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COURTROOM PRACTICE IN CHILD WELFARE CASES

COURT PROCESS

Temporary Custody Hearing



Advising



Adjudication



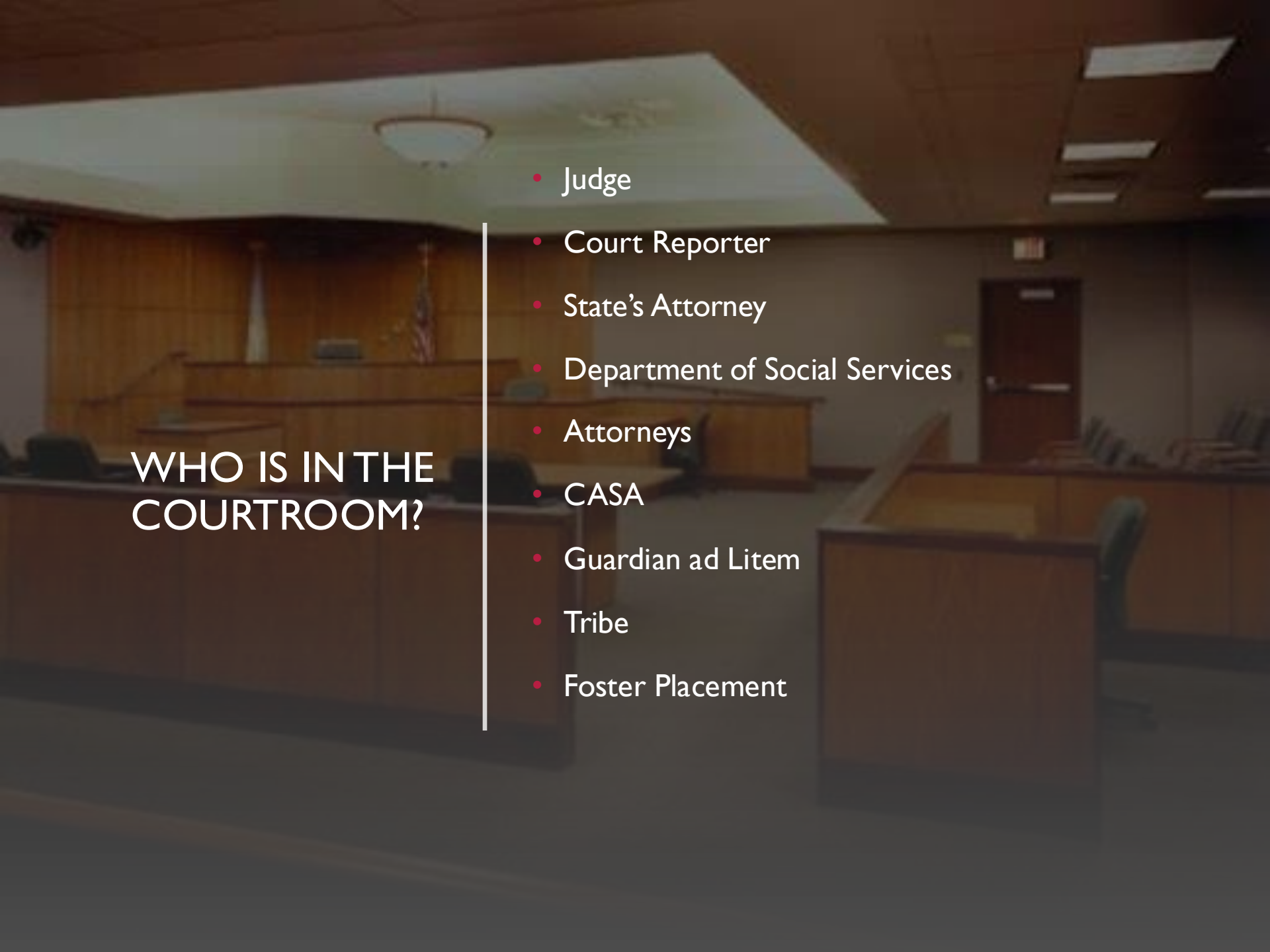
Review Hearings



Dispositional Hearing

ABUSE AND NEGLECT
CASES ARE HELD IN A
CLOSED COURTROOM



A photograph of a courtroom interior. The room features wood-paneled walls and a high ceiling with recessed lighting. In the background, there is a judge's bench and a witness stand. The foreground shows a large wooden desk or counter. The overall atmosphere is formal and professional.

WHO IS IN THE COURTROOM?

- Judge
- Court Reporter
- State's Attorney
- Department of Social Services
- Attorneys
- CASA
- Guardian ad Litem
- Tribe
- Foster Placement

WHY ARE
THERE SO
MANY
LAWYERS?







CHILD'S ATTORNEY

S.D.C.L. § 26-8A-18

The attorney for the child shall represent the child's best interests and may not be the attorney for any other party involved in the judicial proceedings.







GUARDIAN AD LITEM

A person (usually an attorney) appointed by the court to protect the interests of an incompetent party or minor child. A person appointed by the court to act in the best interests of an incompetent adult or minor child.

ICWA APPLIES IF THE CHILD IS ELIGIBLE FOR ENROLLMENT IN A NATIVE AMERICAN TRIBE.



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TEMPORARY CUSTODY HEARING



SDCL § 26-7A-30.

THE COURT SHALL ADVISE THE CHILD AND THE CHILD'S PARENTS, GUARDIAN, OR CUSTODIAN INVOLVED IN ANY ACTION OR PROCEEDINGS UNDER THIS CHAPTER OR CHAPTER 26-8A, 26-8B, OR 26-8C OF THEIR CONSTITUTIONAL AND STATUTORY RIGHTS, INCLUDING THE RIGHT TO BE REPRESENTED BY AN ATTORNEY, AT THE FIRST APPEARANCE OF THE PARTIES BEFORE THE COURT. THE COURT SHALL ALSO ADVISE THEM OF THE RIGHT OF THE PARTIES TO FILE, AT THE CONCLUSION OF THE PROCEEDINGS, A MOTION FOR A NEW HEARING AND, IF THE MOTION IS DENIED, THE RIGHT TO APPEAL ACCORDING TO THE RULES OF APPELLATE PROCEDURE GOVERNING CIVIL ACTIONS.

ADVISING



ADJUDICATION

S.D.C.L. § 26-8A-2

ABUSED OR NEGLECTED CHILD.

In this chapter and chapter 26-7A, the term, abused or neglected child, means a child:

- (1) Whose parent, guardian, or custodian has abandoned the child or has subjected the child to mistreatment or abuse;
- (2) Who lacks proper parental care through the actions or omissions of the child's parent, guardian, or custodian;
- (3) Whose environment is injurious to the child's welfare;
- (4) Whose parent, guardian, or custodian fails or refuses to provide proper or necessary subsistence, supervision, education, medical care, or any other care necessary for the child's health, guidance, or well-being;
- (5) Who is homeless, without proper care, or not domiciled with the child's parent, guardian, or custodian through no fault of the child's parent, guardian, or custodian;
- (6) Who is threatened with substantial harm;
- (7) Who has sustained emotional harm or mental injury as indicated by an injury to the child's intellectual or psychological capacity evidenced by an observable and substantial impairment in the child's ability to function within the child's normal range of performance and behavior, with due regard to the child's culture;
- (8) Who is subject to sexual abuse, sexual molestation, or sexual exploitation as defined in § 22-22-24.3, by the child's parent, guardian, custodian, or any other person responsible for the child's care;
- (9) Who was subject to prenatal exposure to abusive use of alcohol, marijuana, or any controlled drug or substance not lawfully prescribed by a practitioner as authorized by chapters 22-42 and 34-20B; or
- (10) Whose parent, guardian, or custodian knowingly exposes the child to an environment that is being used for the manufacture, use, or distribution of methamphetamines or any other unlawfully manufactured controlled drug or substance.

REVIEW HEARING



S.D.C.L. § 26-8A-26

TERMINATION OF PARENTAL RIGHTS

DISPOSITIONAL TRIAL

If an adjudicated, abused, or neglected child whose parental rights have not been terminated has been in the custody of the Department of Social Services and it appears at a dispositional or review hearing that all reasonable efforts have been made to rehabilitate the family, that the conditions which led to the removal of the child still exist, and there is little likelihood that those conditions will be remedied so the child can be returned to the custody of the child's parents, the court shall affirmatively find that good cause exists for termination of the parental rights of the child's parents and the court shall enter an order terminating parental rights.

APPEAL



S.D.C.L. § 26-8A-28

Notice of order or final decree--Service--Appeal.

Notice of entry of order of adjudication or final decree of disposition issued by the court in any action involving an abused or neglected child shall be served on the child's attorney and the child's guardian ad litem or special advocate, if any, and on all respondent parents and other respondent parties in any manner authorized by the rules of civil procedure. The notice of entry may be served by publication in the same manner as service of the summons in the action as provided in § 26-7A-48. If the notice of entry is served by publication, the service is completed five days after the date of publication. The time for appeal commences on the day following the date of completed service of the notice of entry regardless of the manner in which the notice of entry is served.

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