

Child Protective Services (CPS) and Dependency Actions



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- ❖ Read this only if you are involved with Child Protective Services in the state of Washington.
 - ❖ You can find all the fact sheets we link to here at WashingtonLawHelp.org.
 - ❖ **Are you involved with CPS? If not, you don't need to read this.**
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CPS: The Basics

What is CPS?

CPS is an arm of the Washington State Department of Children, Youth and Families, a state government agency. CPS investigates reports of child abuse or neglect. CPS has caseworkers and social workers. The state Attorney General's Office represents CPS.

What is Child Abuse?

Any of these:

1. Physical abuse
2. Neglect (failing to take care of a child or bad treatment putting child in danger)
3. Sexual abuse or exploitation

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- ❖ If you or your children are domestic violence survivors and CPS is investigating you because of domestic violence, **talk to a lawyer right away!**
 - ❖ [The Washington State Coalition against Domestic Violence's Know Your Rights When CPS Comes Knocking](#), available at wscadv.org, can help.
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When CPS Contacts You or Your Children

Why did CPS contact me?

When someone reports child abuse or neglect, CPS must investigate. CPS must notify both parents about the investigation, if they can find both. CPS must try to find both parents.

If there is immediate danger, CPS must start investigating within 24 hours of getting a report. If there is no immediate danger, CPS has up to 90 days.

CPS contacted my children. Was it legal for CPS to talk to them without me?

Yes. During its investigation, the CPS caseworker can interview your children and anyone else with useful information. The interview can be at any suitable place, like school, home, or daycare. They do not need to ask or to notify you. CPS can talk to the children alone or with a third person. The caseworker can take pictures of the children.

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- ❖ **CPS can talk to your children without your permission**, even if you are not the suspected abuser.
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Can I see CPS' records about my child?

Yes. You generally have the right to see records and information CPS has collected about your children.

Ask a CPS caseworker how to ask for these records. CPS must give you the needed information or help you get the records

Are there records CPS won't show me?

Yes. CPS might “black out” information they believe is confidential, like names of foster parents or the person who called CPS to report child abuse or neglect. CPS does not have to give you witness statements or parts of the record that would tell you who called CPS.

Do I need a lawyer?

If CPS has just made contact with you or your children, then not yet.

When an investigation starts, or when you have a FAR agreement (see below), you can deal with CPS caseworkers yourself. If CPS or the court takes the children, or a caseworker files a dependency court case, get a lawyer. See below.

What happens next?

CPS has 90 days from the date it gets a call to finish its investigation. It must then do one of these:

- end the investigation and close the file

OR



- file a dependency case in court (see **Dependency Court: When CPS Files a Dependency Case**, below)

OR

- The CPS worker who gets a report about your children may decide it does not need investigating. They can offer you an alternative to an investigation called a Family Assessment Response (FAR). See next section.

FAR (Family Assessment Response)

What is Family Assessment Response (FAR)?

FAR workers do not investigate or make findings about abuse or neglect. They make safety assessments and safety plans when they find safety threats.

The FAR lets you and CPS work to come up with a plan for services and support to keep your children safe in your home. If you sign an agreement with the FAR worker, your family can get services for up to 90 days.

Do I have to take part in a FAR?

No. But if you do not agree to do it, CPS will investigate.

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- ❖ Even if you take part in a FAR, CPS could re-open the investigation of your case if they learn something new leading them to believe your child is at risk.
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Do you have tips for working with CPS to get a FAR agreement?

Make sure you understand

- the entire agreement
- what the caseworkers say

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- ❖ CPS will give you an interpreter if you need one.
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When meeting with a CPS caseworker, try to speak calmly and clearly. Ask to have a trusted friend or relative with you for moral support only. That person must not interfere with or be involved in the case.

Generally, you should

- ask caseworkers questions
- ask them to repeat what they have said
- restate important issues in your own words so there is no misunderstanding
- take notes
- write down dates and times of all your calls to CPS
- write down how you have tried to do what you agreed to in the FAR agreement

Having Problems with CPS While They are Investigating You or You Are Taking Part in a FAR

I believe CPS is treating me unfairly.

Write down every time you call CPS. If CPS does not call you back within several days, try to reach the caseworker's supervisor. If you still do not hear from the caseworker, call the DSHS regional manager.

Can Office of the Family and Children's Ombudsman (OFCO) help me?

Yes.

OFCO is a voice for families under CPS supervision due to claims or findings of abuse or neglect. If it is not in your family or children's best interest to go to CPS with your complaint, or you went to them but did not get a good response, contact OFCO.

OFCO can

- look at your CPS files
- ask officials or CPS management to investigate your complaint and make sure someone does something

❖ Visit <https://ofco.wa.gov/filing-complaint> to learn more, or call toll free 1-800-571-7321, TTY 206-439-3789.

When CPS Decides You Have Abused or Neglected Your Children

Can CPS take my children away from me right away?

Yes. They can start a **dependency** case with the court when the children are still in your home. If they think your children are in imminent danger, CPS will ask the court for an order giving them temporary custody of the children and allowing them to remove the children from your home.

You might not be there when CPS takes your children. CPS must try to serve a copy of the dependency court papers on you to tell you they have taken the children. They must try to place the children with a relative or other suitable person requested by you.

Can CPS take my children without a court order?

No.

But law enforcement can take your children into protective custody without a court order for up to 72 hours if law enforcement believes both of these: a child

- is abused or neglected
- will be hurt if not removed immediately

If the child is to remain out of your care for more than 72 hours and CPS wants to get temporary custody, the court must hold a shelter care hearing within that period.

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- ❖ **Hospitals and health care workers** can refuse to release a child to their parent(s) by placing the child on a “**hospital hold**” for up to 72 hours, even if the parents object. A shelter care hearing must be held within that time if the child will not be returned to the parent’s care and the Department wants to get temporary custody.
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Dependency Court: When CPS Files a Dependency Case

What is a dependency court case?

It is a court case that anyone, including a relative, can start to protect children from harm within the family. Usually, CPS files. The petition claims your children are “dependent children.”

What is a dependent child?

The legal definition of a dependent child is a child that:

- has been abandoned, abused, or neglected by their parent, guardian, or custodian
- has no parent, guardian, or custodian able to take good care of them, so there is a danger of serious damage to the child’s physical or psychological development

What are my rights in a dependency?

You have the right to have a lawyer represent you. If you cannot pay for one, tell the judge. The judge may appoint you one or direct you to the public defender’s office.

If you can pay for a lawyer, you must hire one. [How to find a Lawyer](#) might help with this.

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- ❖ Parents can hire one lawyer to represent them both. If you are not living together or are in different situations, you may each want your own lawyer.
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You have the right to information. CPS must try to notify you as soon as possible

- that they have taken your children into custody
- why they took the children
- what your legal rights are

The notice must be understandable, considering your primary language, education, and cultural issues.

You have other rights:

- To information about your children’s health, progress in school, and behavior
- To work with CPS in making plans for you and your children
- To know what CPS expects you to do before they will return the children
- To see CPS’ records and information on your child, with some exceptions

You have the right to services to help reunite your family. DSHS provides some free services directly, or they may send you to an agency they contract with to receive free services. They also might send you to an agency that charges for services. Your CPS worker may be able to help you find housing, clothing, financial help, medical care, childcare, job services, parenting classes, family planning services, transportation services, mental health services, drug or alcohol abuse programs, and/or domestic violence or sexual assault programs.

Do my children get a lawyer in a dependency?

A parent, the child, the guardian ad litem (GAL), a caregiver, or the Department can ask the court to appoint a lawyer to represent a child in a dependency. The court will look at the child’s age, if the child is in the State’s custody, if the child’s interests are aligned with others in the case, if the child disputes the facts, and if the child presents complex argument against the State’s proposed action. If a child is 12 years old or older, the Department and GAL must inform the child of their right to ask for an attorney and ask the child if they want an attorney.

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- ❖ The judge can appoint a GAL or court-appointed special advocate (CASA) for the children. The **GAL** represents the children’s best interests. This might be different from what the children want. **This is not the same as the children having a lawyer.** Read [How to Work with GALs and Parenting Evaluators](#).
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What are my responsibilities in a dependency?

Make sure CPS knows your preference for placement (relative, friend, and so on). The law says CPS must follow the parents’ wishes for placement, as long as the person you want to have the children can pass background checks.

You must go to all your visits with the children. If there are any barriers to your being able to do this, you must let CPS know.

It is your responsibility to support your children. The judge and CPS expect you to contribute to the cost of your children's care if your children are placed outside your home. You should also provide your children clothes and personal items so they are comfortable in someone else's care.

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- ❖ If you have a very low income, the Division of Child Support may delay collecting child support from you.
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You must take part in any court ordered services.

You must keep in regular contact with your lawyer and CPS caseworker. Tell them about changes in address, phone number, job, income, or living arrangements. **If you cannot keep an appointment, let them know beforehand.**

Do you have other tips for me?

Try to get other kinds of support. Try to form a network of family, friends, and community professionals who care about you and your family and who can help out, if needed. It can help to have family, friends, church members, counselors and others tell the judge good things about you and your family.

Keep records showing:

1. your family's medical and dental care
2. any services you are using
3. how you are following court orders
4. any other proof showing how you are caring for yourself and your children

Follow advice and use services. Listen to and get help from teachers, medical providers, and counselors working with you and your children whenever you can.

Types of Dependency Court Hearings and Meetings

What is a Shelter Care–72-Hour Hearing?

There must be a shelter care hearing within 72 hours (not counting weekends and holidays) of:

- CPS removing the children from your home pursuant to a court order; or
- Law enforcement placing the children into protective custody; or

- A hospital hold; or
- Within 72 hours of CPS filing a dependency petition, if the children are not removed from your home.

At the 72-hour hearing, the judge decides both

- if the children should have been removed, and
- if it is safe for the children to return to or stay in the home

❖ Judges rarely dismiss a case at this hearing.

If the children are to stay out of your home, the judge will ask CPS what it has done to try to place the children with a relative or family friend. The judge also decides

- Where the children will live pending further hearing
- Whether and how often the parents will visit the children
- What social services you and/or the children should get

❖ The judge focuses on protecting the children and ensuring the Department is offering the parents and children services to help the family reunite.

The judge cannot order you to take exams, be evaluated, or use services unless you agree. **But** the court can remove your children if you do not agree.

What happens at a Shelter Care–30-Day Hearing?

There is a 2nd hearing 30 days after the 72-hour hearing. The judge checks to see if the situation has changed. CPS cannot place your children in shelter care for more than 30 days without a court order.

What is a case conference?

There may be a case conference after the 30-day hearing. CPS must offer you a case conference **unless one of these is true:**

- You do not want one.
- You did not go to the 72-hour hearing.

At a case conference, you meet with your lawyer, the CPS social worker, the Assistant Attorney General, the GAL, the child's attorney (if there is one), and possibly the DCYF social worker. You talk about

- the service plan
- if or how you can settle the case
- anything else that would help the case move in a positive direction

Will there be a trial?

Maybe. The court will set a trial date (called a **“Fact-Finding”**) for no later than 75 days after the filing of the petition. Trial dates often are delayed.

CPS and parents agree to settle most dependencies. If you settle, there is no trial.

If you do go to trial, you and CPS can give testimony and evidence. There may be more hearings after the trial, before the judge makes a ruling.

What is a dispositional order?

Unless the case is dismissed, the settlement agreement, or judge’s ruling if there is a trial, will state that the children are dependent. There will also be a “dispositional order” stating:

- where your children will live
- the visitation schedule (including amongst your children if they are separated)
- what social services you must complete to keep or get your children back in your care
- how CPS must help you

The goal is to reunite you with the children. If they are staying in the home, the goal is to remove the risks to the children’s safety.

In the dispositional order, the judge usually lets you visit the children regularly, unless visits are harming the child. The judge might order supervised visits. Relatives or friends may supervise, or visits may be supervised by a professional. The judge cannot limit your visits to punish you for not following court orders or using services. The judge will only limit your visits if visits put the children’s health, safety, or welfare at risk.

What is a First Dependency Review Hearing?

The court must review your case within 90 days after the dispositional order **or** 6 months after CPS or the court removed the children from the home, whichever is

sooner. At this hearing, the judge decides if you and CPS have made progress towards completing the dispositional plan. The judge will return the children to you only if the reason the children were removed no longer exists. The judge must also schedule a date to enter a “permanency plan of care.”

What is a Permanency Planning hearing?

CPS starts a **permanency plan** within 60 days of assuming “responsibility to provide services” or a fact-finding, whatever happens first.

A **permanency planning hearing** is a review hearing where the court must review the permanency plan and make any changes it decides are appropriate, based in part on what CPS recommends in its case plan. For example, switch the primary plan from return home to adoption and secondary plan from adoption to return home.

The permanency planning process continues throughout the dependency. The court reviews it at every review hearing, until a permanency plan goal is achieved or the dependency is dismissed.

What does a permanency plan say?

It could list 1 or 2 of these 5 goals or outcomes of the case:

- 1. Return home**—All the issues that brought about the dependency case are addressed. The children go back to you. The judge ends (dismisses) the case.
- 2. Guardianship**—The court places the children long-term with a guardian. This can be a relative, foster parent, family friend, or anyone the court agrees is appropriate. The court does not end (terminate) your rights. When the court enters a guardianship order, it dismisses the dependency. CPS stops providing services.
- 3. Long-term relative or foster care**—This is usually for the child who is near 16 or 17 and needs to live outside your home with a relative or in foster care. The court does not dismiss the dependency. This can also happen when the child has serious disabilities and needs long-term medical or therapeutic care outside the home.
- 4. Adoption**—In serious cases, the judge may terminate your rights to the children. This frees the children for adoption.

- 5. Independent Living**–The judge can emancipate the child. The child no longer has to live with you or a guardian. Read [Emancipation of Minors in Washington State](#).

Special Situations

What if I am in jail or prison?

Under the [Children of Incarcerated Parents Act](#), you have these rights:

- To take part in a case conference to agree to a plan for services. You can take part by conference call or videoconference if you cannot meet in person.
- Where possible, the plan will include treatment options at your facility.
- The plan must provide visits, unless visits are not in the children’s best interests.
- Usually, a court must consider ordering CPS to file for parental rights termination if the children have been out of the home for fifteen of the last 22 months since the filing of the dependency. If your incarceration is a major reason the children have been in foster care for this time, you still have a real role in the children's life, **and** CPS has no other reason to terminate your rights, the court can consider your circumstances. **Example:** You are in jail. This causes you to be unable to care for and provide safe and stable housing for your child.
- If you face a **long-term** sentence, the right to maintain a meaningful role in the children’s life, **and** if it is in the children’s best interest, CPS should consider a permanent placement like guardianship so you can maintain your parental rights and a relationship with the children.

My children are Native American. Do we have other rights?

Yes. Special rules apply to Native American children in dependencies under the federal [Indian Child Welfare Act \(ICWA\)](#). The ICWA defines an “Indian child” as an unmarried person under age 18 who is one of these:

- A member of a federally recognized Indian tribe, or
- Eligible for membership of a federally recognized tribe and the biological child of a tribal member

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- ❖ The court must inquire with each parent whether the child is an “Indian child” at the 72-hour shelter care hearing.
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The case may end up in tribal court, not state court. It depends on the children’s tribe. Any tribe that might be affiliated with the family must get notice of the case and may have the right to be a party to the case.

The ICWA makes it harder to remove Indian children from their homes or terminate your parental rights. It says the court must place Indian children with relatives, family friends, or in foster care approved by the children’s tribe, unless there is good reason not to. Also, CPS must make extra efforts to offer you services to prevent the removal of your children and to return the children home to you.

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- ❖ Read [Indian Child Welfare Act](#) to learn more.
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Get Legal Help

Apply online with [CLEAR*Online](#) - nwjustice.org/get-legal-help

Outside King County: Call the CLEAR Hotline at 1-888-201-1014 weekdays from 9:15 a.m. - 12:15 p.m.

In King County: Call 2-1-1 for referral to a legal aid provider weekdays from 8:00 am – 6:00 pm.

Persons 60 and Over can call CLEAR*Sr at 1-888-387-7111, statewide.

Deaf, hard of hearing or speech impaired callers can call CLEAR or 211 (or toll-free 1-877-211-9274) using a relay service of your choice.

CLEAR and 2-1-1 will provide a free interpreter.

This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice.

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