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CAREGIVERS AND THE COURT

A Guide for Resource and Adoptive Families

IT TAKES AN

‘Ohana

A program of Family Programs Hawai‘i



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These materials are based on laws in effect at the time of publication (May 2012). Federal and state laws can change at any time. The purpose of this guide is to inform and educate. Every attempt has been made to be as accurate as possible. However, there may be mistakes both typographical and in content. Therefore, this guide is to be used for general information only. It is provided with the understanding that the publisher is not engaged in rendering legal or other professional services. For legal advice, you should consult with an attorney.

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INTRODUCTION

An Invitation to Get Involved

We hope this booklet gives resource caregivers, formerly referred to as foster parents, an understanding of the Family Court process for their foster child. Working with the court system can be scary at the beginning. This booklet will help ease your anxiety and make you a more effective advocate for your foster child.

Remember — any suggestions made in this booklet are only suggestions. Each case is different and you need to do what is right for you and for your foster children. We hope that your experience with the Family Court system is a positive and supportive one.

Why Participate in Court?

Resource caregivers have important information for the court. Your day-to-day care of the child and your regular contact with therapists, teachers, and other service providers gives you a unique perspective on the child's needs. By giving the Family Court current and detailed information about the child, you can assist the Court in making the best possible decisions about the child in your home. We strongly recommend that resource caregivers attend all court hearings for their foster child. It is not enough to depend on others to share the information you have about the child's progress and needs. Even if your information and perspective on the child is conveyed accurately in court, direct testimony has more weight and influence with judges than second-hand reports. Your being present to answer questions can also be crucial to a judge's decision making.

Resource caregivers have important day-to-day information about the child that will be helpful to the court. Attending court hearings and making sure the court has this information will help the court make decisions in the child's best interest.

COURT HEARINGS

Federal Law

The *Safe and Timely Placement of Foster Children Act of 2006* says that resource caregivers, pre-adoptive parents, and relative caregivers of children in foster care have a right to be heard in all court proceedings about the child in their home. All states (including Hawai'i) that receive federal court improvement funding must have a rule of court mandating that resource caregivers, kinship, and pre-adoptive parents be notified of court proceedings affecting children in their care.

Hawai'i Law

Hawai'i law requires that all parties be given proper notice of court hearings before a hearing can take place. Parties include the child, the child's parents, the Department of Human Services (DHS), and any other people the court designates as parties.

The child's current resource caregivers are treated as parties for the purpose of getting notice of upcoming court hearings. They are not automatically parties for other purposes. This means that resource caregivers must be given notice of hearings at least 48 hours before the hearing, unless the resource caregivers were present in court at the previous hearing and heard the court set the next hearing date.

No hearing can be held until the resource caregivers (and the other parties) have been given proper legal notice of the hearing. While the law requires resource caregivers to be served with notice of the court hearings, it does not require them to actually attend court hearings. That means you do not have to come to court if you decide not to, but other parties cannot keep you from attending hearings if you choose to attend.

Party Status

As explained above, Hawai'i law requires that resource caregivers be treated as parties for the purpose of receiving notice of court hearings, but it does not automatically make you a party for other purposes. Resource caregivers who want to participate more extensively in court may apply for party status.

Being a party for purposes other than notice means you have a right to hire an attorney to represent your interests in court, to file motions (requests), to subpoena witnesses for contested cases, and to participate fully in all the hearings. A motion to request party status is called a *Motion to Intervene*. Filing a *Motion to Intervene* may require the services of an attorney. The Family Court judge decides if you can become a party in the case.

Court Participation by Foster Children and Youth

Family Court judges on all islands have a general policy of welcoming foster youth to participate in their court hearings. Resource caregivers and the youth's *Guardian Ad Litem* (GAL) or *Court Appointed Special Advocate* (CASA) should encourage the youth to participate. The GAL/CASA notifies the youth and the family caring for them when the hearing will be held and will also let the court know whether the youth will attend the hearing.

When a foster child or youth attends court, judges conduct the hearing in a way that assures the child's safety and well-being. Judges may allow a child or youth to bring a trusted adult with them into the courtroom or allow them to speak to the judge without their abuser in the room. Resource caregivers should report any concerns they have about the effects of coming to court to the GAL/CASA and on how the GAL/CASA and the court can help

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the child feel comfortable in the courtroom. The DHS is responsible for providing transportation for a child who is coming to court.

The Family Court also welcomes children 13 years old and younger into their courtrooms, but understands that there are additional considerations in deciding whether younger children should come to court. The court approaches these cases on a case-by-case basis.

If a foster child or youth comes to court, the child's GAL/CASA and their social worker have joint responsibility to prepare the child for court and to talk with them afterwards about what happened. Regardless of that preparation, your role as the child's resource caregiver cannot be underestimated here. You will be with the child before and after the hearing and in a position to deal more fully with the child's questions and emotions.

If the child's resource caregivers do not come to court their social worker must tell them what happened at the court hearing.

Attending a Court Hearing

Here are some steps that should be taken when attending a court hearing:

- Check in with the bailiff as soon as you arrive at the courthouse.
- When you check in, tell the bailiff what case you are there for. Cases are usually identified by the child's last name. Tell the bailiff your name and that you are the resource caregiver.
- Introduce yourself to the Deputy Attorney General (DAG). If you do not know who the DAG is, ask the bailiff if they can point out the DAG for you.
- Before you go into the court, let the DAG or

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GAL/CASA know if you want to say something while in court. (If you have concerns about the case, it is best to let everyone know about these concerns ahead of time. To have a meaningful hearing, everyone needs to be upfront about concerns and issues.)

- When in the courtroom, the DAG will introduce you to the court. (If you would like to have your name kept confidential, tell the DAG prior to entrance to courtroom.)

You can submit a written report but you do not have to. A written report ensures that the information you feel is important gets to the court. Remember, the report will be shared with the other parties. If you would like to submit a written report to the court, the following section gives you some important tips on writing an effective report.

The information resource caregivers provide is meant to assist the court in making decisions about the child in their care. In general, resource caregivers should focus on giving firsthand information about the child and not offer opinions about other people involved in the court process.

Written Reports to the Court

Judges have a limited amount of time to listen to all the people involved in the case and to consider all the information about the child and the family. So:

- Written reports should be short and well-organized.
- Focus on presenting firsthand information about the child in your care.
- Describe behaviors you have observed in the child.

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- Present information about the child’s needs.
- Do not offer opinions about other people involved in the court process such as the social worker, parents, or lawyers.
- Include the FC-S number, if you have it, and the child’s full name on all reports. Find the FC-S number by calling your social worker, GAL/CASA, court officer or by looking on old court reports.
- Usually a written report is ended with your signature and the date you signed it. If you would like to have your name kept confidential, you may sign the report as “Resource caregiver for Johnny Smith”.
- Type all reports using a standard font – do not use fancy fonts, script fonts, etc. Double space your report.
- Try to send the written report to the court, social worker, and GAL/CASA at least two weeks before the hearing. If you do not know when the hearing is scheduled, call the social worker, GAL/CASA, or court officer to ask for the time and date. The date is usually set at the previous court hearing.
- Bring extra copies of the report to the court hearing in case someone needs it.

Following is a sample of topics that you might want to include in a court report. You do not need to address all topics, only ones that are important to the child’s case. Include the headings in your report for easier reading. You can find sample court reports at www.ittakesanohana.org.

Information the Court May Consider Helpful

1. PLACEMENT INFORMATION

- The date the child came to your home and a brief description of the child’s physical and emotional condition at that time.

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- Reports/items received or not received for child.
Examples:
 - Medical Card or Medical Number
 - Names and contact info for Doctors
 - Personal items treasured by child – if not brought with the child, ask if and when they can be retrieved.

2. MEDICAL INFORMATION

- Doctor visits, significant illness or hospitalizations since the last court hearing, and the results of those visits.
- Any medications the child is taking and dosages.
- Any adverse reactions the child has had to medical procedures or medications.
- A brief description of the child's physical development, and any developmental lags you have observed.
- Any food and/or pet allergies.
- Unmet needs – chronic conditions requiring ongoing treatment.

3. DENTAL INFORMATION

- Visits to the dentist since the last court hearing, and the results of those visits.

4. EDUCATIONAL INFORMATION

- School child is attending: school of origin or new school?
- Transportation needs for child met or unmet.
- How child is doing socially in school.
- What is the child's attitude about teachers, peers, going to school, homework?
- The child's school grades and whether the child is performing at grade level.
- The dates of any school conferences you have attended and the results of those conferences (especially if the child is in special education classes).

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- Any educational testing the child has had, who gave the testing, and the results of the testing.

5. BEHAVIORAL INFORMATION

- A brief description of the child's behavior in your home.
- Description of the child's relationship with those in the home and community.
- Any services the child is receiving to address behavior problems, the person providing the services, and how often the child goes for the services.
- A brief description of how the child expresses his/her needs and feelings.
- A brief description of the child's eating and sleeping patterns and any problems the child has eating or sleeping.

6. CHILD'S SPECIAL INTERESTS AND ACTIVITIES

- A brief description of any special activities the child participates in (Scouts, music lessons, church groups, etc.) and how often the child participates in them.
- A brief description of any talents, interests, hobbies, or skills you have observed in the child.
- Child's accomplishments.

7. VISITATIONS

- The dates of visits between the child and her/his parents or other family members.
- If you supervised the visits, a brief description of the behaviors of the child and the other family members present at the visits. Carefully describe only the behavior. Do not comment on the reason for the behavior.
- A brief description of any arrangements for sibling visitation.
- The dates of any telephone contacts between the child and the child's parents or other family members.

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8. PROFESSIONAL CONTACTS

- All in-person and telephone contacts between you and the child's social worker.
- All in-person and telephone contacts between you and the child's GAL/CASA.
- All in-person and telephone contacts between you and the child's therapist.

9. RECOMMENDATIONS

- A brief description of any services you believe the child would benefit from based on your experience caring for the child, and why.

10. PHOTO

- A recent photograph of the child dated with month and year. It is usually best to have just the child, not other people, in the photograph.



THE COURT PROCESS

How a Case Gets to Court

The Department of Human Services (DHS) investigates reports of suspected child abuse and neglect. If a report is confirmed, DHS has several options:

1. Resolve the matter informally by referring the family to services.
2. Close the case if the child is living with an appropriate “caregiver”.
3. Enter into a voluntary service plan with the family and either:
 - A. Leave the child in the family home, or
 - B. Remove the child from the family home.
4. Request the assistance of the police to place the child in temporary foster custody, if the child is not safe in the family home and the parents will not sign a voluntary placement agreement.

If DHS decides to bring the case to court, DHS must file a petition in the family court. There are three kinds of petitions that can be filed:

1. A petition for family supervision (the child remains in the family home),
2. A petition for foster custody if the child is not safe at home but the parents were willing to sign a voluntary placement agreement, or
3. A petition for temporary foster custody if the child is not safe at home and the parents refuse to sign a voluntary placement agreement.

Hawaii’s *Child Protective Act* requires the family court “to make paramount the safety and health of children who have been harmed or are in life circumstances that threaten harm.”

This booklet focuses on the court process. The state legislature establishes how that process works. With each session of the legislature some of those laws may be changed. These laws are found in the *Child Protective Act, Chapter 587A* of the Hawai'i Revised Statutes. In putting together this booklet, we have tried to include all recent changes in the dependency process. Because more changes in the law may occur, it is intended for general information only and not intended to substitute for legal advice about a particular situation.

Temporary Foster Custody (TFC) Hearing

A police officer is empowered to take a child into custody without a court order and without the consent of the child's family if the officer believes the child is at risk of imminent harm. Promptly after taking the child into protective custody, the police officer must transfer physical custody of the child to DHS.

Shortly after a child is taken into protective custody, the Family Court holds a *TFC Hearing*. This hearing is the court's first chance to hear about the situation that brought the family to the attention of the DHS. At the *TFC Hearing*, the judge decides whether the child's safety requires that the child be removed from the child's home until more court hearings take place on the allegations of abuse or neglect filed against the parent(s).

In making this decision, the judge must apply the *Safe Family Home Factors* (guidelines the judge considers in deciding if the child can safely live with his/her parents) to the evidence and reports received about the child and family. If the court finds that the child cannot live safely

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at home, the judge will order that the child stay in the temporary custody of the DHS. This hearing should be scheduled within two working days after the filing of a TFC petition, excluding Saturdays, Sundays, and holidays.

Since the TFC hearing happens very quickly after the child is removed from the child's home and most resource caregivers do not have firsthand knowledge about what happened to bring the child and family to the attention of the DHS and the court, you probably will not have information to submit at the TFC hearing. This does not mean you shouldn't attend the hearing. Your presence may still be valuable and helpful.

Return Hearing

At the *Return Hearing* the court must decide if the child's physical or psychological health or welfare has been harmed or is threatened with harm as a result of the parents' actions or inactions. If the court finds that it has, the court takes jurisdiction over the child and decides whether the child can safely live at home or needs to be placed in foster care. To make this decision, the court uses the *Safe Family Home Factors*.

If the child must be placed in foster care, relatives are the first people considered as placement options to provide foster care for the child. Relatives are people who are related by blood, marriage or adoption or people who have played a substantial role in the upbringing or support of the child. The DHS must search for and notify all relatives after removing the child from the child's home and provide them with an application to become the child's resource caregivers if they are interested in caring for the child.

If placement with a relative is not possible and appropriate, the DHS determines where and with whom the child will be placed. The child's resource caregivers (whether relatives or not) have authority to consent to routine educational and recreational needs from the first day of placement, including enrolling the child in school. Resource caregivers may also seek and obtain ordinary medical and dental care, immunizations, and well-baby and well-child medical services for the child.

The court also may order visits for the child with the child's parents and siblings and order the parents to complete a service plan prepared by the DHS so that the child may safely return home soon. The return court date must be held within 15 days of filing of the petition or the date of the decision in the TFC Hearing. Parents can agree to a later date.

Many resource caregivers will not have information on whether or not the child has been harmed or is threatened with harm as a result of his parent's conduct. Relatives of the child who may be willing and able to care for the child may wish to attend the hearing to relay information to the court about their relationship with the child and family and their desire to care for the child. Regardless, it can still be valuable for the resource caregivers to attend the Return Hearing.

Periodic Review Hearing

The Family Court must review the cases of all children placed in foster care at least once every six months. These periodic reviews continue until the court's jurisdiction has been terminated, unless the child is in the permanent custody of the DHS. In that case, the court holds

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a permanency hearing (a hearing where the court decides where the child will live permanently) at least once every 6 months so that the child can have a permanent home as soon as possible. At periodic review hearings, information is given on how the child is doing in foster care, on the child's parents' progress with their service plan, and on whether there is a permanent plan for the child if he or she cannot return home. The court uses the *Safe Family Home Factors* to decide if it is safe for the child to return home immediately without help from the DHS; if the child can return home with the help of a service plan prepared by the DHS; or if the child must remain in foster care.

If the child cannot return home immediately, the court projects a likely date that the child can return home or be placed in another permanent home. Since the court wants the child to have the most legally permanent home possible, the preference for other permanent placements is: adoption, followed by legal guardianship; and finally, some other out-of-home placement.

Resource caregivers must be given notice of periodic review hearings at least 48 hours before the hearing, unless the resource parent was present in court and heard the court set the next hearing date. No hearing can be held until the resource caregivers have been given legal notice of the hearing. The best way to keep informed of the next court date is to attend hearings.

Resource caregivers often have valuable information about the child's physical, emotional, educational, and social development. This kind of information can help the court understand the child's needs. If you have been supervising visits between the child and her parent(s), you may also have some information about the parents' progress to relay to the social worker, GAL/CASA and the court at periodic review hearings.

The court order details who was present at the hearing, what the court decided and when the next hearing will take place. You may need to wait for about an hour after the hearing to receive a copy of the court order. Having a copy of the court order will help you follow the progress of the case and can help you address questions your foster child may have about court. It is a good idea to talk with the child's social worker or GAL/CASA about what court information should be shared with the child.

Permanency Hearing

At the *Permanency Hearing*, the court will decide if the child can safely return home immediately; if the DHS should continue efforts to reunify the child with her/his family; or if the DHS should stop trying to reunify the child with her/his family.

Just as in periodic review hearings, information is given on how the child is doing in foster care, on the child's parents' progress with their service plan, and on what permanent plan the DHS recommends for the child if the child cannot safely return home immediately. The court once again uses the *Safe Family Home Factors* to make these decisions. The court also determines if the DHS has made reasonable efforts to place siblings in the same home or to make sure they have visits if they are placed separately.

At this hearing, the court also decides what the permanency plan for the child will be and when implementation of the plan must be completed. The court may also issue orders about the child's education, health, therapy, counseling, visits with family, cultural connections, stability for the child and any other orders the court decides are in the child's best interests. If the child is 16 or older, the court orders the DHS to provide the services the child needs to make the transition from foster care to independent living.

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Under federal law, if the child has been in foster care for 12 consecutive months or a total of 15 out of the most recent 22 months, the DHS must file a motion (request) that the court set a hearing to terminate parental rights unless certain exceptions apply. The DHS does not have to file the motion if there is a compelling reason why it is not in the child's best interests to file it or if the DHS has not provided the child's family with the help they need to reunify with the child. If the court does not immediately order the child returned home, it sets a date for another periodic review or permanency hearing.

If the court decides that the child cannot return home immediately or in the foreseeable future, the court may be interested in knowing if the child's resource caregivers would like to provide a permanent home for the child. In addition, resource caregivers can provide information about the child's progress in their home.

Termination of Parental Rights Hearing

If the child cannot safely return home immediately, even with help from the DHS or it is not reasonably foreseeable that the child can safely return home in a reasonable period of time (not to exceed 2 years from the date the child entered foster care), the court will set a hearing to terminate parental rights. When the child cannot safely return home, the court presumes it is in the best interests of the child to be permanently placed with responsible parents in a secure home.

The younger the child, the more weight the court gives to the presumption. If the child is at least 14 years old, she/he must consent to the permanent plan unless the court decides that the plan should be implemented without her/his consent. If the court determines that there is

clear and convincing evidence that the requirements to terminate parental rights are met, parental rights will be thus terminated and an appropriate permanent plan will be ordered.

If the court finds that the requirements are not met, it sets another hearing and orders the DHS to prepare another plan to achieve permanency for the child.

Once parental rights are terminated, the judge will order a permanent plan of one of the following:

- Adoption
- Legal guardianship
- Permanent custody to the DHS or some other appropriate agency

Adoption, Guardianship, and Permanent Custody

There are three different types of permanent placements for foster children: adoption, guardianship, and permanent custody. Adoption and guardianship hearings will be the last hearings in the child protective process since the child will be placed in a safe and permanent home.

ADOPTION

When the court decides on adoption:

- The social worker will arrange home visits, office visits and phone contacts with the adoptive family and the child.
- Generally, the supervision period is six months, but it will vary depending on the adoptive parents and the special needs of the child.
- To complete the adoption, the FC-S case is closed and all parties are dismissed, including the DHS social worker.

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- In most cases, the DAG will process the adoption.
- If a child and parent meet eligibility requirements, *Adoption Assistance Payments* can be requested through the DHS social worker.



GUARDIANSHIP

When the court decides on guardianship:

- Family Court closes their FC-S case.
- DHS closes their social service case.
- A social worker will no longer be assigned to the case.
- The GAL/CASA is dismissed.
- Court hearings are held every six months until the child turns 18 unless the child has special circumstances that allow guardianship to continue until age 21.

As the child's legal guardian you may continue to receive DHS payments. The child's birth parents may retain certain rights such as the potential to visit the child, mutual inheritance rights, and the responsibility to support the child. If the guardianship disrupts, the guardian may find an alternative, safe home for the child. If the guardian is unable to do so, a neglect or abandonment case may be opened against the legal guardian(s).

PERMANENT CUSTODY

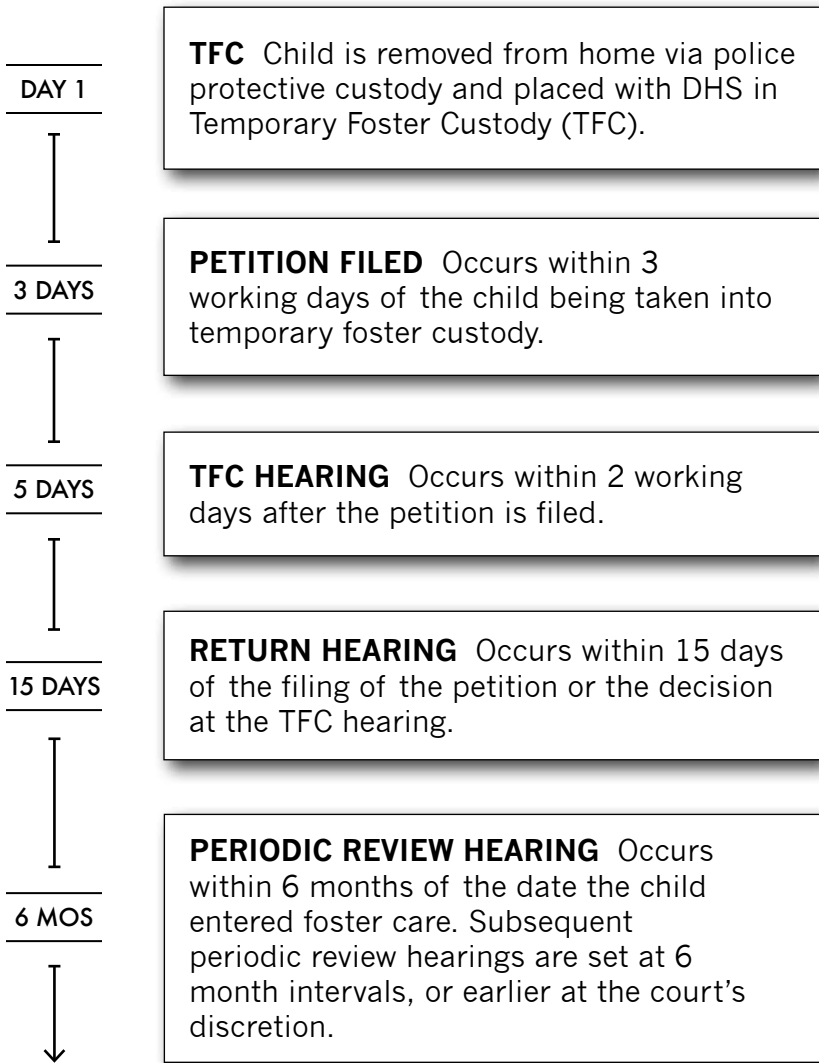
When the court decides on permanent custody:

- Permanent custody is granted to DHS or another authorized agency.
- DHS does not close their case.
- A social worker continues to be assigned to the case.
- Family Court does not close its FC-S case.
- The child's GAL/CASA is retained.
- Court hearings are held at least every 6 months and the DHS files a report to update the court on the child.

If the court grants permanent custody to the DHS, the parents' rights are terminated.



CHILD PROTECTIVE



* There may be hearings at other times, as any party has the right to file a *Motion for Immediate Review*. If the resource caregiver has a concern they feel needs to be addressed by the court, they can let the social worker or GAL/CASA know and ask them to file a *Motion for Immediate Review*. It is up to the court to decide if there are sufficient grounds to grant the motion.

PROCEEDINGS*

12 MOS



PERMANENCY HEARING Occurs within 12 months of the child's date of entry into foster care or 30 days of the court's determination that the child is an abandoned infant or that aggravated circumstances are present. If the child is in the permanent custody of the DHS, permanency hearings take place every 6 months.

TERMINATION OF PARENTAL RIGHTS (TPR) HEARING Occurs when it is not reasonably foreseeable that the child's parents will be willing and able to provide the child with a safe family home, even with the help of the DHS, within a reasonable period of time, which cannot exceed 2 years from the date of the child's entry into foster care. If the child has been in foster care for 12 consecutive months or a total of 15 out of the most recent 22 months, the DHS must file a petition for a TPR hearing unless certain exceptions apply.

ADOPTION OR GUARDIANSHIP HEARING These are held concurrently at the last child protective hearings. Parental rights may or may not have been terminated. The child welfare case is closed when the child is adopted or guardianship is awarded.

TIPS ON ATTENDING COURT

When you attend a court hearing, the judge may ask you a few questions or may invite you to make a short statement. Before going to court, review your records and notes so you can answer the judge's questions accurately. When you verbally answer the judge's questions or if you make a statement, report only facts, not your opinions.

DRESS/APPAREL

- Do not wear shorts, tank or sleeveless tops, or slippers. Avoid wearing sneakers and very casual clothing. Dress as you would for a job interview. It will tell the judge that you consider the courtroom a place where serious business is conducted and conveys your respect for the court.
- Do not wear baseball caps, hats, or sunglasses into the courtroom.
- If you have a cell phone, make sure it is turned off or turned to silent mode before entering the courtroom.

DEMEANOR

- Keep in mind that before you speak one word, people in the courtroom – judge, attorneys, bailiff – will have gotten some impression about you from your appearance and behavior.
- Always rise from your seat to a standing position when the judge enters or leaves the room. Wait to be told to sit down when you enter the courtroom.
- Do not chew gum, eat or drink anything in the courtroom.
- Do not have side conversations with other people in the courtroom when the case is before the judge.
- Address the judge as “Your Honor” when speaking to him or her.
- If you wish to ask a question or make a

TIPS ON ATTENDING COURT

statement, and you are not sure when to speak, make sure the judge and the parties are not in the middle of speaking, stand up or raise your hand to be acknowledged, and ask. For instance, “Excuse me, Your Honor, I don’t mean to speak out of turn, but I have a question I would like to ask.”

- When you hear statements being made by other people in the courtroom that you do not agree with, do not react to the person making the statement. Do not make faces, sigh, or otherwise comment on the actions or testimony of others. Be patient until your time to speak comes. Judges do not like it when people before them argue with one another, respond personally, and speak with each other instead of speaking to the court.
- Direct all communication to the judge. It is not appropriate to speak directly to someone else in the hearing.
- If you know in advance that you would like to speak to the judge in the hearing, let the DAG or GAL/CASA know that when you enter the courtroom if the judge is not present. They can let the judge know you would like to address the court during the hearing when he or she takes the bench.



CONCLUSION

The information presented here is a general overview of the Family Court process and how you can participate in it. Understand that each judge has procedures and rules about what happens in his courtroom.

The most important thing to remember is that resource caregivers are vital members of the team providing care for the foster child in their home. In serving the best interest of the child, you have an important role to play. We encourage you to find out all you can to make sure you can properly advocate for the child's welfare in court.

Thanks for all you do to help Hawaii 's children!



GLOSSARY

Court Players

COURT APPOINTED SPECIAL ADVOCATES (CASA)

The CASA is a volunteer who is appointed by the court to represent the best interest of the child. The CASA's role is to advocate for the best interest of the child based on the CASA's own investigation of the facts and knowledge of the child's needs. The CASA answers directly to the court.

COURT OFFICER

The Court Officer is a social worker employed by the Family Court who provides monitoring of the case on behalf of the Court. The Court Officer will read the case, review all the records, highlight important information, and make recommendations to the judge.

DEPENDENT CHILD

A dependent child is a young person subject to the authority of the court because of child abuse or neglect.

DEPUTY ATTORNEY GENERAL (DAG)

The DAG is a member of the Family Law Division of the Attorney General's office. The DAG represents the Department of Human Services, not the individual social worker or the resource parent. The DAG represents the position of the DHS.

GUARDIAN AD LITEM (GAL)

The GAL is an attorney who is appointed by the court to represent the best interest of the child. The GAL's role is to advocate for the best interest of the child based on the GAL's own investigation of the facts and knowledge of the child's needs. The GAL answers directly to the court. (*DHS Procedures Manual, Part III, Section 6*)

JUDGE

The judge hearing the case decides what actions will be

GLOSSARY

taken based on the evidence presented in court. The judge also issues orders and decides how soon actions must take place.

PARENTS' ATTORNEY

The role of the parents' attorney is to advise the parents of their legal rights, help the parents understand their rights and duties and to present evidence and testimony for the parents. Sometimes each parent has a separate attorney.

PARTIES

Includes an authorized child welfare agency, the child who is the subject of the hearing, the child's parents and GAL/CASA, and any other person found to be encouraging, causing, or contributing to the acts or conditions that brought the child and family before the court. Resource caregivers are treated as parties for the purpose of notice of the court hearings. They may also apply to become full parties if their participation is in the best interest of the child. In that case, the court can limit their participation in the hearing.

NON-PARTIES

Non-parties are not bound by any order of the court. They are allowed to sit in on hearings at the discretion of the judge. The judge may request opinions of non-parties on the case.

RESOURCE FAMILY

A person or family licensed by the DHS or another authorized agency to provide foster care for children. The resource caregiver is often the person with the most information about the child's behavioral, medical, and educational needs.

SOCIAL WORKER

The child's social worker is required to submit a *Safe Family Home Report* or a *Court Report* to the court two weeks before the periodic review hearing. To prepare reports, the social worker gathers information about the parents and the child. The social worker usually sends notice of the review hearing date to the resource caregiver at the same time the court report is submitted .

Terms**RETURN HEARING**

Scheduled within 15 days of the *TFC Hearing*, the *Return Hearing* determines whether the allegations of abuse or neglect in the petition are true. If the department has met the burden of proof, the court then takes jurisdiction (authority) over the child and determines if the child will remain at home or in foster care. The court can order many other things in the best interests of the child.

AGGRAVATED CIRCUMSTANCES

Aggravated circumstances are situations in which the DHS may not be required to try to reunite a child with her/his parents. These include murder, voluntary manslaughter, serious bodily injury of a child, termination of parental rights for the child's sibling, torture of the child, and abandoned infants.

CHILD PROTECTIVE PROCEEDING

Any action, hearing, or other civil proceeding before the court under *HRS Chapter 587A*.

COURT ORDER

Court orders are issued at the end of each court hearing and reflect what was ordered during the hearing. A copy

is provided to each attorney and to parties that are not represented by an attorney. The parties are expected to follow these orders. Any objections to the orders should be stated in court; a motion for reconsideration needs to be filed within 20 days of the filing of the court order about the issue being contested.

FAMILY HOME

The home of the child's legal custodian where there is the provision of care for the child's physical and psychological health and welfare.

FAMILY SUPERVISION PETITION

Family supervision means the legal status in which the child's legal custodian is willing and able, with help from the DHS, to provide the child with a safe family home. A petition is filed to ensure oversight by the court to make sure the child's parents comply with the services provided by the DHS.

FOSTER CUSTODY

Foster custody means the legal status created when the DHS places a child outside of the family home with the agreement of the child's legal custodian or as the result of a court order. In order for the child to be placed outside the home involuntarily, the court must determine that the child's family is not presently able to provide the child with a safe family home, even with help from the DHS.

GUARDIANSHIP

Guardianship is a legally established relationship between a child and an adult who is appointed to protect the child's best interests and to provide for the child's welfare, education, discipline, maintenance and support. Legal guardianship gives guardians the rights and responsibilities of the legal parent. Family Court closes its FC-S case. This means if the guardian wishes to terminate his

role, the DHS needs to petition the court and open a new case with new allegations.

JURISDICTION

When a court has jurisdiction over a case, it has the authority to make orders about the custody of the child, the child's placement and services to the family.

REVIEW HEARING

At periodic review hearings, information is given on how the child is doing in foster care, on the parents' progress with their service plan, and on whether there is a permanent plan for the child if the child cannot return home. The court uses the *Safe Family Home Factors* to decide if it is safe for the child to return home immediately without help from the DHS; if the child can return home with the help of a service plan prepared by the DHS; or if the child must remain in foster care. If the child cannot return home immediately, the court projects a likely date that the child can return home or be placed in another permanent home. These hearings are held for all cases under the court's jurisdiction and are scheduled no more than six months apart.

PERMANENT CUSTODY

Permanent custody is a legal status created by order of the court after parental rights are terminated. When the court grants permanent custody to the DHS, it does not close its FC-S case. The child's social worker and GAL remain on the case and the court's jurisdiction continues. Yearly court hearings continue.

PERMANENT PLAN

A permanent plan is a specific, comprehensive written plan for the child. The permanent plan can be adoption, guardianship, or permanent custody to the DHS or another authorized agency.

PERMANENCY HEARING

Permanency Hearings determine what the permanent plan will be for the child if he cannot return home in the foreseeable future and when the plan must be implemented. The court may also issue orders about the child's education, health, therapy, counseling, visits with family, cultural connections, stability for the child and any other orders the court decides are in the child's best interests. If the child is 16 or older, the court orders the DHS to provide the services the child needs to make the transition from foster care to independent living.

RETURN HEARING

The *Return Hearing* is scheduled to take place within 15 days of the filing of the petition or the decision in the TFC hearing. The court first decides if the child's physical or psychological health or welfare has been harmed or is threatened with harm as a result of the parents' actions. If the court finds that it has, the court takes jurisdiction over the child and decides whether the child can safely live at home or needs to be placed in foster care. The court also orders visits for the child with her parents and siblings and orders the parents to complete a service plan prepared by the DHS.

SAFE FAMILY HOME FACTORS

Criteria the court uses to determine if a family is willing and/or able to provide a safe family home.

SERVICE PLAN

A specific, comprehensive, written plan prepared by the DHS and the child's family to address the specific needs and conditions of the family to help them provide a safe family home for their child.

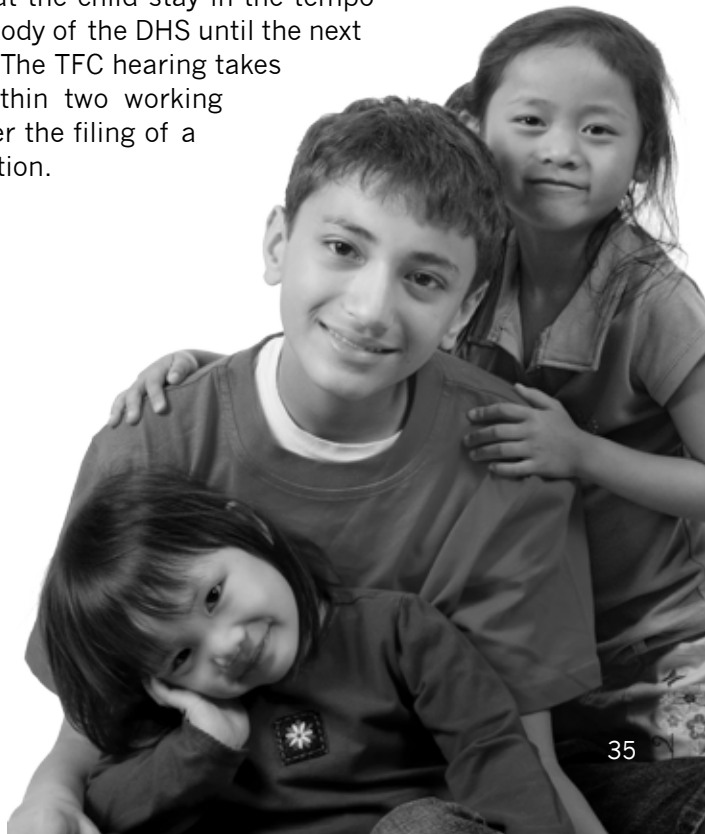
TEMPORARY FOSTER CUSTODY (TFC) PETITION

A petition filed when a child is at imminent risk of being

harmed or threatened with harm and must be removed from the parent's home to ensure that the child is safe. A TFC order transfers responsibility for the child from the parents to the DHS temporarily while the case is being prepared for court.

TEMPORARY FOSTER CUSTODY (TFC) HEARING

At the *TFC Hearing*, the court determines whether the child should remain in the temporary custody of the DHS or be returned to the family, pending a determination on jurisdiction at a return hearing. In making this decision, the judge uses the *Petition* and the *Safe Family Home Factors* to assess the information he receives about the child and family, and any testimony he may hear. If the court finds that the child cannot live safely at home even with services, the judge will order that the child stay in the temporary custody of the DHS until the next hearing. The TFC hearing takes place within two working days after the filing of a TFC petition.



ACRONYMS

CASA:	Court Appointed Special Advocate
CPS:	Child Protective Services
CWS:	Child Welfare Services
DAG:	Deputy Attorney General
DHS:	Department of Human Services
DOE:	Department of Education
FC:	Foster Custody
FC-S:	Family Court Special Service
FSP:	Family Service Plan
GAL:	Guardian ad litem
HAR:	Hawai'i Administrative Rules
HRS:	Hawai'i Revised Statute
PC:	Permanent Custody
SFHR:	Safe Family Home Report
TFC:	Temporary Foster Custody
TPR:	Termination of Parental Rights
TRO:	Temporary Restraining Order
VFC:	Voluntary Foster Custody

SOURCES

Federal and Hawai'i state laws and rules of court that relate to resource caregivers' and relative caregivers' participation in Family Court Child Protective Service proceedings:

FEDERAL

Adoption and Safe Families Act (ASFA): Section 675(5)(G) of title 42 of the United States Code (42 U.S.C. Section 675(5)(G))

HAWAII

- *Hawai'i Revised Statute Chapter 587A, Child Protective Act*
- State of Hawai'i, Department of Human Services, *Administrative Rules*
- State of Hawai'i, Department of Human Services, Social Services Division, Child Welfare Services Branch, *Procedures Manual, Chapter 3*



NOTES



NOTES

Children and Youth in Hawai'i affected by foster care need the support of resource families to help them through the toughest time of their lives.

It Takes An 'Ohana, a program of Family Programs Hawai'i, provides a bridge between resource caregivers and the systems they work with while taking care of the needs of the children and youth in their care. ITAO does this by providing easily accessible, accurate and pertinent information, linking resource families with community resources and representing the resource caregiver voice on statewide committees and task forces.

IT TAKES AN
Ohana



FAMILY PROGRAMS HAWAII

www.ittakesanohana.org
www.familyprogramshawaii.org