

# Overview of a Care & Protection

*Supplemental Reading*

*CAFL Appellate  
Certification Training*

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## Care & Protection/TPR Proceedings Lingo/Glossary

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| Abuse of Discretion      | The standard of review for judicial review of agency decisions. An abuse of discretion (or AOD) hearing is one at which a child or parent challenges DCF's custodial decision-making. For example, when DCF has custody of a child, the agency controls visitation with the child's parents. If the parents or children are not satisfied with DCF's visitation plan (i.e., it should be more frequent, it should be held elsewhere, it should not be supervised, etc.), the parents or children would file an AOD motion seeking to show that DCF abused its discretion in creating or effecting the visitation schedule. These motions are also referred to as <u>Isaac</u> and <u>Jeremy</u> motions, named after the cases that established the standard in care and protection proceedings. |
| Adoption                 | A decree under G.L. c. 210, § 6 that creates a new parent-child relationship and severs all relations between the child and his or her birth parents. Parents ordinarily have a right to consent to their child(ren)'s adoption under c. 210, § 2. A care and protection case may result in a decree terminating the parents' rights to consent to the adoption. This "frees" the child for adoption.  |
| Adoption Plan            | A plan of adoption that must be approved and found to be in the child's best interests by the court under G.L. c. 210, § 3 before parental rights are terminated. The adoption plan usually provides for adoption of the subject child(ren) by a specified family, but may be a "recruitment plan" specifying that DCF currently has no adoptive family but will try to recruit one. An adoption plan may even specify that DCF does not plan to have the child adopted, but intends some other permanent disposition for the child, such as guardianship.   |
| ASFA                     | The Adoption and Safe Families Act. ASFA (pronounced "asfa") is a federal act, the rules of which have been incorporated into the Massachusetts statutory system. Generally, ASFA has streamlined and shortened the process for deciding the child's permanent plan.   |
| CASA                     | Court Appointed Special Advocate. A CASA is a volunteer who functions as a type of guardian ad litem, investigating and submitting a report with respect to the best interests of the subject child(ren). Only a few Juvenile Courts use CASAs.  |
| Child Welfare Proceeding | A care and protection proceeding under G.L. c. 119 in Juvenile Court or a proceeding to dispense with consent to adoption (i.e., a termination proceeding) under G.L. c. 210 in Probate Court.   |

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| C&P                | Care and protection. A “C&P” is short for a care and protection case/proceeding filed in the Juvenile Court. The case is filed by a petitioner who alleges, and must prove, that a parent is abusing or neglecting his or her child.  |
| Competing Plan     | While DCF is required to submit an adoption plan for the subject child(ren) (see Adoption Plan), parents and children are free to offer the court a “competing plan” for adoption or guardianship by someone other than the resource offered by DCF. Frequently, the child or parent submits a “kinship plan” for the child to be adopted by a family member rather than by a non-relative. The court must give equal consideration to all plans. |
| Court Investigator | An investigator appointed by a Juvenile Court judge under G.L. c. 119, §§ 21 & 24 to investigate and submit a report as to “conditions affecting the child.” The Court Investigator’s report is allowed to contain hearsay and certain opinions, as defined by a large body of case law, and functions much as a guardian ad litem in the Probate and Family Court.   |
| Custody            | Legal custody. When DCF removes a child from his or her parents and places the child in foster care, the court usually gives DCF temporary legal custody until the trial on the merits. Occasionally, temporary custody is granted to a relative instead of DCF. The legal custodian has many powers under G. L. c. 119, § 21, including the right to control where the child lives and who visits the child. See Placement.                      |
| Department         | Department of Children and Families (formerly known as the Department of Social Services, or DSS)   |
| DCF                | Department of Children and Families   |
| Fair Hearing       | An appeal within the agency of certain DCF decisions. Appeals of fair hearing decisions go to the Superior Court.   |
| Foster Care Review | Administrative reviews by DCF reviewers, held every six months, of the service plan tasks and the goals for children in foster care. At foster care reviews (or FCRs), the reviewers usually approve the goals set for the child (such as adoption, guardianship, or return home) by DCF. The reviewers also determine whether the parents, child and DCF have complied with the tasks they have under the service plan.                          |

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| GAL               | Guardian ad litem. The guardian ad litem functions as an investigator, and submits a report on the best interests of the child. The GAL report may contain hearsay and certain opinions, as defined by a large body of case law. See also Court Investigator and CASA.   |
| Permanency Hrgs.  | Court hearings under G.L. c. 119, § 29B to review the goal for the subject child(ren). The reviews are required by ASFA, and are intended to ensure that the child is either returned home or has an alternative permanent plan so that the child does not stay in foster care indefinitely. Orders approving a “permanency plans” are appealable.   |
| Permanent Custody | Custody of a child under G.L. c. 119, § 26 to DCF until that child turns 18 or until DCF decides to return the child. The statute never uses the term “permanent.” However, a decree following a care and protection trial that grants DCF custody until the child turns 18 is referred to as a permanent custody order.   |
| Petitioner        | The party that files the care and protection or termination petition, usually (but not always) DCF. Under G.L. c. 119, § 24, any person can file a care and protection petition, and historically hospitals and schools (and even parents) have done so; however, 99% of petitions today are filed by DCF.   |
| Placement         | Not to be confused with “custody,” placement concerns where DCF, or another custodian, chooses to place a child in its legal custody ( <i>i.e.</i> , in a foster home, in a residential setting, etc.). Placement is a matter of DCF’s custodial discretion. DCF can even “place” a child home, but that child is still in DCF’ legal custody.   |
| Probation Officer | Probation officers in care and protection proceedings follow the case and serve a variety of functions. They frequently serve as short time-frame investigators to evaluate potential legal custodians (other than DCF) proffered at a temporary custody hearing. For example, a judge that wishes to award temporary custody of a child to a relative (against DCF’s wishes) may want more information about the relative before doing so. The judge would send the probation officer (or PO) to investigate the relative’s home. POs usually run criminal records checks on the parents or potential custodians. In some courts, they also periodically provide the court with reports about the parents and children. |

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| Reasonable Efforts | DCF must make “reasonable efforts” under G.L. c. 119, § 29 to prevent removal before placing a child in foster care. DCF must also use reasonable efforts to reunify the child with his or her parents before seeking to terminate parental rights. Such efforts are usually evaluated by the type of services DCF offered to the family.                    |
| Removal            | DCF’s removal of the subject child(ren) from the parent’s home and custody (not to be confused with the domestic relations term “removal” that refers to one parent taking the child out of the commonwealth). Children are removed when DCF believes they are being abused or neglected in their home.  |
| Respondents        | The parents. DCF files the care and protection petition “against” the parents, who are sometimes referred to as the “respondent parents.”  |
| Service Plan       | A plan written by DCF setting forth a problem statement that explains why the family is involved with DCF and “tasks” that the parents must undertake (services, evaluations, behavioral changes) to address their problems so that the child can be returned home.  |
| Sua Sponte         | A judge in the Probate and Family Court may sua sponte (on his or her own) decide that DCF should have custody of a child during the course of a domestic relations proceeding. This decision creates a right to counsel for the child and any indigent parents. See “23(a)(3).”   |
| Subject child      | The child who is the subject of a child welfare proceeding. Care and protection proceedings are essentially in rem proceedings concerning the subject child. It is not unusual for DCF to file a care and protection petition regarding one or more children in a home, but not all children in that home. The petition affects only the subject child(ren). |
| Termination        | A “termination” proceeding is one that dispenses with the parents’ rights to notice of, and rights to consent to, the child’s adoption, guardianship or other custodial disposition. Parental rights must be terminated before a child can be adopted (assuming lack of parental consent).   |
| TPR                | Termination of parental rights. Also used colloquially to refer to proceedings to terminate parental rights, as in “DCF filed a TPR on January 1, 2009.”   |

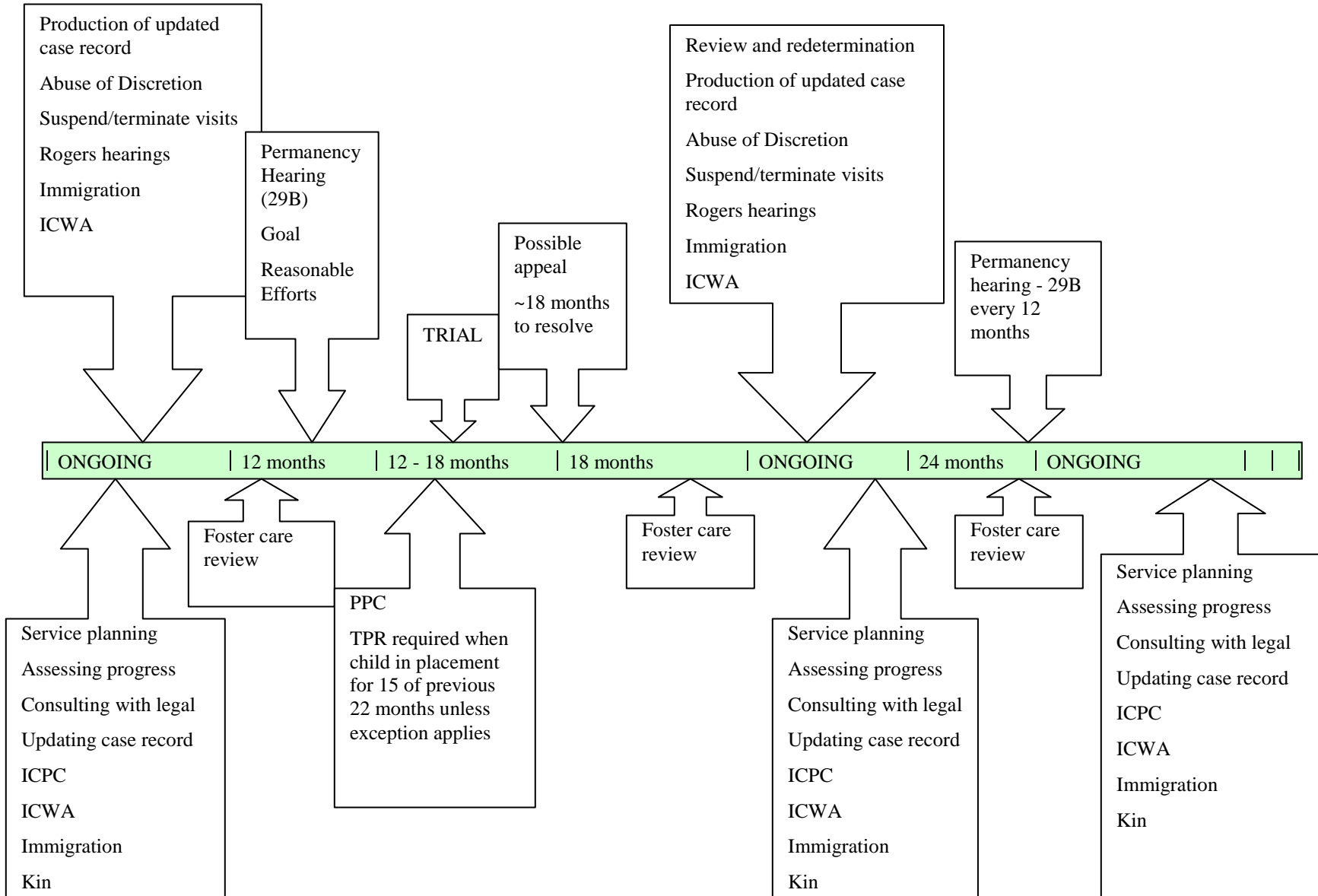
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| Unfitness       | A parent must be found unfit before the court can terminate his or her right to consent to adoption. Parental unfitness must be proven by clear and convincing evidence.  |
| 23(a)(3)        | A petition filed in Probate and Family Court by DCF under G.L. c. 119, § 23(a)(3) to take custody of a child. It can be filed as a petition to take custody (just like a care and protection petition in Juvenile Court); or, a divorce, paternity, guardianship or other domestic relations matter may “turn into” a 23(a)(3) proceeding if (i) DCF wants to get involved and assume custody, or (ii) the judge believes the parents’ fitness is in question and that DCF should get involved or assume custody. The statute used to be c. 119, § 23(C), and these cases are sometimes referred to as “23(C)’s.” |
| 51A             | A report of suspected abuse or neglect under G.L. c. 119, § 51A. Any person may file a 51A with DCF. Certain categories of professionals (such as teachers, social workers, doctors, etc.) are “mandated reporters” who are required to file a 51A if they suspect abuse or neglect.  |
| 51B             | An investigation of a “51A” report of suspected abuse or neglect.   |
| 72-hour hearing | A hearing in Juvenile Court under G.L. c. 119, § 24 that is supposed to take place within 72 hours of DCF’s emergency removal of a child from the parents. The hearing is the first and only opportunity before trial (that may take another year or more) for the parents and children to challenge DCF’s emergency removal and contest an award of custody.   |
| 210, 3          | A termination of parental rights proceeding filed in Probate and Family Court under G.L. c. 210, § 3. The statute that prescribes the elements of proof in a termination of parental rights proceeding in the Juvenile or Probate and Family Court.   |

# Care and Protection Timeline

All times are approximate

Above the line - court activities

Below the line - DCF activities





# Care and Protection Timeline

All times are approximate  
 Above the line - court activities  
 Below the line - DCF activities

