

# Abuse and Neglect Case Information

## What are the common terms in an Child Protection Case?

**A&N** - Abuse and Neglect

**CPS** - Child Protection Services

**DSS** - Department of Social Services

**ICPC** - Interstate Compact for the Placement of Children

**ICWA** - Indian Child Welfare Act

**IFA** - Initial Family Assessment

**PCA** - Protective Capacity Assessment

**PDP** - Present Danger Plan

## What is an abuse and neglect (A&N) case ?

An Abuse and Neglect Case begins when DSS becomes formally involved with a family. An A&N is a civil case and not a criminal case. Sometimes, a parent can face both types of cases, however, they are always separate actions at the courthouse and they have very different processes and consequences.

For example, if a parent is arrested and taken to jail by law enforcement for the crime of child abuse for striking their child, DSS may also take custody. That parent may then (1) be facing the criminal charge of child abuse for striking the child and (2) face a civil allegation that their child is abused or neglected by that parent for subjecting them to mistreatment or abuse.

If the state wishes to prove that a person has committed the crime of child abuse, the state must prove to a jury of twelve people that the person is guilty beyond a reasonable doubt. All twelve must decide guilt unanimously. A guilty verdict results in a public conviction and could result in incarceration. If, on the other hand, the state wishes to prove that a child's status is that of an abused and neglected child, the state must clearly convince one person, the judge, that this is so. If the child is found to be abused or neglected, the result is continued custody with DSS and placement of the parent's name on the central registry. There is also a potential that an A&N could end with termination of parental rights. This registry is confidential and can only be checked by social services or by employers who are filling a position that involves working with children or the elderly, such as daycare providers, counselors, schools, and healthcare professions. People who are on the registry cannot become a licensed foster care provider or be a placement for DSS in the future. The registry cannot be seen on a standard background check. It identifies that the person placed on the registry has had their children adjudicated to be abused or neglected or that DSS has substantiated an abuse allegation.

If a person fails to appear at a criminal proceeding, a warrant is issued and the case remains at a stand-still until the person is located. If a person fails to attend an A&N, the case proceeds without them and might even move faster than it would if the parent were present and participating, though the outcome in this circumstance is rarely positive.

While an A&N is not a criminal case, some types of abuse/neglect do have criminal implications. A parent has a right against self-incrimination and can exercise their right to remain silent if they believe that an answer to a question might incriminate them. Things that parents do say to caseworkers, law enforcement, the judge, or in court could be used against them. On the other hand, a perceived lack of cooperation with DSS by remaining silent can harm reunification efforts and could ultimately result in termination of parental rights. Because of this, an attorney can be an essential guide to navigating this often complicated process.

## **Am I facing an A&N?**

### **INFORMAL INVOLVEMENT**

There are two ways that DSS can become involved with a family. Sometimes, CPS responds to a family but does not take formal custody. Instead, DSS initiates what is called a Present Danger Plan (PDP). DSS considers a PDP if they think the danger they believe to exist can be managed with a family that is cooperative and consents to the plan. Parents should be aware that a PDP is voluntary. DSS meets with the family, learns information about the family unit, and seeks to address the danger that they have identified. A parent is not required to cooperate with DSS, but if they don't, DSS then often seeks to take formal custody. If DSS determines that there is no danger or that the PDP has addressed and resolved the danger, then DSS closes its file and the family unit can return to normal. This way, the parents are not brought into court and an Abuse and Neglect case is never filed. If DSS determines that a PDP has failed or cannot manage the danger, then DSS requests to take formal custody.

## **FORMAL INVOLVEMENT**

If DSS has taken custody of children, the case is placed before a judge by the state's attorney's office and the children are placed in the legal and physical custody of DSS. First, the state files a petition for temporary custody, and a temporary custody hearing (commonly called a 48 hour hearing) is held before a judge. At that hearing, the judge decides whether custody will continue with DSS. If the judge decides to continue custody and the state files a petition alleging abuse or neglect, an advisory hearing is set.

## **PARTIES AND PEOPLE PRESENT IN THE COURTROOM**

Oftentimes, a courtroom can seem unusually full for a closed and confidential hearing. These are the most common people that are present in the courtroom:

**Caseworkers:** DSS workers should be present for the case that they are assigned to in order to address any questions that the judge or any of the parties may have. They often remain in the courtroom for multiple cases, even if they are not specifically assigned to all of the cases that happen to be up that day.

**Court Appointed Special Advocates (CASA):** CASA volunteers are sworn officers of the court that can be assigned to a case. They meet with the children and the parties throughout the life of the case. They are intended to be an extra voice for the child in the courtroom and often have a greater opportunity to meet more

regularly with the child than anyone else. As officers of the court, they also often stay in the courtroom for multiple cases, even if they are not specifically assigned to all of the cases that happen to be heard that day.

**Child's attorney:** When an A&N starts, the judge appoints an attorney to represent the child(ren). This attorney appears at all hearings and represents the child's best interests to the court. The attorney also relays the wishes of the child to the court, however, the child's attorney is not required to advocate for the child's wishes if the attorney does not believe they are in the child's best interest.

**State's Attorney:** The state's attorney represents the state and the Department of Social Services. The state's attorney files paperwork and seeks to prove the allegations being made and advocates from both a legal standpoint and for DSS's position.

**Tribal Attorney and/or representatives:** If ICWA applies to an A&N, then tribes with an interest have a right to intervene in the case and participate in hearings. Tribes have an interest when the child is either (1) a member of their tribe or is (2) eligible for membership and has a parent who is a member. Some tribes have hired attorneys to represent them. Other tribes send representatives or call in to hearings to participate. A state should notify interested tribes of the proceedings so that they can participate if they wish.

**All parents and attorneys for all parents:** All parents to the children involved have a right to participate. Each parent also has a right to have an attorney be present or to have an attorney be appointed. Sometimes, a sibling group may have more than one father or mother involved. Each parent is notified, provided an attorney if they wish, and allowed to participate in hearings.

**Judge:** The judge rules on the case and makes decisions about contested facts and law. Judges occasionally rotate calendars. While it is likely that the same judge will preside over an A&N for its entire duration, if there is a rotation, the judge assignments may change. Questions about what judge is assigned to the case and where their courtroom is located can be directed to the attorney assigned to you, the caseworker on the case, or the clerk of courts.

**Court reporter:** Ultimately, it is very important to have a written record of everything that is said in the courtroom, so disputed rulings can be checked and reviewed. This task is assigned to the court reporter, who types everything that is said during the

hearing into the record. Because everything is written down, it is important that people present should identify their names before speaking, speak loudly and one at a time, and not attempt to address the case when the reporter is not present. The court reporter cannot take down non-verbal cues like nods or head-shakes, so answers should always be stated out loud.

Indian custodian and their attorney: In an ICWA case, an Indian person or relative who was caring for the child at the point where the children were taken into custody also has a right to participate in hearings. DSS must work to reunify the children not only with the parents but with the Indian custodian as well. The Indian custodian has the same rights as parents to notice, to contest petitions, and to receive active efforts from DSS to work towards reunification. If you think that you may have a right to participate in an ICWA A&N proceeding and have not yet been named as an Indian custodian, you should consult with an attorney about how to proceed.

Foster family/placement: While these individuals do not necessarily participate in the court hearing itself, the placement providers are sometimes present for the cases that involve the children they have in their care.

Relatives: Because relatives have an interest in participating in A&Ns and are often support for the parents and for the children, they can also be present. They can only attend court for the cases that they have an actual interest in and must leave the courtroom once that case is completed. If a party objects to the presence of a relative for some reason, the judge may ask that they leave.

Strangers, non-family, and reporters: While it does often seem that there are a lot of people in the courtroom, A&Ns are still confidential proceedings. SD State law prohibits parties from sharing information and documents to non-privileged parties about abuse and neglect cases. While friends are often someone's strongest support outside of family, they are typically not allowed in the courtroom. People that have no interest or personal stake in the case are also not allowed to be present. Reporters or journalists cannot be let in and should not be publishing facts about an abuse and neglect case. If a party believes that there is a person present in the courtroom who should not be, that party can object and the judge will then decide whether that person will be ejected or allowed to remain.

Who is "John Doe" and why is he on my paperwork? Sometimes, for whatever reason, a father is not named on a child's birth certificate. The state has an

obligation to advise all parents that DSS has taken custody, but if the father's name is not on the birth certificate, the state may not know who the actual father is. Because of this, the state names "John Doe" as a legal placeholder. If a father comes forward and believes that the child is his, or if the mother names a potential father, DSS can help arrange paternity testing. If that person is determined to be the father through testing, DSS processes that information and places him on the birth certificate. The state then dismisses John Doe from the petition and replaces him with the child's father. Many times, DSS assists in paying for and scheduling paternity testing. A father need only contact DSS and advise who the child is that he may be father to in order to initiate that process. Furthermore, if an individual named in the state's petition believes that he is not the father and wishes to be removed from the petition, he can ask the court to order paternity testing. If he is excluded as being the father through testing, John Doe could replace him on the petition if or until the true biological father is found.

## **THE PETITION**

A petition is the document that starts an A&N. It lists the parties in the case, information about the parents and the child, AND it states whether ICWA applies to the case and, if so, which tribe is to receive notice of the proceedings. The petition then alleges that the children are abused or neglected and states the facts that support that allegation.

## **ADVISORY HEARING**

At the Advisory Hearing, the judge goes through the rights that a parent has in an A&N. A parent should be present to hear those rights and also to admit or deny the petition. If a parent does not attend the advisory hearing, the state can obtain a default judgment against them. In a civil case, it is presumed that a parent would attend a hearing to dispute something that is not true. If a parent does not attend, then the judge assumes that the facts that the state has presented in its petition are true and the judge finds that taking custody of the children was appropriate and that they are in fact abused/neglected children.

If a parent is present at the advisory and does not yet have an attorney, they may ask that one be appointed to them at that time if they cannot afford one. A court-appointed attorney is not free. The rate and process for paying a court-appointed attorney can vary by county and by state. Generally, a court-appointed attorney

would submit a bill to the county in which the case occurred. The county then submits the bill to the parent. Parents should also be aware that they can be responsible for the fees incurred by the attorney appointed to represent the child or children.

At the advisory, the parent will be asked whether they admit or deny the petition that the state has filed. If a parent admits to some or all of the petition and acknowledges that the children's environment was not what it should have been, then the judge will rule that the children are abused/neglected and custody will continue with DSS while the parties work towards reunification.

## **THE ADJUDICATION**

A parent has the right to have the state prove the allegations in the petition. If a parent wishes to exercise this right, then they deny the petition and an adjudicatory hearing is scheduled. An adjudication is the trial phase where the state must present witnesses and evidence to prove the allegations it has put in the petition. At the adjudication, parents have the right to hear the evidence presented and to have their attorneys cross-examine witnesses or present witnesses of their own. The state must prove to the judge that the environment the children were in was injurious in some way or that they were subjected to mistreatment or abuse. The judge, in order to make a finding of abuse/neglect, must be clearly convinced that the evidence supports such a finding. If a judge finds that the state has not met its burden of proof, then the petition is dismissed and custody is returned. If a judge finds that the state has proven its case, then the children are adjudicated to be abused/neglected and custody of the children continues with DSS. This finding can result in the parents being placed on the central registry.

## **REUNIFICATION PROCESS**

Once a child is found to have been abused/neglected, except for in rare circumstances involving severe or repeated circumstances, DSS then works to reunify the family and put things back the way they were. If parents are separated, DSS seeks to return the child to the original custodial parent. If that cannot be done, DSS then looks to return to the other parent. If DSS cannot return to either parent, they then work to place the child with the family member relative. If they cannot place with relative, then DSS turns to non-family adoptive or guardianship placements.

While the parties work towards reunification, there are times where the parties return to court to discuss the status and progress of the case at a review hearing. Many cases also hold a permanency hearing at the six-month mark. At a permanency hearing, the ongoing caseworker assigned to the case testifies about the placement of the child, the needs of the child and how they are being met, and about the progress the parents are making towards reunification.

There may also be a placement hearing that is held if ICWA applies to the case or if a party objects to the placement of a child. ICWA requires that DSS consider first and foremost a relative placement of the child. If DSS cannot identify an appropriate relative, they must then look to a Native American foster placement. If one is unavailable, then DSS must attempt to place with any other type of tribally-preferred placement. Only once those attempts have been made should DSS place in a non-Native placement. If a child is placed outside the ICWA placement preferences, the state must hold a placement hearing and request that the judge find that they have made sufficient efforts to find a placement within the preferences, and that there is good cause to place outside those preferences. An ICWA-qualified cultural expert must testify in support of the state's request.

## **FINAL DISPOSITIONAL HEARING**

A Final Dispositional hearing ends an abuse and neglect case. If the parents have successfully worked towards reunification and the children are returning home, this hearing can be very short and pleasant. However, parents should be aware that an A&N can end with the termination of parent rights. If the state is requesting that parental rights be terminated, parents have the same right to contest termination at the final dispositional hearing as they did at the adjudication. The basics of what the state must prove to the judge at final disposition are that termination of parental rights is the least restrictive alternative in the children's best interest, that DSS has provided the proper efforts and services to the family to work towards reunification, that those efforts were unsuccessful, and that the conditions that lead to the removal of the children continues to exist. Testimony and evidence is presented at the final dispositional hearing. Parents can call their own witnesses if they have any. If ICWA applies to the case, an ICWA-qualified cultural expert must also testify in support of the state's request and give the opinion that DSS complied with the requirements under ICWA in providing services to prevent the breakup of the family and the state must prove some of these requirements beyond a reasonable doubt.



## **A&Ns OUTSIDE OF COURT**

Attending court is only a portion of what an A&N involves. Between hearings, parents meet with attorneys, their caseworkers, their children, and follow through with the services and activities identified to assist them with reunification.

Throughout an A&N, families often interact with many caseworkers and can feel as though they are always being switched from person to person. This process is naturally segmented, though difficult jobs such as these often have a high rate of turnover as well. The first caseworker a family will meet is often the responding worker on call at the time of first contact with DSS. This caseworker can end up assigned to the case but, more often, is only responsible for responding, for initial paperwork, and to be present for the temporary custody hearing.

The first formally assigned caseworker is commonly called the Initial Family Assessment (IFA) worker. This person is involved in the investigative phase of the process. The IFA worker investigates and assesses the family and identifies any perceived danger or areas of concern to DSS, which is referred to in South Dakota as “impending danger.” If the IFA worker does not identify impending danger, they request that the case be closed and custody be returned. If the IFA worker identifies impending danger, they recommend continued custody and prepare a document called the Initial Family Assessment that outlines the areas of concern. IFAs are typically completed within the first 30 to 45 days of DSS’ involvement with a family.

If custody continues beyond the IFA stage, the case then passes to the ongoing caseworker. This worker’s primary goal is to work with the family towards reunification and schedule visits with the child. The ongoing worker takes the impending danger identified in the IFA and develops a document called a Protective Capacities Assessment (PCA). This document is a plan that is created with the parents to address and alleviate the danger identified. Outcomes are created and activities are listed to help parents work towards getting their children back home. The PCA is reviewed occasionally throughout the case to determine whether progress has been made towards their outcomes.

A family locator may also be assigned to a case. This caseworker assists the primary caseworkers in finding family members to consider as placements. This person has a limited role of reaching out to family and performing home assessments.

Caseworkers in other states could also potentially become involved. If a parent or relative lives outside of South Dakota wishes to be a placement, a caseworker in SD cannot travel to them and assess them over a period of a week or more. Instead, the local DSS submits an interstate compact (ICPC) to the state office in Pierre. The state office then submits the ICPC to the state where the potential placement lives. That office then responds to assess the home in their state and then notifies South Dakota whether or not the placement is suitable.

If parental rights have been terminated or if permanent custody of a child has been given to the state, the ongoing caseworker hands the case over to a children's caseworker. This person has more experience in finding children services and preparing them for adulthood. The children's worker remains on the case until the child is adopted, placed into a guardianship, or turns 18.

## **RIGHT TO APPEAL**

When a decision is made and an order is issued, any party has the right to appeal that order if they feel that a mistake of law or a very serious mistake of fact has been made. If a person wishes to appeal, they must provide notice within 30 days of the order having been placed in writing and served. If a person does not give notice of appeal within that window of time, then they have missed their opportunity to appeal. An appeal is not a do-over. Higher courts only review the facts that were presented in the record and do not hear new evidence or accept any information about events that occurred after the final order was issued. An attorney can be appointed to assist with an appeal as well.

## **CONCLUSION**

While having DSS involved can be stressful, and the system is adversarial in nature, parents should keep in mind that caseworkers can often assist when they are struggling. DSS can do funding requests, give rides, help with gas cards or bus passes, and often has substantial knowledge about services that are available in the area.

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