

HOW DO CHILDREN ENTER FOSTER CARE?

A few people voluntarily place their children in care. Most children, however, enter the foster care system because someone makes a report of abuse or neglect to the State Central Register ("SCR".) Sometimes that person is someone you know, such as a friend or neighbor, or a "mandated reporter" may have reported you. Examples of mandated reporters include doctors, dentists, nurses, hygienists, teachers, child-care workers, social service workers, counselors, psychologists, therapists, and police officers. Mandated reporters are required by law to report you if they suspect your child is being abused or neglected. They don't have to have proof; they only need reason to suspect that this is so.

Many families cannot afford a private doctor, and may see different doctors every time they go to a clinic or hospital. A doctor who knows you is less likely to misinterpret a bruise or an injury that occurred as a result of an accident. Developing relationships with doctors and teachers can decrease the misunderstandings that occur between strangers. Because doctors and teachers are mandated reporters, it helps when they know you well enough to trust your explanations of things that might appear to a stranger to be abuse or neglect.

Children born to a mother who already has children in foster-care ("afterborn children")

A mother who already has children in foster care may give birth to another child. Often ACS will automatically remove this child from the mother at birth. ACS is required to go to court and get a court order for ANY removal of a child, regardless of whether you have other children in foster care or not. If ACS wants to remove this child, they are required to file a new petition stating the reasons why this child would be in "imminent danger" if she were to remain in your care. If you are pregnant and have children in foster care, you should find out what the agency and/or ACS plans to do when the child is born.

DEFINITION OF ABUSE/NEGLECT

A child is considered to be abused or neglected under New York State Law if a parent or other person legally responsible for the child's care harms the child, puts the child in a position where he or she is likely to be harmed, or fails to protect the child. Persons considered to be legally responsible include parents, guardians, adults living in the home, boyfriends, girlfriends and other adults who take care of the child, such as family members involved in the child's life. Abuse and neglect may include physical abuse, physical neglect, sexual abuse or emotional maltreatment.

- Neglect is the withholding of, or failure to provide, adequate food, shelter, clothing, hygiene, school attendance, medical care, and/or supervision to a child when the parent is financially able to do so or offered financial or other reasonable means to do so. Neglect also includes abandonment, excessive corporal punishment (hitting or spanking), and misusing drugs or alcohol to the extent that the child is or can be harmed.
- Physical abuse is the non-accidental physical injury of a child inflicted by a parent or caregiver, ranging from superficial bruises and welts to broken bones, burns, serious internal injuries, or death.
- Sexual abuse is the sexual exploitation of a child by a parent, relative, caregiver, or other person, which may range from non-touching offenses, such as exhibitionism, to fondling, intercourse, or the use of a child in the production of pornographic materials.
- Emotional maltreatment is the constant use of verbally abusive language to harshly criticize and put down a child. It also includes emotional neglect, the withholding of physical and emotional contact in a way that harms the child's normal emotional and, in extreme cases, physical development.

ACS INVESTIGATION

Once you have been reported for abuse or neglect, an ACS caseworker will investigate to see if the report seems to be true. You have a legal right to refuse to let the ACS worker into your home. However, it may not be the best idea to refuse as the worker will probably come back with the police. Ask for the ACS worker's identification, and get his or her name and phone number. The ACS worker will check your cupboards, your refrigerator, and will look for dangerous conditions in the home.

During the investigation, the caseworker may interview a number of people in your child's life. This will most likely include the child, his or her siblings, you and your partner or spouse, and any other people living in your household. The worker should also talk to the person who reported you. In addition, he may try to find teachers, neighbors, clergy, and other people who know your child well. The caseworker will look for drug paraphernalia. He might undress the children to examine them for bruises. You can request that the caseworker allow an impartial person who knows the children to be there with them while this is being done. Caseworkers look for evidence that your child is being abused or neglected. If they don't believe that your child is in immediate danger, they are not supposed to remove your child. They might give you referrals to programs, or offer you **Preventive Services**, if they feel you have problems but that your child does not need to be removed from your home. Preventive services might include family or individual counseling, parenting classes, substance abuse treatment, domestic violence intervention, home care, or support for pregnant teens.

"In my case, I called the cops because my son and his father were fighting. They called ACS, and the next day they came to my house. They told his father he was not allowed to be in the home. Then they charged me with neglect, even though I had reported it! I was offered Preventive Services. Their father was only supposed to see the kids at the Preventive Agency. I had an order of protection, but a lot of times in domestic violence situations, orders of protection don't really help the victim, because you constantly have to call the cops to enforce the order. They told me I had to go to counseling, as well as my son, and they told me I had to go to classes on Domestic Violence. They wanted me to go into a shelter, but I didn't want to subject my small children to a shelter. They tried to tell me to go to parenting classes, but when I reminded them it was the father who had been the problem, they let it go. I had not heard anything for months, and then one day they called me at school and told me I had to be in court that same day, or else they were going to remove my children."

INDICATED CASE

The ACS worker has 60 days to decide whether the report to the SCR is indicated. (That means that there is some evidence to support the report.) This indicated finding will stay on your record until your youngest child turns 28. You can request a Fair Hearing to challenge what is in your record and who can see it. See **Appendix K** which explains how to request a Fair Hearing.

EMERGENCY REMOVALS

"They took my children on a Friday night. I had to be in Family Court that Monday morning. I still didn't know where my children were. There was nobody that I could call to find out where they were. I went crazy for about a week. It was two weeks later when I finally received a letter in the mail telling me what agency, what Case Planner to contact about my kids. I don't know why they couldn't call me and let me know"

When children are subjected to an emergency removal, it is supposed to be because they are in "imminent danger" of abuse or neglect. In other words, it is supposed to be dangerous for them to be at home. You may not agree that there was an emergency requiring the removal of your children. In an emergency removal, you should receive something called a **Notice of Temporary Removal of Child and Right to Hearing**. This is also called "Form 701 B." You should also get a **72-Hour Child Safety Conference brochure**. Both of these tell you the name, title, address, and telephone number of the ACS caseworker removing your child. ACS rarely provides parents with information about when to go to court before the first court date. What usually happens is that after your children have been removed, the ACS caseworker may leave a note on your door or call you and tell you that you have to go to court on a specific date. If your child has been removed and you have not received any notice from ACS about court, go to the Family Court in the borough where you live and ask for the immediate return of your children. Explain to the court officers in the lobby that ACS took your children away and you haven't received any papers. Most likely you will be directed to the record room to find out if a petition has been filed against you and what date you must be in court. Regardless of how you get the information, it is very important that you go to court on the date your case is scheduled.

If you don't know where your children are, you can try calling the ACS Office of Advocacy/ Parents Rights Unit at 212-676-9421 or go to the ACS field office near you and ask for the name and phone number of the agency that has your child, as well as a person at that agency who can talk to you immediately. See **Appendix B** for a list of ACS Field Offices. You have a right to know where your children are, even though you may not immediately be able to see them.

"When my children were removed, I wasn't at home, although their father was. ACS left a white piece of paper stating I had to be in court. At my hearing I was sitting in court waiting for my case to be called. I didn't have a chance to speak to my lawyer before seeing the judge. When my case was called, someone stood beside me and said she was my lawyer. She told me to admit to abusing drugs, which meant admitting to neglecting my children, but said that it was not going to affect my case. That wasn't true. Just about everything you say and do affects your case."

COURT PROCESS

PETITION/NOTICE

If the Administration for Children's Services has decided that your children should be removed from your home, they are supposed to first get a **court order** (called a "remand order") unless you agree to the removal or an ACS caseworker or hospital decides that there is an immediate and serious danger to the health or safety of your children (called "imminent risk").

Although this is the law, this is not the way things usually happen. Most of the time in New York City, ACS takes children away from their homes, schools, doctor's offices, hospitals and other places *without* a court order.

If your child has been removed from you, ACS is supposed to immediately file a **petition** in Family Court and give you a copy of the petition. **See Appendix B for the addresses and telephone numbers of all New York City Family Courts.** A petition is a document that describes the things that ACS believes you have done which have hurt your child and make it unsafe for your child to remain in your care (called "allegations"). For example, the petition may say that your child came to school with severe bruises that were the result of beatings inflicted with a belt, or that during a particular period of time you were using cocaine, were not in treatment, and your child was left alone and unsupervised for long periods of time without food.

FIRST COURT APPEARANCE

You have the right to:

a lawyer- if you have a lawyer, you should bring her to court with you. If you do not have a lawyer and you cannot afford to get a lawyer, you have the right to have the court appoint a lawyer for you (called an 18-B). The court should give you a lawyer the same day. Make sure to get the lawyer's business card, or name, address, telephone and cell phone number. If there are no lawyers available, or if the judge won't assign you a lawyer, the judge may adjourn the case and tell you to come back another day with a lawyer or to be assigned one.

If you'd prefer to find your own lawyer, you can call one of the legal services offices listed at the end of this manual. **See Appendix B.** The lawyers from Legal Aid Society Juvenile Rights Division that are in family court are there to represent your children. They are called Law Guardians. You will not be able to get a lawyer through the Legal Aid Society.

a copy of the petition - it is very important that you get a copy of the petition that lists the

charges ("allegations") that ACS has made against you. Make sure that your lawyer, the judge or the ACS caseworker gives you your own copy. This document is important because it will help you and your lawyer prepare to respond to the accusations that ACS has made against you.

information about your child - You should also get the name and telephone number of the lawyer for your child (the law guardian) so that your child knows how to contact his or her lawyer.

immediate visitation - Except in a few rare instances, you have the right to an immediate plan for visits with your child. If you have not seen your child and no plan has been made for you to visit with her, you should tell the judge and ask that the judge direct ACS to begin visits. Unless the judge specifically limits or restricts your visits, you should be able to visit at least every week at the agency according to ACS visitation guidelines. **See Appendix C.**

have your child placed with a family member - ACS is supposed to ask you if there are any relatives with whom you would like to have your children placed. If ACS has not done that, be prepared to ask that certain relatives of yours (grandparents, aunts, adult siblings) be investigated as possible caretakers for your children until they can come home to you. You should discuss this with your relatives before giving their names to ACS or the court. Make sure that they understand that ACS will check their homes and whether they ever had an ACS "case" against them. If possible, ask your relatives to come to court with you to show the judge that they are serious about taking care of your children and to answer any questions that the judge may have. Also, since ACS is not always that good about following-up, it helps to have your relative in court to give ACS whatever information is needed and to arrange for a home visit.

services that would help your child come home - If there are services such as individual counseling, family therapy, or a homemaker that you believe would make it possible for your children to be returned to you, you should request that the judge direct ACS to provide those services for you. **See Appendix D for a list of services.**

"My mother-in-law was willing to take my children in care, but ACS was giving her a hard time. They wanted me to be in an in-patient drug program before releasing the kids to her. But my husband's lawyer did a very good job having my children released. She spoke up and told the judge that my mother-in-law wanted the children and that she could provide for them. The next day my children were released to my mother-in-law."

When there is an order to place your child in

foster care, and for as long as your child is in foster care, ACS has legal custody of the child, no matter whom the child is living with. This means that ACS will have the right to make all decisions about the child, and even a kinship foster parent will have to consult with ACS before making any decisions about your child. If a relative or another person has custody of the child (rather than being a foster parent), he or she will have more power to make decisions about your child than if he or she is a kinship foster parent.

REQUEST FOR THE IMMEDIATE RETURN OF YOUR CHILDREN - 1028 HEARING

If ACS has removed your children, you have the right to request the immediate return of your children to your care and to have what is called a 1028 hearing ("ten-twenty-eight hearing") in front of the judge within 3 days of your request.

Very often parents request a 1028 hearing the first time in court. While it is understandable that you may want to ask for your children's return immediately, there may be reasons to wait. For instance, in a domestic violence case, you might postpone asking for a 1028 until you have an order of protection. You might also hold off if they say that they're going to return your child when they begin providing services. Another concern is that "hearsay" is admissible at a 1028 hearing but not at a fact finding hearing. "Hearsay" is "he said, she said" conversations such as things the ACS worker heard from your neighbor about you. You may prefer to wait for the fact-finding hearing if ACS may give damaging "hearsay" during the 1028. You should thoroughly discuss with your lawyer whether and when to ask for this hearing.

Often parents are given the impression the first time they are in court that if they don't ask for the 1028 hearing immediately they give up ("waive") their right to that type of hearing forever. **This is not so.** There are two things to remember when the issue of a 1028 hearing comes up:

1- you may request a 1028 hearing ANYTIME while your case is pending but before completion of your fact-finding hearing (explained below) and,

2- if you do not ask for a 1028 hearing on your first court date, you do not have to "waive" your right to a 1028 hearing. You can **reserve your right** to request this hearing at a latertime.

At the 1028 hearing, the judge decides whether your children can safely be returned to your care while the rest of the case continues.

To keep them in care, ACS has to show that your children would be in immediate serious danger ("imminent risk") if they were returned to you now. Usually ACS will have the caseworker who removed your children testify about what led to the removal. Most likely you will then testify and will have to respond to the concerns about your behavior and your children's safety that were raised by the ACS caseworker.

It is very important that you work closely with your lawyer in preparing for your 1028 hearing. Since the hearing occurs within 3 days of the request, you and your lawyer must prepare very quickly, and you may be in the best position to get helpful information and witnesses for your case.

For example, it may be helpful to get your lawyer:

- your children's medical records, school records, letters from doctors, clergy or teachers who know you and can talk about your ability to safely care for your children.
- if drug or alcohol use is an issue, proof that you are in a drug or alcohol rehabilitation or treatment program, letters from your counselor, and urine/blood screens to show you are drug free. If you're not in a program and ACS accuses you of using drugs, but you are not, ask the judge to send you for an immediate drug test.
- if your emotional or physical health is an issue, letters from your therapist, doctor or clinic about your health.
- a list of witnesses who know you and can come to court and tell the court ("testify") about your ability to safely care for your children. Most likely you will have to contact them on your own and ask them to come to court and testify on your behalf.

You should also think about what services or help you might need to have your children safely returned to you. **See Exhibit D.** For example, if your children were removed because you weren't giving one of the children her asthma medication but your Medicaid case was closed and you couldn't renew the prescription, it's possible that with a supply of medication and help in re-opening your Medicaid case your children could come home. Other types of help that might make it possible for your children to be safely returned to your care are orders of protection and domestic violence counseling.

These are examples of "preventive services" that ACS is supposed to offer you to help keep your children safely with you. If you believe there are services that would allow this to hap-

pen, tell your lawyer to raise this issue at the 1028 hearing. Your lawyer should argue that putting these services in place would allow the children to be returned home. Your lawyer should ask the judge to decide (“find”) that ACS has not made “reasonable efforts” to prevent the removal of your children. If the judge agrees, she may order ACS to find and arrange certain services for you and/or your children so they can come home.

At the end of the 1028 hearing the judge may decide:

- that there is no immediate danger and your children can come home immediately, or
- that once certain services are in place your children can be returned home. (If the judge decides this but the services are not provided, or the children are not returned, you may need to advocate with the agency and/or your lawyer to make it happen), or
- the children cannot be returned home at this time.

Even if your children are returned at the end of the 1028 hearing, the case still continues and you will have to return to court. If the children are returned at this stage it is likely that the ACS caseworker will be monitoring you and your children closely. If services have been provided, the caseworker will make sure that you are following through on appointments and referrals. It is an important victory to have children returned at this early stage of the proceedings.

It is more likely that you will have your children returned at a later stage in the proceedings as long as you are working to address the issues that led to placement. If you do not win the 1028 hearing, make sure that at the end of the hearing a visitation schedule with your children is in place and that there is an order requiring ACS to provide whatever services and referrals you need so that your children can safely come home in the future.

AGENCY PROCESS

ACS WORKER

The first ACS worker you’ll meet is the investigative worker who is responding to the report of abuse or neglect. If your child enters foster care or preventive services, you will have a new worker through ACS (called a Case Manager) who is responsible for monitoring your case and making decisions about your family’s needs. Be sure to get the worker’s name and number, as well as the name and number of his or her supervisor. You may or may not have much contact with this ACS worker, because ACS often contracts with private agencies that will also be working with you. Many parents feel anger and resentment toward their ACS workers due to their power to remove, and keep, their children. However, many also feel that to get their children back, developing some form of a working relationship with the ACS worker is important. Even though there won’t be much contact between you and the ACS worker, the ACS worker will be making recommendations about whether and when your child should come home.

FOSTER CARE AGENCY WORKER

Your agency worker is called a Case Planner. This is the person who you will probably have the most contact with. Your Case Planner is the person who supervises the foster family that has your children and who is supposed to refer you to the services you will need to get your children back. Your Case Planner also develops the “permanency plan” for your child. This means that they are working on ensuring your child has a permanent home.

Often, while they are working with you on planning for your family’s reunification, they are also working on an alternative plan for your child in the event that they decide not to return your child to you. This is referred to as “concurrent planning.” “Concurrent planning” can be an added stress for families. An example of “concurrent planning” is when the Case Planner is working with the foster family on possibly adopting your children at the same time that they are working with you on your child’s return. In that situation, your children should be returned to you if you are following up on services they’ve referred you to and visiting your child regularly.

Your Case Planner may process requests for housing subsidies and funds for carfare to your appointments. She will decide how frequently you have visits with your children and whether your visits will be supervised or unsupervised,

unless the court has ordered a visitation schedule. The agency worker will also tell ACS when she believes you are ready to have your children returned.

72-HOUR CASE CONFERENCE

There are two types of 72 Hour Child Safety Conferences: "Elevated Risk" (before a child is removed) and "Child Safety" (after a child is removed). Elevated Risk Conferences are requested by the ACS investigator when s/he feels that there is substantial risk to the child but wants help deciding if removal is necessary. 72-Hour Child Safety Conferences are supposed to be held within 3 to 5 days after ACS takes your child. (The main exception is situations in which there are claims of violence or sexual abuse within the family.) ACS should tell you where and when the conference will be held. ACS may also ask you whom you would like to attend. The purpose of the meeting is to begin developing a service plan for your family. (Service Plans are discussed more later.) You should be able to discuss whether your children can be safely returned home right away and whether any services could be provided right away to make the immediate return of the children possible.

If immediate return isn't agreed to, you can discuss other possibilities, such as having the children live temporarily with your relatives.

You can bring up to three people to the conference. You may invite anyone you wish to the conference, except a lawyer. Examples of the kind of people you might want to ask to come are friends, relatives, clergy, counselors, therapists, parent advocates or people from community organizations in which you are involved. It would be helpful to bring someone who knows you and your children and can help explain your strengths as a parent and the sources of support and help you have. You could also bring someone for emotional support - someone who can help you feel calm and give you the courage to speak up for yourself. Very personal things may be discussed at the meeting, so you shouldn't invite anyone who you don't want to hear this information.

The person who will facilitate the conference is an ACS employee called a Child Evaluation Specialist. The purpose of the meeting is to reach an agreement on a "child safety plan." If a plan is agreed to, it will be written down and everyone will be asked to sign it. You may be offered the opportunity to have a "caucus" during the conference. This means that you and those you bring with you may take a few minutes to discuss privately what is going on and what the options are prior to signing the

child safety plan. If you want to have a caucus with your support people and none is offered, request one. If you go to court, bring a copy of the plan for your attorney.

The child safety plan will be given to the judge as the first service plan. A copy will go to the contract agency. Make sure you are also given a copy. ACS says that in most cases when parents go to the 72-hour conference, an agreement is reached. This might be because parents find it very hard to disagree with what the caseworkers tell them is the best (or only possible) plan.

If you disagree with what is being proposed, you do not have to sign anything. You should explain why you disagree. You should also try to make clear to the caseworkers that you are willing to work with them even though you disagree. It would be a good idea to try to take notes of what occurs at the conference. You should then speak with your lawyer about why you disagree with the plan. Your lawyer should raise this in court.

"My 72-hour Conference was different because the Case Planner neglected to show. She said she didn't know about it. The ACS worker was there, her supervisor, and a third person –who seemed to be in charge of the worker and the supervisor – but I don't remember what she was called. They asked for a few things. One thing was the requirements to get my kids back: individual and family counseling, domestic violence, and individual counseling for my children. My case was also different because I was being charged on criminal charges. I didn't feel like I could speak my mind or disagree because I could incriminate myself. But the conference was okay because they didn't ask me to do anything I couldn't do. For example, I might not have gone to see a therapist on my own free will, but I just went along with what they told me. After the conference they send you a letter. They ask for your feedback on the results and you have another chance to say if there's anything you disagree with."