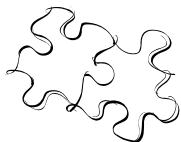


CHAPTER 11

OVERVIEW OF THE COURT SYSTEM, CHILD WELFARE, AND PERMANENCY TIMELINES IN NEW YORK STATE

*(This chapter also serves as the 2008 NYS Customization of the
National CASA Volunteer Training Manual, Chapter Two)*



INTRODUCTION

The National CASA Association's (NCASAA) Volunteer Training Curriculum, and public relations materials developed by NCASAA, are designed for CASA programs across the country. It is important to note that there are different ways in which programs identify themselves in name, administration, and model. The language NCASAA chooses for materials attempts to unify the differences. Each state also varies somewhat in the role CASA volunteers and staff plays in the court room. In many states, this is dictated by statute and/or court rule or case precedent. When utilizing NCASAA materials, you may need to edit language to comply with state-specific parameters for CASA's role here in New York.

In New York State, CASA volunteers are "friend of the court." CASA volunteers are not "officers of the court" in NYS, but are sworn in by the court after they have successfully completed training. We function as additional eyes and ears for the judge, promoting the needs of the child and helping to ensure that the case reaches a quick resolution, one that meets the best interests of the child. We are not "parties" to the case or "guardian ad litem's" in New York, and cannot initiate legal action. (See Part 44, Rules of the Chief Judge.) Communications with the judge about the case between court appearances, if those communications are not shared with all parties, constitute ex parte communication and are prohibited by court rule.

The CASA staff or volunteer in NYS does not provide legal representation for the child; that role is provided by the attorney for the child (formerly called the "law guardian"). All children in child welfare proceedings in NYS are assigned an attorney by statute. That is not the case in all states, and in some of those states, CASA volunteers provide that representation, generally with legal counsel on the program's staff. Thus you will see language in NCASAA publications that uses the word "represent," which is not accurate in NYS. Even the word "advocate" as a noun has a legal connotation of representation. It is the attorney for the child's role in this state to convey to the court the wishes of the child (see Part 7, Rules of the Chief Judge) and the purview of the judge (or court attorney referee) to determine what is in the child's best interests. CASA volunteers can supply information to assist the judge in deciding best interests, but the CASA program by itself cannot determine best interests, although you may see the word "determine" in NCASAA materials. CASA programs generally work closely in NYS with the child's attorney to share information, coordinate visits, and make sure that all available information regarding the child's safety and permanency options are known by the court.

You may also see the word "investigate" used in NCASAA publications about the CASA role. "Investigate" connotes exploring the veracity of the allegations against the parents, which is the role of local departments of social services. CASA volunteers research the circumstances of the case and provide information to the court, sharing that information with the local department of social services caseworker to assist him or her in creating a case plan that best meets the child's needs. It is the judge's role (or court attorney referee's) to issue "findings;" these are conclusions based on the circumstances of the case. Information from the CASA volunteer should not in NYS be designated as "findings."

In addition, while NCASAA standards (7E) say that CASA reports should make "recommendations," that is not consistent practice in New York. Some CASA programs do, at their judges' direction, issue reports with recommendations. These can imply CASA has the authority to direct case planning, however, so many programs end their reports instead with a list of "concerns" about the case.

NCASAA standards also say that the CASA volunteer will review "all relevant documents and records". (There is room for interpretation as to the definition of all relevant documents and records, which may include case files from DSS). We are bound to comply with NYS statute and case law and may be limited in what records we can view.

In general, when using NCASAA materials, bear in mind the CASA status as "friend of the court" in NYS. Like any good friend, you don't want to usurp someone else's role or misrepresent your own. You do want to honestly and openly communicate what you can and cannot do. That means to be mindful when training and supervising volunteers that they are working collaboratively and appropriately with colleagues in Family Court, and to be diligent in the language used in program websites, publications and presentations that it accurately reflects the CASA role in this state.

THE NEW YORK STATE UNIFIED COURT SYSTEM

The mission of the New York State Unified Court System (UCS) is to promote the rule of law and serve the public by providing just and timely resolution of all matters before the courts. The powers and structure of the New York state court system are outlined in Article VI of the state Constitution. For administrative purposes, UCS is divided geographically into four judicial departments and twelve judicial districts. (A map of the judicial districts and departments is available in the publication *The New York State's Courts: An Introductory Guide*, available for download at <http://www.nycourts.gov/reports/ctstrct99.pdf>. For a list of counties in each judicial district and corresponding Office of Children and Family Services regional offices, go to: http://www.ocfs.state.ny.us/main/legal/statewide/judicial_districts_region.asp)

Cases start in the trial courts. Though the vast majority of cases are decided at the trial court level, occasionally parties appeal the decision. Most appeals are initially heard in the intermediate appellate courts, which review the decisions of lower courts to make certain that the law was properly applied. In New York, the court of last resort is the Court of Appeals.¹

¹ New York State Unified Court System. [The New York State Courts: An Introductory Guide](#).

UCS COURTS BY TYPE		FUNCTIONS
<i>TRIAL COURTS OF LIMITED JURISDICTION</i>		
In NYC	<i>The Civil Court of the City of New York</i>	decides lawsuits involving claims of up to \$25,000; includes a small claims part and a housing part; also handles other civil matters referred by the Supreme Court
	<i>The Criminal Court of the City of New York</i>	handles misdemeanors and lesser offenses; conducts arraignments and preliminary hearings in felony cases
Outside NYC	<i>District Courts</i> (located in Nassau and Suffolk Counties)	arraign felonies and handle misdemeanors and lesser offenses, as well as civil lawsuits involving claims of up to \$15,000
	<i>City Courts</i>	arraign felonies and handle misdemeanors and lesser offenses, as well as civil lawsuits involving claims of up to \$15,000; some City Courts have small claims and/or housing parts
	<i>Town and Village Courts</i>	handle misdemeanors and lesser offenses, and hear civil lawsuits involving claims of up to \$15,000
<i>TRIAL COURTS OF SUPERIOR JURISDICTION</i>		
<i>The Supreme Court</i> (a statewide court)		hears cases outside the authority of the lower courts, such as civil matters beyond monetary limits of the lower courts' jurisdiction, divorce, separation and annulment proceedings, and criminal prosecutions of felonies
<i>County Courts</i> (located in each county outside NYC)		handle criminal prosecutions of felonies and misdemeanors committed within the county (although most misdemeanor offenses are handled by lower courts); have limited jurisdiction over civil lawsuits, involving claims of up to \$25,000
<i>Family Courts</i> (located in every county of the state)		hear matters involving children and families, including adoption, guardianship, foster care approval and review, juvenile delinquency, family violence, child abuse and neglect, and child support, custody and visitation

<i>Surrogate's Courts</i> (located in every county of the state)	hear cases involving the affairs of the deceased, including the validity of wills and the administration of estates; are also authorized to handle adoptions and guardianships.
<i>The Court of Claims</i> (a statewide court)	has exclusive authority over lawsuits involving monetary claims against the State of New York
THE APPELLATE COURTS	
<i>Intermediate Appellate Courts</i> (jurisdiction by judicial department)	<p>In the 1st Department hear appeals of decisions in cases originating in the New York City Civil and Criminal Courts;</p> <p>In the 2nd Department hear appeals of decisions in cases originating in the New York City Civil and Criminal Courts, District, City, and Town and Village Courts; and</p> <p>County Courts in the 3rd and 4th Departments (although primarily trial courts) hear appeals of decisions in cases originating in the City Courts and Town and Village Courts</p>
<i>Appellate Divisions of the Supreme Court</i> (one in each judicial department)	hear appeals of decisions in civil and criminal cases from the trial courts, as well as civil appeals from the Appellate Terms and County Courts
<i>The Court of Appeals</i> (New York's highest court—decisions made here are final [cannot be appealed further], except that the U.S. Supreme Court may review cases involving questions of federal law or the U.S. Constitution)	hears both civil and criminal cases on appeal from the state's intermediate appellate courts, and in some instances from the state's trial courts; presides over appeals of decision reached by the state Commission on Judicial Conduct; establishes rules governing the admission of attorneys to the bar

2

For extensive information on USC: <http://www.nycourts.gov/home.htm>

For an outline of the structure of the courts: <http://www.nycourts.gov/courts/structure.shtml>

For an outline of the administrative structure of the courts:

<http://www.nycourts.gov/admin/AdminStructure.pdf>

² New York State Unified Court System. The New York State Courts: An Introductory Guide.

THE FAMILY COURT PROCESS³

The Family Court (FC) handles legal matters involving families and children (except for cases regarding divorce, separation and annulment of a marriage, which are heard in the Supreme Court). The Family Court does not detect or investigate and there are no jury trials in FC actions. Judges decide cases that are properly brought before the court based on the information presented by the attorneys and agencies that come before them.

Proceedings in FC are open to the public; however, a judge hearing a case may decide to close the courtroom or exclude particular persons based upon the privacy interest of the parties and/or possible harm to the children. Family Court records are NOT open to the public, though people directly involved in the proceeding can obtain copies of most documents in the case file.

WHO'S WHO IN FAMILY COURT?

<i>Title</i>	<i>Responsibility</i>	<i>Harris-Price Case (The case utilized in the National CASA Training Curriculum 2007)</i>
The Judge - highest level of authority within FC - in charge of the hearing (trial)	- oversees the court proceedings, requests information, and directs attorneys, witnesses and others involved in the case as to how to proceed - listens to witnesses, examines evidence, then decides whether the case has been proven	Albert Romero, family court judge
Petitioner	- person or agency filing the petition (a written request to the court to make a decision)	Child Protective Services (CPS)
Respondent	- person or agency against whom the petition is filed	Kathy Price, mother
Non-Respondent Parent	- biological parent not accused in the instant pleading (pleading before the court) of any abuse or neglect of child involved in court proceeding - has the right to be served with all papers and attend and participate in all proceedings	Jason Harris, Ben's father & Ernie Price, Robert's father, Rose's putative father

³ Most of the following is from the NYS Bar Association publication "The Family Court and You"

<i>Title</i>	<i>Responsibility</i>	<i>Harris-Price Case</i>
Caseworkers - social service agency workers assigned to work with families	- bring case records to court and testify about the family during hearings	Bob Johnson, CPS caseworker
Support Magistrate	- hears support cases (petitions seeking monetary support for a child or spouse) and paternity cases (petitions to declare someone to be a child's father)	
Court Attorney Referee	- hear and issue orders in custody, visitation and foster-care cases	
Family Court Chief Clerk - coordinates everything that goes on in FC, beginning with the filing of the petition	- supervises case intake, makes sure all procedures are properly followed and handles complaints - may prepare court orders for the judge or support magistrate to sign - may sit near the judge or support magistrate - manages all personnel within court and day to day operations (FCA 216 (a))	
Court Assistant or Part⁴ Clerk -sits near the judge or hearing examiner during proceedings	- takes notes about the proceedings, which then become part of the court file - records Universal Case Management System (UCMS) data -- manages the court calendar, handles scheduling and adjournments, sends notices of proceedings, may prepare orders for Judges to sign, ensures court reports are received in a timely fashion	
Court Clerk	-knowledgeable about court process and proceedings - may prepare court orders for the judge or support magistrate to sign - may sit near the judge or support magistrate	
Attorneys - involved in most proceedings in FC (all parties involved in a case are entitled to an attorney)	- assigned counsel are lawyers assigned by the judge or support magistrate if a party cannot afford one (parents are entitled to an attorney of their own; if they cannot afford an attorney, they may request the judge appoint counsel)	

⁴ A court *part* is defined as: (1) a judge and chambers staff or (2) specialty series handling certain types of matters.

<i>Title</i>	<i>Responsibility</i>	<i>Harris-Price Case</i>
Court Attorney -lawyer who works directly for the judge (sometimes referred to as a Law Clerk)	- assists the judge in conducting legal research, writing decisions and conferencing cases to see if the parties and their lawyers can reach an agreement without the need for a trial	
Attorney for the child (previously Law Guardian) - lawyer appointed by the judge as the attorney for the child (<i>See Part 7, Rules of the Chief Judge</i>)	- consults with and advises the child to the extent and in a manner consistent with the child's capacities - in juvenile delinquency (JD) and persons in need of supervision (PINS) proceedings, they vigorously represent the child; in other types of proceedings, they diligently advocate the child's position in the litigation	
Guardian ad litem (GAL)	- act in the place of children or adults mentally or physically impaired from speaking for themselves in court	
Court Reporter	- produces a full legal record of all testimony and statements made during hearings	
Sheriff Deputy in charge of security throughout the FC building (Uniformed Court Officers or Deputies are assigned to every courtroom)	- calls the parties into the hearing room when the judges or hearing examiners are ready to hear a case - provides security as necessary	
Probation Officer -works for the New York Department of Probation	- prepares reports for the judges about the people involved in the cases (the probation officer assigned to the courtroom is called a Court Liaison Officer (CLO))	
Interpreter	- interprets language for parties and witnesses who have difficulty with English, which includes sign language services for the hearing-impaired	

HOW A CASE BEGINS IN FAMILY COURT

I. Filing a Petition

The Family Court Clerk's Office has the necessary forms to start a proceeding⁵ or they can be found at www.nycourts.gov. To begin a case in FC, a petition (a written description of the circumstances that lead to the request for court action) must be filed with the Clerk's Office in the county where the:

- individual filing lives, for at least six months
- subject child lives, or
- alleged JD or PINS act occurred.

A petition can be filed by an attorney or by an individual seeking relief.⁶ For cases involving CASAs, the petitioner (person or agency filing the original petition) is usually the local department of social services (DSS).⁷

Once a petition has been filed with FC, a date to appear in court is given and a copy of the petition and a summons with the return date must be delivered to and "served" on all parties or their attorneys. The judge directs the manner in which the service of the petition will occur. On rare occasions, the petitioner may see the judge the same day the petition is filed if the petition warrants immediate action. At any time during the proceedings, the petitioner may withdraw the petition.

II. The First Appearance⁸

The first appearance in court is an introduction to the case. Few decisions on the grounds of the petition are made that day; rather, a number of organizational things may occur.

At the first appearance, the judge will read the petition and demands for relief to the parties and explain the rights of the parties not represented by counsel.⁹ Children have the right to a lawyer in FC actions involving abuse/neglect, termination of parental rights (TPR) and juvenile delinquency (JD) cases. Attorneys for the child are lawyers appointed by the court and assigned to a child to represent the wishes and interests of that child.

Appointment of an attorney for the child is required in child abuse/neglect proceedings; furthermore, attorneys for the child must, by law, be appointed to represent the child at the earliest occurrence of any of the following:

- emergency removal of the child;
- an application for an order for removal of the child (prior to filing of a petition); or
- a petition alleging abuse or neglect.

⁵ FCA §216(b) requires the Clerk's Office to provide petition forms to any person requesting them.

⁶ There is no financial cost to file a petition in FC.

⁷ Any other person on the court's direction may originate a proceeding under Article 10.

⁸ Family Court is a court of record and all court proceedings must have a stenographer in order to proceed.

⁹ In some cases, if a party cannot afford an attorney, the Judge will have the party interviewed to see if they are eligible for assigned counsel. If there is a conflict, the Judge will appoint an attorney from the assigned counsel list. Most cases involving CASAs will be eligible for assigned counsel.

In cases involving custody, visitation, or adoption, the court may assign an attorney for the child, but is not required to do so. There is no charge to the child or the family for representation by an attorney for the child because they are paid by public funds.

Also, at the first appearance, the judge may issue a summons for other parties involved in the case to appear and, in rare cases, an arrest warrant for a party that is not present. If the actions precipitating the filing of a petition present the likelihood of imminent harm, the court may grant immediate relief, such as a temporary restraining order or an order to remove the child.

In preparation for the next stage in the process, a pre-trial conference may be held.

III. Pre-Trial Conference

Pre-trial conferences are attended by the judge and attorneys and generally held in the judge's chambers; though, there are times when the judge's law clerk will hold the conference. CASAs are occasionally included in these conferences. The types of issues most frequently discussed at pre-trial conferences, which are off the record, include the:

- completion of discovery;
- filing of motions;
- argument or hearing of motions;
- fixing of a date for a fact-finding hearing;
- simplification and limitation of issues;
- amendment of pleadings or bills of particulars;
- admission of facts;
- stipulations as to admissibility of documents;
- completion or modification of financial disclosure;
- possibilities of settlement; and/or
- limitation of the number of expert witnesses.

At the conclusion of a pre-trial conference, the attorneys and the judge may return to the courtroom to summarize the conference for the parties and if a settlement is reached, place it on the record or if no settlement, place the next court date on the record. If a settlement is reached there is no need for a Fact-Finding Hearing and the case may proceed to Disposition.

IV. Fact-Finding Hearing

At this hearing, the judge will decide if the charges in the petition have been proved. A fact-finding hearing may require more than one appearance.

During the fact-finding phase in a child protection case, the petitioner (usually DSS) will present their case to court. The person or agency filing the petition must present enough evidence to prove the facts in the petition. The evidence presented may include hospital and medical records, agency records and reports, photographs and witnesses.

Through their attorney, the respondent (person or agency against whom the petition was filed) is given an opportunity to respond to the allegation. They have the right to cross-examine witnesses and challenge the evidence. The respondent may also present his or her own case.

If the allegations are not proven, the case is dismissed. If the judge decides the charges in the petition are proven to be true, the court schedules a dispositional hearing, which may be held immediately following the fact-finding hearing or at a later time, even on another day. The court may also order an investigation of the child's home and family, along with mental health or other evaluations and reports.

V. Dispositional Hearing

At the Dispositional Hearing, the judge will listen to testimony and review the agencies' reports and recommendations. At its conclusion, the court will enter an Order of Disposition to:

- suspend judgment;
- release the child to the parent(s)/guardian(s) on the conditions that they not commit further abusive or neglectful acts;
- release the child to the parent(s)/guardian(s) with supervision and services provided by DSS;
- provide court-ordered placement of the child (e.g. foster care) while services are provided to the parents and the child, allowing for a possible future return of the child; these services should be stated in the court order
- provide court-ordered placement of a child whose behavior is beyond the control of those responsible for his or her care; and/or

In cases of severe or repeated abuse, neglect or abandonment, the court can terminate, or end, parental rights at the dispositional hearing. With the termination of parental rights (TPR), the parent will have no legal attachment to the child. This would free the child for adoption by another family, but only if both parents' rights have been terminated or have been surrendered.

VI. The Order

The Judge's decision, known as an order, is served on all parties and their attorneys and finds Best Interests and Reasonable Efforts. If a party is not satisfied with the court's decision, they have the right to appeal to a higher court.

Family Court decisions are reviewed by the Appellate Division of the Supreme Court, based on papers and the arguments made by the lawyers on appeal. The rights to appeal differ in JD, PINS and neglect/abuse cases.

GUIDING LEGISLATION:

NYS COMPLIANCE WITH THE ADOPTION AND SAFE FAMILIES ACT

The Adoption and Safe Families Act (ASFA) is a federal legislation that was passed in 1997 and was enacted in New York State February 11, 1999. Revisions to that law were included in Permanency legislation passed in 2005 and 2006.

ASFA regulations are applicable to all pending Family Court cases (even those commenced prior to February 11, 1999). ASFA is designed to:

- expedite the amount of time children are placed out of their homes/not in permanent settings; and
- achieve permanence for children placed out of their homes pursuant to Child Protective Removals, PINS or JDs.

Moreover, ASFA:

- introduced the tenants of permanency planning and implemented the requirements of permanency hearings and permanency goals for all children placed out of their homes; and
- increased the role of the judge as an overseer of the work of the social service agency.

NEW YORK STATE PERMANENCY HEARINGS¹⁰

Timing for Permanency Hearings: Child Protective Cases

The date for an initial permanency hearing must be set at the time of removal. If at the end of a permanency hearing, the child remains in an out of home placement, another permanency hearing must be set. This process allows the court to retain jurisdiction over the family at all times when a child is placed outside his or her home.

A permanency hearing must be held:

- within eight months after removal from the home and, when the child remains in an out of home placement, every six months after completion of the prior permanency hearing;
- within 30 days of a court finding that reasonable efforts to reunify a family are not required; and
- within 30 days of a child becoming freed for adoption.

All permanency hearings must be completed within 30 days of their commencement.

¹⁰ FCA Article 10-A; SSL 358-a; SSL 392; FCA 352.2; FCA 355.5; FCA 754; FCA 756-a; FCA 1039-b; FCA 1052

Timing for Permanency Hearings: JD and PINS Cases

For placement of juvenile delinquents (JD) and persons in need of supervision (PINS), the date of foster care entry is defined as the earlier of 60 days after child was removed from home (FCA 355.5; FCA 756) or a finding of JD or PINS. For JDs and PINS, a permanency hearing shall be held no later than 12 months after the date the child entered foster care.

PERMANENCY PLANS

At the permanency hearing, the court shall determine whether to approve or modify the permanency plan prepared by the social services official. The permanency plan shall include details of how the agency will effectuate the permanency goal. This information is presented to the court and the parties in the form of a permanency report. The local Department of Social Services also must demonstrate that the agency has made reasonable efforts to reunify the family.

If removed from their home, a child must have one of the following permanency goals:

- return to parent;
- adoption with DSS filing a petition for termination of parental rights (TPR);
- referred for legal guardianship;
- placed permanently with a fit and willing relative; or
- placed in another planned permanent living arrangement with a significant connection to an adult resource (APPLA +)¹¹

In the case of a child 14 or older, the court shall direct services needed to assist the child to effectuate the goal with making the transition from foster care to independent living. The skills are generally referred to as Independent Living skills.

A permanency plan should also include a schedule for visitation and services for the child, including the: child's education, child's health (physical, dental and mental health), child's medications and child's current placement information, as well as provide the parents' status in regard to services (Family Court Act (FCA) §1089 (c)).

CONCURRENT PLANNING is the process of identifying a secondary goal should the designated permanency goal be unsuccessful. Concurrent planning is the responsibility of the caseworker from the time a child is removed from his or her home.¹²

¹¹ This would occur if a DSS has documented a compelling reason for determining it would not be in the best interest of the child to return home, be referred for TPR and placed for adoption, placed with a fit and willing relative or placed with a legal guardian.

¹² The court, as well as CASAs, may inquire about the concurrent plan, which has to come from a permissible permanency goal.

THE DEFINITIONS OF ABUSE AND MALTREATMENT

Definitions of Abuse and Maltreatment

The following definitions of “abuse” and “maltreatment” are pulled directly from a New York State Office of Children and Family Services (OCFS) resource titled “Publication 1159: Summary Guide for Mandated Reporters in New York State.” According to this document:

Abuse encompasses the most serious harms committed against children. An abused child is one whose parent or other person legally responsible for his or her care:

- inflicts serious physical injury upon the child,
- creates a substantial risk of serious physical injury, or
- commits a sex offense against the child.

Abuse also includes situations where a parent or other person legally responsible knowingly allows someone else to inflict such harm on a child.

The term **maltreatment, which includes neglect:**

means that a child's physical, mental or emotional condition has been impaired, or placed in imminent danger of impairment, by the failure of the child's parent or other person legally responsible to exercise a minimum degree of care by:

- failing to provide sufficient food, clothing, shelter, education; or
- failing to provide proper supervision, guardianship, or medical care (refers to all medical issues, including dental, optometric, or surgical care); or
- inflicting excessive corporal punishment, abandoning the child, or misusing alcohol or other drugs to the extent that the child was placed in imminent danger.

It should be noted “poverty or other financial inability to provide the above is not maltreatment” [and] “the definitions of abuse and maltreatment [presented here] are somewhat different for children in residential facilities operated or licensed by state agencies.”¹³

Mandated Reporting

Pursuant to New York Social Services Law (SSL) §413: Certain professionals are required by law to report suspected child abuse or maltreatment to the New York State Central Register (SCR) of Child Abuse and Maltreatment. The law also assigns civil and criminal liability to those professionals who do not comply with their mandated reporter responsibilities.¹⁴

A complete list of those who are obligated to report suspected instances of child abuse and maltreatment can be obtained from New York State’s OCFS. Moreover, OCFS is a resource

¹³ NYS OCFS website: <http://ocfs.state.ny.us/main/publications/Pub1159text.asp>.

¹⁴ NYS OCFS website: <http://ocfs.state.ny.us/main/publications/Pub1159text.asp>.

for finding information about the responsibilities of mandated reporters and the New York State Child Protective Services System (CPS), as well as further information about child abuse and maltreatment: <http://www.ocfs.state.ny.us>.

NOTE: By the definition of their role and the nature of their work, CASAs are *not* mandated reporters. CASA volunteers who may have professions/roles that are enumerated in SSL 413, where mandated reporters are listed, still would not be mandated reporters while carrying out their CASA duties. (If there are questions, consult the authority within your discipline.) Circumstances may arise that a call is warranted to the hotline by CASA. However, the information obtained by the volunteer must be discussed with the CASA Program Supervisor. The determination to place a call will be made together.

In general: As soon as mandated reporters suspect abuse or maltreatment, they must report their concerns by telephone to SCR, which is open 24 hours a day, seven days a week, to receive calls. The timeliness of a call is vital to the timeliness of intervention by local CPS. Mandated reporters are not required to notify the parents or other persons legally responsible either before or after they call SCR. In fact, in some cases, alerting the parent may hinder local CPS investigations and adversely affect its ability to assess the safety of the children.

The telephone numbers are:

Mandated Reporter (800) 635-1522 and Public Hotline (800) 342-3720
Monroe County runs its own child abuse hotline that may be used instead of the SCR: **(585) 461-5690**

Oral reports to any of the hotlines must be followed within 48 hours by a written report on *Form LDSS-2221A* to the local CPS. A copy of this mandated reporter form can be obtained by contacting your local CPS office or by accessing OCFS website at www.ocfs.state.ny.us and clicking on the "Forms" and "LDSS-2221A" links.¹⁵

¹⁵ NYS OCFS website: <http://ocfs.state.ny.us/main/publications/Pub1159text.asp>.

TYPES OF PETITIONS

The highlighted petitions (in bold type) reflect those cases eligible for CASA assignment, as they involve “cases regarding children in or at risk of out of home placement.”¹⁶

- A** - **Adoption**
- AS** - **Adoption Surrender**
- B** - **Termination of Parental Rights**
- C - Conciliation
- D - Juvenile Delinquency
- E - Juvenile Delinquency-Felony
- F - Support
- G** - **Guardianship**
- H - Handicapped
- I - Informal
- J - Public Health
- K** - **Foster Care Review**
- L** - **Approval of Foster Care Placement/Voluntary Placement**
- M - Consent to Marry
- NA** - **Abuse**
- NN** - **Neglect**
- O - Family Offense /Domestic Violence
- P** - **Paternity (NOTE: CASA may be involved as the paternity relates to an abuse and neglect case, but not assigned specifically on P)**
- R - Referred from Supreme Court (except Delinquency)
- S - Person(s) in Need of Supervision (PINS)
- U - Support
- V - Custody and Visitation
- W - Material Witness
- Z - Miscellaneous

Brief Summary of Petitions on which CASA may be assigned	
“A” – Adoption (Domestic Relations Law (DRL) Article 7) (Concurrent with Surrogate’s Court)	- petitioner seeks to have the court give permanent legal rights and responsibilities to people, other than the child's birth parents - adoptions are done in Family Court and Surrogate's Court and should be filed in the Court where jurisdiction exists - there are two types of adoptions: (1) private placement and (2) agency adoptions
“AS” – Adoption Surrender (Social Services Law (SSL) § 383-c(5))	- petition filed allowing a parent to relinquish their parental rights to an authorized agency - the document is called a “judicial surrender” and may be conditional (i.e., have terms of contact, communication or updates or designate a certified foster parent as the adoptive parent)

¹⁶ Section 44.1 of the Rules of the Chief Judge, State of New York.

<p>“B” – Termination of Parental Rights (TPR) (SSL §384 – (b), Family Court Act (FCA) Article 6)</p>	<ul style="list-style-type: none"> - petitions to terminate parental rights are usually brought by an authorized agency, which has responsibility for a child in foster care, alleging permanent neglect, abandonment or severe abuse - the court may direct a Attorney for the child (ATTORNEY FOR THE CHILD) to file a termination petition and the foster parent can file a petition - a lawyer (ATTORNEY FOR THE CHILD) is assigned to the child and a lawyer may be assigned to the (biological) parent/s if he or she cannot afford one - the standard of evidence needed = clear and convincing evidence
<p>“D” – Juvenile Delinquency (up to age 16 at time of offense) OR “E” – Designated Felony (FCA Article 3)</p>	<ul style="list-style-type: none"> - a juvenile delinquent is a child at least seven years of age and under the age of 16 who commits an act that if committed by an adult would be a crime - a minor who commits certain serious acts is called a "juvenile offender" and may be treated as an adult in a Criminal Court - these cases may be heard by the Supreme or County Court, or transferred to the Family Court - these cases result in CASA assignment generally when there is a concurrent abuse and neglect case
<p>“K” – Foster Care Review / Permanency Hearing (Formerly SSL§392, repealed; FCA Article10-A) <u>No new K dockets are given</u></p>	<ul style="list-style-type: none"> - previously, when a child was in foster care for (12) continuous months, the Department of Social Services (DSS) filed a petition for a foster care review - with the passage of the Permanency Law, all children in care are subject to permanency hearings at eight months after removal from the home, and every six months thereafter - children who were in care prior to 12/05 may still be tracked under a K docket
<p>“L” – Voluntary Placement / Permanency Review (SSL 358-a)</p>	<ul style="list-style-type: none"> - sometimes a parent or guardian is unable to care for a child and voluntarily gives temporary custody of the child to a social services agency - an agreement is drawn up between the parent and DSS, which specifies placing a child in foster care for a particular time or upon the happening of a specific event - the agreement transfers care and custody of the child to an agency and the child is then subject to permanency hearings initially at eight months after removal from the home and every six months thereafter

<p>“N” – Child Protective Proceedings due to Neglect or Abuse (FCA Article 10 Section 1012 Definitions)</p>	<ul style="list-style-type: none"> - a child abuse (NA) or neglect (NN) petition charges that the parent or guardian of a child has harmed or failed to protect, properly care for, or provide needed medical care or schooling for the child; it may be alleged that the child has been physically, sexually or emotionally abused by the parent or guardian - <i>emergency removal</i>: if a child appears to be at “imminent risk” while with the parent or guardian and the court is not open, the child may be taken away from his or her home (before a child abuse or neglect petition is filed in the Family Court and before a judge hears the case). In such a case, the police or officials from a child protective agency may take the child from the home before going through the court, or a hospital may refuse to release a child to a parent if it believes such a release would place the child in danger. A Petition in court to approve the removal must be filed on the next court day. - the standard of proof required = the preponderance of evidence standard (51\49 or more likely than not)
<p>“O” – Family Offense/Domestic Violence (Article 8)</p>	<ul style="list-style-type: none"> - filed by someone who claims that a family member committed a specific crime or offense against them or someone else on their behalf - the purpose of a family offense proceeding in Family Court is to obtain protection. Penalty for a violation of an order of protection may include incarceration - family members include persons related by blood or marriage, formerly married persons, and unrelated persons who have a child in common - these cases result in CASA assignment generally when there is a concurrent abuse and neglect case
<p>“S” – Persons in Need of Supervision (PINS) (FCA Article 7 Section 712)</p>	<ul style="list-style-type: none"> - effective fall 2002, a PINS is a person under the age of 18 who does any or all of the following: <ul style="list-style-type: none"> ▪ fails to attend school (this will still be 16); ▪ behaves in a way that is out of control; ▪ often disobeys parents, guardians or other authorities; ▪ is in possession of marijuana; or ▪ runs away or stays out late - <i>diversion process</i> (FCA Section 735): before a PINS petition is filed in court, the child and his or her family must meet with a probation officer or a representative of another social service agency, who attempts to resolve the problems and keep the case out of court. This process can last for up to 90 days. During this time, the Probation Officer may recommend referrals to various community or governmental programs in order to help the child - these cases result in CASA assignment generally when there is a concurrent abuse and neglect case

SPECIALTY COURTS

Specialty (or Problem-Solving) Courts address the issues that bring litigants into the justice system and seek to implement new approaches, including increased judicial oversight and the incorporation of community resources. Specialty Courts operate under the office of the Deputy Chief Administrative Judge for Court Operations and Planning, whose mandate is to:

- improve the functioning of the court system through strategic planning;
- implement operational restructuring; and,
- establish and oversee the problem-solving courts and develop and refine the policies that govern them.¹⁷

Of the Specialty Courts, CASAs would most likely be involved with Integrated Domestic Violence (IDV) Courts and Family Treatment Courts (FTC) because of the abuse and/or neglect components of proceedings in these courts. Moreover, CASAs would not be assigned to Specialty Courts dealing exclusively with criminal proceedings. According to UCS Court Rules §44.1, cases appropriate to CASA assignment involve “children in or at risk of placement in a child protective or foster care proceeding.”

TYPES OF SPECIALTY COURTS¹⁸

Specialty Court	Function
<i>Integrated Domestic Violence (IDV) Courts</i>	serve families by allowing a single judge to hear multiple case types – criminal, family and matrimonial – that relate to one family where the underlying issue is domestic violence
<i>Family Treatment Courts (FTC)</i>	designed to service individuals who have a neglect case against them with alcohol or substance abuse allegations help respondents and their children get back together and stay together
<i>Domestic Violence (DV) Courts</i>	adjudicate criminal offenses involving intimate partners facilitate access to needed services, ensure intensive judicial monitoring and promote increased coordination between the court, community stakeholders and victim services providers

¹⁷ NYS UCS Website: http://www.courts.state.ny.us/courts/problem_solving/

¹⁸ Ibid.

<i>Drug Treatment Courts</i>	<p>provide appropriate non-violent addicted offenders with the option of entering voluntarily into court-supervised treatment</p> <p>involve dramatic court intervention in cooperation with an entire team, including: the defense, prosecution, treatment, education, and law enforcement</p>
<i>Juvenile Treatment Courts</i>	<p>handle cases concerning non-violent substance abusing youth with JD or PINS cases pending in family court</p> <p>utilize a strength based approach and work to reduce drug use through therapeutic interventions and intense judicial supervision of the juveniles and their families</p>
<i>Mental Health Courts</i>	<p>handle criminal cases involving defendants with mental illness and aim to provide offenders with mental illness the support and structure needed to avoid further criminal behavior</p> <p>facilitate access to services, provide intensive judicial monitoring and promote collaboration between the court, community stakeholders, local mental health departments, mental health service providers and social service providers</p>
<i>Sex Offense Courts</i>	<p>seek to enhance public safety by preventing further victimization through early intervention, post-disposition monitoring, consistency and accountability</p> <p>promote justice by providing a comprehensive approach to case resolution, increasing sex offender accountability, enhancing community safety while protecting the rights of defendants</p>
<i>Youthful Offender Domestic Violence Courts (YODVC)</i>	<p>operate on the model, and are guided by the mission and principles, of DV Courts</p> <p>are created in jurisdictions with high caseloads to handle exclusively those domestic violence cases involving defendants aged (16) through (19)</p>

<p><i>Community Courts</i> house an array of non-traditional programs, such as community mediation, job training and placement, drug treatment and homeless outreach, all of which are rigorously monitored by the court in order to address problems that often underlie individuals' criminal behavior</p>	<p>combine conventional punishments with alternative sanctions and on-site treatment and training in an effort to break the "revolving door" cycle of crime</p> <p>are a collaboration among traditionally separate entities, including citizens, criminal justice agencies, businesses, local civic organizations, government entities, and social service providers, which results in neighborhood-focused problem solving</p> <p>services specifically targeted for youth include job readiness, substance abuse and HIV prevention, and tutoring and mentor programs</p>
--	--

For more on Specialty/Problem-Solving Courts:
http://www.courts.state.ny.us/courts/problem_solving/

BEST PRACTICE PARTS AND MODEL COURTS

The term “best practice parts” refers to the courtroom practice of a Family Court Judge, his staff and/or a Court Attorney Referee that employs procedures and practices toward changing behaviors and achieving better outcomes in child welfare cases. Best practice parts are usually guided in their efforts by the National Council of Juvenile and Family Court Judges’ (NCJFCJ) Resource Guidelines and are frequently the result of collaborative design among the key child welfare stakeholders in that jurisdiction.¹⁹

Hallmarks of Best Practices:

- Parent and family engagement in the process
- Increased judicial oversight
- Use of CASAs
- Case conferencing techniques pre-disposition
- Post dispositional reviews
- Timeliness of judicial hearings
- Use of alternative dispute resolution
- Time-certain calendaring
- Children attending and having a voice in court proceedings
- Detailed court orders ensuring Title IV-E compliance
- Increased communication and collaboration among community partners

EXAMPLES OF BEST PRACTICES

Case Conferencing Techniques:

- Preliminary Conferences are held soon after arraignment to:
 - ✓ engage families in services identified, as well as court process;
 - ✓ identify “necessary services” for both family and children;
 - ✓ identify family resources or special persons involved in the child’s life;
 - ✓ discuss visitation with family; and
 - ✓ ensure that non-respondent parent is served and fathers’ issues are addressed.
- Post Dispositional Reviews may include all persons interested in attending and being heard to:
 - ✓ review progress on service plan and ASFA (15/22 months);
 - ✓ discuss parental intention;
 - ✓ review child’s placement and services, including education, physical and mental health;
 - ✓ revisit visitation; and
 - ✓ address any other issues that have arisen

¹⁹ Key child stakeholders include: court officials, child welfare officials, parents, attorneys, attorneys for the child, CASAs, mediation programs, mental health advocates, school district representatives, education advocates, substance abuse providers, foster parent representatives, former foster children and Native American tribal representatives.

Presence of Youth in Court: Studies show young people want to be heard and want to see who is making decision about their lives. Youth provide significant information that will impact the orders generated. (See: Khoury, Andrea. *Seen and Heard: Involving Children in Dependency Court*. ABA Child Law Practice, December 2006)

Use of Alternative Dispute Resolution (ADR): Inspired by national and local experiences in the use of mediation in child welfare matters, the NYS Unified Court System (UCS) and the NYS Office of Children and Family Services (OCFS) came together in 2002 to develop a process for implementing a child permanency mediation pilot project in this state.

Mediation can be used at any stage of a child abuse or neglect proceeding to provide biological or foster parents, as well child-protective, legal and social service professionals, an opportunity to come to a permanent outcome that is in the child's best interests. Mediation can help overcome impasses that delay the timely resolution of these cases. Like other complex matters, child permanency cases can require several sessions and extensive preliminary work before mediation begins.

Best Practices Results

- Permanency for children is achieved more quickly, with their best interest being held paramount;
- Service plans are tailored to the needs of the families;
- Reasonable efforts determinations are more specific;
- Compliance with federal mandates is facilitated; and
- Judicial economy is maximized.

THE CHILD WELFARE COURT IMPROVEMENT PROJECT

New York State's Child Welfare Court Improvement Project (CWCIP) began in 1994 and was administered from its inception through Fall 2006 by the Permanent Judicial Commission on Justice for Children. During 2006, federal funding for the CWCIP expanded to support additional training and data collection and analysis efforts prompting the Commission to recommend institutionalization of the operations of the CWCIP into the Office of Court Administration. The Child Welfare Court Improvement Project was established within the Division of Court Operations and the integrated Office of Alternative Dispute Resolution and Court Improvement Programs was created. The project continues to operate in partnership with the Commission.

The Project is supported by a federal grant from the Administration for Children and Families of the U.S. Department of Health and Human Services. Grants are awarded to states to support implementation of reforms in child welfare court practices.

In recognition of the integral role courts play in charting the course for children who are the subject of abuse, neglect, foster care, termination of parental rights and adoption proceedings, CWCIP provides resources and technical assistance to enhance and promote innovation in court operations and practices. Major areas of focus include:

- Supporting judicial leadership
- Collaborating with interdependent systems
- Educating the bench, bar and court managers
- Enhancing decision making with data
- Promoting the use of alternative dispute resolution
- Resourcing Court Appointed Special Advocates programs

For more information on Court Improvement Programs and Child Welfare Court Improvement Programs at the national level, go:

<http://www.childwelfare.gov/systemwide/courts/reform/cip.cfm> and
<http://www.abanet.org/child/relji/courtimp.html>

For more information on New York State's Child Welfare Court Improvement Program, go to: <http://www.courts.state.ny.us/ip/cwcip/index.shtml> The site includes publications, training materials and announcements, and information about current initiatives.