

A GUIDE FOR

Families in Child Protection Cases

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Maine Judicial Branch
Administrative Office of the Courts

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IMPORTANT INFORMATION

Use this space to write down dates, times, and places of court hearings and other information. Ask your lawyer about any information that you find unclear.

Your Lawyer

Name _____
 Address _____
 Phone _____
 Email _____

Department Caseworker

Name _____
 Phone _____
 Email _____
 Supervisor's name _____
 Phone _____
 Email _____

Guardian ad Litem (GAL)

Name _____
 Phone _____
 Email _____

*Child Welfare Ombudsman

Phone: (207) 213-4773
 Email: ombudsman@cwombudsman.org

Preliminary Protection Hearing

Date & Time _____
 Place _____

**This program provides a trained person to look into complaints when you have not been able to resolve an issue with the Department. The Ombudsman Program is independent of the Department.*

Case Management Conference

Date & Time _____
 Place _____

Visiting Schedule

Day(s) & Time(s) _____
 Place _____

Family Team Meeting

Date & Time _____
 Place _____

COURT DATES

Jeopardy Hearing

Date & Time _____
 Place _____

Judicial Review Hearing

Date & Time _____
 Place _____

Judicial Review Hearing (second)

Date & Time _____
 Place _____

Termination of Parental Rights Hearing

Date & Time _____
 Place _____

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Important Disclaimer

The specific requirements concerning your case are contained in the statutes, rules, and administrative orders. This is only a guide.

INTRODUCTION — *What is this guide for?*

This guide will help you understand your rights and responsibilities and explains what to expect in a Child Protection case (Protective Custody or PC case). A PC case can be confusing and this guide may answer many of your questions.

This guide will also help family members and others who have a significant relationship with your child understand how they may be able to attend or participate in a PC case.

Every PC case is different. It is possible that your PC case will not include every hearing or event described in this guide. The laws that are used in PC cases are the same, but each case involves different facts. Some cases can be resolved quickly. Other cases may take many months to complete.

The purpose of PC cases is to help families create a safe environment and home for children. The goal is to keep families together and, if children were removed from their parents, to return them home.

PART 1 — *Why have I been contacted by the Department of Health and Human Services about my child?*

When the Department of Health and Human Services (the Department) gets a report of possible abuse or neglect of a child, the Department may investigate the report. **The Department may investigate if the report claims that:**

- A child has serious and unexplained injuries;
- A young child was left alone or in a dangerous situation;
- A child has health problems or medical needs that have not been met;
- or
- A child's other basic needs have not been met.

The Department's investigation may result in a report called a "Child Protection Assessment" (the Assessment). After doing the Assessment, the Department may develop a safety plan to keep your child safe and request meetings to discuss the plan. The Department may also decide to start a court case if it believes your child is in immediate risk of serious harm or at risk of serious abuse or neglect.

PART 2 — *What happens when a PC case is started in court?*

Petition

In every PC case, the Department will file a document with the court called a "Petition for a Child Protection Order" (Petition). The Petition will state why the Department claims that your child is at risk of serious abuse or neglect. Once the Petition is filed, the court will begin to schedule court events that you must attend.

Request for a Preliminary Protection Order

In some PC cases, the Department may file a document called a "Request for Preliminary Protection Order" (PPO). The Department files a PPO when it believes your child is in immediate risk of serious harm and asks that the court remove the child from the child's home. (See Part 3 for more information on PPOs.)

Order appointing a lawyer to represent you

At the same time the Petition is filed, the court assigns a lawyer to each parent or legal guardian. Make a note of your lawyer's name and phone number and contact your lawyer as soon as possible. If you do not know which lawyer has been assigned to you, you should contact the court where the case was started.

Child Protection Financial Affidavit

Every parent or legal guardian who is assigned a lawyer must file a sworn statement about income and finances with the court. This form is called the "Child Protection Financial Affidavit." After you complete this form, the court will decide whether to continue to pay for some or all of the cost of your assigned lawyer.

You may be asked to meet with a financial screener at the courthouse on a specific date and time to discuss your paperwork. Parents or legal guardians who do not file the Child Protection Financial Affidavit may lose the opportunity to be represented by a lawyer at State expense.

Order appointing a Guardian ad Litem (GAL)

Your child will have a person assigned by the court to advocate for your child's best interest. This person is called a guardian ad litem or GAL. This person does not work for the Department. The GAL is an independent party who will get to know your child and family.

The GAL's job is to gather information about your family. The GAL will review records and reports, talk to your child, and talk to you. The GAL may also talk to other people involved in your child's life. The GAL will write reports for the court that include recommendations about what the GAL believes is in your child's best interest. The GAL must also tell the court what your child's wishes are.

If you do not understand any part of the Petition or other court papers, ask your lawyer. See Part 13, "Working with Your Lawyer," for more information about how your lawyer can help you in your PC case.

PART 3 — *What happens if the Department files a PPO with the Petition?*

If the Department believes your child is in immediate risk of serious harm, the Department will file a PPO with the district court. The court usually rules on a PPO right away. If granted, the court allows the Department to immediately remove the child from the child's home. Only the court may order your child to be removed from your home or care.

If the Department asks a court for a PPO, it is considered an emergency. You may not get copies of the paperwork that the Department files until after the court has decided if it will grant a PPO. If a PPO is granted and you disagree, you have the right to a hearing. (See Part 13 for more information about working with your assigned lawyer.)

If the court grants a PPO, your child may be placed with an approved relative or in a foster home. If your child is placed with an approved relative, this is called a "kinship placement." Before placing your child with a relative, however, the Department must make sure the child will be in a safe environment by doing an assessment and background check. Sometimes a temporary placement with a relative is not possible because this assessment cannot be completed before the Department requests a PPO.

No later than 7 days after a PPO is granted, the Department caseworker must work with you to arrange visits with your child, unless the court believes there is a very good reason not to. Contact the Department caseworker to discuss visits with your child.

If the Department is not asking to take immediate custody of your child, it will not request a PPO. In this situation, your child may remain in your home as part of the Safety Plan.

Will I be told where my child is staying?

In most cases, yes. The court papers you receive will include:

- Information about your child's placement; and
- The Department caseworker's name and telephone number.

If the Department's Petition says that releasing this information may result in serious harm to your child, a caregiver, or the Department caseworker, information about your child's placement will not be provided.

If the court does not grant a PPO, this does not mean the court case is finished. The court case will still be open, but your child will remain at home.

PART 4 — *When will I be able to go to court if a PPO has been granted?*

If the court grants a PPO, a summary preliminary hearing will be scheduled to ensure that the Department proves its case to a judge. This hearing is scheduled within 7-14 days (or sooner if your lawyer asks and the court is able to do so) after the PPO is granted. You will receive notice of when the hearing will happen.

How should I prepare for the summary preliminary hearing?

To prepare for a summary preliminary hearing you should contact your lawyer to discuss your case and what will happen in court. You should also review all the paperwork you have received from the court, the Department, and your lawyer.

What happens at a summary preliminary hearing?

On the date of the summary preliminary hearing, you have two choices:

- You may agree to have the PPO remain in effect until the next stage of the case, or
- You may require the Department to prove its case at a hearing.

If you agree to a PPO, you are allowing the Department to continue to have temporary custody of your child. If a hearing is held, an Assistant Attorney General

(AAG) will present the Department’s case to the judge. Your lawyer will present your case. You will have a chance to testify.

Other witnesses at the summary preliminary hearing include:

- The child’s other parent or legal guardian,
- The GAL (see Part 2 for information on the GAL); and
- Relatives or foster parents who are caring for your child.

It is very important for you to attend and participate in the summary preliminary hearing. If you do not attend, your parental rights may be at risk. After the hearing, the court will decide if the PPO should stay in place and what should happen next.

PC cases are not open to the public, and all records are confidential. (See Part 17)

PART 5 — *What is a Case Management Conference and when is it held?*

A Case Management Conference (CMC) is a meeting with the judge to discuss what has happened and what the next steps are in the case. If the Department did not ask for a PPO, this will be your first court date. The following people attend a CMC:

- You;
- Other parents or legal guardians;
- The lawyers representing each of you;
- The GAL; and
- The AAG representing the Department.

**The CMC is held
a few weeks
after the start of
the case.**

At the CMC the court will also discuss any upcoming hearings scheduled for your case.

PART 6 — *What is a jeopardy hearing and when is it held?*

The purpose of a jeopardy hearing is to present evidence to the court so the court may decide if your child is in “circumstances of jeopardy.” “Jeopardy” includes, among other things, serious harm, or a threat of serious harm to your child. Ask your lawyer to explain this term if you are not sure what it may mean in your situation.

If the Department did not ask for a PPO (see Part 3), a jeopardy hearing will be the first court hearing in the case at which witnesses will testify. A court must decide whether jeopardy exists within 120 days after the date the Petition was filed. A court’s decision may, however, be delayed if good cause is shown.

Before a jeopardy hearing begins, you and your lawyer will usually receive a draft of a jeopardy order to review. The order will state the reasons for the finding of jeopardy. If you agree with the draft order, you may enter into an order by agreement without having a hearing. The judge will ask you questions about the order to make sure you understand it and agree with it.

If you do not agree with the draft order or cannot come to an agreement, the court will hold a hearing. At the hearing, the court will listen to evidence from the Department, from you and the other parents or legal guardians, and the GAL. After hearing the evidence, the court decides if jeopardy exists. If the court decides there is no jeopardy, the case is over and your child will be returned home (or remain home, if the child was not removed by a PPO or Safety Plan).

If the court finds that jeopardy does exist, the court will issue a jeopardy order. You will begin working with a new caseworker from the Department on reunification. The court may also determine whether you can afford to pay child support, and, if so, how much you should pay.

In some cases, the court may determine that there is jeopardy as to one parent and not the other. When this happens, one option is for the parties and the court to create a parental rights and responsibilities order (PR&R order). This document determines who the child will live with, contact with each parent, and how important decisions for the child will be made. If a PR&R order is developed, the PC case may be dismissed.

If you do not agree with the court’s decision about jeopardy, you should talk with your lawyer about whether you should appeal the decision. (An appeal is a written request to another court to review, and change or reverse, a decision of a trial court.)

It is very important that you attend and participate in the jeopardy hearing. If you do not attend, you will be putting your parental rights at risk.

If the court issues a jeopardy order, go over the order with your lawyer right away. If the order requires you to receive services or supports, make sure you

understand what these are and exactly what you need to do to comply. Be sure to keep in contact with your lawyer, caseworker, and GAL.

PART 7 — *What happens after a jeopardy order is issued?*

If a court issues a jeopardy order, it must review the case at least once every 6 months. You, your child's other parents, the AAG, or the GAL may ask the court to review the case sooner. This court hearing is called a "judicial review."

At the judicial review, the court reviews what has happened in the case since the last court date and decides what should happen next. The court may ask about:

- Your child's well-being;
- The GAL's contact with your child and other people involved in the case;
- What progress you have made toward the goals within your Reunification Plan;
- The efforts the Department has made to provide necessary services for reunification; and
- Any other updates about your case.

Based on the information discussed, the court may make changes to what you or the Department are required to do. The judicial review is a time when the parties and the court discuss your case and determine the next steps. If all parties agree to the status of your case and the next steps, then this review is like a "check-in." If the parties disagree about the status of your case or the next steps, then a hearing with witnesses and evidence will be scheduled.

Most PC cases have more than one judicial review before the case is resolved.

PART 8 — *What is a permanency planning hearing and when is it held?*

The court usually holds a permanency planning hearing within 12 months after your child entered foster care. At the permanency hearing, the court's focus is on the long-term best interest of your child, including whether your child should be:

- Returned to you;
- Cared for by a permanency guardian;
- Placed with a fit and willing relative;
- Placed for adoption; or

- Placed in another planned permanent living arrangement.

A permanency hearing may be held at the same time as a judicial review (see Part 7).

PART 9 — *What is a termination of parental rights?*

If the Department believes you are unable or unwilling to resolve the risk of abuse or neglect to your child, it may file a petition asking the court to end your right to care for or see your child by issuing an order terminating your parental rights (TPR order). You may also voluntarily agree to a TPR order if you think that it is in the best interest of your child. Before you decide, you should discuss your options with your lawyer.

If you have not agreed to a TPR order, the court will terminate your parental rights only if, after a hearing, it finds very strong evidence that one or more of the following four factors exists:

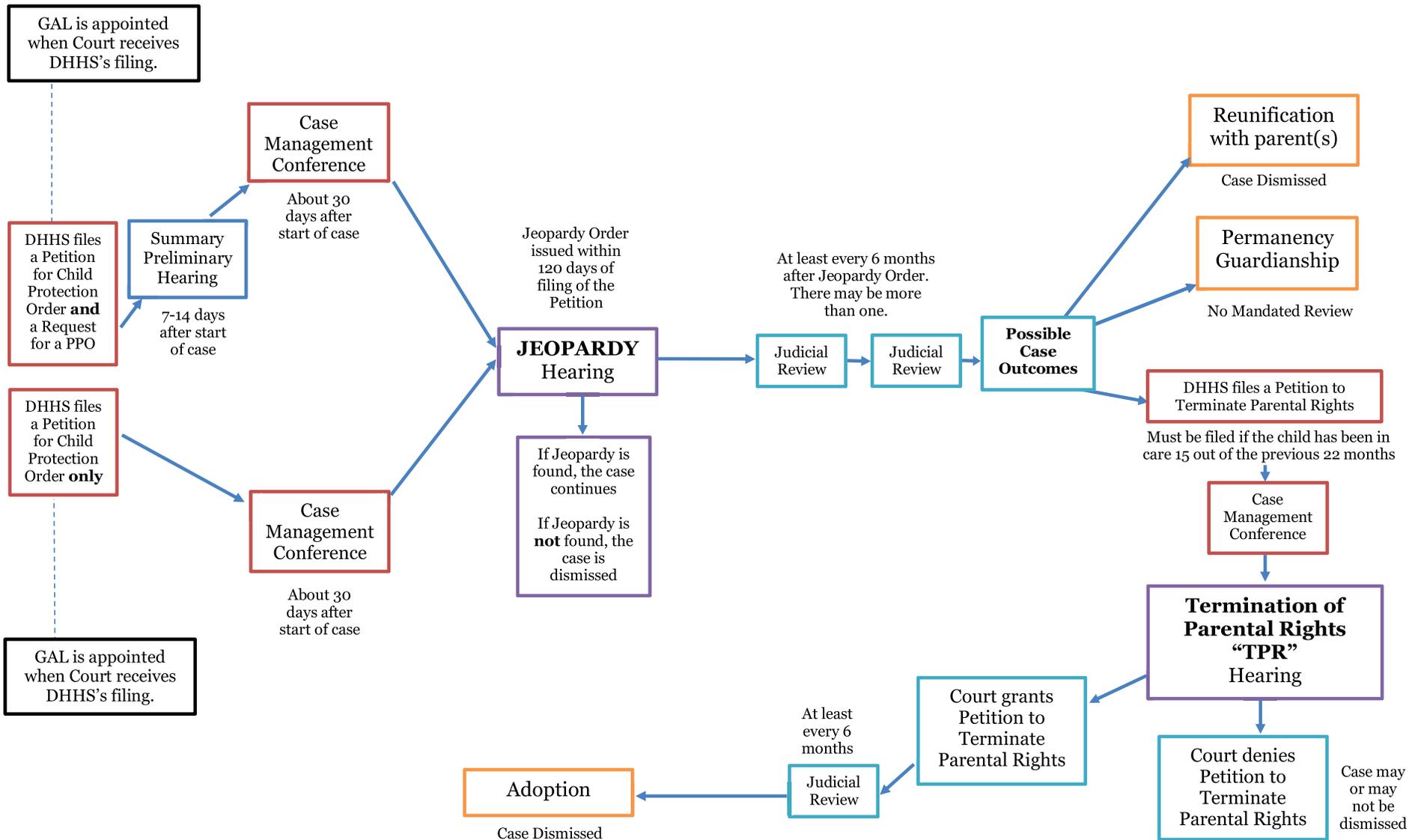
- You are unwilling or unable to protect your child from jeopardy, and that is unlikely to change within a period of time that is appropriate to meet your child's needs;
- You have been unwilling or unable to take responsibility for your child within an amount of time that is appropriate to meet your child's needs;
- You have abandoned your child; or
- You have failed to make a good faith effort to rehabilitate and reunify with your child.

In addition to one or more of these four factors, the court must also determine that termination of your parental rights is in your child's best interest.

As with other hearings in a PC case, you have the right to participate, testify, and present evidence. Your lawyer may call witnesses to support your case, and may question or cross-examine the Department's witnesses and the GAL. The GAL will also be at the hearing and will submit a report that includes recommendations concerning your child.

If the court terminates your parental rights and you disagree with the order, you may talk with your lawyer about whether to appeal the decision.

FLOWCHART OF A CHILD PROTECTION CASE



PART 10 — Appeals

An appeal is a request to a different court to review, and change or reverse, a decision of a trial court. In PC cases, only jeopardy orders, termination of parental rights orders, and medical treatment orders (if the court ordered medical treatment for your child) can be appealed. PC cases are appealed to the Maine Supreme Judicial Court, sitting as the Law Court.

PART 11 — Summary of rights and responsibilities in a PC case

As a parent or legal guardian, you have many rights in a PC case, including the right to:

- Be represented by a lawyer at State expense if you cannot afford to pay for a lawyer;
- Receive copies of all papers and information submitted in the case;
- Be notified of all court hearings and other court events;
- Deny or admit statements presented in the Department's Petition;
- Present your side of the case in court and challenge the Department's case;
- Visit your child while the case is open, unless the court finds that visits are not in the best interest of the child; and
- Unless the court has issued a cease reunification order, have a clear, written Rehabilitation and Reunification Plan (Reunification Plan), listing services and supports offered by the Department to help resolve the concerns that led to the filing of the Petition.

Your child has the right to:

- Be safe and supervised by appropriate caregivers;
- Have adequate food, clothing, and shelter;
- Be protected from physical, sexual, and emotional abuse and neglect; and;
- Receive treatment for medical and emotional conditions.

PART 12 — What is a Rehabilitation and Reunification Plan?

When the court has determined that a child has suffered from abuse or neglect or the child has been removed from the home for 60 days or more, a Rehabilitation and Reunification Plan (Reunification Plan) will usually be developed. The

parents must be invited to participate in developing the Reunification Plan.

The Reunification Plan sets out what the Department must do and what you must do. A plan is made specifically for each individual parent. Your participation in developing the Reunification Plan can help you move toward reunification with your child. **Make sure you go over it with your lawyer and make sure that you understand it.**

In some cases, the Department will not be required to develop a Reunification plan. This may happen when the court determines there is an “aggravating factor” or that the facts of your case do not support reunification efforts by the Department. Ask your lawyer to explain the term “aggravating factor” if you are not sure what it may mean in your situation.

PART 13 — Working with your lawyer

In a PC case, each parent or legal guardian is entitled to be represented by a lawyer at State expense if the parent or legal guardian cannot afford to pay a lawyer. Even if you are married to or living with your child's other parent, each of you will be assigned your own lawyer.

Make sure your lawyer knows your current address and phone number. Your lawyer cannot effectively represent you if you do not keep in touch. When your lawyer calls or writes to you, respond right away.

Your lawyer will:

- ✓ Speak with you before any hearings and conferences;
- ✓ Explain what to expect at hearings and conferences;
- ✓ Present evidence and advocate on your behalf; and
- ✓ Help you understand your rights, legal terms, and what is contained in the documents in the case.

PART 14 — Working with Department caseworkers

You will most likely work with one or more Department caseworkers during your PC case. You will have meetings with your caseworker and have the opportunity

to voice concerns, share your ideas, and ask questions. You may also work with your caseworker to receive the services and supports you may need to help you make a safe home for your child.

The Department uses written guidelines when it works with families in a PC case. You may find it helpful to read over these guidelines and review them with your lawyer if you have questions about them. The guidelines, called the “Child Welfare Services Practice Model,” can be found online at:

www.maine.gov/dhhs/ocfs/cw/practicemodel.

Your caseworker may also give you other helpful materials, including the Department’s Handbook for Parents & Legal Guardians in Child Protection Cases. This handbook is available online at: www.maine.gov/dhhs/ocfs/cw/handbook.

If you do not have access to a computer, ask the caseworker for a printed copy of the handbook and of the guidelines.

PART 15 — *Indian Child Welfare Act (ICWA)*

If you believe you have any Indian heritage or connection to an Indian tribe, you should tell your lawyer and the Department’s caseworker as soon as possible. The Indian Child Welfare Act (ICWA) sets federal requirements that apply to PC cases involving an Indian child who is a member of (or eligible for membership in) a federally recognized tribe. ICWA requires that a child’s tribe and family have an opportunity to be involved in decisions affecting the Indian child.

If it is believed that a report of abuse or neglect involves a child who is a member (or eligible for membership in) a federally recognized tribe, the following steps will occur:

- The tribe(s) identified will determine if the child is a member of or eligible for membership, and
- For the tribes located in Maine, the tribe may participate in the initial investigation of a report of possible abuse or neglect.

If the child is a member of (or eligible for membership in) a federally recognized tribe, a decision will be made to either keep the PC case in district court or move the case to tribal court. Cases that stay with the district court that involve ICWA, will include the tribe in the following ways:

- The Department’s caseworker and the tribal caseworker will work together to make decisions for the Indian child;
- The tribe will receive notice of all court events;
- Placement preference for the Indian child will be with the child’s extended family, other members of the child’s tribe, or other Indian families; and
- A Qualified Expert Witness (QEW) must be provided by the State to testify at the jeopardy hearing, when any placement decisions are being made, and in the event of a termination of parental rights hearing. A QEW testifies about the social and cultural standards of the Indian child’s tribe and the Department’s efforts to reunify the Indian family.

PART 16 — *The Maine Child Welfare Ombudsman Program*

The Maine Child Welfare Ombudsman is an office that specializes in addressing concerns regarding child welfare services provided by the Department. The Ombudsman does not take sides and is independent of the Department. If you or someone you know is having a problem with how the Department or a caseworker is handling your child protection case, you may contact the Ombudsman’s Office for help.

Anyone may submit a complaint or voice concerns to the Ombudsman. The Ombudsman can be contacted at 1-866-621-0758 or 207-213-4773, or by email at: ombudsman@cwombudsman.org.

You can learn more about what the Ombudsman does by visiting the website at: cwombudsman.org.

PART 17 — *PC case confidentiality and rights of relatives and others to attend court and participate in the case*

PC hearings are not open to the public and only certain people are allowed to attend. Also, only certain people are allowed to have access to any records created as part of a PC case. You should speak with your attorney about who may have access to your records and who may attend your hearing.

Individuals who may attend court hearings and have access to records include the foster parent, preadoptive parent, and a relative providing care. These individuals must be given notice of and be allowed to attend hearings.

Notice of the hearings or other court dates will not automatically be sent to any relative who is not providing care. A relative who is not providing care but who wishes to attend a hearing or participate in the case must ask the court's permission. Such a request to attend or participate may be made to the court by contacting the clerk's office in the court where the PC case is being heard. These requests should be in writing.

Other individuals may also request to attend hearings and review court documents. Depending upon the person's relationship with the child, the court may give the person one of the following titles and rights:

- An **"interested person,"** meaning the person may only attend and observe court proceedings;
- A **"participant,"** meaning the person may only attend, observe, and be heard in court proceedings; or
- An **"intervenor,"** meaning the person has the same rights in the case as a party (a parent) has, including the right to present or cross-examine witnesses, present evidence, and have access to court records, unless otherwise limited by the court;

The court may request proof that there is a significant relationship to the child or an interest in the child's well-being before deciding whether to allow someone to be identified as an interested person, participant, or intervenor. Interested persons, participants, and intervenors must keep all information learned through hearings or record review confidential.

No two cases are the same.

This guide describes what may happen at various stages of a PC case. Please remember, however, no two cases are the same. Every decision the court makes is based on the specific facts and evidence. Your actions during your PC case can greatly influence the court's decisions throughout the case and the final outcome.

APPENDIX — General information



Disability Accommodation

The Maine Judicial Branch makes every reasonable effort to provide accommodations and auxiliary aids and services to people with disabilities at no cost to them so that they may access the court and its services. Please talk to your lawyer about arranging for accommodations; contact the Court Access Coordinator at 207-822-0718, TTY: Maine Relay 711, or accessibility@courts.maine.gov with requests; or contact the clerk's office in the court where your case is being heard. A link to the Disability Accommodation Request Form on the Judicial Branch website may be found at: www.courts.maine.gov/ada/accommodation.html.



Language Access

The Maine Judicial Branch provides interpreters to people who have Limited English Proficiency (LEP) or who are deaf or hard of hearing at no cost to them so that they may access the court and its services. The Judicial Branch must also provide an ASL interpreter to court observers who are deaf or hard of hearing upon request. Please talk to your lawyer about arranging for an interpreter; contact the Communications Access Specialist directly at 207-822-0703, TTY: Maine Relay 711, or interpreters@courts.maine.gov with requests; or contact the clerk's office in the court where your case is being heard. More information on interpreter assistance can be found on the Judicial Branch website at: www.courts.maine.gov/programs/lep/index.html.

SELECTED RESOURCES

A copy of this guide and other information related to the Judicial Branch can be found on the Judicial Branch website: www.courts.maine.gov.

Information on Child Protection cases is also available on:
www.courts.maine.gov/courts/family/child-protectection.html.

Information on Guardian ad Litem can be found at:
www.courts.maine.gov/courts/family/gal.html.

The organizations below may offer information or help to parents, legal guardians, and other interested persons in PC cases. The caseworker in your PC case may be able to offer additional resources and information.

Maine Children's Trust

www.mechildrenstrust.org

Prevention Councils offer evidence-based parent education classes, support groups, concrete supports, parent outreach, parent resources, events and more. They also provide trainings to family-serving professionals in Infant Safe Sleep, Protective Factors, Period of PURPLE Crying and Mandated Reporting.

Maine Families Home Visiting provides home-based parenting education and support for expectant parents and parents with new babies using a national evidence-based model. Enrollment must take place before the baby turns 3 months of age and may continue up until the child turns three years old. Families are connected to needed resources and learn how to support their child's healthy development.

For general information, please contact:

Maine Children's Trust
207-623-5120
info@mechildrenstrust.org

Pine Tree Legal Assistance

ptla.org

Statewide nonprofit organization providing free, civil legal assistance to low-income people in Maine on a variety of issues and types of cases. Pine Tree's online law guide on Maine Child Protection cases may be found at:
ptla.org/maine-child-protection-proceedings#talk_to_DHHS.

Maine Child Welfare Ombudsman Program

cwombudsman.org

An independent, impartial office that assists people who have concerns or complaints about how the Department of Health and Human Services is handling a Child Protection case or child welfare services. Anyone with a concern or complaint may contact the Ombudsman at 207-213-4773 or 1-866-621-0758. You may also email the office at: ombudsman@cwombudsman.org.

Department of Health and Human Services, Office of Child and Family Services

www.state.me.us/dhhs/ocfs/cw

A Handbook for Parents: A Guide to Child Protective Services:
www.maine.gov/dhhs/ocfs/cw/handbook.html

Child and Family Services Policy: www.maine.gov/dhhs/ocfs/cw/policy.

211 Maine

211maine.org

A free, confidential information and referral service that can connect people to local services, including substance use, mental health, and housing. 211 Maine can be reached by dialing 211 or 1-866-811-5695. You may also text your zip code to 898-211 or email info@211maine.org.

NOTES

Maine Judicial Branch
Administrative Office of the Courts
1 Court Street, Suite 301
Augusta, Maine 04330
www.courts.maine.gov

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Administration for Children and Families Court Improvement Program*