

## SECTION 8: LEGAL PROCESS

### WHO IS INVOLVED: UNDERSTANDING THE ROLES AND RESPONSIBILITIES?

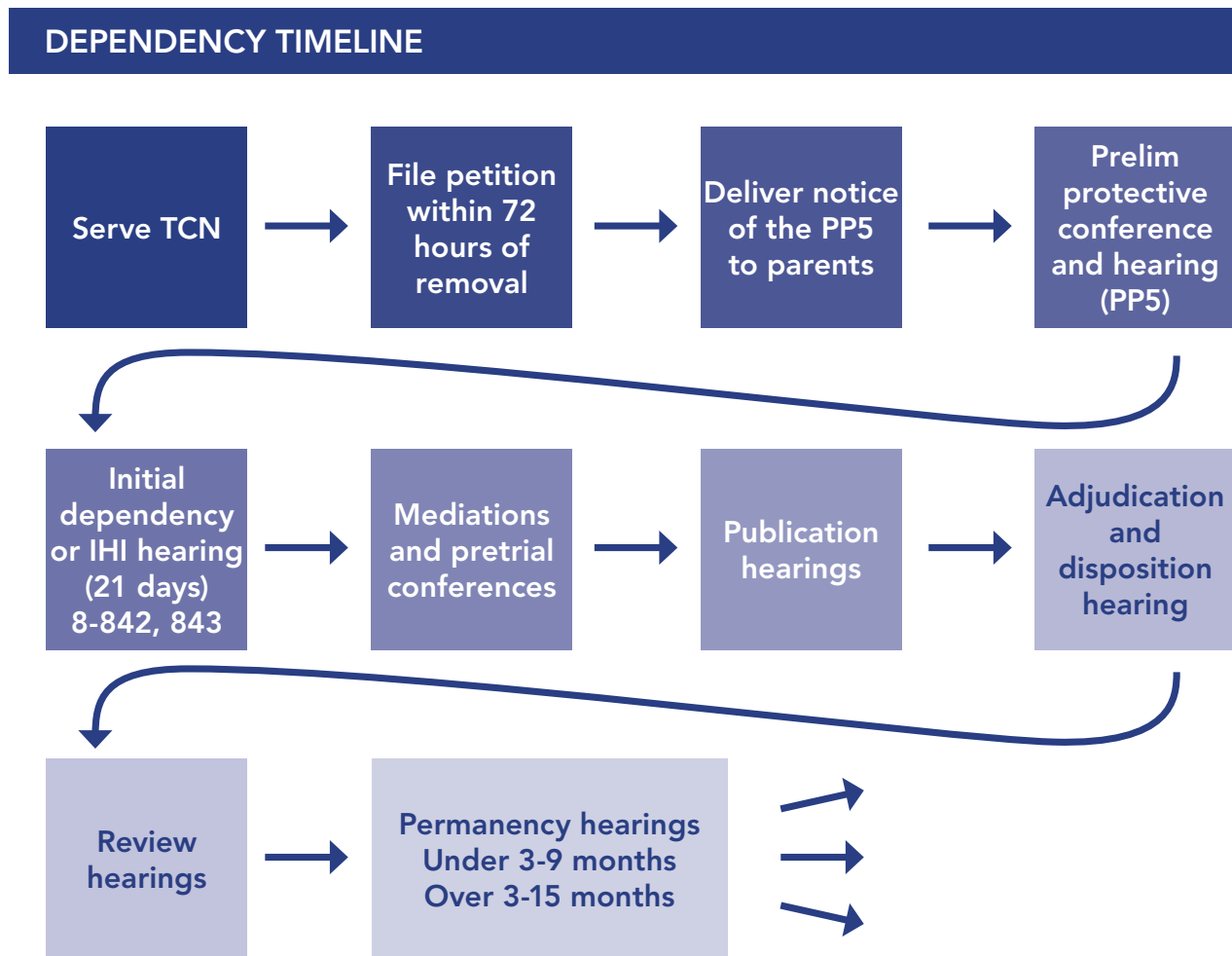
- The Juvenile Court (Judge or Commissioner) is responsible for hearing all actions that concern issues of dependency, termination of parent-child relationship, adoption and guardianship.
- Assistant Attorneys General (AAGs) within the Protective Services Division of the Attorney General's Office appear in Juvenile Court cases on behalf of DCS. The Attorney General's Office is responsible for representing DCS in actions concerning DCS cases.
- Private attorneys represent parents and guardians. The Juvenile Court will appoint private counsel for the parent or guardian if they are unable to afford an attorney. A private attorney may also represent the child to present his or her wishes to the Juvenile Court. They are usually appointed when a child is over 12.
- The guardian ad litem (GAL) is appointed by the Juvenile Court to represent the child's best interest in a dependency case. Representing the child's best interest is not necessarily the same as representing the child's wishes. The GAL may be an attorney, a volunteer special advocate or other qualified person. In Arizona they are attorneys. This usually occurs when the child is of an age to assert his/her own opinion but the child's wishes are not in his/her best interest (e.g. return home when child's safety cannot be assured).  
Foster Caregivers are to provide all information about the care of the child while in their home to the GAL. The GAL is to be given every opportunity to consult with the child, i.e. at Juvenile Court, the GAL's office, a case plan staffing or in the Foster Caregiver's home. [Note: A separate GAL should be assigned to advocate for a child in a criminal case of maltreatment. The child may be eligible for up to \$20,000 from a county victim's compensation program.]
- All parents or legal guardians are parties to actions, unless their parental rights have been terminated by the Juvenile Court or they have relinquished legal custody. The mother of the child could be a biological or adoptive mother. A father could be a biological, legal, alleged or presumed father. Legal Guardians are persons with legal responsibility for the care and welfare of the child.
- The child is a party to the action. The child, through his/her attorney and/or GAL, has the right to be informed of, to be present at and to be heard in dependency and termination of parental rights hearings.
- Foster Caregivers (Foster parents, pre-adoptive parents and kinship caregivers) are considered an interested party to an action concerning a child who is in their care or who has been in their care within the last six months. They are also entitled to receive notice of and given an opportunity to be heard at any review or hearing concerning the child.
- The DCS Specialist is the representative of DCS in hearings affecting a child or family about which he or she has relevant information. The DCS Specialist is expected to attend all hearings concerning his or her cases.
- The Court Appointed Special Advocate (CASA) is a volunteer who is appointed by the Juvenile Court to advocate for a dependent child. The CASA's first priority is to advocate for the child's safety; the CASA must meet with the child. CASAs have access to all documents and information about the child and the birth family history. CASAs provide information to the Juvenile Court to assist in making decisions concerning what is in the child's best interest.
- The Foster Care Review Board (FCRB) is a group of volunteers who review the case of every dependent child who remains in out-of-home care at least every six months. The FCRB is mandated to make determinations in these four key areas:
  - safety, necessity and appropriateness of placement
  - case plan compliance
  - progress toward mitigating the need for foster care
  - a likely date (target date) by which the child may be returned home or placed for adoption or legal guardianship.

The FCRB cannot direct the agency to take specific actions concerning a child; however, it may make recommendations to the Juvenile Court regarding plans and services for a child or family. Foster Caregivers are encouraged to attend either in person or by telephone to provide valuable input about the care and progress of the child. More information can be found by going to <http://azcourts.gov/dcsd> then click on Foster Care Review Board on the menu.

- A relative identified as possible placement has the right to be heard in any proceeding with respect to the child. Other relatives or individuals may petition the Juvenile Court to be considered interested parties to

an action. Other interested parties having a legitimate interest in the welfare of the child may file a petition to adopt. Other interested parties may be a person or agency.

## ARIZONA DEPENDENCY PROCESS



## JUVENILE COURT HEARING TYPES

At any dependency hearing, the Juvenile Court's first priority is the protection of the child from abuse or neglect. The different hearing types include the following:

- Preliminary Protective Pre-hearing Conference: A mandatory meeting of all parties to the dependency action and other interested persons as permitted by the Juvenile Court held immediately before the Preliminary Protective Hearing (PP5). The purpose of the meeting is to attempt to reach an agreement about temporary custody and placement of the child, services to be provided to the child, parent or guardian, and visitation of the child. The availability of reasonable services to the parent or guardian is considered. The child's health and safety is a paramount concern.
- Preliminary Protective Hearing (PP5): Held no less than five and not more than seven working days, excluding Saturdays, Sundays and state holidays, after the child is taken into custody and a dependency petition is filed. The hearing is to determine whether to continue temporary pending the Initial Dependency Hearing. The Juvenile Court receives any agreement from the pre-hearing conference; determines if reasonable efforts were made to prevent or eliminate the need for removal of the child and if services are available that would eliminate the need for continued removal. The Juvenile Court enters orders regarding the child's placement and visitation, if the child remains in care. The Juvenile Court orders DCS to make reasonable efforts to provide reunification services, unless the Juvenile Court finds this is contrary to the best interest of the child. The Juvenile Court gives paramount consideration to the child's health and safety.
- Initial Dependency Hearing: occurs within 21 days of filing a petition, held only if the parent did not appear at the Preliminary Protective Hearing (PPH).

- Settlement Conference or Mediation: Held prior to the pre-trial conference or dependency adjudication hearing. The purpose is to attempt to settle the issues in a non-adversarial manner and to avoid a trial.
- Contested Dependency Adjudication Hearing: occurs 90 days from the date the petition was served to the parents. The purpose is to determine whether the State has met the burden of proving the child dependent. (See Disposition Hearing)
- Disposition Hearing: is held at the same time of or within 30 days of the dependency adjudication hearing. The purpose is to obtain specific orders regarding the child's placement, services and appropriateness of the case plan. The Juvenile Court considers the goals of placement, appropriateness of the case plan, services that have been offered to reunify the family and the efforts that have been or should be made to evaluate or plan for other permanent placement. If the Juvenile Court does not order reunification of the family, the Juvenile Court shall order a plan of adoption or other permanent plan.
- Report and Review Hearings (R & R): Held at least once every six (6) months after the Disposition Hearing until the dependency is dismissed. The Juvenile Court reviews the progress of all the parties in achieving the case plan goals and determines whether the child continues to be dependent.
- Expedited Permanency Hearing: occurs at 6 months for children under the age of 3 at the time of removal. If the Juvenile Court finds that the parents have substantially neglected or willfully refused to participate in reunification services, the Juvenile Court may terminate their parental rights at this permanency hearing.
- Permanency Hearing: occurs 12 months from removal. The Juvenile Court determines the future permanent legal status goal for the child and enters orders to accomplish the plan within specific time frames.
- Termination Hearing: occurs 90 days from the Permanency Hearing if severance and an adoption plan were ordered at the Permanency Hearing. The Juvenile Court determines whether the State has met the burden of proof to terminate parental rights and whether termination is in the best interest of the child. A jury trial will be held upon the request of the parent.
- Other Hearings: If applicable, a Guardianship Hearing or an Adoption Finalization Hearing could occur.

### **FOSTER CARE REVIEW BOARD (FCRB)**

The Arizona State legislature established the Foster Care Review Board (FCRB) in 1978 in response to concerns that Arizona's foster children were being "lost" in out-of-home care and staying too long in temporary placements. The primary role of FCRB is to advise the Juvenile Court on progress toward achieving a permanent home for a child in foster care.

The FCRB is mandated to make determinations every six (6) months in these four key areas:

- safety, necessity and appropriateness of placement
- case plan compliance
- progress toward mitigating the need for foster care
- a likely date (target date) by which the child may be returned home or placed for adoption or legal guardianship.

Foster Caregivers are encouraged to attend either in person or by telephone to provide valuable input about the care and progress of the child.

More information can be found by going to <http://www.azcourts.gov/fcrb/Home.aspx>.

### **FOSTER CAREGIVERS NOTIFICATION OF JUVENILE COURT HEARINGS AND FOSTER CARE REVIEW BOARD HEARINGS**

Foster Caregivers must be notified of any Juvenile Court proceedings affecting their foster child and have a right to be heard and participate in these hearings. Ask the DCS Specialist for the next Juvenile Court hearing date and the next Foster Care Review Board Hearing. Your presence, input and advocacy are very important in these legal forums.

### **JUVENILE COURT HEARINGS OPEN TO THE PUBLIC**

Juvenile Court proceedings relating to dependency, permanent guardianship and termination of parental rights are open to the public. DCS may request that the Juvenile Court order a proceeding to be closed to the public. Unless a parent waives his or her right to privacy, the DCS Specialist should request that all or part of the hearing be closed to the public if records of substance abuse assessment and treatment, behavioral and mental health, medical, education or HIV/AIDS or domestic violence will be discussed.

## TERMINATION OF PARENTAL RIGHTS (TPR)

An order of the Superior Court that separates the parent and the child of all legal rights, privileges, duties and obligations with respect to each other except the right of the child to inherit and receive support from the parent. This right of inheritance and support shall only be terminated by a final order of adoption.

Grounds for TPR: Always remember this is a legal process determined by the Juvenile Court to be in the best interest of the child. DCS will consider at least the following factors:

- the child's permanency goal;
- the parent's progress in making necessary behavior changes and the likelihood of imminent family reunification;
- the child's age and willingness to consent to adoption (a child who is 12 years of age or older must consent to the adoption in open Juvenile Court);
- the child's need for a permanent parent-child relationship;
- whether reunification services were ordered, but not provided;
- whether the services that were provided were culturally sensitive and if the service provider was successful in engaging the family in the services;
- the availability of relatives or other significant persons to provide a safe, permanent home for the child;
- the effects of removal from the current placement on the child's long term emotional well-being and the caregiver's willingness to adopt;
- compliance with Indian Child Welfare Act requirements relating to provision of active reunification services, placement and standard of evidence; and
- applicability of the grounds for termination and supporting evidence.

The following are the legal standards for consideration by DCS and the Attorney General's office prior to making a recommendation to the Juvenile Court. Before the Juvenile Court can terminate a parent's legal rights to a child, Juvenile Court (or jury) must make 2 findings:

1. Finding, by clear and convincing evidence, that at least one termination ground exists for each parent, and
2. Finding, by a preponderance of the evidence, that termination will be in the child's best interests.

All grounds for termination must include: information; documentation; opportunity; provision and compliance of services; timeline calculations and cooperation or non-cooperation of the parent(s); ability and willingness of the parent to care for their child(ren). When considering termination it must be reviewed by an internal DCS committee and the Arizona Attorney's Office before being presented to the Juvenile Court for final judgment.

The following list is not inclusive of all of the legal grounds for termination of parental rights. (ARS § 8-533):

- The parent has abandoned the child. Abandonment is failure to provide reasonable support and to maintain regular contact with the child, including normal supervision. The Juvenile Court must find the parent has made only minimal efforts to support and communicate with the child. Failure to maintain a normal parental relationship without just cause for 6 months or longer is considered proof of abandonment.
- The parent has neglected or willfully abused a child. Neglect or willful abuse is abuse that includes serious physical or emotional injury or situations in which the parent knew or reasonably should have known that a person was abusing or neglecting a child.
- The parent is unable to discharge parental responsibilities because of mental illness, mental deficiency or a history of chronic abuse of dangerous drugs, controlled substances or alcohol. There are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period.
- The parent is incarcerated and convicted of a felony that includes murder of another child of the parent, manslaughter of another child of the parent or aiding or abetting or attempting, conspiring or soliciting to commit murder or manslaughter of another child of the parent, or if the sentence of that parent is of such length that the child will be deprived of a normal home for a period of years.
- The length of time the child has been in care:
  - The time in care has been for a cumulative total period of nine months or longer and the parent has substantially neglected or willfully refused to remedy the circumstances that cause the child to be in an out-of-home placement (length of time in care).
  - The child is under three years of age has been in care for a cumulative total period of six months or

longer and the parent has substantially neglected or willfully refused to remedy the circumstances including refusal to participate in reunification services offered by the department.

- The child has been in care for a cumulative total period of fifteen months or longer and there is a substantial likelihood that the parent will not be capable of parenting the child in the near future.
- The identity of the parent is unknown and continues to be unknown following three months of diligent efforts to identify and locate the parent.
- The parent has had parental rights to another child terminated within the preceding two years for the same cause and is currently unable to discharge parental responsibilities due to the same cause.
- The child was returned to the parent and within eighteen months was again removed and the parent is currently unable to discharge parental responsibilities.
- The parents have relinquished their rights to a child to an agency or have consented to the adoption.

### **INDIAN CHILD WELFARE ACT (ICWA):**

ICWA is a federal law that seeks to keep Indian children with Indian families. Congress passed ICWA in 1978 in response to the alarmingly high number of Indian children being removed from their homes by both public and private agencies. The intent of Congress is to “protect the best interests of Indian children and to promote the stability and security of Indian tribes and families” (25 U.S.C. § 1902).

ICWA sets federal requirements that apply to state child custody proceedings involving an Indian child who is a member of or eligible for membership in a federally recognized tribe or is the biological child of a member of federally recognized tribe.

The ICWA applies to child custody proceeding including foster care placement, termination of parental rights, pre-adoptive placement and adoptive placement. The ICWA requires DCS to follow certain standards and procedures when an Indian child is involved in child custody proceedings in state court. The state court is required to give legal notice to the child’s tribe when the court knows or has reason to know that ICWA applies.

DCS must give preference to foster care placement of an Indian child with:

- A member of the Indian child’s extended family;
- A foster home licensed, approved or specified by the Indian child’s tribe;
- An Indian foster home licensed or approved by an Indian tribe; or
- An institution for children approved by an Indian tribe or operated by an Indian organization

DCS must give preference to adoptive placement of an Indian child with:

- A member of the child’s extended family;
- Other members of the Indian child’s tribe; or
- Other Indian families, including single parent families.

DCS is required to make active efforts to provide remedial services and rehabilitative programs. Remedial services and rehabilitative programs will be provided in a culturally competent manner consistent with the child’s and parents’ wishes and delivered in a manner that incorporates, when appropriate, Indian ceremonial and religious practices, talking circle, and tribally operated programs which reflect Indian values and the beliefs of the family.

The child’s Indian tribe is a party in the case and has the right to intervene or take legal custody of the child at any point in a state court proceeding involving foster care placement and termination of parental rights proceedings.

For more information contact the Indian Child Welfare website at <http://www.nicwa.org/>.

### **DELINQUENCY**

The legal status of a juvenile who has been charged or is convicted of a criminal charge and is placed under the jurisdiction of the Juvenile Justice System which is the County Probation Department or the Arizona Department of Juvenile Correction.

### **DUALLY ADJUDICATED YOUTH**

Dually adjudicated is the legal term for juveniles who are both dependent and delinquent. These children are under the jurisdiction of the Juvenile Court for both their dependency matter and their delinquency matter. Separate Juvenile Court hearing will be held on each type of issue.