

NOTES



**A Parents Guide:
*How to effectively
handle your
termination of
parental rights case***

*Written and published by the Office of
the Clark County Special Public Defender
Family Defense Project*

Important Names and Numbers

NOTES

My Case Number Is: _____

My Lawyer Is: _____

Phone Number: _____

My SPD Social Worker is: _____

Phone Number: _____

The Hearing Master in my case Is:
Honorable _____

The Judge in my Case Is:
Honorable _____
Department No: _____

My Caseworker Is: _____

Phone Number: _____

My Child's CAP Attorney Is:

My Child's Foster Care Provider Is:

Phone Number: _____

My Child's CASA Is: _____

Other: _____

Permanency hearing: A hearing at which DFS presents its plan to terminate your parental rights or to continue the plan of reunification.

Petitioner: The party who begins a civil lawsuit by filing a complaint. DFS is the plaintiff in a termination of parental rights action against a parent.

Relinquishment: An agreement to end your parent-child relationship, which allows DFS to find an adoptive home.

Return date: The date on which you must return to court.

Vacate: The process of undoing a default judgment that has been entered against you is called vacating a judgment. To do this, you must file papers explaining your reason for not going to a court hearing or evaluation and asking the judge to vacate the default. If your default is vacated, your right to a complete trial will be given back to you.

Ward of the Court: This term refers to the fact that the Court has taken control of your child. A temporary legal guardianship of the child or children until they are either returned to the parents, or they are adopted by someone else.

This is not a criminal case

A termination of parental rights action is a civil action, not a criminal case.. You cannot be put in jail or other criminal penalty if you lose this case. Criminal charges may be brought against parents for child abuse or neglect, but parents who are charged with those crimes are usually arrested close to the time CPS first removes the children from your home.

If you are also a defendant in a criminal case, or if the prosecutor's office is investigating you as a possible criminal defendant, make sure that the lawyer representing you in your termination of parental rights case knows about your criminal case. Also make sure that the lawyer defending you in the criminal case knows about your termination of parental rights case. Anything you say to police, case workers or treatment providers can be used against you in a criminal case.

How did I become involved in this process?

Under Nevada law, within 10 days of the removal of a child, the State must file a complaint for abuse/neglect. In a child abuse or neglect court action, the judge must decide whether you abused or neglected your child. You may have stipulated (agreed) to facts upon which the judge based a finding of abuse or neglect against you, or you may have had a fact-finding trial that resulted in a court judgment finding that you abused or neglected your child.



FAMILY REUNIFICATION

When your child was removed from you, DFS, in most cases, is supposed to first give you a chance to solve the problems that prevented you from caring for your children. This may be a “Case Plan” or making “reasonable efforts” to avoid terminating your parental rights. DFS must also make “reasonable efforts” to return the child to your home. If a parent needs substance abuse rehabilitation, therapy or counseling, housing, day care, or other services to be able to provide a safe home for his or her children, DFS is supposed to help the parent get those things.

In some instances, DFS may have successfully convinced the court that it should not be required to make reasonable efforts to help a parent. This can happen to a parent who has been found by a court to have committed or tried to commit a serious crime against one of his or her children, to a parent whose rights to another of his or her children were terminated involuntarily, and to a parent in certain other unusual situations.

DFS has decided to try to terminate your parental rights to your child

At some point, DFS made a decision to try to terminate your parental rights. You may have attended a *permanency hearing*, at which DFS presented its plan to terminate your parental rights. Permanency hearings must be held no later than 12 months after your child has been placed in the care of someone else.

In situations where the court determines that DFS does not have to make reasonable efforts to reunify you and your child, the permanency hearing must be held within 30 days of that determination. Once DFS decides not to reunify your family, it is required to make plans for your child to have a permanent home with the child’s current caretakers or with someone else.

Direct examination: The questions that a lawyer asks each of his or her client’s witnesses.

Discovery: The process of requesting and providing information before a trial.

Doctor-patient privilege: Special protection is given to the things you tell a doctor who treats you as a patient regularly. The same is not true for an expert doctor who evaluates you for your trial.

Foster home adoption: DFS’ plan for a child to be adopted by his or her current caretakers.

General surrender of parental rights: see Relinquishment.

Guardianship: A legal alternative to termination of parental rights that is designed to be more permanent than placing a child in the custody of a relative or friend. However, it allows you to keep some parental rights to your child.

Office of the Clark County Special Public Defender, Family Defense Project: A branch of the Office of the Clark County Special Public Defender that represents low-income parents who cannot afford lawyers in abuse and neglect and termination of parental rights hearings.

Open adoption: An adoption where biological parents keep the right to have some ongoing contact with their children, even after the children have been legally adopted in exchange for relinquishing their parental rights.

GLOSSARY

Best interests of the child: The most common legal basis for terminating parental rights, where DFS must prove a number of reasons why it is best that your parental rights be ended.

CAP attorney: The lawyer who represents the child named in a termination of parental rights complaint.

Chambers: The judge's office.

Clear and convincing evidence: The highest level of proof required in a civil case—the civil equivalent of the “beyond a reasonable doubt” standard in criminal cases.

CPS: Child Protective Services

Cross-examination: An attorney's questioning of a witness called to testify by the other side in the case. Cross-examination questions are asked in order to check or discredit the testimony, knowledge, or credibility of the witness.

DFS: Department of Family Services.

Defendant: In a termination of parental rights case, the parent is not called a defendant, but is called a Respondent.

Default: A default can be entered against you if you fail to appear or respond to court orders or miss your contested hearing or TPR trial.

Deputy District Attorney: The lawyer for the State of Nevada.

A child whose parents are living cannot be adopted unless the parental rights of both the child's birth mother and birth father have been terminated. If DFS cannot find one of the child's parents (commonly the father), it can still terminate that parent's rights if it can prove to the court that it tried to identify and find the parent, but was unable to do so.

DFS uses the term *foster home adoption* to describe its plan for a child to be adopted by his or her current caretakers.

In most cases, DFS is required by law to file an action to terminate parental rights after a child has been in foster care for 14 months. There are exceptions to this requirement if:

- Your child is living with a relative and a permanent plan for the child may be achieved without termination of parental rights;
- DFS has a good reason why termination of parental rights is not in the best interests of your child; or DFS believes that, to be a safe parent, you need certain help that it has not provided for you.

The Clark County District Attorney has filed a complaint to terminate your parental rights

The complaint that has been filed against you for termination of parental rights is a very important document. It explains why the State is trying to end your parental rights. To terminate your parental rights, unless certain presumptions apply against you, DFS must prove that the things it says about you in the complaint are true. The court then decides if those things justify terminating your parental rights under Nevada law.

The termination of parental rights case filed against you can only be used to terminate your rights to the child or children named in the complaint.

What about my other children?

If you have other children who are not named in the complaint, the court cannot terminate your rights to those children through this court action. DFS can, however, ask the court's permission to add their names to the complaint. DFS must give you a copy of the complaint. If this case results in an involuntary termination, you risk having your other children taken from you.

YOUR COURT DATES

YOU WILL BE GIVEN COURT DATES TO APPEAR when you are in Court. This is called the *return date*. It is very important that you appear in court at the time and date described. If you do not go to court, the court could rule against you without ever hearing your side.

DO I NEED AN ATTORNEY?

If you are involved in a court action that may result in a termination (loss) of your parental rights, you may have the right to an attorney. The State is represented by the Clark County District Attorney, and, unless you have legal training, it can be very difficult to handle a case on your own because there are many rules to follow, laws to know that form the basis of the case, and certain actions that must be taken. A person with very little or no legal training may not know about these things or how to find out about them. You may need the assistance of an attorney. Legal advice can be very important in preventing serious problems with the processing of your case.

Finding an attorney

There are several places to look for an attorney.

Non-identifying information:

Adoption records may also be accessed to assist adoptee, birth and adoptive parents who may request non-identifying information. Examples of non-identifying information may include:

- Age of the birth parents or adoptive parents at the time of adoption; Height, weight, complexion, eye and hair coloring of the parents; Education and occupation of the parents; Health histories. For further information or to request an application, contact the Nevada Adoption Registry at 4126 Technology Way, Third Floor, Carson City, Nevada 89706, (775) 684-4415,

CONCLUSION

If you decide to fight to keep your parental rights, you will have the best chance of winning if you give your lawyer all of the information you can, stay in touch and work with your lawyer from the beginning of your case. Carefully follow his or her advice. Attend all court dates, evaluations, and scheduled visits with your child, as well as any therapy and substance abuse counseling sessions, meetings, and classes DFS asks you to attend. You must keep proof of your attendance and the progress you have made in solving the problems that led to the removal of the child.

You must be willing and able to work hard and devote a lot of time and effort for your child. You must be willing and able to commit your best efforts to defending your parental rights, or you will almost surely lose.

Being the respondent in a termination of parental rights action is frightening, stressful, and very difficult emotionally. However, you must not become discouraged or refuse to deal with the situation. You must **start from where you are at this moment and do your very best to keep your family together, if that is what you want.**

parents well enough to speak directly with them, you can ask your DFS worker and your attorney to discuss the matter with them. Be specific about the type of contact you would like to maintain with your child.. In **open adoptions**, biological parents keep the right to have some ongoing contact with their children, even after parental rights have been relinquished and the children have been legally adopted.

A written open adoption agreement must be completed and signed prior to relinquishment. Without it you may never have contact with your child again — it would be up to the adoptive parents

The Nevada Adoption Reunion Registry

The Nevada Adoption Reunion Registry was established in 1979 and is maintained by the Division of Child and Family Services. This mutual consent registry assists adult adoptee, birth parents, and relatives in conducting searches for each other if the other eligible party or parties have filed applications agreeing to the release of identifying information. Those eligible to register are:

1. Birth parents who relinquished their rights or consented to a child's adoption through a public or private adoption agency in Nevada, or whose parental rights were terminated by court order in Nevada.
2. Adult adopted persons age 18 and over, whose adoption was finalized in a Nevada Court.

Birth relatives related within the third degree of consanguinity of the adoptee. Written consent from the birth parent is required before identifying information regarding the adoptee can be released to a relative.

All eligible parties must have applications on file for the matching process to proceed and their contact information must be current. *Individuals may withdraw their application at any time.*

The Nevada State Bar Association

A list of attorneys who practice law can be obtained from the bar association in your local area or you may consult the local telephone book for a Lawyer Referral Service number or a complete list of lawyers in the yellow pages under Attorneys. The **Nevada State Bar Lawyer Referral & Information Service** is a free, non-profit, public service for attorney referrals. The phone number is **(702) 382-0504**.

Court-Appointed Attorney

You may be entitled to a court-appointed attorney at no cost to you if the Court finds that you are indigent after reviewing information about your income, property, expenses, and other financial information . If you qualify, you will be appointed a Deputy Special Public Defender, or receive a Court appointed attorney.

The court may require repayment of some or all of the costs of a court-appointed attorney.

Separate lawyers for each Parent

In some cases, the law may require that each parent have his or her own lawyer to represent him or her. This may be so, even if both parents are asking for the same thing. Separate lawyers are sometimes necessary because the parents involved may disagree or take positions against each other during the case.



WHAT ARE THE REASONS FOR TERMINATING MY RIGHTS?

The law describing what the State must prove to terminate parental rights appears in the Nevada Revised Statutes (NRS) in Section 128. You may get a copy of this law at the Clark County Law Library, the Self Help office in the Family Courthouse, most public libraries, or on line at <http://www.leg.state.nv.us/law1.cfm>



Pursuant to the Nevada Revised Statutes chapter 128, and case law, there is a two (2) part test the Court must apply to determine whether a request should be granted.

The first part of the test directly asks “Is it in your child’s best interests to terminate your parental rights?”

The second part of the test is have you corrected the problem that caused the state to take your child— such as:

- Abandonment of the child by the parent;
 - Neglect of the child by the parent;
 - Unfitness of the parent;
 - Failure of parental adjustment by the parent;
 - The child at risk of serious physical, mental, or emotional injury if he or she were returned to, or remains in, the home of his or her parent or parents;
 - Only token efforts by the parent or parents to support or communicate with the child; to prevent neglect of the child; to avoid being an unfit parent; or to eliminate the risk of serious physical, mental, or emotional injury to the child;
- or
- With respect to termination of the parental rights of one parent, the abandonment by that parent. (These are contained in NRS § 128.106 to 128.109, inclusive).

The state and DFS must prove both parts of this test by “clear and convincing” evidence unless the child has been out of the house for 14 months of any 20 months.

Appeals that challenge what the judge determined were the facts in a case are rarely successful. Most appeals challenge whether the trial judge applied the law correctly.

The State also has a right to appeal if they disagree with the decision.

WILL I HAVE CONTACT WITH MY CHILD AFTER TERMINATION?

Final visit

If you voluntarily surrender your parental rights or the court decides to terminate them, you may ask your lawyer to request a final visit which may be very important for both you and your child. The final visit is a time to say good-bye. DFS must approve a final visit.

At the final visit, you can take pictures of your child and give your child pictures of you and other members of your family. Even if you do not have a final visit, you may request permission to write a final letter to your child, including pictures, if you wish.

Asking for continued contact (open adoption)

In some cases, the people who adopt your child may allow you to keep in touch through visits, telephone calls, or letters. If you want continued contact with and information about your child, ask the adoptive parents whether they will agree to it. If you do not know your child’s adoptive

Preparing your testimony is very important. You should spend as much time as possible with your lawyer in order to get ready to answer the questions your lawyer will ask you on direct examination and the questions he or she thinks you will be asked on cross-examination.

Your child's attorney also has the right to call witnesses to testify at the trial. Again, your lawyer will have the chance to ask those witnesses questions on cross-examination.

After all of the witnesses have testified and been cross-examined, the lawyers will make closing arguments to the judge. Your lawyer will argue that DFS has not proven clearly and convincingly the specific things required under Nevada law to terminate parental rights. DFS will argue that it has proven its case by clear and convincing evidence. Clear and convincing evidence is proof that is very strong.

THE JUDGE'S DECISION

The Judge must decide, based on the evidence presented at your trial and the law, whether or not to terminate your parental rights. The Judge may announce the decision right after your trial ends or may take some additional time before making the decision.

If the Judge decides to terminate your parental rights, you will receive written notice from the Court. You then have the option of accepting the Court's decision or filing an Appeal to the Nevada Supreme Court.

Appeal

If you disagree with the judge's decision at the end of your trial, you have a right to appeal it. However, you do not have the right to have an attorney represent you on the appeal. You must either hire private appellate counsel or proceed in proper person.

If this is true, it is **presumed** that the parent both failed to correct the conditions leading to the removal of the child and that it is in the best interests of the child to terminate your rights to your child. If this happens, then the burden of proof shifts, and it is up to you to prove that you have corrected the conditions that caused your child to be removed from your home, **and** that it is in the best interests of the child to not terminate your parental rights.

WHAT DOES THE "BEST INTERESTS OF THE CHILD" MEAN?

The legal basis for terminating parental rights is called *best interests of the child*. Once your child is no longer in your care, NRS 128.107 outlines what the Court must consider in order to terminate your parental rights.

1. The services provided or offered to the parent or parents to facilitate a reunion with the child.
2. The physical, mental or emotional condition and needs of the child and his desires regarding the termination, if the court determines he is of sufficient capacity to express his desires.
3. The effort the parent or parents have made to adjust their circumstances, conduct or conditions to make it in the child's best interest to return him to his home after a reasonable length of time, including but not limited to:
 - (a) The payment of a reasonable portion of substitute physical care and maintenance, if financially able;
 - (b) The maintenance of regular visitation or other contact with the child which was designed and carried out in a plan to reunite the child with the parent or parents; and
 - (c) The maintenance of regular contact and communication with the custodian of the child.
4. Whether additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent or parents within a predictable period.

The court shall disregard incidental conduct, contributions, contacts and communications.

While you may not have harmed your child, your parental rights may be terminated by a failure to correct the reasons your child was removed from your home

Another legal basis for terminating parental rights is a parent's failure to correct the reasons for removal. To base its termination on this ground, DFS must prove that the following things are true:

- Within a the term of supervision by the Court from the time of the removal of your child, you have not corrected the problems, or dangerous parenting practices that caused the child to be taken from your home, although you are physically and financially able to correct your problems. DFS has done what it was required to do to help you correct your problems.

ABANDONMENT

Parental rights may be terminated on the ground of abandonment under NRS 128.012 if:

- DFS does not know who you are, even though it has used all reasonable methods to identify you; or
- Without having a good reason, you have had no contact with the child, the child's foster parents, or DFS for six months.

CONVICTION OF A CRIME

Another reason for terminating parental rights may be if you have been convicted of, or entered a plea of guilty to, the commission of a felony, if the facts of the crime indicate unfitness of the parent to provide adequate care and control necessary for the child's physical, mental, or emotional health and development; (NRS 128.106).



that bring out your side of the story (*cross-examination*). Your child's attorney, if your child has an attorney, will also get to cross-examine the witnesses.

When the direct examination and cross-examination of DFS witnesses has been completed, your lawyer may call witnesses to testify for you. Long before your trial, you should discuss with your lawyer your ideas about who might testify on your behalf. When your lawyer presents your case, he or she may call experts, therapists and counselors, neighbors, friends, members of the clergy, and family members who can say positive things about you and your ability to care for your child. The District Attorney, and the attorney for any of the parties present will have an opportunity to cross-examine the witnesses called by your lawyer.



If you believe that your child is old enough to talk to the judge and that the child does not want his or her relationship with you ended, you should discuss with your lawyer the possibility of having the judge interview the child. Children rarely testify in court in termination of parental rights cases, but may allow their feelings to be known through their attorney.

It is important for you and your lawyer to decide if you will testify at the trial. Usually, a parent fighting against termination of parental rights will want to testify and any parent may be called as a witness by the District Attorney. If you do not testify, the judge may think that you have something to hide or that you have no defense to the evidence against you. In making your decision about testifying, you must remember that you will be cross-examined by the District Attorney. They are likely to try to get you to say things that will hurt your chances of keeping your parental rights.

You need to contact your lawyer as soon as possible if you miss court or an evaluation. Your lawyer will know or can find out if a default has been entered and can try to vacate it, with your cooperation.

WHAT HAPPENS AT A TRIAL?

Unless your case is settled before trial, your trial is the most important event in your termination of parental rights case. You need to be present in court every day of your trial. You should dress neatly to make a good impression on the judge. You should wear the same kind of dressy clothes you would wear to an important occasion, such as a wedding or job interview.

A trial in a termination of parental rights case usually begins with opening statements by the lawyer for DFS, the law guardian, and the lawyers for the parents. Opening statements introduce the facts the lawyers will try to prove and explain how those facts are related to the laws that control termination of parental rights.

After the opening statements, the DFS lawyer will call witnesses to testify against you. The DFS witnesses probably will be your caseworkers and the experts DFS hired to evaluate you. Other witnesses against you may be visiting nurses, home health aides, substance abuse rehabilitation counselors, neighbors, or relatives who have negative things to say about you. Even though you may be angry at some things these witnesses say, you must remain quiet and calm. **EVERYTHING YOU DO, EVERYTHING YOU SAY AND EVERY LOOK ON YOUR FACE IS BEING SEEN BY THE JUDGE.** However, if something a witness says is wrong, inconsistent, or reminds you of something important, you may silently write a note to your lawyer.

After the District Attorney lawyer questions each of his or her witnesses (this is called *direct examination*), your lawyer will have a chance to ask the witnesses questions

Other court findings

Your parental rights also may be terminated if the following conditions exist which may affect you as a parent:

- Emotional illness, mental illness, or mental deficiency which renders the parents consistently unable to care for the immediate and continuing needs of the child:
- Conduct toward a child of a physically or sexually cruel or abusive nature;
- Conduct that involves the sale of a person to another;
- Excessive use of intoxicating liquors, controlled substances or dangerous drugs:
- Repeated or continuous failure by the parent, although physically and financially able, to provide the child with adequate food, clothing, shelter, education or other care and control necessary for his physical, mental, and emotional health and development: however, a person who, legitimately practicing his religious beliefs, does not provide specified medical treatment for a child is not for that reason alone a negligent parent;
- Unexplained injury or death of a sibling of the child
- Inability of appropriate public or private agencies to reunite the family despite reasonable efforts on the part of the agencies

Failure to reunify within state time limits

Your parental rights may also be terminated if you fail to correct the problems and your child does not live within your home within certain time limits. **WHEN YOUR CHILD HAS BEEN IN FOSTER CARE 14 MONTHS OF ANY 20 MONTH PERIOD** the Court will presume that is in the best interests of the child to terminate your parental rights, and that you are presumed to have demonstrated only token efforts to care for the child. **(NRS § 128.109).**

Additionally, **If you fail to comply substantially with the terms and conditions of a plan to reunite the family within 6 months** after the date on which the child was placed or the plan was commenced, whichever occurs later, the Court may consider that as evidence of failure of parental adjustment, and may use that as a basis for terminating your rights to your child.

WHAT ARE YOUR RIGHTS AND WHAT DO YOU NEED TO DO?

Getting services from DFS

Time to fix the problems that prevent you from caring for your child has almost run out!

- If you have a substance abuse problem, you must enroll in a substance abuse treatment program immediately. If you are recovering from substance abuse, this is an important time to get all of the help you need to stay clean and be tested to prove that you are clean.

-If there are particular services that you think you need now, tell your lawyer. If DFS refuses to give you help at this point, your lawyer can ask the judge to order DFS to give you the services you need. If you cannot get DFS to give you services, try to find the help you need yourself. DFS is usually required to make "reasonable efforts" to help parents correct their problems. These reasonable efforts include at least the following steps:

- Working with you to develop a plan for services to help you get your child back;
- Providing or referring you to the services you and your DFS case worker have agreed upon, such as counseling,



Be courteous, respectful, and calm in the following situations: in court, at visits with your child, in your treatment program, at your therapy, at parenting classes, and when anyone from DFS or the Courts visit with you. When you have the opportunity to do so, show that you are willing to cooperate and do all of the reasonable things you may be asked to do. Show that you care about and love your child very much.

What you say may be used against you

Things you say to DFS workers can be used against you in your termination of parental rights case and also can be used against you in a criminal case. The same is true of things you say to other people, including therapists, Foster Parents, case workers, or anyone who is evaluating or investigating you. **Only things that you tell your lawyer are confidential.**

What happens if you miss court -- Defaults

If you miss any contested hearing or Termination of Parental Rights Trial, a *default* can be entered against you. Defaults are dangerous if you want to defend against termination of parental rights.

You **may** be able to undo a default that has been entered against you by explaining your reason for not going to the court hearing you missed and asking the judge to *vacate* the default. That decision is up to the Judge.

If your default is vacated, your right to a trial will be given back to you. Be prepared to give your lawyer and the court **proof** of a **serious event or circumstance** that prevented your attendance, such as an emergency room discharge form if you were in a car accident on the way to court.

COURT ORDERED EVALUATIONS ARE NOT THERAPY —THEY CREATE EVIDENCE THAT CAN BE USED AGAINST YOU

An evaluation by a potential expert witness is not a private therapy session. **There is no doctor-patient privilege or confidentiality.** The expert evaluator will prepare a report for DFS that may be used in court against you. The report will describe significant events and conversations that occurred during your evaluation.

In most cases, if DFS' experts decide that you are capable of caring for your child and that your child is attached to you emotionally, your chances of getting the child back are good. On the other hand, if the DFS experts decide that your child might be harmed if he or she is returned to you, DFS will use their evaluations as evidence against you.

If you are financially eligible to be represented by a lawyer through the Clark County Special Public Defender's Office, or appointed counsel, your lawyer can apply to the Court for money to pay for your own defense expert. Whether or not this is available is up to the Judge. Always be on time for the expert evaluations you are to attend. Be polite, and follow the instructions of whoever is evaluating you. Remember that, at trial, the experts who have evaluated you will be telling the judge what they think of you.

How you act while your case is pending is important

Always keep in mind that the DA, DFS, and the Judge are forming opinions about you based on your behavior. Try not to express anger toward DFS workers, foster parents, therapists, the Judge, other court officials, any of the lawyers, or anyone else. Angry, aggressive behavior will hurt your chances of winning your case.

family therapy, or substance abuse treatment;

- Informing you about the progress, development, and health of your child in foster care; and Arranging for you to visit with your child. This should include you obtaining educational and medical information regarding your child. Be aware that if a Termination of Parental Rights Trial has been set, this means that the time left to reunify is almost gone and you should discuss your options with your attorney immediately.

Attend all of your classes and/or counseling sessions

If DFS is providing therapy, parenting skills classes, or other services to you, **FOLLOW YOUR CASE PLANS.** Be sure you attend all of the sessions. **REMEMBER YOUR GOALS, YOUR CASE PLAN OBJECTIVES. PARENTING CLASSES, THERAPY AND ALL OTHER SERVICES BRING YOU CLOSER TO YOUR GOAL OF HAVING YOUR CHILD RETURNED TO YOU.** If you do not participate in the services DFS offers, a judge is likely to think that you are not serious about getting your child back. If you are ordered by a judge to participate in services and you do not participate, the court may terminate your parental rights.

VISITING WITH YOUR CHILD

Regular visits are a very important part of trying to get your child returned and maintaining your parental rights. You should have as much contact with your child as possible.

Regular visits help maintain and strengthen your relationship with your child and allow your child to have consistent and reliable contact with you. It is very important that you do not miss visits with your child.

Family visitation with both parents is required in all out-of-home cases unless one parent's rights have already been terminated, or the Judge rules that (1) "reasonable

efforts” are not required, or (2) that visitation is not in your child’s “best interest”.

If DFS is not letting you visit with your child, you may ask the Court to order visits. If DFS argues that visits with you could be psychologically or physically dangerous for your child, the Judge may require psychological evaluations to help decide whether to permit visits. Another possibility is that the judge might order that visits take place in the presence of a therapist or counselor.

Supervised Visitation

In many cases, visits are supervised by a Foster parent, by your caseworker or by someone approved by DFS. If you are not satisfied with how often you visit, where your visits take place, or how long they last, ask your lawyer to try to get you a better visitation plan. **DO NOT ARGUE WITH OR ATTEMPT TO CONFRONT THE VISITATION SUPERVISOR**, that’s what your attorney and the Court are for. You may make a request to the court that visits be more often, for a longer period of time, held in a different location, and supervised by a relative, friend, or community member. The Court understands that frequent and lengthy family visits are beneficial for most children.

It is important that you follow all rules and regulations of the visitation including not talking to your children about your case. If you do any of these things, it will be reported to the Judge and will be used against you.

Unsupervised Visitation

You may also ask that visits be unsupervised. Unsupervised visits are more likely to be granted if you are making progress in the completion of the services offered to you or if the claims DFS makes against you do not raise safety issues. For example, a parent charged with educational neglect may not require supervision during a visit.

WHAT WILL HAPPEN WHEN I GO TO COURT?

Discovery

Beginning at the first court appearance, both sides will gather information for the trial. This information gathering before a trial is called *discovery*. Under the discovery rules, the State is required to give your lawyer copies of all of the reports and other papers it is relying on to make its case against you. Your lawyer is allowed to look at the files about you and your children. These reports are very important. You should discuss the information in the reports and the file with your lawyer.



Expert psychological and other evaluations

Psychological evaluations are very important in parental rights termination cases. If the Court Orders you to be evaluated by a psychologist or other mental health expert it selects, if you don’t go, the Court will hold it against you.

The court may also order you to go to substance abuse evaluations or physical examinations. If you do not attend and cooperate with these, you will almost certainly lose your parental rights.

During supervised visits, the State may also have an expert observe you and your child together to determine what kind of relationship you and your child have and how emotionally attached your child is to you.

If one of the claims is that your parental rights should be terminated because the child has become emotionally bonded or attached to foster parents who want to adopt him or her, the foster parents’ relationship with the child must also be evaluated. The expert will try to determine if separation from them will cause your child harm.”

If you decide that legal guardianship would be a good thing in your case, you should tell your lawyer and request that DFS and the court consider that option. If you oppose having your child placed in legal guardianship, even as a way to settle your case, you should make that clear to your lawyer, to DFS, to the proposed guardian, and to the court. You are entitled to a trial to defend against awarding legal guardianship.

4. Voluntary relinquishment of parental rights and adoption

Deciding to relinquish your parental rights is a very serious decision that should be discussed with your lawyer.

Adoption — General and “Open”

Relinquishing your parental rights means that you agree to end your legal relationship with your child. A relinquishment of your parental rights ends your relationship with your child in the same way as a judge’s decision terminating your parental rights. If the court and DFS accept the relinquishment of your parental rights, there will not be a trial. Once you relinquish your rights, you cannot change your mind or appeal your relinquishment.

You can relinquish your parental rights in two ways: a general relinquishment, which ends the parent-child relationship and allows DFS to find an adoptive home, or an **open adoption**, which ends the parent-child relationship but allows you, the parent to have some knowledge about your child’s post-adoption life.

In order to do an open adoption, you and the adopting parent must agree on the terms, the agreement must be in writing and signed by you and the adopting parents. This agreement must be signed and notarized before the relinquishment is signed.

If your visits must be supervised, you or your lawyer may suggest that a friend or relative be the supervisor.

You may ask DFS and the judge to allow your visits with your child to take place at your home; at the home of a friend or relative; or at a park, restaurant, or other public place. Sometimes visits can be arranged for a parent who is in prison or jail, a hospital, or a substance abuse treatment program.

Phone calls, letters, church and school activities

In addition to parent-child visits, you may ask DFS and the judge for contact by telephone, letters, or e-mail. You may also ask to participate in or attend the child’s extracurricular activities, such as attending church services, Doctors appointments parent-teacher conferences, a “back-to-school night,” a school play, or an organized team sport.

Make the most of your time with your child. Try to take healthy snacks for your child to eat and drink at the visits. Take games to play or books to read. Sharing pictures can help reinforce your child’s relationship with the family.



Pay attention to your child. The visit is for your child, not waste your visit talking to the DFS staff or the Foster Parent.

If you have no way to get to your visits, ask DFS to provide you with transportation via bus passes. If DFS does not agree to provide transportation, your lawyer may ask the court to order DFS to provide it.

WHAT ARE MY OPTIONS FOR MY FAMILY?

Because the consequences to you and your child are so serious, you must give a great deal of thought to your response to the court action to terminate your parental rights. You have the following options.

1. Attempt to regain custody of your child

You are entitled to a trial at which you will have the opportunity to defend against termination of your parental rights and try to convince the judge to return your child to you. The fight to keep your parental rights and regain custody of your child is a difficult one. To have a chance of winning, you must work closely with your lawyer and be ready to devote a lot of time and energy to the case.

2. Place your child in the custody of a relative

An alternative to termination of your parental rights is to try to have your child placed with a relative or friend. When DFS first removes a child, it is required to look for relatives who might be able to care for the child.

Now that DFS has begun its action to terminate your parental rights, it probably will oppose moving your child to the home of a relative if the child's current caretakers want to adopt the child and can be approved as adoptive parents. However, whether or not DFS wants to move your child, you should tell DFS and your lawyer about a relative who could provide a good home for your child.

DFS may place your child with a relative from either side of the child's family. If DFS is considering a friend or relative with whom you do not want your child to live, tell your lawyer and DFS.

Generally, the State will require foster parent training, licensing and a home study of any potential caretaker, including a relative or family friend. A home study includes criminal and DFS records checks. Some people do not qualify to be certified as foster parents due to a criminal history, prior DFS involvement, or other facts that may be revealed by the home study. Even if DFS does not approve, you may present your plan to place your child with your relative or friend to the judge prior to your trial as an alternative to termination of your parental rights. The Judge must at least consider your plan.

Sometimes the State may agree to end a case by giving a relative custody without terminating parental rights. Even if your first choice is return of custody of your child to you, consider suggesting that custody of your child be given to a relative as a fallback alternative to termination of your parental rights.

A relative or friend who takes custody of your child might be able to get money to support the child as a certified foster parent, or from the welfare department. You also may be required to pay child support.

3. Legal guardianship

Legal guardianship is a legal alternative to termination of parental rights that is more permanent than merely placing a child in the custody of a relative. It allows a parent to keep parental rights to his or her child. Including the right to have visits and the right to decide whether to allow the child to be adopted or to change his or her name.

If legal guardianship of your child is awarded, getting your child back in the future may be very difficult. To undo the legal guardianship of your child, you would have to prove by "clear and convincing" evidence that your problems that caused the removal of your child no longer exists and that returning your child to you is in your child's best interests.