

Where does the child live after removal?

Until the 72 hour hearing is held and the judge makes a decision, DSS decides where the child lives. DSS will place the child with a relative (if one is available), in a foster home, or at a residential group home, depending on the age and the needs of the child. This is also true if, after the initial hearing, the child remains in the custody of DSS.

What happens after the 72-hour hearing?

The judge appoints a court investigator. The investigator is independent and works for the court not for DSS, the parents, or the child. The investigator interviews the parties, the child, service providers, and other people who know the family. S/he will review the DSS and court case file and other documents about the case. After completing this process, the court investigator writes a report for the judge with recommendations for how the case should be resolved.

The parents, DSS, any foster parents, and the child, if he or she is over 14, will also have to discuss and sign a service plan aimed at re-unifying the family or helping the family resolve the problems that led to the C&P.

A service plan is an agreement between the parents and DSS that includes a list of what each family member and DSS is expected to do. The service plan includes jobs that must be successfully completed by each family member so that the child can return home. These jobs can include taking parenting or anger management classes, going to counseling, finding suitable housing, or submitting to drug or alcohol screens. While the case is open, DSS, the parties, and their attorneys will monitor whether everyone, including DSS, is completing their tasks.

A few months after the 72-hour hearing, everyone meets for a pre-trial conference to

prepare for and select a date for the trial. The trial will be used to decide if the parents or guardian are currently “unfit” to raise the child, and who should have custody of the child, DSS, the parent, or another person.

What happens at trial ?

At the trial the judge must consider what is in the child’s best interest, and decide whether the parents are currently unfit to raise their child. The parties have the same rights to present evidence and be represented by an attorney as they did at the 72 hour hearing.

If the judge decides that the parents are not fit to rear the child and that it would be in the child’s best interest to terminate the parents’ rights to the child, the judge can free the child for adoption. The judge may also award permanent custody of the child to DSS with the goal of reuniting the family at a later date. If the parties ask the judge to make another person, such as a family member, the child’s guardian instead of DSS, the judge could also award custody of the child to that person.

If the judge decides that the parents are fit, and that the child’s interests are best served by a return home, the judge will return custody to the parents. Even if the judge decides that the parents are fit, DSS may continue to provide services to the family.

For more information call:

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Phone Assistance Hours
Tuesday & Thursday 2-4 pm
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**This agency is supported in part by the
Massachusetts Legal Assistance Corp.,
Massachusetts Bar Foundation,
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CHILDREN’S LAW CENTER
OF MASSACHUSETTS

CARE AND PROTECTION

CASES

September 2005

United Way
of Massachusetts Bay

What is a Care and Protection case?

A Care and Protection (C&P) case is a court proceeding in which a juvenile court judge decides whether a child has been or is at risk of serious abuse or neglect by a caretaker, usually a parent or guardian. The judge also decides whether the guardian is currently unfit to care for the child and who will have custody of the child. To help in this decision, the judge considers what is in the child's best interest.

How does a C&P begin?

A C&P can be filed by any person over 18. Most C&P cases are filed by the Department of Social Services (DSS). A C&P usually begins when someone reports to DSS that a child is being physically or sexually abused or neglected by their parent or guardian, or by another caretaker who the guardian allows to have access to the child. This report is referred to as a "51A report."

What is abuse and neglect?

Abuse can be physical, sexual, or emotional. Reports of the death or serious injury of a child, sexual assault or exploitation of a child must also be referred to the District Attorney for investigation and possible criminal prosecution. Neglect means failing to provide the child with necessary support for his health, welfare, and safety. This can include allowing the child to live in seriously substandard conditions or to live without adequate food, clothing, heat, or medical care, taking drugs in the presence of the child, failing to provide sufficient supervision of the child, failing to keep the child safe from other people who might abuse or exploit the child, and failing to require a child who is under 16 to attend school.

Who may file a 51A report?

Anyone who suspects that a child is being abused or neglected may file a 51A report. The reporter can remain anonymous.

Who must file a 51A report?

Certain professionals called "mandated reporters" are required by law to report instances of suspected child abuse and /or neglect to DSS. These professionals include teachers, day care providers, social workers, doctors, nurses, dentists, psychologists, psychiatrists, police, and firefighters.

What happens after a 51A report is filed?

When someone files a 51A report with the Department of Social Services, the DSS worker must make a decision to either "screen in" or "screen out" the report.

When will a 51A report be "screened out"?

A report will be "screened out" if the actions that are being reported are not considered "abuse" or "neglect" as defined by law or if the abuser is not a caretaker of the child. The report may also be screened out if the family already has an open case with DSS, or if the report is old or "frivolous."

What happens if the report is "screened in"?

If the report is "screened in," DSS will conduct an investigation called a "51B" investigation. If the DSS investigator decides that the child is at risk of being abused or neglected or that the child is currently being abused or neglected, the 51A report will be "supported" or "substantiated." This investigation should be conducted within 10 days of the initial report; in emergency cases, within 24 hours. The investigator will attempt to speak with the caretaker, the child named in the report, and other individuals from the community and family members who have contact with the family.

What happens if DSS believes that the child is currently unsafe because of the alleged abuse or neglect?

If on receiving the 51A report the intake worker believes that an emergency response is necessary to protect the child from harm, or if

during or after the investigation DSS believes that the child is at risk of serious abuse or neglect if s/he remains in the current situation, DSS can file a C&P and ask the judge for permission to temporarily remove the child from the custody of his or her parent or guardian.

How does DSS get emergency temporary custody of a child?

To get emergency temporary custody of a child, a DSS worker must go to Juvenile Court with a written statement called an affidavit that tells the judge why DSS believes that it is necessary to remove the child from the custody of his or her parent. If the judge agrees that the allegations are so serious that removal is necessary to protect the child from harm, the judge can temporarily order that the child be placed in the custody of DSS. In extreme emergencies, DSS has legal authority to remove a child from their guardian even without advance court permission. In these cases, immediately after the removal, DSS must notify the court of the emergency and get permission to keep the child.

What happens after the child is removed?

If a child is temporarily removed from his or her parent, the parent and the child have a right to a hearing during which they each can tell the judge their side of the story. The hearing should be held within approximately 72 hours of the child's removal from the parent. Both the parent and the child have a right to have an attorney at the hearing, and if eligible will be appointed an attorney at no cost. The parent, child, and DSS also have a right to present evidence supporting their position and have a right to cross-examine witnesses. The parties may ask the judge to return custody of the child to the parent or to give another person, usually a family member or friend, temporary custody of the child.