

## FCA ARTICLE 10: NEGLECT/ABUSE.

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ABUSE: non-accidental physical injury; risk of death, disfigurement, impairment; or prostitution and incest crimes.

NEGLECT: physical/emotional/mental harm, or risk therefor, including excessive corporal punishment; or inadequate food/shelter/clothes/education, i.e. supervision and guardianship.

Persons Legally Responsible for child may include those regularly in the home, if their conduct so warrants. Child need not be presently in the care of the Resp in order to file a petition.

Family Court has exclusive original jurisdiction over neglect/abuse; although Criminal cases can be maintained for the same actions.

Criminal cases may be transferred to Family, and vice-versa.

Family Court can grant Resp testimonial immunity.

Child must be under 18 at time of incident.

Venue is where either the child or custodian has residence/domicile.

Child shall be assigned a Law Guardian, at time of petition or application for removal, and such shall continue in capacity until disposition (including ACD). If the child is Placed, LG continues through the period of placement.

Police or Special Peace officer can remove a child with written consent.

Police or Special Peace officer, Society for Prevention of Cruelty to Children, or Social Services can effect an emergency removal of a child when there is an imminent danger to life and/or health.

Agency can apply to Court pre-petition for a removal order if the parent refuses or is absent. Court must address child's Best Interests, and whether an Order of Protection would eliminate any risk; also Reasonable Efforts to prevent the need for removal. If granted, the written removal order shall be prepared immediately, in any case by the next court day.

Petition must be filed within 3 days of pre-petition removal; pre-petition temporary order of protection is vacated if no petition is filed within 10 days.

If child had been removed without Court order, or Resp was not represented or

didn't participate in pre-petition hearing, there shall be a Section 1027 hearing by the next court day after petition filing to determine if continued removal is appropriate.

If there was no 1027 hearing, the Court can hear an application pursuant to section 1028 for return of a child temporarily removed. Such hearing shall be held within 3 days of application, and not be adjourned except for good cause.

Removed child can be placed with a relative or suitable person not the Resp; remanded to Social Services to reside with a suitable person; or directly remanded to CSS. Children should be placed with siblings (including half siblings) - unless not in best interests - immediately, else within 30 days. Court can also release the child home, including with a preliminary order of protection.

If a child is over 5 years old, he/she can designate potential resources to be explored.

If a child is in non-kinship foster care, a relative within the 3rd degree of consanguinity to a parent can apply to be a resource. Kin must not have refused to care for the child previously, unless they were then unable to do so. Application must be made within 6 months of notice that the child is in care, but no more than 12 from actual removal date.

Resp shall be afforded visits - unless not on child's best interests - such may be only supervised though. Visitation can be modified at the request of a party of LG, visitation order terminates upon disposition.

Family Court can direct an investigation pursuant to section 1034 requiring an agency to determine whether or not a neglect/abuse petition should be filed.

Petition shall only be by an authorized agency, or by an entity at the Court's direction. If child had been previously removed, petition shall state date and section of law. Petition shall notice in conspicuous print that "clear and convincing" evidence of severe/repeated abuse can result in termination of parental rights.

Court can substitute Neglect for Abuse petition at any time.

Summons shall be issued same day as petition was filed.

Summons shall notice that a TPR may have to be filed if child remains on care 15 out of 22 months; parents who are not the Resp shall also be notified of proceedings.

If child is removed, return date is within 3 days; else = 7.

Summons shall be served at least 24 hours before the hearing time.

Abuse summons shall state "Child Abuse Case". Abuse summons shall either be

served within 2 days of issuance; else agency shall report failure to Court within 3 days, and warrant shall issue (unless out-State service).

In addition to the usual criteria, warrants can also issue if safety of child, parent, foster parent, or custodian is at stake. If warrant is not executed within 2 court days of issuance, such shall be reported to court within 3 days of issuance.

Process may be sent out-State for acts which occurred here; abuse summonses must be served within 10 days of issuance, Court can extend time.

Indigent Resp shall be assigned free 18B counsel at first appearance, counsel can waive recitation of charges.

Adult sibling, aunt/uncle, or grandparent can move to intervene as regards the child's custody; relative must have consent of all appearing Resps, but Court's permission shall otherwise be granted liberally.

Subpoenas can be issued by Court, Corporation Counsel, or County/District Atty; service shall be by certified mail, return receipt requested.

All abuse cases **MUST** have physical examination of child with color photos, neglect cases *MAY*.

In a sex abuse case, expert witness interview with child may be videotaped; Court, LG, and parties have access to record.

Court can ACD case before fact-finding, with consent of Petr, Resp, and LG. ACD is up to 1 year.

Agency can motion pursuant to section 1039(b) for an order excusing them from making efforts to work with the parents towards return of the child. Such motion shall be predicated upon aggravating circumstances: severe/repeated abuse; or any abuse within 5 years of return of child to home from prior placement in case against same Resp; or parents failed to plan for child's return for more than 6 months; or where parent convicted of Murder 1,2 or Voluntary Manslaughter 1,2 for Resp's sibling (including out-State); also Attempts, Conspiracy, Solicitation, or Facilitation regarding such crimes, including against Resp; or Assault 1,2 or aggravated against Resp or sibling, if then under 11 years of age; OR if parents rights were terminated for Resp/sibling (unless reunification still in best interests). Any case where Court makes determination that no Reasonable Efforts are not required shall be set down for Permanency Hearing within 30 days; and Commissioner of Social Services may file to terminate parents' rights.

There shall not be a fact-finding unless Resp is present, was served, or efforts were made to serve.

If Resp is not present, case can proceed only if child has LG or GAL.

If Resp was not present, must be served with dispositional order, and can move for vacatur and/or re-hearing within 1 year of service. Resp's non-appearance must not have been willful, and Resp must also have a meritorious defense.

Court can exclude public from hearing.

Neglect/Abuse of one child shall be admissible as to others ["derivative" finding].

Child's out-of-court statements are admissible, but not sufficient for fact-finding absent corroboration.

There is no privilege for spouse, Dr., psychiatrist/psychologist, social worker, or rape counselor!

Fact-finding is by competent, relevant, and material proof. Disposition need only be relevant and material, not necessarily competent.

Abuse or Neglect shall be proven by preponderance of evidence.

Serve/Repeated abuse must be "clear & convincing".

All Abuse cases - and any Neglects with removals - shall have priority, with only short adjournments prior to disposition.

Court can allow amendment of petition to conform to proof; must allow Resp time to answer new charges.

Court can allow a Resp to consent to entry of finding without admission or hearing pursuant to section 1051a, as long as all parties and LG agree.

Before accepting a consent or admission, Court must allocute Resp that it is understood: placement is one option for disposition; termination of parental rights may be warranted if child remains placed; a report shall be on file with the State Central Registry of Child Abuse and Maltreatment until 10 years after the youngest child in the report turns 18.

Court shall dismiss the petition if it's aid is not required.

Else dispo = Suspended Judgment; Release; Placement; Supervision; Order of Protection.

Except in cases of Release, Social Services must notify LG on any new indicated report regarding same Resp.

In all dispositions (including ACD) - except Placement - where agency is not seeking to extend the term of order: must report to Court, parties, and LG at least 60 days

prior to expiration.

Counsel shall advise Resp of appeals process, including right to proceed as poor person.

Suspended Judgment or Supervision is for period up to 1 year, may be extended for additional year upon "exceptional circumstances". If either disposition was entered on consent of parties and LG, there shall be a report to Court, parties, and LG within 90 days unless Court determines it is not necessary. If disposition was not on consent, Court can direct reports as appropriate.

Motion or OTSC alleging violation of Suspended Judgment or Supervision tolls the period of dispo until determination is made; revocation shall only be on competent proof of willful failure to obey. Court may also commit Supervision violator to jail.

Child can also be Released to parent, or to PLR @ time of petition filing; release may be in conjunction with Supervision.

Placement: with relative or other suitable person; with DSS; or with an agency. Court can direct DSS/agency placement with specific individual. Child shall be placed with siblings; or if such not in best interests, at least sibling visitation. Placement is until completion of next scheduled permanency hearing (date specified in order, no more than 8 months from removal, and together with any previously scheduled sibling's hearings unless too far out).

Placement order shall address whether an Order of Protection would serve to eliminate the risk of leaving the child at home, and also if any relatives are appropriate resources. Placement order describes visits, provides that Resp be notified of planning conferences, requires Resp to keep agency apprised of address; and reiterates that placement for 15 out of 22 months can result in filing of TPR case.

Court may allow final discharge of child from care on 10 days written notice to Court and LG.

Child may be "trial" discharged on a test basis to a parent; or if the permanency goal is Another Planned Permanent Living Arrangement, to an adult with whom the child is to have a significant connection.

Placement can continue until child turns 18; if child then consents to remain, until maximum of 21.

If a child runs away from foster care, Court may require child to appear with LG. Court can also revoke placement if appropriate.

An interested person on child's behalf can motion to terminate placement. Applicant must first have requested of agency to release child, and either been denied or

ignored for over 30 days. Agency and LG must each answer motion within 5 days of service. If motion is denied, cannot be renewed within 90 days unless Court permits.

If a child on Public Assistance is placed, the parent(s) are no longer entitled to those funds; except if needed for shelter/fuel when child's plan is discharge, then not if federal reimbursement will cover foster care costs.

Child abandoned while younger than 1 can be discharged to Social Services as a destitute; with the direction that a diligent search be conducted for the parents so as to file TPR after 6 months from transfer of custody, unless parents first communicate with and visit the child.

TPR order suspends placement order, although child remains in foster care; placement order terminates upon expiration of appeal time regarding TPR.

If a voluntary Surrender of parental rights is effected - but PRIOR to adoption - Agency shall inform parents of any "substantial" failure of condition within 20 days. Agency can petition Court for review within 30 days of failure; else if Agency doesn't file, party/LG can within 60 days of notice.

Prior to adoption, enforcement of contact provision of surrender instrument can be filed by any party in county where agreement was approved.

Order of Protection: against a parent/PLR/spouse who is before the Court; term is concurrent and extended with any other dispo; except that PLR ***not*** a household member or relative by blood/marriage can be until child's 18th birthday. Custody can be awarded during term of order, but only to a parent or relative.

Non-custodial parents and grandparents have visitation rights with children in foster care, and can petition to enforce orders. Father must have paternity established first. DSS and/or LG need only answer such petition if they oppose it. Court sets the hearing upon receipt of papers, may consolidate with a dispositional hearing if within 10 days. Visitation shall be approved unless competent/relevant/material proof demonstrating a danger to child's life and/or health, in which case Court shall deny application. Court can also modify or alternate a visitation order. All orders remain in effect as long as child is in foster care.

Person shall NOT get visits where they have Murdered (1st, 2nd degree) the child's parent/guardian/custodian/sibling. Except if in best interests of child, AND: perpetrator was domestic violence victim of deceased; or unless the child's present custodian/guardian assents (child can assent him/her self if of an appropriate age).