

appointed an attorney. The parent, child, and DCF also have a right to present evidence supporting their position and have a right to cross-examine witnesses. The parent or child may ask the judge to return custody to the parent, or to award another person (family member or friend) temporary custody of the child.

#### **Where does the child live after removal?**

Until the 72 hour hearing is held and the judge makes a decision, DCF decides where the child lives. DCF will place the child with a relative (if one is available and can be approved by DCF), in a DCF foster home, at a short term group home, or at a residential group home, depending on the age and the needs of the child. This is also true if, after the 72 hour hearing, the child remains in the custody of DCF.

#### **What happens with my DCF case after the 72-hour hearing if DCF keeps custody of the child?**

The parents and the child, if he or she is over 14, will discuss with DCF an action plan aimed at re-unifying the family or helping the family resolve the problems that led to the C&P. An action plan is an agreement between the parents and child age 14 or older and DCF that includes a list of what each family member and DCF is expected to do. Parents may agree in the action plan, for example, to take parenting or anger management classes, go to counseling, find suitable housing, or submit to drug or alcohol screens.

The action plan should be developed together by the parents and child age 14 and older and DCF, not just by DCF alone. If the parents and child age 14 or older agree with what is in the action plan, they sign it. Parents and the child may want to consult with their attorneys before signing the action plan. While the case is open, DCF, the parents and child age 14 or older, and their attorneys will monitor whether everyone, including DCF, is completing their tasks in the plan

#### **What happens in Juvenile Court after the 72-hour hearing if DCF keeps custody of the child?**

The judge assigns a court investigator who will review records and interview the parents, the child, DCF personnel, and family members and professionals who work with the family. The investigator will write a report and include recommendations for the case. This report will be submitted to the judge, and the attorneys for the parents and child will receive copies.

A few months after the 72-hour hearing, the parents and attorneys and the attorney for the child participate in a pre-trial conference hearing at court to review the court investigation, prepare for, and select a date for the trial. The trial will be used to decide if the parents or guardian are currently “unfit” to raise the child, and who should have custody of the child: DCF, the parent, or another person.

#### **What happens at trial ?**

At the trial the judge must decide whether the parents are currently unfit to raise their child. The parents and child have the same rights to present evidence and be represented by an attorney as they did at the 72 hour hearing.

At the end of the trial, the judge may:

- Decide that the parents are fit to raise their child and return custody of the child to the parents;
- Decide that the parents are not currently fit to raise the child and award permanent custody of the child to DCF with the goal of reuniting the family at a later date or in order to allow someone else to become guardian of the child; or
- Decide that the parents are not fit to raise the child, that it would be in the child’s best interest to terminate the parents’ rights to the child, and free the child for adoption.

DCF, the parents, or the child may appeal the decision of the judge, which means that they would ask another court to review the judge’s decision. The appeal process can take more than a year.

#### **For more information call:**

Children’s Law Center of MA  
298 Union Street, Lynn, MA 01901  
(tel) 781-581-1977 (fax) 781-598-9364  
[www.clcm.org](http://www.clcm.org)

Phone Assistance is available during business hours. Please call 1-800-KIDLAW8 and request to speak with an intake worker.

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## **CARE AND PROTECTION CASES (C&P)**



**CHILDREN’S LAW CENTER  
OF MASSACHUSETTS**



United Way  
of Massachusetts Bay  
and Merrimack Valley

### **What is a Care and Protection case?**

A Care and Protection (C&P) case is a court proceeding in which a juvenile court judge decides whether a child has been or is at risk of serious abuse or neglect by a caretaker, usually a parent or guardian. The judge also decides whether the guardian is currently unfit to care for the child and who will have custody of the child. To help in this decision, the judge considers what is in the child's best interest.

### **How does a C&P begin?**

A C&P can be filed by any person over 18. Most C&P cases are filed by the Department of Children and Families (DCF). A C&P usually begins when someone reports to DCF that a child is being physically or sexually abused or neglected by their parent or guardian, or by another caretaker who the guardian allows to have access to the child. This report is referred to as a "51A report."

### **What is abuse and neglect?**

Abuse can be physical, sexual, or emotional. Reports of the death, serious injury, sexual assault, or exploitation of a child must also be referred to the District Attorney for investigation and possible criminal prosecution. Neglect means failing to provide for the child's health, welfare, education, and safety. This can include allowing the child to live in dangerous conditions or to live without adequate food, clothing, heat, or medical care; taking drugs in the presence of the child; failing to provide sufficient supervision of the child; failing to keep the child safe from other people who might abuse or exploit the child; and failing to require a child who is under 16 to attend school.

### **Who may file a 51A report?**

Anyone who suspects that a child is being abused or neglected may file a 51A report. The reporter can remain anonymous.

### **Who must file a 51A report?**

Certain professionals called "mandated reporters" are required by law to report suspected child abuse and/or neglect to DCF. These professionals include teachers, daycare providers, social workers, doctors,

nurses, dentists, psychologists, psychiatrists, police, and firefighters.

### **What happens after a 51A report is filed?**

When someone files a 51A report, DCF must decide whether to "screen in" or "screen out" the report for additional "response" from DCF.

### **When will a 51A report be "screened out"?**

A report will be "screened out" if the reported actions are not considered abuse or neglect as defined by law or if the abuser is not a caretaker of the child. The report may also be screened out if the family already has an open case with DCF, if the report is old, or if the report is "frivolous."

### **What happens if the report is "screened in"?**

If the report is "screened in," DCF will conduct an investigation also called a "response." If DCF decides the report requires a non-emergency response, the investigation should begin within 2 business days and end within 15 business days of the report. If DCF decides the report requires an emergency response, the investigation should begin within two hours and end within 5 business days of the report. The investigator will attempt to speak with the caretaker, the child named in the report, and family members, professionals, and other individuals from the community who have contact with the family.

### **What happens at the end of the investigation/response?**

DCF decides whether the report is:

- Unsupported: there is no reasonable cause to believe the child was abused or neglected.
- Supported: there is reasonable cause to believe the child was abused and/or neglected or the actions by the caregivers put the child in danger.
- Substantiated concern: there is reasonable cause to believe the child was neglected and those actions by the caregiver create the possibility of abuse and/or neglect, but there is no immediate danger to child.

At the end of the response/investigation, DCF also decides whether it needs to act to make sure the child is safe at home.

### **What happens if DCF believes that the child is in immediate danger because of the abuse or neglect alleged in the 51A report?**

If DCF believes that it must immediately remove the child from the home in order to protect the child from harm either upon receiving the 51A report or during or after the investigation, DCF can ask the court for emergency temporary custody of the child.

### **How does DCF get emergency temporary custody of a child?**

To get emergency temporary custody of a child, a DCF worker and DCF lawyer must go to Juvenile Court with a written statement by the social worker called an affidavit that tells the judge why DCF believes that it is necessary to remove the child from the custody of his or her parent. If the judge agrees that the allegations are so serious that removal is necessary to protect the child from harm, the judge can temporarily order that the child be placed in the custody of DCF. In extreme emergencies, DCF has legal authority to remove a child from the parent or guardian even without advance court permission. In these cases, immediately after the removal, DCF must go to the Juvenile Court to get permission to keep the child.

### **Does DCF have to make any efforts to try to avoid removing the child from the custody of his/her parent or guardian?**

Yes! DCF must make "reasonable efforts" to try to prevent the removal of the child from the custody of his/her parent or guardian. This does not mean that DCF has to leave a child in an unsafe situation, but it does mean that DCF must try to provide reasonable services or think of alternative arrangements for the family that would eliminate the danger to the child and prevent the child from having to leave the custody of his/her parent or guardian.

### **What happens after the child is removed?**

If a child is temporarily removed from her parent, the parent and the child have a right to a hearing during which they each can tell their side of the story. The hearing should be held within 72 hours of the child's removal from the parent or guardian. Both the parent and the child have a right to have an attorney at the hearing and, if eligible, will be