are going.
6. If the problems are corrected and it is safe for the child, the child will be returned to live with the parent and the case will be dismissed from court jurisdiction.
7. If the problems continue—usually because the parents cannot or will not follow through with the requirements of the case plan—the court will have to look to other



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options to keep the child safe, such as placing the child permanently with a relative or placing the child for adoption by a new family.

#### ***CIVIL CASES VS. CRIMINAL CASES***

Civil actions are brought to court by individuals or the government to seek various remedies—for instance, damages for injuries or enforcement of contracts. If the defendant is found liable, the court can order him/her to pay compensation, take certain steps, or stop certain conduct. The court cannot send a defendant in a civil case to prison, except for contempt of court. The legal standard of proof is “preponderance of the evidence”—meaning that the allegations are more likely than not to have occurred.

#### **Child protection cases are civil matters.**

In criminal cases, the government brings an action against an individual alleging that a crime has been committed. If the defendant is found guilty, the court can order fines, restitution, probation, participation in treatment programs, incarceration (prison), or in some states, the death penalty. Given the severity of potential consequences, the legal standard of proof is higher than in civil cases. Allegations in criminal cases must be proven “beyond a reasonable doubt.”

**A parent might also be charged criminally for hurting a child—for example, for sexually assaulting the child. This court process would be separate from the child welfare case.**



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### **Authority of the Juvenile Court and the Role of the Judge**

Juvenile courts have the responsibility to protect the rights of parties before the court and ensure safe, permanent homes for abused and neglected children. Among the most pressing judicial concerns in abuse and neglect cases are the modality of treatment, rehabilitation, family preservation, and permanency planning.

Child protection agencies, service providers, guardians ad litem, attorneys, and CASA volunteers all play critical roles in child abuse and neglect cases. For the child welfare system to function in the best interests of the children, it is essential that all these major participants discharge their responsibilities in an effective and responsible manner. Ultimately, however, children are placed pursuant to court orders. Therefore, the juvenile court has the responsibility to hold the entire system accountable. To discharge this responsibility, the juvenile court must have authority commensurate with the task assigned.

Juvenile court judges can be leaders in their communities, state capitols, and at the national level to improve the administration of justice for children and families. Judges can be active in the development of policies, laws, rules, and standards by which the courts and their allied agencies and systems function. Judges can inform the community of the unique and diverse needs of troubled children and their families. Judicial responsibility for impartiality does not preclude judicial leadership. The very nature of the office mandates that the judge act as an advocate and convener to assure that needed services for children and families are available and accessible.



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### Court Terminology

#### ***DEPENDENT CHILD***

A child who has been made a ward of the court and is determined to be one or more of the following:

- a. In need of proper and effective parental care and control and has no parent or guardian, or one who has no parent or guardian willing to exercise, or capable of exercising, such care and control.
- b. Destitute or who is not provided with the necessities of life, or who is not provided with a home or suitable place of abode, or whose home is unfit for him by reason of abuse, neglect, cruelty, or depravity by either of his parents, his guardian, or other person having his custody or care.
- c. Under the age of eight years who is found to have committed an act that would result in adjudication as a delinquent or incorrigible child if committed by an older child.

#### ***PARENTAL RIGHTS***

Biological parents have certain rights, but when they are unwilling or unable to discharge these rights, the state must intervene. When a child is made a Ward of the Court, a plan is developed that attempts to address this issue. The court is required to determine if reasonable efforts have been made so that the child may be reunited with the parents. If reunification is not possible, a permanent plan must be designed to address other options for a safe, permanent home (placement) for the child.

Parental rights for a dependent child are:

- To know they are under investigation.
- To be notified in writing when their child is taken into custody. This is accomplished through the Temporary Custody Notice (TCN).
- To choose whether or not they will cooperate or accept the services offered by Child Protective Services. However, consequences are involved in the decision not to cooperate.



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- To have legal counsel. If they cannot afford an attorney they may request that the court appoint one for them.
- To be notified and to attend court and Foster Care Review Board hearings.
- To participate in the development and to receive a copy of the Case Plan/Written Agreement.
- To know what they must do to regain custody of their child.
- To have an invalid report that was investigated purged from the Central Registry if no other reports are made within a two-year period.
- To purge from the Central Registry after five years if (1) not investigated and (2) no further reports are received by the department.
- To sign for medical treatment of their child, even if the child is a “ward of the court.” Often the court states in the minute entry that CPS personnel are given the authority to sign on behalf of the parent for medical treatment, school authorization, etc., but the parent still has the right to sign in such situations. A problem may arise when the CPS case manager and the parent do not agree as to medical treatment.



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### **Juvenile Court Procedure**

The juvenile court, a division of the County Superior Court, has the authority to hear cases involving children ages birth to 18 years. These cases include adoption, termination of the parent-child relationship, delinquent youth (juvenile criminal), incorrigible children (including runaways, out-of-parental control, or actions taken by a child considered delinquent if performed by a child eight years or older), and dependency cases (child abuse or neglect).

While juvenile proceedings may be less formal than other superior court proceedings, Arizona Revised Statutes, Rules of Evidence, and Rules of Procedure for the Juvenile Court must be followed. The parties, including juveniles, have constitutional rights to due process before the juvenile court can act to intervene in lives of children and families. Juvenile court orders direct parties of the case to act based upon facts presented before the court in hearings or other formal procedures. **Court orders take precedence over any other actions or recommendations by other state agencies or parties unless overturned by appeal by the Arizona Court of Appeals or the Arizona Supreme Court.** A CASA volunteer benefits from this authority through the Court Order of Appointment. Essentially, the court order gives the CASA access to confidential information without prior approval for purposes of providing information to the juvenile court.

- Certain agencies functioning under federal law, regulations, and statutes are not required to honor a CASA volunteer's court order. Generally, federally-funded facilities that treat substance abuse do not have to initially honor a CASA's court order. Arrangements for confidential information from these types of facilities need to be made by the county coordinator.
- Since the court is not a social service agency, it cannot find a child "dependent" just because services are needed or it appears to be in the child's best interest. A dependency will be granted by the court only if sufficient legal grounds are present.
- In dependency matters the juvenile court operates with the presumption that the parent-child relationship is fundamental. The burden of proof is on the petitioner to overcome this presumption. Usually Child Protective Services and the Attorney General's Office petition the court. However, private parties can petition the court to ask for an initial dependency hearing.
- The standard of proof to declare a child dependent in non-Indian Child Welfare Act (ICWA) cases is "by the preponderance of the evidence." This means it is more likely than not that the allegations contained in the petition are true.



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- A “clear and convincing” standard of proof requires that more than the majority of evidence points to one conclusion. This standard is applied to dependency hearings involving Indian children, mental health commitment proceedings, and severance proceedings for non-ICWA cases.
- The “beyond a reasonable doubt” standard of proof requires that evidence points to one conclusion. This standard of proof is required for severance proceedings involving Indian children and delinquency proceedings for all children.
- Once a child is adjudicated dependent, delinquent, or incorrigible, the child becomes a “ward of the court.” This means, in essence, that the child becomes “the court’s child.”
- Some juvenile court matters are heard by commissioners or judges pro tempore. Juvenile court commissioners are appointed by the presiding juvenile court judge. A commissioner may perform all functions of a juvenile court judge except hearing contested cases in which a parent might lose custody and cases in which a juvenile might be committed to the Department of Corrections. A judge, commissioner, and judge pro tempore are all judicial officers.
- A judicial officer will preside over juvenile court proceedings, hear testimony, rule on the admissibility of evidence, determine credibility or weight to be given to the testimony or exhibits, and make findings of fact and decisions. The judicial officer will also make orders to implement decisions.
- Various other personnel or the public may be at court hearings, which are “open” in Arizona. The judge may decide to “close” a dependency hearing based on a justifiable reason from a party. The juvenile court clerk keeps a written summary of what occurred during hearings, administers the oath to witnesses, and is responsible for exhibits. The court reporter will record everything said during the proceedings and later will prepare a transcript of the hearing, in case it is required for an appeal or other purposes.
- The parties to the hearing may each have an attorney. The attorney is responsible for giving advice to the client and presenting the best case possible for the client. Unlike a criminal hearing that almost always has only two parties, it is possible to have more than two parties at a dependency hearing.

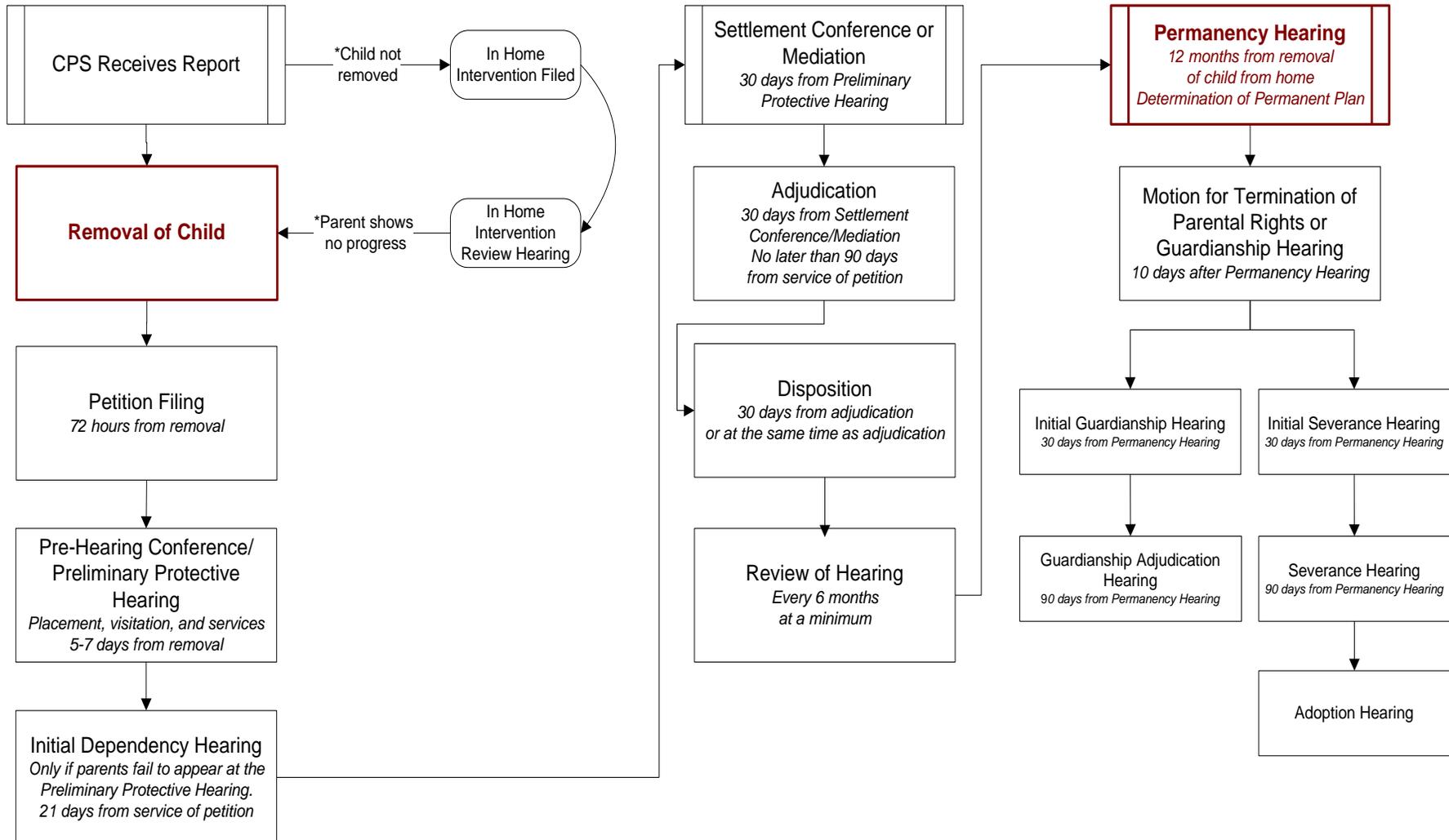


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**The Arizona Dependency Process**



## **Arizona Dependency Process Descriptions**

### ***PETITION FILING***

A dependency case is initiated in juvenile court with the filing of a dependency petition. The dependency petition must be filed within 72 hours (excluding Saturdays, Sundays, and holidays) of a Temporary Custody Notice being served on the parents. The petition is a sworn statement filed with the court containing allegations of fact showing dependency. The petition may be filed by any interested party.

Most petitions are filed by the state Attorney General's Office, based upon information gathered by a Department of Economic Security Child Protective Service case manager. However, it is not uncommon for a relative or person who has been caring for a child to file a petition, called a private petition.

The petition is often accompanied by a request that the child be made a temporary ward of the court. This occurs when the petitioner believes grounds exist to remove the child from the home. This request is reviewed by the judge or commissioner. If the sworn petition contains sufficient information to show that removal is necessary, the judge will make the child a temporary ward of the court. In some cases, the court will find a child dependent but will allow the child to remain in the home while obtaining appropriate services.

Once the petition has been filed, the agency is obligated to make "diligent and reasonable efforts" in searching for ALL biological parents should their whereabouts be unknown. This extensive search should occur prior to key decision points in the life of a case and no less than once every six months. The agency is also required to conduct an extensive and documented search for guardians, custodians, extended family members, and other significant persons as placement resources for children in out-of-home care.

### ***PRE-HEARING CONFERENCE***

This is a mandatory meeting of all parties to the dependency action and other persons as permitted by the court, and is held immediately before the preliminary protective hearing, usually facilitated by court personnel. The purpose of the meeting is to attempt to reach an agreement about:

- Temporary custody.
- Placement of the child.
- Services to be provided.
- Visitation.

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The availability of reasonable services to the parent or guardian shall be considered; the child's health and safety shall be of paramount concern.

#### ***PRELIMINARY PROTECTIVE HEARING***

This hearing is held on each case, **no less than five (5) and not more than seven (7) working days**, (excluding Saturdays, Sundays, and state holidays) after the child is taken into custody and a dependency petition is filed. The court may grant one continuance not to exceed five days. The purpose of this hearing is to determine whether temporary custody of the child is clearly necessary to prevent abuse or neglect pending the hearing on the dependency petition.

At this hearing:

- The court will review any agreement reached at the pre-hearing conference.
- The parent is advised of his or her rights and will admit or deny the allegations in the petition.
- The court will determine if reasonable efforts were made to prevent or eliminate the need for removal and if services are available that would eliminate the need for continued removal.
- The court will enter orders regarding the child's placement and visitation, if the child is not returned to the parent.
- The court will inform the parent that the hearing may result in further proceedings to terminate parental rights.
- The court will give paramount consideration to the child's health and safety in making determinations.

#### ***INITIAL DEPENDENCY HEARING***

The initial dependency hearing must be held within **21 days** of the date on which the dependency petition was filed as to a parent not present at the preliminary protective hearing.

At the initial dependency hearing:

- The parent is advised of his or her rights and will admit or deny the allegations in the petition.
- The court will determine if reasonable efforts were made to prevent or eliminate the need for continued removal.
- Unless the court finds reunification is contrary to the best interest of the child, the court will order CPS to make reasonable efforts to provide reunification services, if the child is not returned to the parent.



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### ***SETTLEMENT CONFERENCE OR MEDIATION HEARING***

The settlement conference or mediation is set when the parent or guardian denies the allegation in the petition and must occur prior to the pre-trial conference or dependency adjudication hearing. The purpose of the settlement conference or mediation is to attempt to settle the issues of dependency and disposition in a non-adversarial manner and to avoid trial. All parties to the contested action must participate. Any agreement reached is recorded in writing and submitted to the court for approval.

### ***ADJUDICATION***

This hearing must be completed within 90 days of service of the dependency petition on the parent. If critical circumstances exist, the court may extend this deadline by 30 days. At this hearing, the court determines whether the allegations of dependency are sustained by a preponderance of the evidence. If the allegations are sustained the court may either proceed with a disposition hearing or set the disposition hearing within 30 days.

### ***DISPOSITION***

This hearing must be held at the same time or within 30 days of the adjudication hearing. The purpose of this hearing is to obtain specific orders regarding the child's placement, services, and appropriateness of the case plan.

The court considers the goals of:

- The placement.
- Appropriateness of the case plan.
- Services that have been offered to reunify the family.
- The efforts that have been or should be made to evaluate or plan for other permanent placement.

### ***REVIEW HEARING***

These hearings, also referred to as Report and Review Hearings, are held **at least once every six (6) months from the disposition hearing** to review the dispositional orders of the court.



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### ***PERMANENCY HEARING***

This hearing is held within 12 months of the child's removal from the home. The court will determine the permanent plan for the child and order the plan to be accomplished within a specified period of time. If the court finds that termination of parental rights or permanent guardianship is in the child's best interest, the court will order a motion to terminate parental rights or for permanent guardianship be filed within ten days.

### ***INITIAL HEARING ON MOTION TO TERMINATE PARENTAL RIGHTS***

The hearing is held within 30 days of the permanency hearing when the court orders the filing of the motion to terminate parental rights. If the parent contests the motion, the court must set a date for trial within 90 days of the permanency hearing. At this hearing, the court determines whether there are sufficient grounds to terminate the parent-child relationship. It is also known as a severance hearing.

### ***TERMINATION OF PARENTAL RIGHTS HEARING (SEVERANCE HEARING)***

At this hearing, the court determines whether there are sufficient grounds to terminate the parent-child relationship. It is also known as a severance hearing.

### ***ADOPTION HEARING***

At this hearing, the court determines whether to grant the adoptive parents' petition to adopt a child.

**In addition to the above those listed above, the court may order special hearings or reviews to address specific case-related issues.**



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### Resources

#### **Dependency Handbook for Parents**

<http://www.supreme.state.az.us/dcsd/improve/dep/docs/AzParentsHandbook.pdf>

The handbook provides an overview of the court process and the people involved in a dependency case.

#### **Dependency Process Training**

<http://www.supreme.state.az.us/dcsd/improve/judicial.htm>

This training module was designed with ease-of-use and convenience in mind. There are links for immediate definitions, statutes, and laws. The tutorial offers a solid overview of the dependency process and illuminates areas of special importance throughout.

#### **Laws Affecting Dependency**

<http://www.supreme.state.az.us/dcsd/improve/laws.htm>

This page provides information and links to Federal and State Regulations Applicable to the Arizona Dependency Process



