

## 6. Legal Intervention

**6.0 PURPOSE:** The purpose of this section is to set up procedures when legal intervention is necessary in protecting children. The use of the court system as a tool in the overall system of child protection can be vital in preventing further harm or threatened harm to a child.

### 6.1 AUTHORITY:

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|----|------------------------------|---|
| A. | P.L. 105-89                  | Adoption and Safe Families Act of 1997  |
| B. | 45 CFR 1340.14               | Criminal or civil court action shall be taken, if appropriate to protect the child.   |
| C. | 45 CFR 1340.15               | Legal proceedings may be initiated as may be necessary to prevent the withholding of medically indicated treatment.           |
| D. | CHAP 346-14, HRS             | Establishment and administering of programs, standards and adoption of rules for protection of abused and neglected children. |
| E. | CHAP 350.1, HRS              | Mandatory reporting   |
| F. | CHAP 350.2, HRS              | Action on reporting   |
| G. | CHAP 350.3, HRS              | Immunity from liability   |
| H. | CHAP 587                     | Child protective act  |
| I. | ACT 302, SLH'96              | Child protective and diversion services   |
| J. | <a href="#">HAR 920.1-7</a>  | Authorization for services  |
| K. | <a href="#">HAR 920.1-8</a>  | Confidentiality   |
| L. | <a href="#">HAR 920.1-17</a> | Foster Custody  |
| M. | <a href="#">HAR 920.1-18</a> | Casework services   |
| N. | <a href="#">HAR 920.1-21</a> | Risk Assessment   |

## 6.2 FAMILY COURT INTERVENTION

The Family Court Act of 1970 established the Family Court, in each circuit within the State, as the proper arena to mandate and monitor services for children. The Family Court has the ultimate authority in all matters pertaining to children brought before it.

Part of the assessment process in child protective services is to determine whether the child and his/her family need the oversight of the Family Court in order to prevent further harm or threatened harm. The involvement of Family Court provides objective scrutiny and accountability for all parties.

Not all child protective services cases need the intervention of the court, but for those cases that are deemed appropriate for court oversight, the CWS social worker needs to be aware of terminology, procedures, and other aspects of working in the court system as well as the legal requirements outlined in Chapter 587, Hawaii Revised Statutes, (The Child Protective Act).

### 6.2.1 Required Initial Court Action

CWS social workers shall petition the Family Court when, after an assessment of a complaint of harm or threatened harm, the following situations are determined to be present. Cooperation of the family is not a factor in determining initial court action when the harm is substantial.

- A. The child is in imminent danger and the parent (caregiver) is unwilling or unable to take action to protect the child.
- B. A sibling has died as a result of suspected abuse or neglect.
- C. Serious abuse is confirmed per the DHS 1517, "The Child and Family Assessment Matrix" with an overall assessment of **severe**.
- D. Serious failure to thrive is diagnosed.
- E. The family, either through words or actions, demonstrates an unwillingness or inability to jointly develop and carry out a protective plan for the child within sixty days of the initial complaint date and the department believes that the child will be denied safe or adequate care if changes are not made in

the family's functioning.

- F. The family, who voluntarily placed a child in foster care, willingly enters into a service plan but the plan is not successful within 90 days.
- G. An act or failure to act by the child's parent (caregiver) poses a life threatening situation for the child. This could include withholding critical non-optional medical/psychiatric care. (Excluding practices of recognized religious groups. For these situations, however, action can still be taken after consultation with the Deputy Attorney General.)
- H. Any child who has been abandoned.

**The department will file a petition (or, if such a petition has been filed by another party, seek to be joined as a party to the petition) for permanent custody in order to terminate the parental rights of a parent(s) whose child has been determined by a court of competent jurisdiction to be an abandoned infant (as defined under State law). A permanency hearing must be held within 30 days of a judicial determination that the child is an abandoned infant and a petition to terminate parental rights must be filed within 60 days of the judicial determination that the child is an abandoned infant;**

#### **6.2.2 Types of Child Protective Services Petitions as delineated in 587, Hawaii Revised Statutes**

##### **A. Temporary Foster Custody (TFC):**

A petition for Temporary Foster Custody (TFC) is used when a child is at imminent risk of being harmed or threatened with harm and MUST be removed from the family home in order to assure his/her safety.

This type of custody temporarily transfers parental responsibility for the child from the parents to the department.

1. When a child has been removed from his/her home by the police due to serious concerns about the child's continued safety in the home, the police will turn the child over to the department, who then assumes temporary foster custody. (Refer to CHAPTER III,

Section 4, **SERVICES TO FAMILIES AND CHILDREN** for specifics).

2. The CWS social worker shall determine within one day (excluding holidays and weekends) of assuming temporary foster custody from the police if the family home can be made safe for the return of the child, with services, or whether the child must remain out of the home. (Refer to Chapter II Section 1, **FAMILY ASSESSMENT** and Chapter III, Section 4, **SERVICES TO FAMILIES AND CHILDREN** for specifics).
3. Once the determination has been made that the child cannot return home, even with services, and the parents refuse to voluntarily allow the child to remain out of the home, the CWS social worker must initiate the TFC petition process.
4. The TFC petition process:
  - a. The CWS social worker needs to inform the Deputy Attorney General (DAG) of the need for a TFC petition. The CWS social worker is to share the facts surrounding the risk to the child. The DAG, through the paralegal, will write the petition while the CWS social worker completes the Safe Family Home Report that will accompany the petition to court.
  - b. The CWS social worker will notify the Family Court of the impending TFC petition. The Family Court will assign a proper Family Court number to the case and will schedule the hearing on the petition within 48 hours of the projected filing date of the petition.
  - c. The CWS social worker, after reviewing and approving the petition, insures that the petition is filed with the Family Court within 3 days (excluding holidays and weekends) of the assumption of temporary foster custody from the police according to the filing procedures of the respective circuit.

Accompanying the petition should be the initial

Safe Family Home Report and any necessary Family Court documents. If the family has a Family Service Plan, it should also accompany the petition.

### B. Foster Custody:

A petition for Foster Custody is used when a child needs to remain out of the family home in order to assure his/her safety.

The legal status of Foster Custody transfers most parental responsibilities from the parent to the Department.

1. When a child must remain out of the home in order to assure his/her safety, the family can agree to out-of-home placement by signing a voluntary consent for foster placement, DHS 1568 and state a willingness to engage in recommended services. (Refer to Chapter III, Section 4, **SERVICES TO FAMILIES AND CHILDREN** for specifics on voluntary placement and services).
  - a. The CWS social worker shall file a petition for Foster Custody if, regardless of the efforts of the family, changes are not made to the family home to allow the safe return of the child within 90 days.
  - b. The CWS social worker shall file a petition for Foster Custody if the family, within 60 days of the voluntary consent, is resistive or non-responsive to services that would allow the child to return home.
  - c. The CWS social worker shall file a petition for Expedited Foster Custody if the family, after signing a voluntary consent for out-of-home placement, immediately refuses to cooperate or threatens to revoke the voluntary consent before any services have been offered. The situation becomes an imminent harm situation.
2. If the harm to the child falls into the criteria cited in Section 6.2.1, **Required Initial Court Action**, the CWS social worker is still required to file a petition for Foster Custody, regardless of the cooperation of the family to

allow the child to be voluntarily placed out of the home,

3. The Foster Custody petition process:
  - a. The CWS social worker needs to inform the Deputy Attorney General (DAG) of the need for a Foster Custody or Expedited Foster Custody petition. The CWS social worker is to share the facts surrounding the risk to the child. The DAG, through the paralegal, will write the petition while the CWS social worker completes the Safe Family Home Report that will accompany the petition to court.
  - b. The CWS social worker will notify the Family Court of the impending Foster Custody or Expedited Foster Custody petition. The Family Court will assign a proper Family Court number to the case and will schedule the hearing on the petition, based on the projected filing date of the petition. An Expedited Foster Custody petition is to be heard within 48 hours of filing the petition, if possible.
  - c. The CWS social worker, after reviewing and approving the petition, insures that the petition is filed with the Family Court according to the filing procedures of the respective circuit.

Accompanying the petition must be the initial Safe Family Home Report, appropriate Family Service Plan (if available), and any necessary Family Court documents.

### C. Family Supervision:

A petition for Family Supervision is used when the child is able to remain in the family home, with services, but oversight by the court is determined to be necessary to insure compliance with services which will insure the safety of the child.

Family Supervision does not transfer parental responsibilities from the parent to the department, but it does allow the department to monitor the home, to recommend services and to remove the child if it is later determined that remaining in

the family home places the child at risk of imminent harm or threatened with harm.

1. If the CWS social worker determines that the child can remain in the family home, with services, and the family is cooperative, a voluntary service plan will be put into effect to allow the family the opportunity to make the needed changes in their home. (Refer to Chapter III, Section 4, **SERVICES TO FAMILIES AND CHILDREN.**)
  - a. If, after **60 days**, the family has not been willing to fully engage in services and the CWS social worker determines that all the recommended services are still necessary in order to assure a safe family home for the child, the CWS social worker shall file a petition for Family Supervision.
  - b. If the family ceases to cooperate with recommended services, but the child is not at imminent risk of abuse or neglect, but threatened harm still exists without services, the CWS social worker shall immediately petition for Family Supervision.
2. When a family psych-social assessment determines that a child can remain in the family home but that court oversight is needed to insure safety for the child, the CWS social worker shall file a petition for Family Supervision.
3. If the harm to the child falls into the criteria cited in subsection 6.2.1, **Required Initial Court Action**, the CWS social worker is still required to file a petition for Family Supervision, regardless of the cooperation of the family or the removal of the maltreater.
4. The Family Supervision petition process:
  - a. The CWS social worker needs to inform the Deputy Attorney General (DAG) of the need for a Family Supervision petition. The CWS social worker is to share the facts surrounding the risk to the child. The DAG, through the paralegal, will write the petition while the CWS social worker completes the Safe Family Home Report that will accompany

the petition to court.

During this discussion, it may be agreed that a request for an expedited Family Supervision hearing may be necessary based on the cooperation level of the family and the type of harm suffered by the child.

- b. The CWS social worker will notify the Family Court of the impending Family Supervision petition. The Family Court will assign a proper Family Court number to the case and will schedule the hearing on the petition, based on the projected filing date of the petition.

If an expedited hearing is being requested, the CWS social worker is to alert the Family Court of the need for an immediate hearing, if possible.

- c. The CWS social worker, after reviewing and approving the petition, insures that the petition is filed with the Family Court according to the filing procedures of the respective circuit.

Accompanying the petition must be the initial Safe Family Home Report, the appropriate Family Service Plan and any necessary Family Court documents.

### 6.2.3 Types of Child Protective Family Court hearings as delineated in 587, Hawaii Revised Statutes

The department is required to attend a variety of hearings in Family Court pertaining to the protection of children.

#### A. Temporary Foster Custody (TFC) hearing

This hearing, to be scheduled within 48 hours of filing a petition for TFC, is for the sole purpose of determining whether the child in question should remain in the temporary custody of the department or be returned to the family. The level of evidence is **reasonable cause to believe** which allows the court to decide the issue.

*In layman's terms, "reasonable cause to believe" means*

*that a reasonable person (the man on the street) would believe that the facts, as outlined in the petition by DHS, are true.*

If the court agrees that the burden of proof has been met by the department, the court will then set a further hearing, called a jurisdictional hearing, within 15 days of the TFC hearing.

If all parties agree to the need for court oversight and departmental monitoring, the court can, at this hearing, take jurisdiction and assign a disposition and then set the case for any needed further hearing.

### B. Jurisdictional hearing

This hearing is necessary to determine whether the allegations in the petitions: TFC, Foster Custody, and Family Supervision, meet the burden of proof, which is raised to **preponderance of the evidence**.

*In layman's terms, "preponderance of the evidence" means that at least 51% of the evidence presented to the court [by DHS] is determined to be credible by the court.*

If the burden has been met by the department, the court will then take jurisdiction over the child and set the matter for a dispositional hearing, which will determine the legal status.

If all parties agree to the need for court oversight and departmental monitoring, the court can, at this hearing assign a disposition and then set the case for any needed further hearing.

### C. Dispositional hearing

This hearing is to determine whether the legal status of the case should be Foster Custody or Family Supervision. Many times this hearing is combined with the jurisdictional hearing.

After taking jurisdiction, the court needs to determine, based on all information presented to the court, whether the child would be safe in or out of the family home.

D. Service Plan hearing

This hearing, usually set within 45 days of the dispositional hearing, is to order appropriate services for the family. The CWS social worker needs to have completed an appropriate family case plan (refer to Chapter III, Section 3, **FAMILY CASE PLAN**) prior to the hearing.

E. Return hearing

1. When a petition has been filed, the court shall conduct a return hearing within fifteen days of:
  - a. The filing of the petition; or
  - b. The date a decision is announced by the court during a temporary foster custody hearing.
2. At the return hearing, if it is established that a party required to be notified has not been served prior to the hearing, the court shall:
  - a. Order the method of service of summons that the court deems to be appropriate, based upon the available information; and
  - b. Set a continued return hearing and:
    - i. May waive the appearance of any party at the continued return hearing; and
    - ii. If service of summons is ordered to be made by mail or publication, shall set the continued return hearing no less than twenty-one days after the date of service as evidenced by the signature of the recipient on a return receipt or the date of the last publication.
3. At a continued return hearing, the court shall:
  - a. Enter the default of the party who was served but failed to appear at the continued return hearing;
  - b. Order the party who was served to appear on the date of the next scheduled hearing in the case; or
  - c. Set a hearing on the oral motion to vacate prior orders, if a party appears at the hearing and moves the court to vacate or modify prior orders. The moving party shall file a written motion and serve the other

parties with proper written notice of the motion and the hearing date.

4. At the return hearing, the court shall decide:
  - a. Whether the child's physical or psychological health or welfare has been harmed or is subject to threatened harm by the acts or omissions of the child's family;
  - b. Whether the child should be placed in foster custody or under family supervision; and
  - c. What services should be provided to the child's parents.
  
5. If the court finds that the child's physical or psychological health or welfare has been harmed or is subject to threatened harm by the acts or omissions of the child's family, the court:
  - a. Shall enter a finding that the court has jurisdiction pursuant to section 587A-5;
  - b. Shall enter a finding regarding whether, before the child was placed in foster care, the department made reasonable efforts to prevent or eliminate the need to remove the child from the child's family home;
  - c. Shall enter orders:
    - i. That the child be placed in foster custody if the court finds that the child's remaining in the family home is contrary to the welfare of the child and the child's parents are not willing and able to provide a safe family home for the child, even with the assistance of a service plan; or
    - ii. That the child be placed in family supervision if the court finds that the child's parents are willing and able to provide the child with a safe family home with the assistance of a service plan;
  - d. Shall determine whether aggravated circumstances are present.
    - i. If aggravated circumstances are present, the court shall:
      1. Conduct a permanency hearing within thirty days, and the department shall not be required to provide the child's parents with an interim service plan or interim visitation; and
      2. Order the department to file, within sixty days after the court's finding that aggravated

- circumstances are present, a motion to set the case for a termination of parental rights hearing.
- ii. If aggravated circumstances are not present, the court shall order that the department make reasonable efforts to reunify the child with the child's parents and order an appropriate service plan;
  - e. Shall order reasonable supervised or unsupervised visits for the child and the child's family, including with the child's siblings, unless such visits are determined to be unsafe or detrimental to, and not in the best interests of, the child;
  - f. Shall order each of the child's birth parents to complete the medical information forms and release the medical information required under section 578-14.5, to the department. If the child's birth parents refuse to complete the forms or to release the information, the court may order the release of the information over the parents' objections;
  - g. Shall determine whether each party understands that unless the family is willing and able to provide the child with a safe family home, even with the assistance of a service plan, within the reasonable period of time specified in the service plan, their respective parental and custodial duties and rights shall be subject to termination;
  - h. Shall determine the child's date of entry into foster care as defined in this chapter;
  - i. Shall set a periodic review hearing to be conducted no later than six months after the date of entry into foster care and a permanency hearing to be held no later than twelve months after the date of entry into foster care;
  - j. Shall set a status conference, as the court deems appropriate, to be conducted no later than ninety days after the return hearing; and
  - k. May order that:
    - i. Any party participate in, complete, be liable for, and make every good faith effort to arrange payment for such services or treatment as are authorized by law and that are determined to be in the child's best interests;
    - ii. The child be examined by a physician, surgeon, psychiatrist, or psychologist; and

- iii. The child receive treatment, including hospitalization or placement in other suitable facilities, as is determined to be in the child's best interests.
6. If the court finds that the child's physical or psychological health or welfare has not been harmed or subjected to threatened harm by the acts or omissions of the child's family, the court shall enter an order to dismiss the petition and shall state the grounds for dismissal.
7. Nothing in this section shall prevent the court from setting a termination of parental rights hearing at any time the court deems appropriate.

F. Periodic Review hearing

1. The status of each child in court ordered out-of-home care under the placement responsibility of the department shall be reviewed by the court at intervals no greater than six months. The reviews shall be held within six months of the date of the initial date of entry into out-of-home care and at least every six months thereafter.
2. If a periodic review is due, but in the assessment of the department a permanency hearing is more appropriate, a permanency hearing shall be requested in place of the periodic review hearing. The permanency hearing shall take the place of the periodic review in this instance.
3. For children adjudicated under chapter 587, HRS, the department shall request that the court review the status of the case to determine whether the child is receiving appropriate services and care, that case plans are being properly implemented, and that activities are directed toward a permanent placement for the child. Procedural safeguards relating to parental rights pertaining to the removal of the child from the home, changes in placement, any determination affecting visitation privileges of parents, notice, participation of the parties, and appeal shall be provided according to the rules of the court. At the hearing the court shall be requested to:
  - a. Determine the safety of the child;
  - b. Determine the continued need for and appropriateness of the out-of-home placement;

- c. Determine the extent to which each party has complied with the case plan and the progress the family has made in making their home safe;
  - d. Determine the extent of progress toward resolving the problems that caused the placement and necessitate continued out-of-home placement of the child; and
  - e. Project a likely date for the child's return to a safe family home, or permanent placement out of the family home in the following order of preference, through adoption, legal guardianship, or other permanent out-of-home placement.
  - f. Evaluate visitation arrangements; and
  - g. Issue such further or other appropriate orders as it deems to be in the best interests of the child.
4. The department shall request that the periodic reviews required by Pub. L. No. 96-272 be held at the same hearing as that scheduled for the chapter 587, HRS, matter.

### G. Permanency hearing

1. A permanency hearing shall be held within twelve months of the child's initial date of entry into out-of-home care or within thirty days of a judicial determination that the child is an abandoned infant or that aggravated circumstances are present and reasonable efforts to reunify a child and family are not required. The status of the child shall be reviewed at least every twelve months thereafter for as long as the child remains in out-of-home care under the placement responsibility of the department.
2. The department shall request that the court review the status of the case to determine whether the child is receiving appropriate services and care, that case plans are being properly implemented, and that activities are directed toward a permanent placement for the child. Procedural safeguards relating to notice, participation of the parties, and appeal shall be provided according to the rules of the court. At the permanency hearing the court shall be requested to:
  - a. Determine that the department has made reasonable efforts to finalize a permanency plan for the child within twelve months of the initial date of entry into out-of-home care and at least every 12 months thereafter;

- b. Determine the safety of the child and the continued need for and appropriateness of the out-of-home placement;
- c. Determine the extent to which each party has complied with the case plan and the progress that the family has made in making the home safe;
- d. Determine the extent of progress toward resolving the problems that caused the placement and necessitate continued placement;
- e. Project a likely date for the child's return to a safe family home, or permanent placement out of the family home in the following order of preference, through adoption, legal guardianship, or other permanent out-of-home placement;
- f. Determine the need for a permanent plan hearing pursuant to section 587, HRS and if so, by when;
- g. Determine in the following order of preference whether, and if applicable when, the child will be:
  - i. Returned to the legal custodian;
  - ii. Placed for adoption and parental rights terminated;
  - iii. Referred for legal guardianship;
  - iv. Placed permanently with a fit and willing relative; or
  - v. Placed in another planned permanent custody living arrangement, but only in cases where the department has documented to the court a compelling reason for determining it would not be in the best interest of the child to follow one of the four specified options above.
- h. In the case of a child who will not be returned to the parent, the hearing shall consider in-State and out-of-State placement options.
- i. Determine if the child is placed out of the state in which the home of the legal custodian is located, whether the out-of-state placement continues to be in the best interest of the child; and
- j. Consult, in an age appropriate manner, with the child about the proposed permanency or transition plan.

- k. Determine, in the case of the child who has attained 14 years of age, the services needed to assist the child to make the transition from foster care to successful adulthood.
- H. Termination of parental rights hearing.
- 1. At a termination of parental rights hearing, the court shall determine whether there exists clear and convincing evidence that:
    - a. A child's parent whose rights are subject to termination is not presently willing and able to provide the parent's child with a safe family home, even with the assistance of a service plan;
    - b. It is not reasonably foreseeable that the child's parent whose rights are subject to termination will become willing and able to provide the child with a safe family home, even with the assistance of a service plan, within a reasonable period of time, which shall not exceed two years from the child's date of entry into foster care;
    - c. The proposed permanent plan is in the best interests of the child. In reaching this determination, the court shall:
      - i. Presume that it is in the best interests of the child to be promptly and permanently placed with responsible and competent substitute parents and family in a safe and secure home; and
      - ii. Give greater weight to the presumption that the permanent plan is in the child's best interest, the younger the child is upon the child's date of entry into foster care; and
    - d. The child consents to the permanent plan if the child is at least fourteen years old, unless the court consults with the child in camera and finds that it is in the best interest of the child to proceed without the child's consent.
  - 2. If the court determines that the criteria set forth in subsection (a) are established by clear and convincing evidence and the goal of the permanent plan is for the child to be adopted or remain in permanent custody, the court shall order:
    - a. That the child's parent's parental rights be terminated;
    - b. Termination of the existing service plan and revocation of the prior award of foster custody;
    - c. That permanent custody of the child be awarded to an appropriate authorized agency;

- d. An appropriate permanent plan; and
  - e. The entry of any other orders the court deems to be in the best interests of the child, including restricting or excluding unnecessary parties from participating in adoption or other subsequent proceedings;
3. Unless otherwise ordered by the court or until the child is adopted, the child's family member shall retain, to the extent that the family member possessed the responsibility prior to the termination of parental rights, the continuing responsibility to support the child, including repaying the cost of any and all care, treatment, or any other service provided by the permanent custodian, any subsequent permanent custodian, other authorized agency, or the court for the child's benefit.
  4. A family member may be permitted visitation with the child at the discretion of the permanent custodian. The court may review the exercise of such discretion and may order that a family member be permitted such visitation as is in the best interests of the child.
  5. An order for the termination of parental rights entered under this chapter shall not operate to terminate the mutual rights of inheritance of the child and the child's family members or any other benefit to which the child may be entitled, until the child has been adopted.
  6. The court, in its discretion, may vest permanent custody of a child in an authorized agency or in subsequently authorized agencies, as the court deems to be in the best interests of the child.
  7. If the department receives a report that the child has been harmed or is subject to threatened harm by the acts or omissions of the permanent custodians of the child, the department may automatically assume either family supervision over the child and the child's permanent custodian or foster custody of the child. The department shall immediately notify the court, and the court shall set the case for a permanency hearing within ten days after the department receives such a report, unless the court deems a later date to be in the best interests of the child.
    - a. If the court determines that the criteria set forth in subsection (a) are not established by clear and convincing evidence, the court shall order:
      - i. The preparation of a plan to achieve permanency for the child;
      - ii. The entry of any orders that the court deems to be in the best interests of the child;

- iii. A periodic review hearing to be held within six months after the date of the last permanency hearing; and
  - iv. A permanency hearing to be held within twelve months of the date of the last permanency hearing.
8. Absent compelling reasons, if the child has been in foster care under the department's responsibility for an aggregate of fifteen out of the most recent twenty-two months from the date of entry into foster care, the department shall file a motion to set the matter for a termination of parental rights hearing.

I. Adoption and Guardianship hearing

After permanency has been established, the child can either be adopted or have a guardian appointed as the goal of their permanent plan. These hearings are the final hearings in the child protective process as the child is assured of a safe and permanent home.

J. Trials

Trials, which are set when parties do not agree on issues, can be short, lasting less than 30 minutes, to lengthy, lasting many days. The court is to hear all the evidence and rule.

As trials, by their nature, are adversarial, CWS social workers need to be prepared and work with their DAG to present the department's position in a clear and objective manner.

K. Immediate Review hearing

Any party in a child protective proceeding can motion the court for an immediate hearing to discuss an issue. These hearings are set at the court's discretion.

L. Mediation (not part of 587, Hawaii Revised Statutes)

The court may order a mediation conference if the judge thinks that an agreement can be reached regarding contested issues without a trial.

The mediation conference is conducted by a court trained mediator who will allow all parties to discuss the issues and try

to come to an agreement which will not endanger the safety of the child. The CWS social worker is accompanied by the DAG, as are the parties by their respective attorneys. If an agreement is reached, the mediator will inform the court who will then have the parties appear before the judge to get the courts approval. If the judge agrees with the proposed agreement, a court order will be issued. If the court does not agree with the agreement, the judge will either set the matter for a return hearing or issue additional orders in the agreement

If the mediation conference is not able to reach an agreement, the court is informed and the matter will be scheduled for a return hearing before the judge.

M. Other hearings that are not part of 587, Hawaii Revised Statutes

The CWS social worker may need to attend other types of hearings that are related to the child, such as paternity cases, hearings at the detention home, Family Court hearings on other calendars (divorce, domestic violence, juvenile status hearings, to name a few). The CWS social worker should always consult with the assigned DAG on the child protective case for direction and advice before attending any non-HRS 587 hearing.

**6.2.4 Types of motions in child protective proceedings**

The Family Court allows any party to motion the court for special hearings or orders. Motions are to include the reasons for the request and how the child will benefit.

A. Family Supervision to Foster Custody

When a CWS social worker removes a child from the family home and the child is already known to the court under the legal status of Family Supervision, the following is to be completed:

1. The CWS social worker must decide if the action to remove the child is only a temporary measure, for not more than 72 hours, or if the child must remain out-of-the home for an indefinite period of time due to safety concerns.

2. Once the CWS social worker determines that the child needs to be in foster care, the CWS social worker must notify the DAG assigned to the case. The CWS social worker is to inform the DAG immediately (within one work day) of the facts and that a hearing needs to be scheduled in Family Court. The DAG will then make the arrangements for a hearing and prepare a motion for an immediate review hearing. The motion is not to be filed until the CWS social worker submits a written report to the DAG.

In the case where a child is subject to court ordered family supervision and the child is placed in out-of-home care by the department, a report shall be submitted to the court and a hearing held within ten days of the child's removal from the home, pursuant to section 587-2, HRS

3. The CWS social worker is to write a report to the court, using the Supplemental Safe Family Home Report (refer to Chapter III, Section 3, **FAMILY CASE PLAN**). The CWS social worker is to address the current situation of the child, the placement information, the circumstance with the family that led to the risk to the child that justified removal from the home. The CWS social worker is also to make an assessment as to the prognosis of the case.
4. The CWS social worker is to amend the Family Service Plan by completing Part 3, which will reflect all the foster care criteria necessary.
5. The CWS social worker is to submit the Supplemental Safe Family Home Report and amended Family Service Plan to the DAG who will then attach the documents to the motion. The motion will be sent to all parties.
6. The department assumes Foster Custody on the date of removal, not on the date of a court order.

### B. Permanent Custody

When a CWS social worker has determined that a motion to establish a permanent plan needs to be filed, the CWS social

worker is to contact the DAG assigned to the case. The DAG will need to prepare the proper documents, per the respective circuit, in order to proceed with the motion.

**The department will file a motion (or, if such a motion has been filed by another party, seek to be joined as a party to the motion) for permanent custody in order to terminate the parental rights of a parent(s):**

1. Whose child has been in foster care under the responsibility of the State for 15 of the most recent 22 months. The petition must be filed by the end of the child's fifteenth month in foster care. In calculating when to file a petition for termination of parental rights, the department.

**Will calculate the 15 out of the most recent 22 month period from the initial date of entry into foster care**

**Date of entry into foster care means the date a child was first placed in foster custody by the court or sixty days after the child's actual removal from the home, whichever is earlier. (587A-4)**

- a. Will use a cumulative method of calculation when a child experiences multiple exits from and entries into foster care during the 22 month period
  - b. Will not include trial home visits or runaway episodes in calculating 15 months in foster care; and,
  - c. Need only apply section 475(5)(E) of the Child Protective Act to a child once if the department does not file a petition because one of the exceptions applies;
2. Whose child has been determined by a court of competent jurisdiction to be an abandoned infant (as defined under State law). A permanency hearing must be held within 30 days of a judicial determination that the child is an abandoned infant and a petition to terminate parental rights must be filed within 60 days of the judicial determination that the child is an abandoned infant; or,
  3. Who has been convicted of: the murder of another child of the parent, voluntary manslaughter of another child of the parent,

aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter, or committed a felony assault that has resulted in serious bodily injury to the child or to another child of the parent, or parental rights with respect to a sibling have been terminated involuntarily. Under such circumstances, a permanency hearing must be held within 30 days of the judicial determination that reasonable efforts to reunify family are not required and the petition to terminate parental rights must be filed within 60 days of a judicial determination that reasonable efforts to reunify the child and parent are not required.

The department may elect not to file or join a petition to terminate the parental rights of a parent if:

- a. The child is being cared for by a relative;
- b. The department has documented in the case plan (which must be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the individual child;
- c. The department has not provided to the family, consistent with the time period in the case plan, services that the department deems necessary for the safe return of the child to the home, when reasonable efforts to reunify the family are required.

When the department files for the permanent plan hearing to terminate parental rights, it concurrently begins to identify, recruits, process and approve a qualified adoptive family for the child.

1. The CWS social worker needs to submit a report, using the final Safe Family Home Report format (refer to Chapter III, Section 3, **FAMILY CASE PLAN**). All the guidelines are to be addressed and the assessment needs to state why permanency is in the best interest of the child NOW and why the proposed permanent plan (with goal) is in the best interest of the child.
2. CWS social worker is to complete the initial permanent plan that delineates a permanency goal with a projected completion date. (Refer to Chapter III, Section 3, **FAMILY CASE PLAN**).
3. CWS social worker only needs to submit, to the DAG,

the original copy of the final Safe Family Home Report and the initial permanent plan, who will then submit the documents to the court, per procedures in the respective circuit.

### C. Other types of motion requests

During the course of the court case, the CWS social worker may need to motion the court for immediate reviews for special requests. For each motion, the CWS social worker needs to submit to the DAG a written report outlining the need for the hearing, using the Supplemental Safe Family Home Report format.

Other types of motions may include, but not be limited to:

- Protective Orders
- Allowing a child to leave the State
- Reviewing the progress, or lack of, by the parents
- Extraordinary circumstances involving the child that needs court intervention
- Responding to specific orders of the court
- Sudden changes in the case that need to be reviewed

## 6.3 OTHER LEGAL ACTIONS

### 6.3.1 Foster Custody to Family Supervision

If a child in out-of-home placement and under the legal status of Foster Custody, is to be returned to the family home, the court is to be notified 10 (ten) days prior to the actual date of return.

- A. The CWS social worker is to meet all departmental criteria surrounding the return of a child to the family home. Such criteria may include having a multidisciplinary team or other type of internal review. (Refer to Chapter III, Section 4, **SERVICES TO FAMILIES AND CHILDREN**)
- B. Once the CWS social worker has the approval of the CWS supervisor and has met the departmental criteria, the proposed return needs to be discussed with the GAL/VGAL, if not already informed.
- B. The attorneys for the parents also need to be contacted and informed of the impending action.

- C. The department is to notify the court, by a letter, of the planned return of the child. This letter is to be submitted at least 10 days prior to the actual date of return. The letter is to also contain attempts to contact all parties and responses of those parties.
- D. The 10 days notice allows the court or any parties the time to file an objection, if any, to the return.
- E. If no objections are raised, the child can be returned as planned. The legal status changes from Foster Custody to Family Supervision on the date of return, not when the case returns to court.

### 6.3.2 Subpoenas

#### A. Subpoena to appear

When a CWS social worker is served with a subpoena to appear in a non-HRS 587 court hearing, **AFTER DATE STAMPING THE SUBPOENA**, the CWS social worker is to call the DAG assigned to the case for advice. The CWS social worker is to inform the CPS DAG who issued the subpoena and what is being requested. A copy of the subpoena is to be sent to the DAG.

**CWS social workers should not appear in any non-HRS 587 matters involving a child receiving active protective services in their capacity as a CWS social worker unless accompanied by, or after consultation with, a DAG.**

#### B. Subpoena to produce records (Active cases)

When a CWS social worker is served with a subpoena to produce records, **AFTER DATE STAMPING THE SUBPOENA**, the DAG assigned to the case needs to be notified and a copy of the subpoena needs to be sent to the DAG. The DAG needs to be informed as to who issued the subpoena and what exactly is being asked.

The DAG will represent the DHS in any hearing requesting records. The CWS social worker will also need to attend the hearing, unless instructed otherwise by the DAG. The DAG will advise the CWS social worker as to what to produce, if

anything, at the hearing or to wait until arguments are heard and the court renders a decision as to what to produce.

The CWS social worker is to comply with the advice of the DAG. If there are any disagreements as to this advice, the CWS social worker is to bring the matter to the attention of the CWS unit supervisor, who will contact the DAG. If no resolution is reached, the section administrator for the unit will be contacted and a decision will be made at that level, in consultation with the Family Law Division CWS supervisor of the AG office.

**If records are to be produced, the CWS social worker is to follow the procedures in CHAPTER I, Section 2: CONFIDENTIALITY regarding how to redact records.**

C. Subpoena to produce records (Closed cases)

When the department is served with a subpoena to produce a closed case record, **AFTER DATE STAMPING THE SUBPOENA**, the request is routed per individual section procedures.

The CWS unit who receives the subpoena needs to contact the DAG office for representation at the hearing and to confer as to what to produce, if anything, at the hearing.

The CWS unit is to comply with the advice of the DAG. If there are any disagreements as to this advice, the CWS social worker is to bring the matter to the attention of the CWS unit supervisor, who will contact the DAG. If no resolution is reached, the section administrator for the unit will be contacted and a decision will be made at that level, in consultation with the Family Law Division CWS supervisor of the AG office.

**When records need to be produced, procedures outlined In CHAPTER I, Section 2: CONFIDENTIALITY are to be followed regarding how to redact records.**

**6.3.3 Criminal trials related to Child Protective issues**

A. Called as a witness

When a CWS social worker is called as a witness in a criminal

proceeding, which resulted from a child abuse or neglect issue, the CWS social worker needs to confer with the DAG assigned to the HRS 587 case as to how to testify. The DAG will then instruct the CWS social worker as to how to proceed with communication with the attorney who subpoenaed the CWS social worker. There are situations where the CWS social worker is called as a witness for the defense, thus seeking legal advice from DHS attorneys is necessary.

CWS social workers, when called on a child abuse or neglect criminal matter, need to remember that they represent the department, not themselves, and are to testify as such.

### B. Request to produce children in Non-587 HRS matters

When a CWS social worker is given a subpoena to produce a child who is under the foster or permanent custody of the department, for the purpose of testifying or to be questioned by non-HRS 587 attorneys in non-587 HRS matters, (such as criminal or divorce cases) the CWS social worker needs to inform the DAG assigned to the case, the child's GAL, as well as Program Development. (This does not include 571 HRS cases where the child is the subject of the legal action.)

DHS, as custodian of the child, needs to be aware of the emotional status of the child in question and whether an appearance in court is in the child's best interest. The CWS social worker should consult with service providers, including foster parents, to help assess the possible impact the request may have on the child. On a case-by-case basis, the department will determine how to proceed after thorough discussion with the CWS unit supervisor and/or CWS social worker and Program Development. Program Development will represent the department's position to the DAG assigned the subpoena and will be the departmental representative, if needed.

### 6.3.4 **Civil Lawsuits against the Department**

Whenever the department is sued over its actions in a child protective services case, the complaint is to be routed to the Program Development office. The Program Development office will forward a copy of the complaint to the unit in question for **informational purposes only**.

The Program Development office will serve as the point of contact for all parties and will decide how to proceed on the complaint on behalf of the department. Program Development will assist the non Family Law Division DAG assigned the lawsuit in gathering all necessary CWS information. Program Development will set up and maintain a separate case folder for the purpose of the lawsuit which will contain all necessary legal documents.

Line level CWS unit supervisors and CWS social workers will be asked by Program Development (at the request of the assigned litigation DAG) to participate or to provide information.

Civil lawsuits usually take years to resolve, thus having one point of contact will prevent any duplication of effort or misunderstandings that may happen over the course of the life of the lawsuit.

The line CWS unit supervisor needs to keep a separate folder, apart from the case file, to maintain all information pertaining to the lawsuit until the suit is resolved. The CWS supervisor will then determine what documents should be included in the CWS case file for informational purposes, (usually the complaint and the decision).

## 6.4 COURT KNOWLEDGE

### 6.4.1 Court Participants

There are a number of participants in the legal process. It is important for the CWS social worker to be aware of the different players, their roles and their potential impact.

There is a certain amount of procedural requirements involved in the court process which is considered necessary to remind all the parties of the seriousness of the action. Part of the procedural requirement aspect is the roles each of the participants play. CWS social workers should remember that what is said, as well as what personal relationships exist between the various professionals outside the court room, have no place **inside** the court room. The attorneys are ethically bound to represent their clients, regardless of their own personal feelings. CWS social workers are also representing the department, not themselves, thus their own personal feelings are also to remain outside the court room. In order for the court process to work correctly, to allow the court the opportunity to be objective, the participants must perform their roles to the best of their ability.

A. Judge

The judge, who hears the case, determines the course of action to be taken based on the evidence presented in the case. The judge also issues orders that delineate decisions and time frames.

B. Deputy Attorney General (DAG)

The DAG provides legal representation for the department (State) in the child protective proceedings. Their role is to present the opinion of the department, provide legal advice and prepare for court hearings and trials.

C. Guardian ad Litem (GAL)

The GAL is an attorney (or in rare cases, a non-attorney) who is appointed by the court to represent the best interest of the child. His/her role is to be a neutral third person who is to make decisions based on his/her own investigation of the facts and knowledge of the child. The GAL answers directly to the court.

D. Voluntary Guardian ad Litem (VGAL)

The VGAL, like the GAL, is appointed by the court to serve as an objective reporter to the court as to what is in the best interest of the child. The VGAL is supervised by a social worker who is part of the VGAL program attached to the Family Court system. When a case goes to trial, the VGAL is represented by an attorney.

A child can have a GAL or a VGAL, but not both.

E. Parents' Attorney

Parents are allowed to be represented by an attorney. If the parent is not able to afford an attorney, the court will allow the parent to request a court appointed attorney. It is up to the court to determine whether the parent qualifies for a court appointed attorney.

The role of the parents' attorney is to represent his/her client and what the client feels is in the best interest of the child. In the process, the parents' attorney may become aggressive,

demanding and insulting. The CWS social worker needs to remember to keep the roles clear and not engage in any personal arguments due to the attorney's behavior.

### F. Child's Attorney

In some cases, when a child may need a separate attorney to represent his/her wishes, not what is in his/her best interest (as the GAL/VGAL is to do), the court may appoint an attorney for that purpose. The role of the child's attorney is to inform the court of the child's wishes and to present any legal arguments for the child, even if those wishes conflict with those of the GAL/VGAL.

### G. Court Officer

The court officer is a social worker who is an employee of the Family Court. His/her role is to provide ongoing monitoring of the case on behalf of the court. The court officer reviews all court reports and provides a social worker perspective to the judge, as well as recommendations.

Open communication between the court officer and the CWS social worker is vital to insuring that all concerns are being addressed.

### H. Parties

When a petition is filed with the Family Court, the department indicates on the petition who the parties (concerned participants) are. Parties usually include the mother, legal father, adjudicated father, presumed or alleged father, and the department.

Other parties could include grandparents or other relatives who have a vested interest in the child in question; a live-in boyfriend or girlfriend, if they have access to the child in question.

The focus of the case is on the parties and their ability to make the changes necessary to insure a safe family home for the child in question.

### I. Non Parties

Foster parents, relative caregivers, interested individuals, and some service providers, are allowed, at the discretion of the judge, to sit in on the hearings. These individuals are not parties to the case and are not bound by any order of the court. Given the interest of the non party, the judge may request their opinions on the case.

### 6.4.2 Orders of the court

At the end of each court hearing, the court will issue orders that reflect what was ordered during the hearing. A copy of the order is provided to each attorney, who then insures that his/her client gets a copy. If parents or other parties are not represented by an attorney, the court then provides a certified copy of the order to those parties.

Court orders are expected to be followed. When the court orders something that the department disagrees with, the CWS social worker needs to insure that a formal objection is stated in court, and when appropriate, indicated on the court order. (Example: when the court returns a child to the family home over the objection of the department, thus giving the department Family Supervision responsibility, the objection to this action must be indicated on the order.)

If the CWS social worker is still concerned about the order, he/she must consult with the unit supervisor to decide if the department should request a motion for reconsideration.

The CWS social worker is not to contact the DAG to request a motion for reconsideration unless the CWS unit supervisor has approved the action.

A motion for reconsideration needs to be filed within 20 days of the filing of the court order regarding the issue being contested, therefore the supervisory consultation needs to be completed immediately after the court hearing and the DAG needs to be contacted within 24 hours after the hearing in order to prepare the proper and timely documents.

The CWS social worker needs to remember that if the objection was denied by the judge and the decision of the CWS unit supervisor is not to motion the court for reconsideration, the orders of the court must be followed.

When CWS social workers receive their copy of the court order they need to review the order for any mistakes, either in specific orders, dates or information. Court orders should not have multi hearing dates on one order. Any errors need to be brought to the attention of the DAG immediately, who will then need to issue amended orders to correct the errors. As the department needs to follow the orders of the court, the court orders need to be correct.

Staff are to use "Court Orders --- tracking sheet ", to record any court orders that lack the proper findings or have multiple hearings on one order and fill in the sheet with the info requested in the header. Staff should inform their supervisor on a monthly basis of any of these court orders, if any, and submit to their SA. The SA should report these cases to the DAGS, Court Improvement Co-ordinator and Program Development via email along with the incorrect court order. The DAGS and Court Improvement Co-ordinator will speak to the respective courts about the court orders needing improvement.

If transcripts are necessary, FPPEU staff will inform the supervisor, who will inform the Section Administrator, who will send this concern and request to the DAGS and the Court Improvement co-ordinator. The DAGS will request the transcripts of the hearing.

### 6.4.3 Preparation for court hearings

The court process can be a very intimidating experience for not only the family, but the CWS social worker. Proper preparation should ameliorate some of the anxiety that is produced by the court process.

#### A. Preparing the family:

In order to make the court experience as constructive as possible and to help reduce the adversarial nature of the proceedings, the CWS social worker should help prepare the family for their hearings.

1. For the initial court hearing, explain to the family, including any age appropriate children, why court intervention is being sought and the goals the department is trying to achieve.
2. For ongoing court hearings, review with the family their progress in services, the assessment and

recommendations of the department and what the department hopes to accomplish at each hearing.

3. Try to explain the possible orders the court may impose and what those orders may mean to the family and the department.
4. Review the role of the department in the court hearings and that the CWS social worker represents the department and must act as an agent of the department, not as an individual.
5. Answer any questions the family may have as to the court process and service recommendations.
6. Remind the family of their right to an attorney and to seek legal advice.

B. Preparing the child:

There are some situations when the child in question may need to appear in court or be a witness.

1. Explain to the child how the court process works, who the participants are and what their roles are in the hearing.
2. If a child is to be a witness, attempt to have the child visit an empty court room to familiarize him/her with the layout. Allow the child to sit in the witness chair and to practice answering questions **that are not related to the case**. The CWS social worker needs to help the child work through the fear of testifying.
3. The CWS social worker needs to be sensitive to any feelings of guilt, fear or uncertainty that a child who will be placed in a position to testify may feel.
4. Insure that the child's GAL/VGAL is aware of the feelings of the child and that the child's legal rights are protected.
5. In a child protective hearing, if the child is to testify, try working with the DAG and the GAL/VGAL to have the child testify in the judge's chambers rather than in the

court room.

6. In a criminal case, the CWS social worker as well as the GAL/VGAL, should work with the criminal attorneys in efforts to restrict the child from testifying in open court if the child is emotionally fragile or very young. Efforts should be made to have the child testify by closed circuit television, if possible.

C. Preparing the QWS social worker:

The CWS social worker also needs to be ready for the court process. Whether the CWS social worker is the assigned CWS social worker for the case or a substitute CWS social worker that stands in for the assigned CWS social worker (such as a "court team CWS social worker"), preparation is the key to a better departmental presentation.

1. If not contacted by the DAG assigned to the case, the CWS social worker needs to contact the DAG to discuss the issues that will be presented at the hearing. The CWS social worker and the DAG need to make sure that the departmental position is clear as well as legally sound.
2. If preparing for a trial, the CWS social worker needs to give a list of recommended witnesses, as well as what information each witness will provide, to the DAG when requested.
3. If preparing for a trial, the CWS social worker needs to meet with the DAG prior to the trial to go over the facts of the case and the questions that the DAG will be asking.
4. If preparing for a trial, the CWS social worker needs to insure that the facts are clear and that all documents are submitted in a timely fashion.
5. For any hearing, whether petition, ongoing or trial, the CWS social worker needs to confer with the CWS unit supervisor to insure that the department's position is clear and that the CWS supervisor is able to provide advice and instruction to the CWS social worker on any relevant issues that will be presented to the court.

6. The best tool the CWS social worker has in preparing for any court hearing is to submit written reports to the court on time. These reports should contain all the significant facts in the case, whether they support the department's position or not. The CWS social worker must be able to articulate his/her decisions in clear, factual and professional language.
7. The CWS social worker, if having trouble remembering specific data, can make some notes for their own recollection while testifying, but **under no circumstances** is the case record to be brought to the court.

#### 6.4.4 The CWS social worker as a witness

Testifying can be a very difficult experience for the CWS social worker. CWS social workers sometimes feel conflicted as they view themselves as supportive of the family and yet they will be informing the court of many unpleasant facts concerning the family. CWS social workers need to be reminded that their role is to protect the child, even though that responsibility may mean testifying against a family with whom a positive rapport has been built.

CWS social workers must always remember that when they testify, they are not testifying as individuals, but rather as representatives of the department which has a mandate to make difficult decisions regarding the well being of children and families. The experience can be less stressful if the CWS social worker is prepared.

- A. The CWS unit supervisor should insure that the CWS social worker is familiar with the facts of the case. Quizzing the CWS social workers, going through a role-play scenario, or reviewing all the reports are some of the methods a CWS unit supervisor may employ in preparing the CWS social worker.
- B. The CWS social worker and the DAG should have met prior to the hearing so that the focus and direction of the testimony is understood.
- C. At court, the CWS social worker should dress appropriately and professionally. Jeans should not be worn to court. How one dresses impacts on credibility.

- D. Most likely, the CWS social worker will be a witness for the State, thus the DAG will ask the CWS social worker more open-ended questions, allowing the CWS social worker to elaborate.
1. Listen to the question, answer only the question
  2. Be as specific as possible. Do not give vague answers, such as "I saw Mrs. Jones a couple of times." Instead, state, "I saw Mrs. Jones 3-4 times between May and June."
  3. Speak clearly and use professional language. Try to avoid using departmental acronyms or "jargon" without explanation.
  4. Look directly at the person asking the question when the question is being asked. Look at that person or the judge when answering the question.
  5. Don't guess, if the answer to the question is unknown, say so.
  6. Ask to have a question repeated if it is unclear or confusing.
- E. When the CWS social worker is being cross-examined by other attorneys, the CWS social worker needs to be aware that the role of those attorneys is to discredit the CWS social worker and his/her testimony. In order to accomplish that task, the opposing attorneys will try to confuse, anger or intimidate the CWS social worker. These tactics can be rendered useless if the CWS social worker does the following:
1. **ALWAYS REMAIN CALM.**
  2. Listen very carefully to the question being asked. If the question is a compound question, restate the question prior to answering all parts.
  3. Take a little time to review the question mentally before answering. This allows the CWS social worker the chance to be more complete and concise.
  4. Do not offer additional information. Answer only the

question. If the answer is "yes" or "no", then answer as such. The opposing attorney will need to ask the CWS social worker for more details. Let them do their job; don't give them information they may not know about.

5. Be aware of trick questions. Listen carefully.
6. Be aware of some of the tactics used in cross examination to confuse witnesses:

- a. Rapid-fire questions:

This tactic is when one question after another is asked with little to no time to answer. The purpose is to confuse the witness and to force inconsistent answers.

Take time to answer each question. Be deliberate.

- b. Condescending:

This tactic is when the attorney is benevolent in his approach, over-sympathetic in questions to the point of ridicule. The purpose is to give the impression that the witness is inept and lacks confidence. This will go straight to the credibility of the witness.

Be firm and decisive in giving answers. Ask that the question be repeated if improperly phrased.

- c. Friendly:

This tactic is when the attorney tries to be courteous, polite, and questions tend to lull the witness into a sense of security. The purpose is to trick the witness into giving answers that favor the opposition without the witness being aware of any change in direction.

Stay alert; remember that the role of the attorney in the trial process is not to be the friend of the CWS social worker but rather to discredit witnesses and to present their client in the best possible manner, even at the expense of the witness.

d. Badgering, belligerent:

This tactic is when the attorney stares at the witness, shouts and basically attacks the witness. The purpose is to upset the witness to the point of anger and to lose his/her focus.

Remain calm; allow the DAG time to object to this tactic.

e. Suggestive questions:

This tactic is when the attorney will ask a leading question that has its own answer in the question, such as "Wasn't the mother always willing to talk?" The purpose is to suggest an answer to the witness that may be contrary to the facts or just skirts the facts.

Concentrate on the question and do not allow the attorney to formulate answers. Disregard the suggestion and answer objectively.

f. Demanding a "yes" or "no" answer:

This tactic is when the attorney wants only a one word answer. The purpose is to prevent any explanation of information.

Try to explain the answer, but do as the court directs. If only ordered to answer "yes" or "no", do as ordered and move on to the next question. Do not show any anger or uneasiness in being ordered to answer differently than desired.

g. Reversing witness' words:

This tactic is when the attorney will restate either answers or facts incorrectly. The purpose is to confuse the witness.

Just answer correctly. Restate the facts, correctly, if the attorney was in error.

h. Repetitious questions:

This tactic is when the attorney asks the same questions over and over again, using a different format. The purpose is to get the witness to answer differently.

Listen to the question, regardless of the form of the question, to insure that answers are consistent.

i. Conflicting answers:

This tactic is when the attorney tries to use answers of other witnesses to confuse the witness. The purpose is to force the witness to question his/her own statements.

Remain calm and answer as honestly as possible; regardless of what other witnesses allegedly state.

j. Mispronouncing names of witness or others:

This tactic is when the attorney calls either the witness, other parties, service providers or other departmental employees, by a different name. The purpose is to redirect the witness to making corrections rather than listening to the full intent of the question.

Disregard these errors and concentrate on the scope of the question.

k. Staring:

This tactic is when the attorney continues to stare at the witness after an answer has been given. The purpose is to create a long pause, which most people feel compelled to fill with talk. The attorney wants the witness to feel that there is something more to add to the answer already given.

Wait for the next question. Do not add to the answer already given.

- F. The CWS social worker needs to remember to present as a professional by being confident, straight-forward and avoid being halting, stumbling, hesitant, arrogant or inaccurate.
- G. Whether the CWS social worker is a witness for the State or being cross-examined, always remember to **tell the truth**. If the CWS social worker realizes that he/she may have been incorrect in an answer, apologize to the court and correct the answer. Be sincere at all times.
- H. Finally, the CWS social worker needs to remember that the most important outcome of his/her interaction in court is his/her credibility. Regardless of whether the department prevails in a hearing, the manner in which a CWS social worker presents him/herself will have long lasting effects. CWS social worker credibility carries over from case to case, from attorney to attorney, from judge to judge, and from year to year.