



# The TRI-COURT SYSTEM

## *Court Systems that Handle Child Custody*

There are generally three courts that handle custody of children. All three are Superior Courts, but they differ in terms of the types of cases, the circumstances of the parties, and the identity of the parties.



### FAMILY COURT

**This is the court that determines custody of children between the two biological parents.**

Different actions can be brought in Family Court, such as paternity, child custody, divorce, and legal separation. Also, Family Court is the place where restraining orders are issued. There is no ongoing court-directed supervision or services. Parents and children do not have the right to free, court-appointed attorneys in Family Court, although sometimes the Court appoints an attorney to represent a child. The cost of the child's attorney is paid by the parents, or if they cannot afford it, by the Superior Court. The court will also appoint an attorney if a paternity case is filed against a man and the man says he is not the father. Generally, the law requires that children have continuing contact with both parents unless it is not in the best interests of the children. Under some circumstances, other people, such as grandparents and step-parents, may ask the court for visitation by filing a petition. If the court believes that the child cannot stay with either parent and that it would be detrimental for the child to be with the parent, the judge can make an order granting custody to another person.



### PROBATE COURT

**This is the only court system where non-parents can petition the court for custody of a child, through a guardianship.**

- A guardianship is a formal decision by a judge that names a non-parent as the legal caretaker of a child.
- A guardianship action may be started by anyone. If a parent agrees to the guardianship, the court must find that the guardianship is necessary and convenient. If the parent does not agree with the guardianship, the court must find that it would be detrimental for the child to be with the parent, and that it would be in the child's best interest to live with the guardianship.

- A child twelve years old or older may be the person who asks the court to appoint a guardian.
- A guardianship does not terminate parental rights. Instead, it puts parental rights on hold and places those rights in the guardian. The guardianship transfers custody and control of the child from the parent to the guardian. The parent still has the responsibility to support the child.
- In Probate Court, there are no services for the families, and the parents and children do not have the right to court-appointed, free attorneys.
- There is no "reunification" in a Probate Court guardianship. That means that the court does not offer services for the parent so that the parent can regain custody of the child. The child, the guardian, or the parent may petition to terminate the guardianship when it is no longer needed.
- Once a guardianship is granted, there is very little court supervision. The court maintains jurisdiction over the child and the guardians, and there may be occasional reviews, but the court does not monitor what is happening in the family.



## **DEPENDENCY COURT**

**This is the court system that gets involved when a child is at risk of being physically, sexually, or emotionally abused, neglected, or exploited, and no parent or relative is able to protect the child.**

- If the County has been alerted to child abuse or neglect, the child may be removed from the home of the parents. The child may be placed at the Children's Shelter, in a foster home, with relatives, or even back with a parent under supervision.
- After a child has been removed from the home, if the court determines that the child cannot go back home safely, the court can take jurisdiction over the child and declare the child a dependent of the court.
- Once a child is declared a dependent, there is ongoing court-ordered supervision. That means that there are frequent court dates and there are social workers who keep track of what is happening in the family. Children are given free, court-appointed attorneys and parents get free attorneys if they qualify for one due to financial hardship.
- The social worker recommends to the judge whether or not the parent qualifies for "reunification," where the parent is offered services so s/he can become a better parent and regain custody of the child.
- If a parent fails at reunification, the court must either free the child for adoption, establish a guardianship with a relative, or place the child in long-term foster care.
- A parent who has failed at reunification may have his or her parental rights terminated.
- Some recent federal laws have made big changes in dependency law. First, parents have less time to try to reunify with younger children. Second, adoption is now considered the most favorable "permanent plan" for a child, if parents fail reunification. Third, when a parent qualifies for reunification, the social worker must give reunification services at the same time as planning for the child's eventual adoption. Fourth, in some cases, it has become easier to terminate parental rights and not offer reunification services.

*Fact Sheets for Teen Parents can be found on-line at: <http://www.teenparents.org>*