

FOSTER PARENTS AND THE COURTS

ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES

OFFICE OF THE FOSTER CARE OMBUDSPERSON

A NOTE TO FOSTER PARENTS IN ERIE COUNTY:

As a foster parent, you have a critical role to play in the life of a child. One of the critical needs of a child placed in foster care is the need to receive permanency timely. Erie County Department of Social Services (ECDSS) has the responsibility to assist the birth family in rectifying the problems that led to the removal of the child, allowing the child to return home safely. It is recommended that you attend all court hearings for the children in your care; however, your presence is not mandatory. As a foster parent, you are not a party to the case. You have the right to receive notice of Permanency Hearings. If, as a foster parent, you have cared for a child continuously for twelve months or more, you will be permitted as a matter of right to intervene as an interested party in any proceeding involving custody of the child.

We developed this handbook to help you understand the court process. It will provide you with valuable information about your rights and responsibilities, as well as the role of key participants in the court process.

This handbook is not all-inclusive. You may have additional questions that can be answered by the child's Agency or ECDSS caseworker or the Attorney for the Child (AFC). Also, it is crucial to understand that there is a local culture involved in Family Court proceedings; each Judge has procedures and rules about what happens in his or her courtroom, and those rules may vary by location or by the particular Judge involved in the case.

THE COURT PROCESS

WHAT IS FAMILY COURT?

New York State designed its Family Court to protect the physical, mental, and emotional well-being of children. It helps parents maintain a safe home for their children. Information about a family is presented to the Judge during various hearings. Judges are required to make tough decisions that have a significant impact on the lives of children and families. Judges are dependent on all of the participants on a case to provide factual and timely information before they make any decisions.

REASONS WHY CHILDREN MAY BE PLACED IN OUT OF HOME CARE?

Children are placed in out of home care for several reasons:

- Their parents/guardians or caretakers are not able to keep them safe.
- Physical, sexual, or other abuse or neglect has occurred in the home.
- The environment in the home is unsafe.
- Parents/guardians become sick or hospitalized or incarcerated, leaving them unable to care for their children.

HOW DOES A CASE GET TO COURT?

Most cases in Family Court start with a report of suspected child abuse or neglect to the State Central Registry. If the State Central Registry accepts the report for assessment, an ECDSS Child Protective Services (CPS) worker will conduct a child abuse assessment within 60 days of the report. If CPS indicates the report (i.e., finds some credible evidence that supports the allegation), they will consult with an ECDSS Attorney, who may file a Neglect or Abuse Petition.

WHAT ARE DILIGENT/REASONABLE EFFORTS?

"Reasonable efforts" refers to activities of social services agencies that aim to provide the assistance and services needed to preserve and reunify families. The Federal Title IV-E program requires social services agencies to make reasonable efforts to preserve and reunify families (i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and (ii) to make it possible for a child to safely return to the child's home.

WILL I BE INFORMED WHEN A HEARING IS GOING TO TAKE PLACE?

Once a Neglect or Abuse petition is filed, the Court will schedule various hearings that will take place over a period of time. As a foster parent, you are only treated as a party to receive notice of Permanency Hearings. You are not considered a party for other purposes, such as filing motions, questioning witnesses, or appealing the Court's decision. Notice of Permanency Hearings should be sent to you by a representative of Erie County.

WHAT ARE THE DIFFERENT COURT HEARINGS?

Note: Timeframes for court hearings are often set based on federal and state mandates.

REMOVAL HEARING: The removal hearing, frequently called a remand hearing in Erie County, will frequently determine whether the child will return home or remain in the custody of Erie County. During the hearing, the Judge will listen to the recommendations of the ECDSS Attorney, the AFC, as well as the parents and others involved with the family, to decide if the conditions of the home are appropriate for the child's return. If the Judge decides that the child will be unable to return home at this time, they will advise the parents that if they do not remedy the situation that caused the children to be removed within 15-22 months, the County may petition for the termination of their parental rights.

FACT-FINDING HEARING: Cases of Neglect and or Abuse are decided in two steps - the fact-finding hearing is held first, and the dispositional hearing is the second step. Frequently, the fact-finding and dispositional hearings are conducted on the consent of all parties, as the issues have been negotiated before the hearing. The parents will make an admission to neglect or abuse, and then the agreed-upon Plan for Services (aka, "Court Menu") is signed. If there is no negotiated resolution, the fact-finding hearing is held. There is no jury in Family Court; the Judge conducts all hearings. At the fact-finding hearing, the Judge will determine whether the allegations in the petition have been proven by a preponderance of the evidence. If the child is in out-of-home care, the Judge may also decide if it is safe for the child to return home. The Judge's decisions will be based on the information provided by those involved in the case.

DISPOSITIONAL HEARING: The dispositional hearing must be held as soon as practicable after the fact-finding hearing. Typically, the parties agree to have the dispositional hearing on the same day as the fact-finding hearing. At this hearing, the Court Menu developed by the respondent parents, the respondent parent's Attorney, ECDSS, the AFC, and others involved with the family, is presented to the Judge. The Judge reviews the Court Menu and determines whether it fully addresses the child's needs and/or the safety concerns that resulted in the removal of the child. The plan outlines the services that the parents need to engage in, in order for the child to return home safely.

REVIEW PROCEEDING: A review proceeding is generally held one-to-two months after the dispositional hearing and periodically after that until the case is closed. However, the Judge has the discretion to determine how often they would like to review a case; review proceedings can occur more than once every two months. Review proceedings are usually conducted before a Court Attorney Referee (CAR), whose job it is to assist the Judge. During a review proceeding, the CAR receives updates regarding the parents' progress on the issues identified in the Court Menu. Changes in access and placement may be discussed at that time.

PERMANENCY HEARING: The initial Permanency Hearing occurs when a child has been out of the home for eight months after the removal. Subsequent Permanency Hearings will occur no later than six months from the completion of the previous Permanency Hearing. Permanency Hearings are held to determine if it is in the best interest of the child to continue to be placed outside of their home and for

the Court to determine if the child's permanency plan remains appropriate. Much like a review hearing, the progress the parents have made at addressing the concerns that brought the child into care will be discussed at this time, as well as the efforts ECDSS has made to achieve the child's stated goal. The child's goal may be reunification, adoption, legal guardianship (KinGAP), permanent placement with a fit and willing relative, or alternative planned permanent living arrangement (APPLA). Changes to access and placement may occur at a Permanency Hearing to work towards achieving the child's stated goal.

WHAT IS PERMANENCY?

Permanency is about supporting lifelong family connections. Erie County's permanency vision is that every child deserves a forever family. A forever family offers safe, stable, and committed parenting, unconditional love, lifelong support, and legal family membership status.

Ideally, permanency is achieved through preserving or reunifying the child's original family. If this is not possible due to safety concerns, permanency can also result in legal guardianship or adoption by kin or other caring, committed adults.

Three critical pieces of the permanency puzzle include:

1. An emotional attachment between youth, caregiver, and other family and kin.
2. A legally established relationship (adoption, guardianship, or birth family).
3. A continuous connection to family, tradition, race, ethnicity, culture, language and religion.

Permanency for a child means that the child has a safe and stable environment in which to grow up and a life-long relationship with a nurturing caregiver. Some Permanency options include:

- **RETURNING HOME:** If the Judge determines that the best interests of the child will be to return home, the services being provided will continue to focus on that goal. Services to return the child home will continue until the Judge determines it is no longer in the child's best interest.
- **TRANSFER CUSTODY TO ANOTHER PARENT:** In situations where the child's parents do not live in the same home, the permanency plan may be that the child is placed with the other parent. If this is the case, efforts will be made to place the youth permanently with the other parent.
- **ADOPTION:** If the Judge determines that returning home is not in the child's best interest, adoption may be one of the options available. The ECDSS Caseworker will work to identify a permanent home for the child; in many cases, the adoptive family may be a relative or the foster parent who has been taking care of the child. If the family interested in adopting the child is another family, the ECDSS caseworker will assist the child and the family in building a relationship before any final placement decisions. If the child is 14 years of age or older, the child has to agree to the adoptive placement.

WHAT ARE MY RIGHTS AS A FOSTER PARENT IN THE COURT PROCESS?

NOTICE: As a foster parent, you have a right to receive notice of Permanency Hearings involving a child in your care, and you have a right to be heard. When a child is placed with you, Family Court will send you a notice of your right to be heard. The notice will state:

1. The child's name, date and time, and location of the hearing.
2. You have the right to be notified of the hearing.
3. You have the right to attend the hearing.
4. You have the right to respectfully request to be heard at the hearing.
5. You are allowed to participate in every review or Permanency Hearing as you are an integral part of the court update. You do not gain standing as a party until you have fostered your foster child continuously for 12 months or more.

ATTENDANCE AT THE HEARINGS: While it is usually recommended that you attend all hearings for any child in your home, in most cases, it is your decision whether or not to attend. However, if a party to the child's case would like you to attend the hearing, they have a right to serve you with a subpoena. A subpoena is a legal order compelling your attendance. If you are served with a subpoena, you must attend the hearing as directed.

AS A FOSTER PARENT YOUR RIGHTS DO NOT INCLUDE:

1. You are not a legal party to the proceedings; therefore, you may be asked to leave during part of the hearing.
2. You cannot examine or call witnesses, and you cannot object to any testimony.
3. You are not allowed to send the Judge a letter, make a phone call, or attempt to visit the Judge outside of the presence of the other parties. This is called *ex parte* communication and is prohibited by the ethical provisions applying to both lawyers and the Court. All information must be shared with all parties.

WHAT HAPPENS IF I ATTEND THE PERMANENCY HEARING?

If the matter is uncontested (the parties agree with a recommendation to the Court), then you may be allowed to make a short statement to the Court. Some judges may limit your participation at Court to answering questions he or she has about the child. The Court has a limited amount of time, and your comments should be short and to the point.

If the matter is contested (i.e., the parties cannot agree to a recommendation to the Court), you may be called as a witness by one of the lawyers in the proceeding. In that event, your testimony will be limited to responding to specific questions asked. All of the other lawyers or parties will have an opportunity to ask you additional questions by cross-examining you. You will be required to take an oath to tell the truth before testifying.

CHILDREN'S PARTICIPATION IN COURT PERMANENCY HEARINGS

Any child may participate in their Permanency Hearing if they want to. The AFC will discuss with the child the option to participate in the hearing. For children ten and over, the AFC must advise the Court and other attorneys in advance of the hearing whether the child wishes to participate and in what manner the child would like to participate. The child may participate by appearing in person, by phone, or by submitting a written statement to the Court. If the Court deems it to be in the child's best interest, the Court may choose to split the Permanency Hearing into two parts so that the child may participate in the Permanency Hearing without being in the presence of the parent. Unless advised to do so by the AFC, the child should not be brought to Court. If a child chooses to participate in the Permanency Hearing, they may choose to stay for the whole court appearance or just part of it. Typically, the CAR or Judge will give the child the opportunity to speak if they would like to and will often engage with the child in an age-appropriate manner, such as asking about school or what movies they have seen recently. It is the job of the AFC to, dependent on the child's age and development, advise the child what happened at court appearances and address any questions they may have. Children must be able to freely contact their attorneys.

CHILD'S RIGHT TO SIBLING VISITATION

Under New York State law, children in foster care who are not placed with their siblings have a right to frequent visitation or other ongoing interaction with their siblings. Removing a child from their home is traumatizing, and when a child is separated not only from their parents but also from their siblings, it is even more difficult. As a foster parent of a child who is not placed with their siblings, you can play an essential role in helping facilitate visitation between the child and their siblings. This may mean hosting visits in your home, driving the child to the siblings' foster home, or a central location so that they can see their siblings, or initiating phone calls, letters, or emails. Any help that foster parents can provide in facilitating sibling visitation is greatly appreciated.

A copy of this handbook is available on the ECDSS Website-

<http://www2.erie.gov/socialservices>

GLOSSARY

A glossary of the terminology used in this handbook can be found at:

<http://ww2.nycourts.gov/lawlibraries/glossary.shtml>

HELPFUL WEBSITES:

Kinship Navigator-www.nysnavigator.org (information for relative caregiving)

Erie County Family Court-www.nycourts.gov (court operations)

Office of Child and Family Services-www.ocfs.ny.gov (foster parent's rights, rules, and regulations)

Erie County Homefinding-www2.erie.gov (Information and resources)

Adoptive and Foster Family Coalition of Western New York-www.affcnny.org (events and advocacy)

Western New York Foster Adoptive Families Association-www.fafa.org (foster parent support)

Child Welfare Information Gateway- <https://www.childwelfare.gov/pubPDFs/cwandcourts.pdf>