

The Court Process and Planning for a Permanent Situation for Your Child

As soon as CPS files a law suit, you will need to start going to court so the judge can check in with you, CPS, your child's attorney, and other people involved in your case. The judge will want to talk to everyone so that he or she can get as much information as possible about what happened when your child went into foster care, what you are doing to address CPS's concerns, and what CPS is doing to help you regain custody and keep your child safe.

Overview

It is important that you and your lawyer go to every hearing – keep track of hearing dates on your calendar and be sure to contact your lawyer before every hearing. At the end of each court hearing, the judge should sign a court order listing out things that you or CPS or someone else has to do. Your attorney or the court should always give you a copy of these orders and make sure you understand them. If you don't get a copy of the court order right away be sure to remind your attorney or ask your caseworker or go to the clerk's office at the courthouse.



IMPORTANT

Court hearings can start without you! It is important that you and your lawyer are on time to every hearing and prepared for any questions about your case and what you need to get done to try to get your child back home.

By law, most CPS cases last 12 months. If there are big changes in your situation, CPS can ask the court to dismiss a case at any time, but usually there are several hearings where your judge will sign orders that control what happens in your case. If you do not understand the purpose of any hearing, or you are worried about what will happen at a hearing, you should talk to your attorney. During the months that your case is open, you will probably go to several hearings.

There are also Permanency Planning Meetings that don't happen at court where you and CPS can talk about things like where your child will live during the case and whether you are meeting your goals toward creating a safer home for your child. The judge does not attend Permanency Planning meetings, but your lawyer should come with you to both court hearings and Permanency Planning Meetings.

These are the names given to each hearing or meeting by the Texas Family Code (the law that governs what happens in your case):

Adversary Hearing – happens at court

Permanency Planning Team Meetings – happens at CPS Office

Status Hearing – happens at court

Permanency Hearings – happens at court

Mediation – can happen anywhere

Final Hearing (Trial) – happens at court

The Adversary Hearing

This may also be called the "262 Hearing" or the "Show Cause Hearing." This will probably be the first hearing you attend after a court gives CPS the okay to place your child in foster care or in another home. (See page 51 for more on removals.)

This hearing must take place within 14 days of when CPS removes your child. Sometimes, the court will grant a delay for up to 7 days, but only in some situations. This is one of the most important hearings in your case and you will want to have a lawyer help you get ready. (See page 79 for more information about working with your lawyer.) **If you qualify for a free lawyer but one has not been appointed, ask the court to push the hearing date back so a lawyer can be appointed to represent you.**

CPS will tell the judge why it removed your child. You or your lawyer will tell the judge why CPS's claims are not true or why, even if true, it is now safe for your child to come back home. The judge will decide whether CPS has provided enough evidence to grant CPS custody. If CPS has not provided enough evidence, the judge can dismiss the CPS petition. If the judge decides CPS has provided enough evidence, the judge can name CPS as your child's "Temporary Managing Conservator" or in other words, give temporary custody of your child to CPS.

If CPS is named the “TMC,” the court will enter an order that includes information such as where your child will live, child support payments (if there are any to be made or collected), paternity testing (to identify a father), and a visitation schedule. The court may also order that you do certain things like get a drug or alcohol assessment, undergo psychological testing, or submit to other assessments before your next hearing, which is called the Status Hearing.



IMPORTANT

An order signed by a judge in a CPS case is very powerful. If you are ordered to do something, and you don't do it, it can be used against you to terminate your parental rights.

Permanency Planning Team Meetings

Early in the case, you will be asked to attend a Permanency Planning Meeting. This is NOT a court hearing and does not include the judge, but it is just as important because it is where you will develop your Service Plan or Family Plan of Service. You, your lawyer, your child's lawyer, your child's GAL, your CPS caseworker, and possibly your child (if over the age of 7) and your child's foster parents or other caretakers should all be invited. (See “Service Plans” on page 77 for more information.)

Your Service Plan will include a permanency goal for the outcome of your case. This is also called the “Permanency Plan” and it says what you want your child's permanent living arrangement to be. Most of the time, at the beginning of your case, the Permanency Plan will be “reunification” – meaning the plan is for your child to come home to you. There will also be a second, backup Permanency Plan that is worked at the same time, in case your child cannot come home. The backup plan may include having your child live with relatives or friends long-term, having your child adopted by friends or by strangers, or your child continuing to live in foster care until he turns 18. Your Service Plan will list out things that you have to do to reach the permanency goal established for your case.

You will probably attend more than one Permanency Planning Meeting because things about your case will change over time. Later Permanency Planning Meetings allow everyone to talk about how you are doing with and meeting the permanency goal. They also help you keep track of the progress you have made to make your home safer for your child.

These meetings are also a good place to talk about changes to your Service Plan, which might involve new services or stopping old services that aren't working for you. Make sure you tell your lawyer before the meeting about any changes and make sure your voice is heard at the Permanency Planning Meeting!

"SERVICE PLANS"

It is important that your Service Plan only address concerns that are in the petition. For example, if drug and alcohol use are NOT part of the CPS petition, the Service Plan should not require you to do drug or alcohol testing or counseling. Talk with CPS about what goes in your Service Plan so that you are not expected to complete services that are not needed! (See page 77 for more information on Service Planning).

IMPORTANT

Signing the Service Plan tells the court that you agree to all of the things included in the Plan and also that you agree with what the Service Plan says about why CPS became involved with your family. There is space at the end of the Plan where you can write in ANY thing you do not agree with, including the reasons CPS gives for why your child isn't safe with you.

- **READ YOUR PLAN CAREFULLY!**
- **TELL CPS YOU WANT TO REVIEW THE PLAN WITH YOUR LAWYER, IF YOU HAVE ONE!**
- **TALK WITH YOUR LAWYER, IF YOU HAVE ONE!**

Not completing the Service Plan can lead to a court terminating rights.

The Status Hearing

The Status Hearing will be held about 2 months after your child is removed and within 60 days after CPS is given TMC of your child. The Status Hearing will take place after your first CPS Permanency Plan team meeting. At this hearing, the judge should hear from you about your Service Plan. The judge should ask you if you were involved in creating the Service Plan and if you understand the Service Plan and the things you must do before a judge can return your child. The judge will ask if you've been able to make any progress so far. The judge will also warn you (like at every hearing) that unless you can provide a safe home for your child, your parental rights may be terminated.

If there is anything in your Service Plan that you don't agree with or that you don't think you will be able to complete, you should tell your lawyer before the Status Hearing. (See page 77 for more information on Service Plans).

Permanency Hearings

Your first Permanency Hearing will be held about 6 months or 180 days after the court gives CPS custody of your child.

At this hearing, the court will again review how your child is doing and will also review your Service Plan and the Permanency Plan or goal to make sure you are on track. Later Permanency Hearings will be held about every 4 months after the first Permanency Hearing, although they can be more often if the judge wants them to be.

CPS must also file a report that provides a summary of how things are going in the case. CPS should always provide you or your lawyer with a copy of a Permanency Progress Report before the Permanency Hearing. Read the Report and talk with your lawyer, if you have one, to make sure you know what is being said about you and your child. Local rules may vary, but your lawyer may respond to the Progress Report to correct any big mistakes.

CASA may also give the court written reports detailing what has been going on in your case and what needs to be done to keep everything on track like: How is your child doing in school? How is visitation going? Have you been doing all of the things the case plan requires? Have there been problems setting up services for you or your child? In short, these reports give the court the information it needs to make sure everyone is doing all they are supposed to be doing to keep your child safe and to support the parents' efforts to make the changes needed to bring their child home. You should be able to have a copy of each of these reports.

The judge will review your case to make sure you are doing what is ordered in the Service Plan, and can make changes to the Service Plan, if necessary. The judge can return your child to you if you have shown that you can provide a safe home and it is in your child's best interest.

There are usually at least two Permanency Hearings. In many cases, a judge isn't likely to return your child at the first Permanency Hearing. It's more likely to happen at the second Permanency Hearing that is held about 10 months after your child has been removed from your care. However, if your child cannot be returned home by the second Permanency Hearing, the judge will probably schedule a date for a Final Hearing, if one hasn't already been set.

Mediation

Mediation is when all of the parties in a case, including CPS, meet to talk with a mediator (not the judge) about the legal case to see if there are ways to resolve the issues. Parties in the case can ask for mediation or the Court can decide, on its own, to order mediation. Mediation can happen at any time during the case and can take place anywhere, even by telephone or at the courthouse. At mediation, the parties might agree on all of the issues in a case or on just a few issues.

Mediators do not act like judges. A mediator listens to all of the arguments and helps find solutions, but does not make decisions about the case. The mediator is considered "neutral," which means that he or she should not take sides in the case. Anything said in mediation must be kept confidential – it cannot be told to the judge and cannot be used in the trial against you or the other parties. **An important exception to this rule is that if any information about new or previously unreported claims of abuse or neglect is disclosed during mediation it must be reported to CPS.**

When parties reach an agreement – whether on some or all issues in a case – that is called a settlement agreement. The agreement must be in writing and signed by all of the parties (and their lawyers) OR disclosed to the judge in open court and made part of the court record. The agreement will be entered as an order of the court.

Final Hearing (Trial)

The law requires the judge to issue a “Final Order” within one year of the date that CPS was granted TMC. The judge can also grant one six month extension but only under extraordinary circumstances and if it’s in the best interest of your child. It is important for children to have a permanent home, which is why the law only allows one year to decide if your parental rights will be terminated, if your child will be placed with a relative or someone else you have chosen, or if your child will be placed in the permanent custody of DFPS so he or she can be adopted by someone you know or maybe by a stranger.



IMPORTANT

Extensions are granted only in very special circumstances, so don’t plan on it happening in your case. This means you **MUST** be on track to complete your service plan within **ONE YEAR!**

At the final hearing, judges often hear from witnesses and review other evidence to decide whether you followed your Service Plan, whether you can be a safe parent, and what will be best for your child in the future. In order to terminate your rights, the evidence offered by DFPS must be clear and *convincing* on at least one ground for termination and termination must also be in your child’s best interest. The grounds for termination in the Texas Family Code are a list of things that parents did before, during, and after their children lived in their home that may have been unsafe for the children. For a court to terminate your parental rights, it must find that you did one of these things, plus that termination of your parental rights is in the best interest of your child. (See Appendix C on page 151 for more information on the grounds for terminating parental rights.)

Final Hearings sometimes last all day or even several days. You should ask your attorney how long she expects the Final Hearing to last and make plans to take off work and have someone watch your other children, if necessary.

After the trial, the judge will sign a Final Order. The Final Order can do any of the following:

- Return your child home to you
- Appoint CPS, a relative, or a friend as your child's managing conservator, but not terminate your parental rights
- Terminate your parental rights

If your rights are terminated, and the court does not give a relative or another person conservatorship of your child, then your child will be in the conservatorship of DFPS and can be adopted by a relative, friend, foster parent, or someone else.

Frequently Asked Questions

I DON'T HAVE A WAY TO GET TO COURT – WHAT SHOULD I DO? It is important that you plan ahead for each of your court hearings. If you don't have transportation, talk to your caseworker; she may be able to get you a bus pass or help you figure out some other way to get to court. If you are not able to find a ride, talk to your lawyer about it. At least if you do not make it to court your lawyer can explain why. But, you should always do your best to attend court because it shows the judge you are taking your case seriously.

WHAT TIME SHOULD I GET TO THE COURTHOUSE? You should get to court early! For example, if your case is set for 9:00 A.M., plan to be in the courtroom by 8:30. This will give you a chance to find your lawyer and talk to her and ask any questions before the judge calls your case.

There are lots of things that can make you late for court. There might be traffic, your ride might be late, or your bus may be running behind. Keep in mind that at many courthouses, especially in big cities, parking can be hard to find. You want to allow yourself time to find a parking space and to walk a few blocks to the courthouse, if necessary. Also, in many courthouses, you will have to go through a metal detector or security, which can sometimes mean waiting in line. All of these things can take longer than you expect so always plan to get to court early!

WHAT SHOULD I WEAR TO COURT? You should dress like you are going to church or to a job interview. You should try to look professional, clean, and respectful. Do not wear shorts, short skirts, athletic pants, flip flops, or t-shirts with pictures or writing on them. Remember that people may judge you on how you look as well as how you act.

Men should try to wear nice pants and a shirt with a collar, if possible. Women should wear pants or a knee-length or long skirt, and a modest shirt. You may want to bring a sweater or jacket since the courtrooms can be cold.

Never wear a hat or sunglasses and don't chew gum or eat food or drink anything inside the courtroom.

HOW LONG WILL MY HEARING TAKE? It is very hard to say how long court will take. It really depends on where you live, the judge, the day of the week, and how long the hearings before yours last. You should ask your lawyer what to expect.

Unless your lawyer tells you otherwise, you should plan on being in court for several hours. Most of this time will be spent talking to your lawyer and other people working with you, waiting for the judge to call your case, and waiting to get a copy of the order.

WHAT SHOULD I BRING WITH ME? If you have been keeping track of your visitation and Service Plan accomplishments, such as meetings and visits you went to, make sure to bring those records with you. You should also bring a list of any questions you want to ask your lawyer, caseworker, or others working on your case.

If your attorney says you will have to wait for your case to be called, you might want to bring something to do, like read a book. Do not bring newspapers, as they can be noisy and distracting. If you are looking at your phone, make sure the volume is OFF and you are still paying attention to what is happening in the courtroom. Some courts do not allow phones to be used in the courtroom – this is something you should ask your lawyer before going into the courtroom.

Be careful about bringing food; most judges won't allow food in their courtroom. If you need to eat, you should go outside. Always make sure your lawyer knows where you are going and can call you back quickly, if needed.

Also, remember that you will have to go through a metal detector or security to get in to the courthouse. NEVER bring weapons to the courthouse. If you have concerns about your safety, you should talk to your lawyer about how to handle the situation.

WHAT IF I HAVE (OR THINK I MAY HAVE) A WARRANT? If you have a warrant or think you might have a warrant out for your arrest, then you need to talk to your lawyer. It is important that you get the warrant taken care of BEFORE your CPS hearing. You need to be at the CPS hearing, but going to court could lead to your arrest if the problem is not taken care of before the hearing.

You can call or check online to see if you have any warrants out against you. Two good places to start your search are your county's Clerk of Court or Sheriff's Office. Even if they don't have records showing a warrant on you, they should be able to tell you where else to be checking.

CAN I BRING FRIENDS AND FAMILY WITH ME? Yes, you can bring anyone you want with you, especially if it makes you feel more comfortable. Make sure your friends and family know that they will have to be respectful and quiet during the court hearing. If your friends or family get upset or start saying things to the judge during your hearing, it might be bad for your case. Sometimes there may not be room for them in the courtroom and they will have to wait outside while the hearing is going on.

WHAT DOES THE COURTROOM LOOK LIKE? WHAT ARE THE COURT PROCEDURES? Every courtroom will look a little different, but some things are the same. The judge will sit at the front of the room behind a desk. This is called the "bench" and some benches might be tall so the judge sits higher than everyone else in the courtroom. The judge's clerk will often sit to the side or in front of the judge. There may also be a person who is recording everything said during the hearing. This person, called a court reporter, may be typing into a special machine.

There will be two tables facing the judge. This is where you, the lawyers, CPS, and your child's GAL and others involved in the case will sit when your case is called. In some hearings, people on your case may stand between these tables and the judge's bench. Follow your lawyer's lead on this. In the back of the courtroom, there will be chairs or benches for people who are waiting for their cases to be called.

When the judge comes in, a court officer will say, "All rise." Everyone has to stand up. When the judge sits down, everyone can sit down again.

The judge will usually call cases by the last name of the children involved (if your children have different last names, the judge might just call the case using the last name of the oldest child). It is very important to always be quiet while the judge is in the room. If you have to get up and leave in the middle of someone else's hearing, make sure you do it very quietly.

HOW SHOULD I ACT? WHAT SHOULD I DO? When the judge calls your case, everyone involved will get up and move to the front of the courtroom. Your lawyer will tell you where to sit or stand. There is generally no need for you to talk unless the judge asks you a question directly. If you are not sure what to say, ask your lawyer. If you do not understand what the judge is saying because you don't speak English, make sure you ask for an interpreter.

Never interrupt the judge or anyone else who is talking. Never raise your voice or get angry. This might be hard, especially if CPS or someone else is saying something you don't agree with, but you have to remember that you are trying to show you are a safe parent. If you get mad or yell, then the judge might think that you cannot stay calm around your children. Remember, the judge gets to decide, based on evidence presented, whether or not your child will be returned to you.

If you want to say something, whisper it to your lawyer and your lawyer will handle it. If the judge asks you a question, answer respectfully. You should say "Yes, your honor," or "No, your honor." If you don't understand a question, don't say "What?" Instead, you should say, "I'm sorry your honor, but could you please repeat the question?"

TIPS:

Court hearings are your chance to tell the judge how you are doing and what you have been doing to make your home safer. It is important to make good use of your time in front of the judge.

Always remember:

- **BE ON TIME!**
- **BE RESPECTFUL!**
- **ASK FOR WHAT YOU NEED TO BE SUCCESSFUL!**
- **SHOW HOW HARD YOU ARE WORKING TO GET YOUR CHILDREN BACK HOME!**