

FOSTER PARENTS AND THE COURTS

**A Guide for Foster Parents
on Being an Effective
Advocate in Court for
Children in Foster Care**

a resource for families
ifapa
Iowa Foster & Adoptive Parents Association

A NOTE TO IOWA FOSTER PARENTS:

As a foster parent you have a critical role to play in the life of a child. Not only are you responsible for the child's day-to-day care, but because you spend so much time caring for and observing them, you are able to provide the Department of Human Services (DHS), and the court with valuable information that is needed to make important decisions regarding the child's welfare. One of the important needs of a child placed in foster care is the need to receive permanency timely. Juvenile court and DHS have the responsibility to assist the birth family in rectifying the problems that led to the removal of the child, allowing the child to return home safely. It is strongly recommended that foster parents attend all court hearings for the children in their care. As a foster parent, you have a right to receive notice of court hearings and you have the right to be heard in court. You are not automatically a party to a case; however, you may become a party if you petition to intervene and are granted that right.

This handbook was written in order to help you understand the court process. It will provide you with valuable information about your rights and responsibilities, the role of key participants in the court process, and how you can be most effective in advocating for the best interests of the children in your care.

This handbook is not all-inclusive. You may have additional questions that can be answered by the child's DHS social worker, the child's attorney or guardian ad litem (GAL), a Court Appointed Special Advocate (CASA) volunteer, or through training on the court system provided by the Iowa Foster and Adoptive Parents Association (IFAPA). Also, it's important to understand that there is a local culture involved in juvenile court proceedings; each judge has procedures and rules about what happens in his or her courtroom, and those rules may vary by location or by the particular judge involved in the case.

A copy of this handbook is available on the IFAPA website at www.ifapa.org. In addition to this handbook for foster parents, the following booklets have been developed for various other persons regarding the juvenile court system:

Parents and the Court – English and Spanish Version
Understanding the Juvenile Court – Ages 3 and above
Understanding the Juvenile Court – Ages 7 and above
Youth Handbook and the Court

These booklets may be obtained by visiting the Iowa Children's Justice website at:
www.iowacourts.gov/Administration/Childrens_Justice/Childrens_Justice/Resources_and_Publications

HELPFUL WEBSITES :

<http://www.law.drake.edu/academics/middleton/?pageID=middletonWebRsrcs>
http://www.iowacourts.gov/Administration/Childrens_Justice/Childrens_Justice/index.asp
<http://www.ifapa.org/>
http://www.americanbar.org/groups/child_law.html

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THE COURT PROCESS

WHAT IS JUVENILE COURT?

Juvenile court is a special court designed to protect the physical, mental, and emotional well-being of children. It helps parents maintain a safe home for their children. Information about a family is presented to the judge during various hearings (see "Time Frame for CINA Hearings" on page 15 of this booklet). Judges are required to make very difficult decisions that have a huge impact on the lives of children and families. Judges are dependent on all of the parties on a case, including foster parents, to provide factual and timely information before they make any decisions.

WHY ARE CHILDREN PLACED IN OUT OF HOME CARE?

Children are placed in out of home care for a number of reasons:

- Their parents/guardians or caretakers are not able to keep them safe.
- Physical, sexual or other abuse or neglect has occurred in the home.
- The environment in the home is unsafe.
- Parents/guardians become sick or hospitalized or incarcerated leaving them unable to care for their children.

HOW DOES A CASE GET TO COURT?

Most cases in juvenile court start with a report of suspected child abuse or neglect to the Child Protective Services division of the Iowa Department of Human Services (DHS). If the report is accepted for assessment, DHS will conduct a child abuse assessment within 20 working days of the report. If the report is confirmed, DHS will inform the county attorney who may file a Child in Need of Assistance (CINA) petition.

WHAT ARE REASONABLE EFFORTS?

Reasonable efforts are efforts that assist the parents to avoid removal or to return the child home and include services that the parents, the child's GAL/attorney and the child's DHS social worker decide are necessary. It is DHS's responsibility to provide the family with needed services to help keep the child safe now and into the future. At each court hearing, the judge will decide if reasonable efforts have been made to keep the child at home, to reunite the child with their family, or to establish a permanent placement if the child cannot be returned home safely.

WILL I BE INFORMED WHEN A HEARING IS GOING TO TAKE PLACE?

Once a CINA petition is filed, the court will schedule various hearings that will take place over a period of time. All parties involved in the case must be given proper notice of the hearings. These parties include the child, the child's parents, DHS, and the foster parent. As a foster parent, you are treated as a party for the purpose of receiving notice of the hearing, but you are not considered a party for other purposes, such as filing motions, questioning witnesses, or appealing the court's decision.

WHAT ARE THE DIFFERENT COURT HEARINGS?

Note: Timeframes for court hearings are often set based on federal and state mandates.

- **Shelter Hearing:** The shelter hearing is set within 48 hours of a child's temporary placement in shelter care. The judge will determine whether it is unsafe for the child to live at home until the removal hearing.
- **Removal Hearing:** The removal hearing is held within ten days of a child's removal from the home. The judge will determine whether the child will return home at this hearing. During the removal hearing the judge will listen to the recommendations of the county attorney, DHS, the child's attorney/GAL, as well as the parents and others involved with the family to decide if the home is still unsafe for the child's return. If the judge decides that the child will be unable to return home at this time, they will advise the parents that if the child is under four years of age and the parent does not remedy the situation that caused the children to be removed within six months, the state may petition for the termination of parental rights. If the child is four years or older, the parent may have 12 months to remedy the situation before the state files for termination of parental rights.
- **Adjudicatory Hearing:** The adjudicatory hearing is held within 60 days of the filing of the CINA petition. The judge will determine whether the facts in the petition are true and whether the child is a child in need of assistance as defined by state law. If the judge decides that the child is a child in need of assistance, services to help the family will continue until it's determined that they are no longer needed or have been unsuccessful. If the child is in out-of-home care, the judge will also decide if it is safe for the child to return home. As with the removal and shelter hearings, the judge's decisions will be based on the information provided by those involved in the case as well as what is in the child's best interest.
- **Dispositional Hearing:** The dispositional hearing must be held as soon as practicable after the adjudicatory hearing. Typically they are set within 45 days, but sometimes the parties agree to have the dispositional hearing on the same day as the adjudicatory hearing. At this hearing the Case Permanency Plan, developed by the child, the parents, DHS and others involved with the family, as well as a social history report prepared by DHS, is presented to the judge. The judge reviews the Case Permanency Plan and determines whether it fully addresses the child's needs. The plan outlines the steps and changes that the parents, and sometimes the child, need to make in order for the child to return home safely. It also identifies the services needed to achieve that goal.

- **Review Hearing:** A review hearing is held six months after the dispositional hearing and at least every six months after that until the case is closed. The judge has discretion to determine how often they would like to review a case, so review hearings can occur more than once every six months. During a review hearing the judge receives updates regarding the family's progress on the issues identified in the Case Permanency Plan. At the end of a review hearing the judge will determine whether it is safe for the child to return home based on the progress that has been made. If more time is needed to meet the requirements necessary for the child to safely return home, the child will remain out of the home and services will continue.
- **Permanency Hearing:** A permanency hearing occurs when a child has been out of the home for six months after removal if they are younger than four years of age or twelve months after removal if they are four years of age or older. If placement outside of the home lasts longer than twelve months, the judge must decide whether it is in the child's best interest to continue making efforts to return the child home or whether another permanency option should be pursued. Options for permanency include returning the child home, adoption, guardianship, custody with a relative or other suitable caretaker, or another planned permanent living arrangement.

WHAT IS PERMANENCY?

Taken from Iowa's Blueprint for Forever Families 2011

Permanency is about supporting lifelong family connections. Iowa's permanency vision is that every child deserves a forever family. A forever family offers safe, stable, and committed parenting, unconditional love, lifelong support, and legal family membership status.

Ideally, permanency is achieved through preserving or reunifying the child's original family. If neither of these is possible due to safety concerns, permanency can also result in legal guardianship or adoption by kin or other caring committed adults. Three critical pieces of the permanency puzzle include:

1. An emotional attachment between youth, caregiver, and other family and kin.
2. A legally established relationship (adoption, guardianship, or birth family).
3. A continuous connection to family, tradition, race, ethnicity, culture, language and religion.

Permanency for a child means that the child has a safe and stable environment in which to grow up and a life-long relationship with a nurturing caregiver. Permanency options include:

- **Returning Home:** If the judge determines that the best interests of the child will be to return home, the services being provided will continue to focus on that goal. Services to return the child home will continue until the judge determines it is no longer in the child's best interest.
- **Transfer Custody to Another Parent:** In situations where the child's parents do not live in the same home, the permanency plan may be that the child is placed with the other parent. If this is the case, efforts will be made to place the youth permanently with the other parent.
- **Adoption:** If the judge determines that returning home is not in the child's best interest, adoption may be one of the options available. The DHS social worker will work to identify a permanent home for the child; in many cases the adoptive family may be a relative or the foster parent who has been taking care of the child. If the family interested in adopting the child is another family, the DHS social worker will assist the child and the family to build a relationship prior to any final placement decisions. If the child is 14 years of age or older, the child has to agree to the adoptive placement.
- **Guardianship:** Guardianship is another option if returning the child home is not possible. Guardianships are established for the purpose of giving someone the legal responsibility to make decisions for the child. These decisions would include registering the child for school or giving permission for medical treatment. The judge is the only person who can take guardianship away from the parents and give it to someone else. In most cases the judge will grant guardianship to a relative or non-relative caretaker or, in some cases, to the foster parent who has been caring for the child.
- **Supervised Apartment Living (SAL):** Supervised apartment living offers older youth in foster care the opportunity to transition to an apartment in the community while still receiving supervision and assistance. SAL allows the youth to live in an apartment unit and be responsible for shopping, preparing meals, cleaning, laundry, managing their own time, and other responsibilities of adult living. It is not a structured living arrangement.
- **Another Planned Permanency Living Arrangement (APPLA):** This is a formal arrangement between DHS and a foster parent, a relative, or a non-relative caregiver to provide care for a youth. All parties involved must formally commit to the youth's placement in the home until he or she reaches 18 years of age and possibly beyond. An APPLA goal is usually appropriate only for older youth when all other options have been explored. Under this goal, a youth receives services focused on enhancing their independent living skills as well as preparing them for the transition to adulthood.

WHAT ARE MY RIGHTS AS A FOSTER PARENT IN THE COURT PROCESS?

Notice: As a foster parent you have a right to receive notice of any hearing involving a child in your care, and you have a right to be heard. When a child is placed with you, the juvenile court will send you a notice of your right to be heard. You can view a sample notice on page 14 of this booklet. The notice will state:

1. The child's name, date and time, and location of the hearing.
2. You have the right to be notified of the hearing.
3. You have the right to attend the hearing.
4. You have the right to respectfully request to be heard at the hearing.

Attendance at the Hearings: While it is usually recommended that you attend all hearings for any child in your home, in most cases it is your decision whether or not to attend. However, if a party to the child's case would like you to attend the hearing, they have a right to serve you with a subpoena. A subpoena is a legal order compelling your attendance. If you are served with a subpoena, you must attend the hearing as directed.

As a Foster Parent Your Rights DO NOT Include:

1. You are not a legal party to the proceedings; therefore, you may be asked to leave during part of the hearing.
2. You are not entitled to have a lawyer represent you.
3. You cannot examine or call witnesses and you cannot object to testimony.
4. You are not allowed to send the judge a letter, make a phone call, or attempt to visit the judge outside of the presence of the other parties. This is called ex parte communication and is prohibited by the ethical provisions applying to both lawyers and the court. All information must be shared with all parties.

WHAT IS MY ROLE AS A FOSTER PARENT IN THE COURT PROCESS?

Your role as a foster parent is to provide the court with current and accurate information regarding the child in your home. As foster parents you have more relevant information than almost anyone else because of your constant contact with the child. The judge wants to hear what you have to say. Judges are required to make very difficult decisions that have a major impact on the lives of children and their families. They want as much information as possible before they make these decisions, and they value information provided by foster parents. Your role also includes providing assistance to the child when they attend a hearing. The court hearing may include difficult information for the child to hear, and your presence will provide support to the child.

HOW DO I PROVIDE THE COURT WITH THE INFORMATION THAT IT NEEDS?

You may provide oral or written information to the court. Any information that you provide will be shared with all parties on the child's case. If you are served with a subpoena to testify, you may be called as a witness by one of the lawyers. You will be under oath to tell the truth, you will be required to answer specific questions, and will be subject to cross-examination by the other parties. If you attend a hearing and are not called as a witness, but you would like to share something with the judge, make sure to tell the child's GAL or DHS worker prior to the hearing. They can ensure that you have a chance to speak. If you choose to submit a written report, you can provide it to the child's DHS worker, GAL, or CASA before the hearing and they will submit the report to the judge by either attaching it to their own reports or by submitting it separately.

WHAT HAPPENS IF I ATTEND THE HEARING?

If the matter is uncontested (the parties agree with a recommendation to the court) then you may be allowed to make a short statement to the court. Some judges may limit your participation at court to answering questions he or she has about the child. The court has a limited amount of time and your comments should be short and to the point.

If the matter is contested (the parties cannot agree to a recommendation to the court) you may be called as a witness by one of the lawyers in the proceeding. In that event, your testimony will be limited to responding to specific questions asked. All of the other lawyers or parties will have an opportunity to ask you additional questions by cross-examining you. You will be required to take an oath to tell the truth before testifying.

TIPS FOR TESTIFYING IN COURT:

The following tips as well as the handbook section on “Information That May Assist the Court” can help you prepare to testify in court. Always show respect and courtesy for everyone in the courtroom.

- Arrive at least 30 minutes before the scheduled court time.
- Be prepared to wait. Juvenile courts are busy and hearings do not always start on time.
- Before you enter the courtroom, turn off your cell phone.
- Do not chew gum, eat or drink anything in the courtroom.
- Dress professionally (as you would for a job interview).
- Come organized and prepared.
- Always stand when the judge enters the room.
- Tell the truth.
- Speak loudly and clearly.
- Testimony must be spoken so it can be recorded in the court record. Do not nod or shake your head in answer to a question.
- Be serious, calm, polite and sincere, even if you are challenged or criticized.
- Wait until a question is completed before you begin your answer.
- Listen carefully to the question and make your answer directly responsive to it.
- If you do not understand a question, ask the lawyer for clarification.
- If you do not know the answer to a question or can't remember something, just say so. Do not guess at an answer.

TIPS FOR PROVIDING THE COURT WITH A WRITTEN REPORT:

If you decide to provide the court with a written report, you should consider using form 470-4614 Foster Parent Post Adjudication Hearing Report. You can find a copy of this form on IFAPA's website at www.ifapa.org. Here are some additional tips to consider when providing a written report to the court:

- Report should be typed or written very clearly.
- Keep it short and well organized by using headings. You may want to use the section “Information that May Assist the Court” on page 10 of this handbook as a sample outline.
- Present only facts, never opinions.
- Focus your attention on giving firsthand information about the child and not opinions about other people involved in the court process.
- Describe behaviors you have observed in the child.
- Present information about the child's needs.
- Make sure to include any of the child's successes.

INFORMATION THAT MAY ASSIST THE COURT

Placement Information;

- The date the child came to your home.
- A brief description of the physical and emotional condition of the child when the child came to your home.

Medical Information:

- Doctor visits or hospitalizations since the last court hearing, and the results of those visits.
- Any medications the child is taking and the 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.

Dental Information:

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

Educational Information:

- The child's grade in school and whether the child is performing at grade level.
- The dates of any school conferences you have attended, and the results of those conferences.
- Any educational testing the child has had, who administered the testing, and the results of the testing.
- The child's progress in school.

Behavioral Information:

- A brief description of the child's behavior in your home.
- Any services the child is receiving to address behavioral difficulties, who provides the services, and how often the child receives the services.
- A brief description of how the child expresses his/her needs and feelings and how s/he calms herself or himself.
- A brief description of the child's eating and sleeping patterns and any difficulties the child has in these areas.

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.

Visitation/Family Interaction:

- The dates of visits/family interaction between the child and the parents or other family members.
- If you supervised the interactions, a brief description of the behaviors of the child and the other family members present at the visits. Carefully describe only the behavior and do not offer your opinion 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.

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 attorney.
- All in-person and telephone contacts between you and the child's CASA volunteer.

Recommendations for Additional Services:

- A brief description of any additional services you believe would benefit the child and why.

CHILDREN'S PARTICIPATION IN COURT HEARINGS

Participation of children in court hearings should be encouraged when appropriate. Under certain circumstances, a child in care may have a right to participate in their court hearings. The child's GAL or attorney should inform the child of their right to attend the hearings and should encourage the child to attend unless it is not in their best interests. The GAL should inform the child and the foster parent when the hearing will take place, and they should also inform the court if the child will be attending the hearing. For children aged 14 or over, there is a presumption that it is in the child's best interests to participate in all hearings, staffing, and meetings related to the case.

If a child attends the hearing, the judge will conduct the hearing in a way that protects the child's safety, morale, and well-being. The child may waive his or her presence for certain portions of the hearing. If the child has information they would like to share with the judge, but they are hesitant to share it in the courtroom, the judge may take the child into chambers and allow them to speak to the judge without the other parties present.

If you have a concern about the child attending a hearing, you should share this concern with the child's GAL ahead of time. The child's GAL or attorney will prepare the child for the hearing. If the child does not attend, the GAL or attorney will explain what happened in the hearing to the child afterwards.

While DHS is ultimately responsible for the transportation of the child to and from the hearing, often foster parents and other natural supports assist with facilitating the child's participation. The court hearing may include difficult information for the child to hear and the foster parent's presence will provide support to the child.

CHILD'S RIGHT TO SIBLING VISITATION

Under Iowa law, children in care who are not placed with their siblings have a right to frequent visitation or other ongoing interaction with their siblings. Removing a child from their home is traumatizing, and when a child is separated not only from their parents but also from their siblings, it is even more difficult. As a foster parent of a child who is not placed with their siblings, you can play an important role in helping facilitate visitation between the child and their siblings. This may mean hosting visits in your home, driving the child to the siblings' foster home or a central location so that they can see their siblings, or initiating phone calls, letters, or emails. Any help that foster parents can provide in facilitating sibling visitation is greatly appreciated.

GLOSSARY

BHIS: BHIS stands for Behavioral Health Intervention Services. These are services designed to improve the child's level of functioning as it relates to a mental illness. The primary goal is to assist the child and their family in learning age-appropriate skills to manage their behavior and regain or retain self-control.

CINA: CINA stands for Child in Need of Assistance. It is the process for determining whether a child has been the victim of abuse or neglect, is in need of the court's help and if so, what the state should do to protect the child.

CPS: CPS stands for Child Protective Services under the Department of Human Services (DHS). DHS is the state agency responsible for investigating reports of child abuse or neglect.

DHS: DHS stands for the Department of Human Services. It is the state agency in charge of providing child welfare services to families in Iowa. DHS works with families to help them achieve safe, stable, self-sufficient, and healthy lives. Child welfare services are provided to families when children have been or are at risk of being abused or neglected.

FSRP: FSRP stands for Family, Safety, Risk and Permanency Services. They are designed to deliver an array of interventions and supports to achieve safety and permanency for children in the family's home or other designated locations.

COURT PARTICIPANTS :

CASA: CASA stands for Court Appointed Special Advocate. CASAs are specially trained volunteers who are appointed by the court to represent the child's best interests. They report directly to the court and inform the judge how the child is doing, what the child needs, and what the child wants based on their own investigation. The CASA will visit the foster home and talk to the foster parents and the child. They will typically submit a report to the court before a hearing.

County Attorney: This is the lawyer for the State.

DHS Child Protective Services Worker: The child protective services worker is the person notified when concerns of a child being abused or neglected are reported. They are responsible for conducting an assessment and reporting their findings to the court.

DHS Social Worker/ Case Manager: The DHS social worker or case manager works directly with the family in order to develop a case permanency plan. They make sure the family gets the services they need and are required by the court order. This person may be referred to as Child Protective Worker (CPW).

FSRP Provider: The Family, Safety, Risk and Permanency Services (FSRP) provider is the person who the family will work with the most. They provide the services and support the family needs. They work with the foster parents on arranging visits and may also be present during the visits with the child and parents.

Guardian ad litem (GAL): The GAL is usually a lawyer. They can be the same person as the attorney for the child or there can be a separate attorney and GAL. The GAL is appointed by the court. They report directly to the court and it is their job to advocate for the best interest of the child based on their own investigation. The GAL will visit the foster home and talk to the foster parents about the child. They will also talk to the child. They will prepare a report to submit to the court before the hearing outlining how the child is doing, what the child wants, and what the child needs. In some counties the GAL and the CASA is the same person.

Juvenile Court Judge: The juvenile court judge appointed to the case makes the decisions regarding the child and family based on the evidence presented in court. The judge is responsible for issuing orders and deciding the timeline of the case. The judge also makes sure everyone does their job and they determine what is in the best interest of the child.

Parent's Attorney: The parent's attorney is responsible for the advising the parent of their legal rights. They represent the parent in the proceedings, helping them present evidence and testimony. Each parent usually has their own attorney.

SAMPLE NOTICE

IN THE JUVENILE COURT OF _____ COUNTY

STATE OF IOWA

In the Interest of:
A Child(ren) Under 18 Years of Age

Case No:

To:

NOTICE OF RIGHT TO BE HEARD

You are hereby notified that a hearing will be held in the interest of the above named child(ren) on: (DATE AND TIME) at the Juvenile Court.

As the provider of the child(ren's) current placement, you are entitled to notice of this hearing and to a right to be heard in this matter, per Iowa Code 232.91(3). You may appear at the hearing at the date and time above stated to provide oral information or you may submit written information, which will be distributed to all parties.

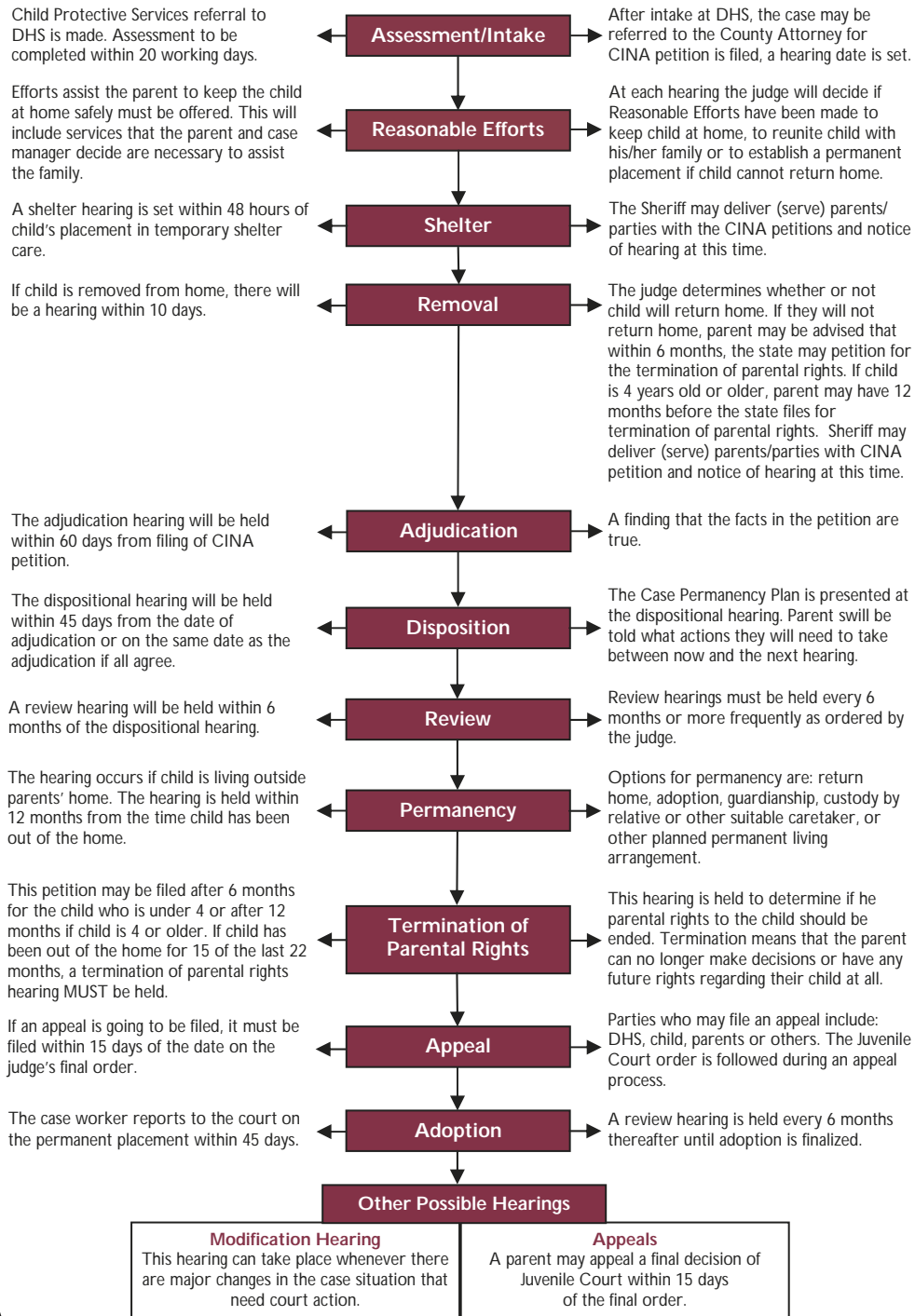
PLEASE NOTE: YOU ARE NOT REQUIRED TO APPEAR UNLESS YOU RECEIVE A SEPARATE SUBPOENA.

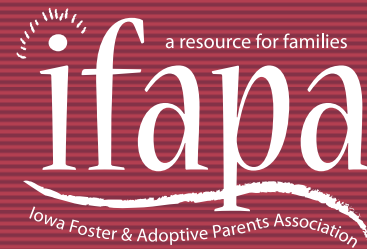
You are not considered a legal party to these proceedings, so you may not be permitted to remain in the courtroom throughout the entire proceeding. You are not entitled to have a lawyer represent you to the Court. Since you are not a party to the case, you cannot cross-examine or call witnesses or object. Your role is to provide current information regarding the child in your home. If you present written or oral information, you may be required to testify and be subject to cross-examination.

If you choose to attend this hearing, please be sure that the Court, the GAL or DHS social worker knows you are present and desire to be heard or present information.

Thank you for taking care of a child or children under the supervision of this Court.

TIME FRAME FOR CINA HEARINGS





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