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SOCIETY

Child Abuse and Neglect; Foster Care; Court Termination of Parental Rights

There are two ways you can be found to have abused or neglected your child. One is through the Department of Social Services (DSS). The other is through the Juvenile and Domestic Relations (J&DR) Court. However, only a court has the power to terminate your parental rights.

What is child abuse?

Child abuse is defined as when someone:

- Causes or threatens to cause a non-accidental physical or mental injury.
- Causes or threatens to cause injury during the manufacture or sale of certain drugs.
- Neglects or refuses to provide adequate food, clothing, shelter, emotional nurturing or health care.
- Abandons the child.
- Fails to provide adequate supervision relative to the child's age and level of development.
- Commits or allows someone to commit any sexual act upon a child.
- Knowingly leaves a child alone with a person who is not related by blood or marriage and who is required to register as a violent sexual offender.
- Has a newborn child who tests positive for drugs.

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I have been accused of child abuse. What happens now?

An investigation or family assessment will be conducted. There will be an informal conference with the Director of the local Department of Social Services.

If you choose not to participate in the conference, the investigation will be conducted without your input. During a family assessment, the Child Protective Services (CPS) worker will:

- Conduct an initial safety assessment and develop a safety plan for the child if needed.
- Talk face to face with you, your child and others who may live with you.
- Look for signs of injury, abuse or neglect.
- Observe your home's environment.
- Check for prior reports of abuse or neglect.
- Complete a risk assessment with your family and determine what services, if any, are needed to prevent future abuse or neglect.
- Request your assistance in identifying other individuals who may be able to help your family if services are needed to keep your child safe.
- Arrange for services to support your family.

The law requires a CPS family assessment be completed in 45-60 days from the date of the report. That can be extended to 90 days if law enforcement is involved in the investigation, and if DSS and law enforcement agree it's necessary, with written justification for it. If your family needs services the CPS social worker will offer to link you to available community resources. You may choose to decline these services.

The case will be closed if there is no threat to your child's safety. If your child's safety is compromised the CPS worker will consider petitioning the court to require additional services to ensure the safety of your child.

What right does CPS have to talk to my child?

Virginia law allows a CPS social worker to speak with a child and their siblings without parental consent and outside the presence of the parent/caretaker. In some cases the CPS social worker may electronically record these interviews.

If the CPS social worker talks with your child or children without your prior knowledge, you will be notified about the interview as soon as possible.

What is CPS allowed to do when examining my child?

The CPS social worker will observe the child for injuries or signs of neglect. Virginia law permits the CPS social worker to take photographs and make the necessary arrangements to X-ray the child as part of a medical evaluation. This can be conducted without parental consent.

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Photographs of the living conditions in which the child resides may also be taken with the consent of the parent/caretaker, or under the direction of the local Commonwealth Attorney's Office.

What if I don't agree with the results?

You can appeal within 30 days and there will be a hearing. Your appeal must be in writing and mailed to:

Appeal and Fair Hearings Unit
CPS Section
Virginia Department of Social Services
801 East Main Street
Richmond VA 23219

What happens at this hearing?

The hearing is conducted by a Hearing Officer. The Department of Social Services must show that the disposition/decision made by the local Director was made in accordance with law and policy. You will be allowed a turn to speak.

What if I disagree with the results?

You should really consult a lawyer at this level.

You may appeal to the Circuit court within 30 days from service of the Hearing Officer's decision. You must file a written petition to:

Commissioner
Virginia Department of Social Services
801 East Main Street
Richmond VA 23219

Then, within 30 days after mailing that notice, you must file a written petition of appeal to the appropriate Circuit Court and have a copy of the petition served on the Commissioner.

What are the reasons a child can be removed from my home?

Under Virginia law, your child may be removed if:

- There is an immediate threat to your child's life or health and the threat is so great that severe or incurable injury would likely result, or your child is a delinquent.
- Reasonable efforts have been made to prevent removal of your child.
- Nothing else will protect your child.

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How does a court removal case start?

Removal cases may start one of three ways:

- An authorized person may take emergency custody of your child.
- DSS may get an emergency removal order before you have notice of a court hearing.
- DSS also may get a preliminary removal order after you have notice of a court hearing.

What happens when someone takes emergency custody?

A doctor, DSS protective service worker, or law enforcement official may take emergency custody of your child. This can be done without your consent and without a court order. However, all of the following things must be true:

- Your child is in immediate danger.
- A court order can't be gotten right away.
- Procedures exist for placing your child in temporary foster care.
- You and the other parent are notified as soon as possible.
- A report is made to DSS.

If a doctor, DSS protective service worker or law enforcement official tries to take emergency custody of your child, you should not obstruct them. Within 72 hours of removal, an emergency removal hearing or preliminary removal hearing must be held. You and the other parent must be given court papers telling you the date, time, and place of the hearing. You will have a chance then to tell your side of the story.

What happens when a court issues an emergency removal order?

DSS may petition the J&DR Court for an "ex parte" emergency removal order before removing your child and before giving you notice of a hearing. Ex parte means that only one side (DSS) gets heard.

The petition from DSS must be supported by an affidavit or sworn testimony. If the order is issued, DSS immediately may remove your child.

Within 5 business days of removal, a preliminary removal hearing must be held. You and the other parent must be given court papers telling you the date, time and place of the hearing. You will have a chance then to tell your side of the story. Ask for a court appointed attorney.

Do I need an attorney before I go to this hearing?

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No. Virginia law gives a parent or guardian, if indigent, the right to the appointment of an attorney in cases involving abuse or neglect/removal from the home or in cases that could result in the termination of parental rights. You can ask for a court appointed attorney at the hearing.

What happens when a court issues a Preliminary Removal Order?

DSS also may petition the J&DR Court for a preliminary removal order before removing your child and after giving you notice of a hearing. This requires prior notice to you and the other parent telling you the date, time, and place of the hearing. This gives you a chance to tell your side of the story before your child is removed.

After this hearing, the court may issue an order allowing DSS to remove your child. You will have a chance to improve your situation and have your child returned to you. In addition, you also will have a chance to appeal the court's order.

What is a Dispositional Hearing?

The dispositional hearing decides the custody of the child. The court may return custody to the parent with certain conditions and requirements, place the child in the custody of Social Services (foster care), or place the child with a relative.

What is permanent foster care?

When a child is placed in permanent foster care s/he is placed with a specific family and the child cannot be moved from that placement without a court order. "Permanent foster care" status gives the foster parents expanded authority in decision-making in a child's life such as:

- Medical decisions,
- Military service,
- Marriage,
- Motor vehicle and driver's licensing,
- Application to college,
- Other activities requiring parental consent.

How do I get my child returned to me?

Within 60 days of removal, DSS must file and have a hearing on a Foster Care Service Plan. DSS must give you a copy of this plan. This plan must set forth DSS's goals for your child, and the dates for reaching those goals. The plan also must set forth DSS's goals for you and the other parent, and the dates for reaching those goals. In addition, the plan must set forth the services DSS will provide to the child and to the parents.

Go to the hearing and ask for a court appointed attorney. There will be a series of court hearings to review your progress and the foster care plan.

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What services will DSS provide?

DSS must allow you to visit with your child. Most of the time, this will be at the DSS office and will be supervised by DSS. However, you may ask the judge to order that some responsible adult supervise your visitation. DSS also may provide you these following services:

- Parenting classes.
- Anger management classes.
- GED classes or other education.
- Mental health counseling.
- Alcohol abuse or substance abuse counseling.
- Financial and budget counseling.
- Help in finding work.
- Help in finding housing.

The court is going to terminate my parental rights. How can this happen?

The services and programs offered by DSS, and often ordered by the judge, are intended to assist you in having your child returned to a safe environment. If you fail to participate in these services, or it is not likely that the abuse or neglect that brought the child into care can be corrected within a reasonable time despite the services that have been provided, you may permanently lose your parental rights. If no family member or close friend of the family expresses to DSS an interest in caring for the child on a permanent basis, DSS can then ask the court to take some other action.

One action they can request is to have the court terminate or end the rights of the parents to the child so that the child can be adopted. If family members or friends do come forward and show an interest in becoming a permanent caretaker for a child, they must be approved for that placement by DSS and the judge.

The termination of parental rights is a serious action. The Juvenile and Domestic Relations Court will appoint a separate attorney for each parent if that person does not have money to pay for a lawyer. This helps to ensure that the rights of the parents are protected in these cases.

How do I appeal?

If you don't agree with the decision of the judge in J&DR Court, you can appeal your case to Circuit Court. You may only appeal from a "final" order of the J&DR Court. If you want to

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appeal a preliminary removal order, you need to be sure the judge in the J&DR Court writes on the order that it is "final" or "appealable."

You must go to the J&DR Court clerk's office within 10 days of the order and file a written Notice of Appeal. You probably will need a lawyer to help with the appeal. Procedures in the Circuit Court are more complicated.

Are there abuse and neglect cases that are not in court?

Yes. DSS may do an abuse and neglect case outside of court. By law, DSS must look into and investigate every complaint they receive about possible abuse or neglect of a child. This is true even if the person making the complaint does not tell their name. If you are contacted by DSS about an abuse or neglect complaint, be polite and cooperative. DSS is just doing their job. If DSS makes a finding you don't agree with, you will have a chance to appeal.

DSS must tell you, in writing, whether an abuse or neglect complaint is "founded" or "unfounded." DSS must do that within 45 days of receiving the complaint. A founded complaint means the majority of the evidence shows it is true. An unfounded complaint means the majority of the evidence shows it is not true.

Unfounded complaints must be destroyed and shredded within 30 days after DSS tells you the complaint was unfounded.

What happens to a founded complaint?

Founded complaints are stored in a Central Registry in Richmond. They are stored for 3, 5, or 18 years. This depends on how serious the founded complaint is. Only certain groups can get this information from the Central Registry. These include schools, day care centers, and any place around children. If your name is on the Central Registry, you are very unlikely to get a job around children or other people needing protection.

You have 30 days after getting notice of a founded complaint to file a written request for an informal conference with the local DSS Director. You must be told the date, time and place of the conference. This gives you a chance to tell your side of the story and that your child wasn't abused or neglected.

If you disagree with the Director's decision, you have 30 days after getting the decision to file a written request for a hearing with a State Hearing Officer. You must be told the date, time, and place of the hearing. This gives you another chance to tell your side of the story and that your child wasn't abused or neglected. If you disagree with the Hearing Officer's decision, you have 30 days after getting the decision to file an appeal to Circuit Court.

How do I find out the name of the person who made an unfounded complaint?

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You would have to file a Petition in the Circuit Court. You would have to show that the complaint was made in bad faith. Your petition must specifically state why you believe that the report or complaint was made in bad faith or malicious intent.

After you file the petition, the circuit court requests from the local department its records of the investigation for the circuit court's closed door review. You are entitled to present evidence to support your petition.

If the circuit court determines that the complaint may have been made in bad faith or with malicious intent and that disclosing the identity of the complainant would not likely endanger their life or safety, it will give you a copy of the records of the investigation.

Even if you show that the complaint was made in bad faith, you may not get the name of the person who made it. This is because a person who makes a complaint to DSS of possible child abuse or neglect does not have to tell their name.

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**Free Legal information by Web and Phone: www.vlas.org and
1-866-LegAid (534-5243)**

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