

LEGAL PROCEEDINGS

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I. INTRODUCTION

DHR and the juvenile court system have a joint responsibility to protect children when parents/primary caregivers are unable or unwilling to discharge their responsibilities. Child welfare staff must have a clear understanding of both DHR's and the court's roles and responsibilities in order to provide protection and care that is in the children's best interests.

This document has been designed to provide general information about legal proceedings in which child welfare staff may become involved. When court intervention is necessary, child welfare staff shall follow their local court system's established policies and procedures.

A. DHR's Role

DHR is responsible for seeking court intervention when children's parents/primary caregivers are unable and/or unwilling to discharge their responsibilities and the provision of in-home child welfare services have been unsuccessful in preventing or eliminating the need to place children under court supervision or in out-of-home care. DHR justifies the decision to seek court intervention by providing the court with specific and pertinent information in the form of court reports and testimony. Code of Alabama, 1975 § 12-15-101 through 12-15-701, Juvenile Proceedings, contain provisions for DHR to receive dependency referrals, conduct assessments, and complete reports with recommendations regarding whether children need to be placed in DHR's care.

B. The Court's Role

Alabama statutes provide for district courts to exercise juvenile court jurisdiction except in certain counties where the presiding circuit judge has established a family court division in the circuit (§ 12-17-70) or designated a circuit judge in the 11th, 12th, and 27th Judicial Circuits (§ 12-17-24.1). These courts have jurisdiction (§ 12-15-114) over the following matters:

1. Children who are alleged to be dependent, in need of supervision, or delinquent;
2. Children who are in situations that subject them to physical, mental or emotional abuse or are in clear and present danger of suffering lasting or permanent damage;
3. Children who require emergency medical treatment in order to preserve their life, prevent permanent physical impairment or deformity, or alleviate prolonged agonizing pain;
4. Children whose custody must be determined or a legal custodian/guardian appointed when the children are before the court for other reasons;

Note: This provision is not intended to deprive other courts of the right to determine custody or guardianship when that custody/guardianship is

incidental to a pending case. These courts may, however, certify questions to the juvenile court for hearing and determination or recommendation.

5. Proceedings under the interstate compact on juveniles;
6. Proceedings for the commitment of mentally ill or mentally retarded children;
7. Proceedings for the adoption of children when such proceedings have been removed from probate court on motion of any party to the proceedings;
8. Termination of parental rights;
9. Removal of disabilities of nonage, including judicial consent to marriage, employment, withdrawal from school, or enlistment when such consent is required by law; and
10. Situations where it is alleged that children's rights are improperly denied or infringed upon in proceedings that resulted in suspension, expulsion or exclusion from a public school.

The juvenile court system has the responsibility to ensure safe, permanent homes for abused/neglected children while protecting the rights of parties who come before the court. Judges utilize court reports, testimony, applicable statutes, and court rule as a basis for court orders which are designed to fulfill the court's responsibilities around safety and permanence, enforce the parties' compliance, and review the delivery of services and treatment to children and their families.

C. Dependent Child Definitions

Code of Alabama, 1975 § 12-15-102 (8)(a), paragraphs a through n, provide the following definitions for a "dependent child."

- a. Whose parent, legal guardian, legal custodian, or other custodian subjects the child or any other child in the household to abuse, as defined in Section 12-15-301 or neglect as defined in Section 12-15-301, or allows the child to be so subjected; or
- b. Who is without a parent, legal guardian, or legal custodian willing and able to provide for the care, support, or education of the child; or
- c. Whose parent, legal guardian, legal custodian, or other custodian neglects or refuses, when able to do so or when the service is offered without charge, to provide or allow medical, surgical, or other care necessary for the health or well-being of the child; or

- d. Whose parent, legal guardian, legal custodian, or other custodian fails, refuses, or neglects to send the child to school in accordance with the terms of the compulsory school attendance laws of this state; or
- e. Whose parent, legal guardian, legal custodian, or other custodian has abandoned the child, as defined in subdivision (1) of Section 12-15-301; or
- f. Whose parent, legal guardian, legal custodian, or other custodian is unable or unwilling to discharge his or her responsibilities to and for the child.
- g. Who has been placed for care or adoption in violation of the law.
- h. Who, for any other cause, is in need of the care and protection of the state.

Children who meet any of the definitions listed above and are subject to real physical or emotional harm come under the protection of the juvenile court system.

II. GENERAL GUIDELINES

A. Legal Counsel

In every case involving an abused or neglected child that results in a judicial proceeding, an attorney shall be appointed to represent the child in such proceedings. This attorney will represent the child's rights, interests, welfare and well-being, and will serve as guardian ad litem for the child (§ 26-14-11).

Parents/guardians/custodians in dependency cases shall be informed of their right to be represented by legal counsel and when these persons are financially unable to retain their own counsel, one shall be appointed for them upon their request [§ 12-15-305)]. Child welfare staff are responsible for advising these persons of their right to make such a request.

§ 12-15-304 a) In all dependency and termination of parental rights proceedings, the juvenile court shall appoint a guardian ad litem for a child who is a party to the proceedings and whose primary responsibility shall be to protect the best interests of the child.

(b) The duties of the guardian ad litem include, but shall not be limited to, the following:

(1) Irrespective of the age of the child, meet with the child prior to juvenile court hearings and when apprised of emergencies or significant events impacting the child. In addition, the guardian ad litem shall explain, in terms understandable to the child, what is expected to happen before, during, and after each juvenile court hearing.

- (2) Conduct a thorough and independent investigation.
- (3) Advocate for appropriate services for the child and the family.
- (4) Attend all juvenile court hearings scheduled by the juvenile court and file all necessary pleadings to facilitate the best interests of the child.
- (c) Before being appointed by the juvenile court, every guardian ad litem appointed in juvenile dependency or termination of parental rights cases shall receive training appropriate to their role.
- (d) Nothing in this section shall prohibit the juvenile court from appointing trained volunteers in addition to guardians ad litem in promoting the best interests of the child.
- (e) A guardian ad litem may be appointed to protect the best interests of more than one child of the same parent. A guardian ad litem also may be appointed to protect the best interests of both a minor (or otherwise incapacitated) parent and the child.

1. Guardians Ad Litem (GALs)

A guardian ad litem is a special guardian appointed by the court to prosecute or defend, on behalf of a child, a suit to which the child is a party. The GAL, an officer of the court, represents the child's interests in the litigation. Public Law 93-247, The Child Abuse Prevention and Treatment Act of 1974, prohibits states from instituting child custody proceedings unless a GAL is appointed for the child.

Child welfare staff are responsible for:

- ensuring that legal counsel is appointed by the court in all custody proceedings involving a child or a minor parent;
- bringing the provision of a GAL to the court's attention when necessary; and
- requesting that costs associated with a GAL's appointment be assessed against the State (§ 15-12-21 and § 15-12-22).

2. Legal Representation For County Departments

County Directors are authorized to retain legal representation, on a case-by-case basis, from local attorneys who are SDHR approved when representation is needed for judicial proceedings involving dependency and temporary custody matters. Counties with Regional Legal Offices are required to obtain legal representation from that office. County Directors and/or local counsel may also contact SDHR Legal for clarification on specific cases.

If a county department is served with a lawsuit in which DHR or DHR staff are being sued, SDHR Legal shall be contacted immediately. These cases shall not be referred to local counsel unless the county is directed to do so by SDHR Legal.

B. Special Assistants

Special assistants (e.g., interpreters for the deaf or non-English speaking) are occasionally needed for children, parents, or other persons whose testimony is necessary to present the County Department's case in court. Attorneys representing County Departments must contact SDHR Legal to obtain prior approval to hire these assistants. If approval is obtained, the attorney's bill will include the assistant's fee.

C. Witnesses

Witnesses with firsthand knowledge of the facts in a case are needed to testify at dependency hearings to support a child's best interest and the Department's petition. The attorney representing the County Department can subpoena witnesses to appear in court.

1. Expert Witnesses

Some cases may require an expert's opinion and the expert may charge a fee for testifying. When an expert's testimony is considered critical to the case, the attorney representing the County Department must contact SDHR Legal to discuss the case and obtain prior approval for payment to the expert.

2. Depositions

Depositions can be used for court witnesses who live in-state or out-of-state when the witnesses are unable to travel to court or travel costs are prohibitive. Attorneys representing the County Department must contact SDHR Legal to obtain prior approval when considering depositions.

D. Privileged Communication

The doctrine of privileged communication (§ 26-14-10), with the exception of the attorney-client privilege, is not grounds for excluding evidence regarding a child's injuries or the cause of them. Privileged communication between husband and wife is also set aside when judicial proceedings result from a report of child abuse/neglect pursuant to this act.

E. Preparing Children For Hearings

Children ages twelve (12) years and older will receive a summons to appear at court hearings, and the court may require the parent/guardian/custodian to accompany children of any age. Children should not be present at hearings when evidence that may damage their confidence in their parents is heard or when evidence that is unsuitable for them to hear is presented. §12-15-129 provides that the court may temporarily exclude the children's presence from the hearing if it is in their best interests.

Child welfare staff is responsible for preparing children for court proceedings when the children are old enough to understand. If the judge decides to hold a private interview with a child in order to obtain facts pertinent to the proceedings, the child must be apprised.

III. DEPENDENCY PROCEEDINGS

The decision to seek court intervention is typically a joint decision by ISP team members after it has been determined that services delivered have been unsuccessful and positive outcomes are unlikely without court intervention. Child welfare staff must clearly document all reasonable efforts made to prevent or eliminate the need for a child's removal from home. Parents/primary caregivers must be informed of the need for court intervention unless the advance notice could lead to an increased risk of serious harm to the children.

A. Making Complaints And Preparing Petitions

Cases are brought to the juvenile court's attention by making a complaint to the court's intake officer which alleges facts sufficient to establish the court's jurisdiction and the child's dependency. Dependency is alleged when the child meets any of the definitions noted in section I., C.

Complaints may be signed by any person who has firsthand knowledge of the facts in a case or by any person who is informed of the facts and believes them to be true. The complaint is verified when the person signs an affidavit swearing that the complaint's contents are true. The court intake officer then conducts a preliminary inquiry to determine whether the child is in the court's jurisdiction and whether the child's or the public's best interests require that a petition be filed. Petitions must be filed within fourteen (14) days of receiving the complaint, except in summary removal cases where the petition must be filed and a hearing held within seventy-two (72) hours (Saturday, Sundays, and holidays included).

All petitions must specify (1) the legal definition of why the child is alleged to be dependent (use applicable paragraphs a through n from section I., C.); (2) facts that show the child is dependent; and (3) reasonable efforts that were made to prevent the child's removal from home. Unless a good cause exemption has been established, § 12-15-314(e) requires that DHR custody petitions also include the following requests:

- a request for child support;
- a request to set a child support hearing if the child is found to be dependent and DHR is awarded custody;
- a request for medical support; and
- a request for wage withholding directing that the child support be paid to DHR.

B. The Summons

The court will direct the issuance of summonses after a dependency petition has been filed. Summonses will be served to appropriate persons (e.g., parents; primary

caregivers; children ages twelve (12) years and older; any other persons who appear to the court to be proper or necessary parties to the proceedings) at least twenty-four (24) hours before the hearing.

A copy of the petition will be attached to each summons, and the court may order the parents or primary caregivers to bring the children to the hearing. Any party, other than the children, may waive service of summons in writing or through voluntary appearance at the hearing. If a party waives the right to notice, the hearing may be held before the scheduled date. In this event, each party must be given a copy of the petition before or at the hearing. The inability to serve any party does not deprive the court of jurisdiction to proceed. If a summoned person fails to appear without reasonable cause, the court may hold that person in contempt.

C. Predisposition Study And Report

After a dependency petition has been filed, DHR may be ordered to conduct and file a predisposition study and report concerning the child, the child's family, and other matters relevant to the case. These studies and reports shall be completed according to the court's order, and must contain factual evidence to support the dependency allegations and enable the judge to rule in the child's best interests. CA/N Central Registry information may be made available to the appropriate court, district attorney, and law enforcement agency according to § 26-14-8 (c), paragraphs 1 through 4, 6 and 8. Central Registry information on "not indicated" reports and information contained in CPS Prevention referrals and assessments may be included in court reports only when that information is subpoenaed or provision of the information is expressly authorized by order of the court. Agency records other than CA/Ns shall not be made available to anyone outside the Department unless expressly authorized by order of the court. County Departments can defer providing pending CA/N information (unless served a subpoena or court order) until the CA/N initial assessment process is completed. Reports that recommend a child's removal from home must also contain documentation that all reasonable efforts have been made to prevent removal.

Written reports and evaluations from out-of-state social service agencies may not be considered in the hearing's adjudicatory phase unless the worker who knows the case facts and has completed the evaluation/report can testify. Attorneys for County Departments must contact SDHR Legal to request assistance with determining whether it is absolutely necessary that the out-of-state worker testify at the hearing or if a deposition will suffice.

D. Hearings

Dependency hearings are conducted without a jury and separate from other court proceedings. The general public is excluded, and only the parties, their counsel, witnesses, and any other persons requested by a party or the court are admitted under the condition that they refrain from divulging any information which identifies the children or family involved. Judges may also temporarily exclude the children's presence at hearings.

1. Shelter Care and Summary Removal

A. Shelter Care

Shelter Care hearings must be held within seventy-two (72) hours of taking children into temporary protective custody. After a child is removed either by summary removal or pick up order, a shelter care hearing is required within 72 hours. This hearing determines if continued out-of-home care is needed.

If a child is not released from care and the parents/primary caregivers have not been notified of the hearing or have waived appearance, an affidavit stating these facts must be completed, and the court must rehear the case within twenty-four (24) hours.

B. Summary Removal

Summary removal is the process where children are taken into temporary protective custody to protect them from imminent risk of serious harm. Summary removal is a pick up that does not require a court order. Code of Alabama 1975, § 26-14-6, provides the Department the statutory authority to remove a child without a pick up order.

2. Adjudicatory

An adjudicatory hearing is a “hearing on the merits” of the petition, and may be combined with the shelter care hearing. The parties are informed of the specific allegations in the petition and given an opportunity to admit or deny the allegations.

If the allegations in the petition are denied, the court will proceed to hear evidence in order to make an adjudication. Clear and convincing evidence and competent, relevant material must be presented to show that the child is dependent thereby allowing the court to make a proper disposition. Persons knowing the facts will need to be subpoenaed to give testimony. Depositions may be taken if these persons are out-of-state and travel costs are prohibitive, or if in-state witnesses are unable to travel to the hearing. SDHR Legal must give approval before depositions are taken.

DHR must provide clear and convincing evidence that a child is dependent and in need of the State’s care or supervision. DHR must also identify the permanent plan for the child (e.g., return to parents, relative placement, adoption). The court may dispose of the case immediately or may postpone the adjudication and schedule another hearing in order to make a proper disposition. If the facts in the petition have not been established, the court may dismiss the petition and order that the child be returned home if summary removal had occurred.

A judge may issue any of the following orders for the child's protection when a child is found to be dependent.

- Child is permitted **to remain with the parent/guardian/custodian** subject to the court's conditions and limitations;
- Child is placed **under DHR protective supervision**;
Protective supervision is a legal status created by a court order where a child is permitted to remain at home with supervision. Both supervision types allow the parents/custodians to retain custody with periodic reports provided to the court.
- **Child's legal custody is transferred from the parent or custodian to any of the following:**
 - (1) The County Department;
 - (2) A local public child-placing agency or private organization or facility licensed by DHR or otherwise authorized by law to receive and provide care for a dependent child;
 - (3) A relative or any other individual found by the court to be qualified to receive and care for the child; or
 - (4) A state or local agency that can provide services and treatment for the child.

Code of Alabama 1975, §12-15-314(b) provides that no child found to be dependent shall be committed to or confined in an institution established for the care and rehabilitation of delinquent children or a detention facility, unless also found to be delinquent.

There is nothing that prevents the placement of a child in need of supervision, a delinquent child, and a dependent child in the same residential or shelter facility (e.g., child care institution, foster family home, group home, shelter) if such a facility was not established for the care and rehabilitation of delinquent children.

3. Dispositional

Dispositional hearings are held to dispose of petitions and may be combined with the adjudicatory hearing. All relevant evidence, including oral and written reports, is presented to the court and used to the extent that the court finds them pertinent. The parties or their counsel are afforded an opportunity to examine and raise arguments to written reports, and to cross-examine individuals making reports. Dispositional hearings may be continued for a reasonable timeframe in

order to receive more reports or other evidence. In this event, the court will make an appropriate order for the child's care until the next hearing.

4. Permanency Hearings

The term "permanency hearing" replaced the twelve month "dispositional hearing" with the enactment of the Adoption And Safe Families Act (ASFA). This legislation, effective November 19, 1997, reaffirms R.C. Consent Decree principles and promotes national goals of safety, permanency and well - being for children.

To qualify as a permanency hearing, the hearing must be open to the child's parents, the age-appropriate child, the foster parents, and the pre-adoptive parents. The hearing must be conducted by:

- a family or juvenile court;
- a court of competent jurisdiction; or
- an administrative body appointed or approved by the court.

Initial permanency hearings must be held within thirty (30) days of a court determination that reasonable efforts are not required or within twelve (12) months of "the date the child is considered to have entered care." ASFA defines "the date the child is considered to have entered care" as the earlier of: (1) the date of the first judicial finding that the child has been abused or neglected, or (2) sixty (60) days after the date the child was removed from home. The initial permanency hearing is due twelve (12) months from the actual date that the child entered care, and subsequent hearings must be held no less frequently than every twelve (12) months thereafter to assure that required timeframes are being met. Permanency hearings are not required for children in DHR custody who reside in their own homes. Code of Alabama 1975, §§ 12-15-312 and 315.

Permanency hearings are held to determine whether and when a child will be:

- returned to and safely maintained at home; or
- placed with a relative and referred for legal custodianship; or
- placed for adoption following termination of parental rights; or
- placed in another planned permanent living arrangement, if the other options are not appropriate.

E. Appeals

Aggrieved parties in a dependency case may appeal a final order, judgment, or decree by filing a written notice of appeal within fourteen (14) days after the order, judgment, or decree has been entered.