

What is a Dependency?

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

You and Your Attorney

Since the state is attempting to take custody of your children you are entitled to an attorney. Your attorney will work closely with you to assist in re-unifying you with your children. You will need to keep in contact with your attorney as your case moves through court to get the best possible results.

Your attorney from the Public Advocates Office is dedicated to the representation of parents or children in dependency cases. He or she graduated from an ABA accredited law school, has passed the Arizona bar exam and has a license to practice law. Your attorney has received extensive training regarding dependency law.

An important note – everything you tell your attorney is confidential. Everything you tell a case manager, parent aide, police officer, therapist, psychiatrist, etc. is **not** confidential. Everything you tell anyone but your attorney can be reported to the judge. Please talk with your attorney about conduct involving your children, before speaking giving the information to anyone else.

Other Helpful Tips

It takes time, several months or longer, for a case to move through the courts. During that time, it is extremely important for you to keep in touch with your attorney and to make all court appearances until your case is closed.

You can help your attorney by:

1. Being on time for court and other appointments
2. Give your attorney your home address and phone numbers where you can be contacted. Let the office know if this information changes.
3. Give your attorney a list of family and friends who are able to care for your children while the matter is going through court.
4. Provide your attorney with any documents you think might be helpful.
5. Participate in any services.

The Courts and Your Case

Preliminary Protective Conference:

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 child[ren]. The pre-hearing conference and the preliminary protective hearing will be held in five to seven days of the removal of the child[ren] from the home. The purpose of the pre-hearing conference is to facilitate the resolution of issues, custody, placement, visitation, outside of the court room. 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.

Initial Hearing

An initial hearing is set 21 days from the day the parent receives 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.

Adjudication (Trial)

The adjudication will take place within 90 days from the day the parent receives 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 CPS 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 show they were taking care of their children and not abusing them. 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. The case plan may be family re-unification or severance and adoption.

Disposition

At the Disposition the court will order the mother and father to fully comply with the case plan outlined by CPS. The goal of CPS 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 other recommended services 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.

Permanency Planning Hearing

Depending on the age of the child, a Permanency Planning Hearing will be held from 6 months to one year of the initial removal of the

children from the home. 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.

Severance

Severance is the permanent termination of a parent's rights to their child[ren]. The state may request that a parent's rights be severed if the parent fails to participate in services, continues to abuse substances, parent unable to parent the child[ren] due to physical or mental illness or the abuse inflicted by the parent would place any child[ren] in the parent's care at risk. If the state wishes to terminate a parent's rights, the parent is entitled to an adjudication. The adjudication would take place within ninety days of the Permanency Planning Hearing.

Appeal

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.

YOUR RIGHTS in DEPENDENCY COURT



*Safeguarding the rights of
Citizens involved in Juvenile
and Dependency Court*

Dependency Division

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