

National College of
Juvenile and Family Law



Glossary of
Selected
Legal Terms
for
Juvenile Justice
Personnel

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Foreword

Social and legal systems are constantly evolving. Associated with this process is a new and changing terminology not found in our daily conversation. This situation is nowhere more true than in the juvenile justice system which, in many instances, has a unique vocabulary of its own. Meanwhile, it becomes increasingly apparent that all of us who have a role in the juvenile justice system — be it judge, social worker, guardian, probation officer — must be well-versed in the language of the juvenile courts in order to protect and adequately represent children.

The National Council of Juvenile and Family Court Judges is pleased to offer the *Glossary of Selected Legal Terms for Juvenile Justice Personnel* as an acknowledgement of the diversity we see in the many dedicated professionals involved in our juvenile and family courts, and as a contribution to ensure each voice is properly heard. The *Glossary* is not intended to be all-inclusive. The terms and phrases provided, however, are among those most frequently encountered. We sincerely hope it will be useful to you both in your studies at the National College of Juvenile and Family Law and in your professional practice.

Cordially,



Louis W. McHardy, Dean
Executive Director
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**GLOSSARY OF SELECTED LEGAL TERMS
FOR
JUVENILE JUSTICE PERSONNEL**

ABANDONMENT: A parent's or custodian's act of leaving a child without adequate care, supervision, support or parental contact for an excessive period of time; an express or implied intention to sever the parent-child relationship and avoid the obligations arising from the relationship. Also, the desertion of one spouse by the other with intent to terminate the marriage relationship. In a number of jurisdictions, the term "abandonment case" is used to refer to a suit to terminate parental rights.

ADJUDICATION: The process of rendering a judicial decision as to whether the facts alleged in a petition or other pleading are true. An adjudicatory hearing is that court proceeding in which it is determined whether the allegations of the petition are supported by legally-admissible evidence; also called a "Jurisdictional" or an "Evidentiary" hearing.

ADMISSIBLE EVIDENCE: Evidence which can legally and properly be used in court.

ADMISSION: 1) A statement tending to establish the guilt of the person making the statement. 2) The transfer of a minor's physical custody to a detention or shelter facility.

AFFIDAVIT: A written statement of facts signed under penalty of perjury, often before a court clerk or notary public who administers the oath to the signing party, who is called the affiant or declarant. Affidavits are routinely required for the procurement of warrants and are used in some jurisdictions to initiate juvenile court proceedings. They may be admitted into evidence.

ALLEGATION: A charge or claim of fact set forth in a petition or other pleading, which is proven true or false at an adjudicatory hearing.

ANNUAL REVIEW: Yearly judicial review, usually in dependency cases, to determine whether the child requires continued court supervision or placement. Increasingly required by state laws; but also often set as policy by local court rule. Sometimes reviews are required at other than yearly intervals.

APPEAL: Complaint to a higher court urging that it overturn the decision of a lower court. Appellate (higher) courts normally review questions of law on appeal, not determinations of fact. The review is conducted upon the record of the lower tribunal's proceedings. Sometimes the term appeal is used in a technical sense to refer to upper-court review which is undertaken as a matter of right, as opposed to review granted on a discretionary basis (see CERTIORARI). More commonly, however, the term refers to any upper-court review.

APPELLANT: The party who initiates an appeal.

APPELLEE: The party against whom an appeal is taken; also called the respondent.

BATTERED CHILD SYNDROME (B.C.S.): Physical condition of a child indicating that external or internal injuries result from acts committed by a parent or custodian. Also termed Parent Infant Trauma Syndrome (P.I.T.S.).

BURDEN OF PROOF: The duty to establish a claim or allegation by admissible and credible evidence at the time of hearing. This is usually the duty of the state; it is up to the state to prove its case with respect to a minor or parent, and it is not the minor's or parents' duty to explain or disprove unproven allegations.

CERTIFICATION: Generally used to refer to the process of transferring a minor's case from the juvenile court to the adult court for trial. However, the term has widely varying meanings, and local state laws must be consulted for the particular meaning in that state.

CERTIORARI: A writ issued by an appellate court accepting a lowercourt decision for review. Usually used to refer to review that is not required, but granted as a matter of judicial discretion.

CHILD ABUSE: Traditionally, any physical mistreatment of a child, as opposed to child neglect or negligent care. However, the term is increasingly used to cover any "physical or mental injury, sexual abuse, negligent treatment or maltreatment of a child . . . by a person who is responsible for the child's welfare under circumstances which indicate that the child's health or welfare is harmed or threatened thereby," and is so defined in the federal Child Abuse Prevention and Treatment Act (Pub. Law 93-24, 1974).

CHILD NEGLECT: Failure by a parent or custodian to render appropriate care to a child; an act of omission by the person legally responsible for a child's care which threatens the child's well-being. Failure to provide a child with suitable food, shelter, clothing, hygiene, medical care or parental supervision.

COMMON LAW: Law developed as the result of judicial decisions rather than by legislative enactments (see STATUTE).

COMPLAINT: The initiating pleading in a criminal or civil case, filed by the moving party and setting out the cause of action.

COMPETENCY: In the law of evidence, a witness's ability to observe, recall and recount under oath what happened.

CUSTODY: The right to or responsibility for a child's care and control, carrying with it the duty of providing food, shelter, medical care, education and discipline.

DELINQUENCY: The commission of an illegal act by a juvenile. Increasingly used to refer only to those acts which would be

crimes if committed by an adult, but state laws vary in their definitions.

DEPENDENCY: Properly speaking, a situation where a child is dependent upon another for financial support, but widely used to describe child neglect or child abuse cases. Though the term is something of a misnomer when thus applied, it is so used in the law of a number of states.

DETENTION: The temporary confinement of a minor by a public officer pursuant to law.

DETENTION HEARING: A judicial hearing, usually held after the filing of a petition, to determine the interim custody of a minor pending an adjudication of the petition.

DISPOSITION: The order of a juvenile court determining what is to be done with a minor already adjudged to be within the court's jurisdiction (at an adjudicatory hearing). Analogous to the sentence in a criminal case.

DIVERSION: Procedures for handling relatively minor juvenile problems informally, without referral to the juvenile court.

DUE PROCESS: The constitutionally-guaranteed right of persons to be treated by the law with fundamental fairness. In juvenile delinquency proceedings, these include the right to adequate notice in advance of the hearing, the right to counsel, the right to confront and cross-examine witnesses, the right to refuse to give self-incriminating testimony, and the right to have allegations of conduct that would be criminal if committed by an adult proven beyond a reasonable doubt.

EQUITY: Historically, a system of remedial jurisprudence which grew up separate and distinct from the common law and was not bound by its writs and precedents, so that it could accomplish just relief where the common law could not. The legal system's exercise of jurisdiction over families and children is founded on principles of equity.

EVIDENCE: Generally, any sort of proof put forth during a trial for the purpose of influencing the judgment.

Circumstantial Evidence: Evidence of circumstances from which another fact may be inferred. For example, proof that a minor owned a pair of channel-lock pliers may connect the minor to a burglary in which such pliers were used to gain entry.

Direct Evidence: First-hand evidence, usually of a witness who saw an act committed. For example, testimony of a witness that she observed a minor working at a door-knob with what appeared to be a pair of pliers would be direct evidence.

Hearsay Evidence: Second-hand evidence, generally consisting of a witness's testimony that he heard someone say something. Though there are numerous exceptions to the rule — often expressly provided by statute, as in the case of a number of state

juvenile court acts allowing hearsay evidence in social studies presented to the court — hearsay evidence is generally inadmissible because the person making the statement is not available for cross-examination, and because it is inherently unreliable.

Opinion Evidence: Witnesses are normally required to confine their testimony to statements of fact and are not allowed to give their opinions in court. However, if a witness is qualified as an expert in a particular field, he or she will be allowed to state his or her opinion as an expert based on certain facts.

Physical Evidence: Any tangible piece of proof (document, X-ray, weapon, etc.). Also called "Real" evidence.

EXPUNGEMENT: The destruction or sealing of records of minors or adults, after the passage of a specified period of time or when the person reaches a specified age and has not committed another offense. Sometimes provided for by statute and sometimes ordered by the court under its inherent powers. See also SEALING.

EXTRAORDINARY WRIT: A writ, often issued by an appellate court, making available remedies not regularly within the powers of lower courts. They include writs of habeas corpus, mandamus, prohibition and quo warranto. Sometimes called "Prerogative writs."

FAILURE TO THRIVE SYNDROME (F.T.T.): A serious medical condition in which a child's height, weight and motor development are significantly below average for his or her age. Usually, though not invariably, found in children less than one year old. The syndrome may have an organic cause, or it may be caused by severe emotional or physical neglect.

FELONY: A serious crime, generally punishable by imprisonment in a state or federal penitentiary.

FIFTH AMENDMENT: The Fifth Amendment to the U.S. Constitution, guaranteeing that a person cannot be compelled to present self-incriminating testimony in a criminal or juvenile proceeding.

FITNESS HEARING: A hearing held in juvenile court to determine the fitness of a minor for retention in juvenile court, and the minor's amenability to juvenile court resources. Must be held before any evidence is heard on the petition; a prerequisite to transfer of a minor's case to adult court. Also called "certification hearing," "remand hearing," "transfer hearing," or "waiver hearing" depending upon local practice.

FOSTER CARE: A form of substitute care, usually in a home licensed by a public agency, for children whose welfare requires that they be removed from their own homes.

FOURTEENTH AMENDMENT: The Fourteenth Amendment to the U.S. Constitution, securing to every person due process rights to life, liberty and property when they are being dealt with under state law.

FOURTH AMENDMENT: The Fourth Amendment to the U.S. Constitution, protecting every person against unlawful search and seizure.

GUARDIAN AD LITEM: An adult person appointed by the court to represent a child's interests in a particular judicial proceeding. (The phrase means "Guardian at Law"). Required by the federal Child Abuse Prevention and Treatment Act in every child abuse or neglect case which results in a judicial proceeding, if any state is to qualify for federal funds under the Act. In some jurisdictions called the "Next Friend."

HABEAS CORPUS: Lit., "You have the body"; an extraordinary writ ordering a public officer holding a person in confinement to bring the person before the court for release. Used to secure the release from custody of minors or adults being illegally held.

HEARING: A trial or other proceeding before a judicial officer — judge, referee, commissioner, master, magistrate or chancellor depending upon the local jurisdiction or an administrative agency.

HEARING DE NOVO: A full new hearing or trial, as opposed to review on a transcript or record.

HEARSAY: See under EVIDENCE.

IMMUNITY, LEGAL: Legal protection from liability, such as the protection given to reporting parties under child abuse reporting statutes.

IN CAMERA: Lit., "In chambers"; a hearing or judicial proceeding conducted in chambers or privately.

INCEST: The crime of sexual intercourse between a male and a female who are so closely related that they would not legally be allowed to marry.

IN LOCO PARENTIS: Lit., "In the place of the parent"; refers to actions of a custodian, guardian or other person acting in the parent's place and stead.

JURISDICTION: 1) The power of a particular court to hear cases involving certain categories of persons or allegations.

2) A geographical area subject to a particular law or court.

MALICE: The intentional commission of a wrongful act without legal justification with the intent of inflicting injury or harm, or under circumstances such that the person acting should reasonably have known that injury or harm would result.

MANDAMUS: Lit., "We order"; an extraordinary writ issued by a higher court and directed to a public executive or administrative officer or agency, or the judge of a lower court, commanding the performance of a specified act. Also known as "Writ of Mandate."

MATERIAL: Evidence that relates to a substantive part or element of a case.

MIRANDA RULE: From the U.S. Supreme Court case of *Miranda v. Arizona*, 384 U.S. 436 (1966), the rule that confessions are inadmissible at trial if the police do not advise the subject of certain rights before questioning him or her. The rights of which the subject must be advised include:

- a) The right to remain silent and to refuse to answer any questions;
- b) The right to know that anything he or she says can and will be used against him or her in a court of law;
- c) The right to consult with an attorney and to have an attorney present during questioning;
- d) The right to have counsel appointed at public expense, prior to any questioning if the subject cannot afford counsel.

Though the U.S. Supreme Court has not ruled directly on the question, good practice and the laws of many states require that the warnings be given in juvenile cases. Moreover, some states have required that a minor be advised of the right to have a parent, relative or other advisor present during questioning, in addition to counsel.

MISDEMEANOR: A crime less serious than a felony, usually punishable by a fine or incarceration in a city or county jail, but not a state penitentiary.

MOVING PARTY: The party who initiates a lawsuit or other judicial proceeding. In juvenile court, this is usually the probation officer or prosecuting attorney who files the petition.

NEGLIGENCE: Failure to exercise the care that an ordinarily prudent person would exercise in the same circumstances.

NEXT FRIEND: See GUARDIAN AD LITEM.

ORDINANCE: A law enacted by the governing body of a city or county.

PARENS PATRIAE: Lit., "The father of his country"; from English law, the legal doctrine under which the Crown assumed the protection of certain minors, orphans, and other persons in need of protection. Though not wholly accurate, the phrase is sometimes used to express the benevolent and rehabilitative philosophy of the juvenile court.

PARENT INFANT TRAUMA SYNDROME (P.I.T.S.): See BATTERED CHILD SYNDROME.

PETITION: A civil pleading filed to initiate a matter in juvenile court, setting forth the alleged grounds for the court to take jurisdiction of the case and asking the court to do so and intervene.

PINS: Person in need of supervision; a juvenile status offender who is involved in non-criminal misbehavior. Depending upon the

state, also "CHINS" (Child in Need of Supervision), "JINS" (Juvenile in Need of Supervision), "MINS" (Minor in Need of Supervision), "Beyond Control Child," "Incorrigible," "Wayward Youth," "Miscreant," etc. See STATUS OFFENSE.

PLEA BARGAINING: Negotiation of an agreement between prosecuting and defending counsel, often with the agreement of the court, to have the accused plead guilty to certain reduced charges in return for the dismissal of others, or for a reduced disposition or penalty.

PLEADING: Any one of the formal written statements of accusation or defense in an action at law.

PRIMA FACIE: Lit., "On the first appearance"; evidence which on its face makes out the necessary elements of the allegation, and which will suffice to establish that allegation as true until it is contradicted and overcome by other evidence.

PRIVILEGED COMMUNICATIONS: Confidential communications to certain persons that are protected by law against forced disclosure. Privileged communications cannot be disclosed in court over the objection of the holder of the privilege. (The holder of the privilege is usually the patient, client, or other person receiving care, rather than the provider of that care.) Communications between lawyer and client, physician and patient, psychotherapist and patient, priest, minister or rabbi and penitent, are typically privileged. Some social workers are also covered by privilege in some states, but the law varies widely from state to state as to the classes of persons to whom the communications are privileged; who may invoke the privilege; and similar matters. Generally, the privilege only protects the communication from disclosure *in court* or in connection with a court case.

PROBATION: In adult or juvenile court, a disposition which allows the defendant or the minor to remain at liberty under the supervision of a probation officer, frequently with a suspended commitment or sentence of imprisonment and usually requiring compliance with certain stated conditions.

PROTECTIVE CUSTODY: In child abuse and neglect cases, the emergency removal of a child from his home when the child would be in imminent danger if allowed to remain with the parent(s) or custodian(s).

QUANTUM OF PROOF: See STANDARD OF PROOF.

QUO WARRANTO: Lit., "By what authority . . .?" an extraordinary writ usually issued by a higher court to prevent continued assertion of unlawful authority by a public officer.

REHEARING: In some states, an order by a referee or commissioner may be reviewed by the presiding judge of the juvenile court if the minor or parents so request. If there is no transcript of

the original hearing, the review will commonly have to take the form of a new hearing (hearing *de novo*), which is called a rehearing. If the first hearing was recorded and a transcript exists, the review may be made on the transcript and the court may order a rehearing at its discretion. The term is also used when a matter is reconsidered by the judicial officer who first heard it, for the purpose of modifying an order or disposition.

RELEVANT: Evidence that is logically connected to, and helps to prove, a material point or issue in a case.

REMAND: Lit., "to send back"; frequently used to describe the order transferring a minor to adult court for trial, or an adult court's order sending a minor to the juvenile court. See also CERTIFICATION, FITNESS HEARINGS, TRANSFER AND WAIVER.

REPORTING STATUTES: State laws requiring certain designated persons (physicians, nurses, teachers and the like) to report to proper authorities suspected cases of child abuse and injuries inflicted by unlawful means. Such statutes commonly confer immunity from any liability on the person required to make the report.

RES IPSA LOQUITUR: Lit., "The thing speaks for itself"; a legal doctrine that allows evidence to be admitted even though no one actually saw what happened, only the results. For example, in a child abuse case the medical reports indicating multiple broken bones and reflecting the physician's opinion that they could not have been sustained by accident would be admissible even though no witness saw anyone strike the child. Under this doctrine, the court can convict a person having exclusive custody of an abused child and/or assert juvenile court jurisdiction over the child even though there was no direct testimony as to how, when, where or by whom the injuries were inflicted.

RESPONDENT: 1) The person who is the subject of a petition.
2) The prevailing party in a court case against whom an appeal is taken.

SEALING: In a juvenile court practice, the closure of juvenile records to all inspection except by the minor upon petition to the court. See EXPUNGMENT.

SOCIAL STUDY: The report prepared by a probation officer or social caseworker for the judge's consideration at a dispositional hearing. Such reports review the minor's behavior and family history and frequently contain material that would be inadmissible in most judicial proceedings because of hearsay, lack of verification, etc. In many states, specific statutes permit their admission into evidence. Social studies may not be received by the court until after the petition has been adjudicated and jurisdiction established. Also called "social history," "social report," or "probation report."

STANDARD OF PROOF: There are varying requirements of proof in different kinds of judicial proceedings. In criminal and delinquency cases, the offense must be proven *beyond a reasonable doubt*. In neglect and dependency proceedings, and in civil cases generally, the standard of proof is by a *preponderance of the evidence*, a significantly lower standard which requires that the judge believe that it is more likely than not, on the evidence presented, that neglect occurred. In some states, the standard of proof in PINS cases and in abuse and neglect proceedings is by *clear and convincing evidence*, a standard more stringent than *preponderance of the evidence* and less demanding than *beyond a reasonable doubt*. See also QUANTUM OF PROOF.

STARE DECISIS: Lit., "To stand by the decision"; legal doctrine which requires adherence to legal precedents (decisions of appellate courts) until they are overruled by the same or higher courts.

STATUS OFFENSE: The term essentially refers to non-criminal misbehavior, which would not be criminal if committed by an adult (e.g., truancy, runaway, etc.). The behavior is an offense only because of the minor's status as a minor.

STATUTE: A law enacted by a state legislature or the U.S. Congress.

STIPULATION: An agreement between the attorneys in a case, entered into in court, allowing a certain fact to be established in evidence without the necessity for further proof. Depending upon the requirements of the particular jurisdiction and the nature of the proceedings, stipulations may either be written or oral.

SUBPOENA: A legal document, usually issued by a court clerk, requiring that the person named in the subpoena appear on a stated day and time at a specified court to give testimony in a case. A subpoena must be served personally on the person named; this is usually done by a law enforcement officer, probation officer, child protective services worker, or process server. Failure to obey a subpoena is punishable as a contempt of court.

SUBPOENA DUCES TECUM: Lit., "Bring with you"; a subpoena served upon the person who has custody of records, commanding that such custodian bring the specified records to court on the stated day and time.

SUMMONS: 1) A legal document, issued by the court clerk or other court officer, notifying the named person that a law-suit or legal cause has been filed against or involves him or her, and notifying such person of any dates set for hearings and deadlines for responding to the complaint or petition. The purpose of a summons is simply to notify the persons concerned; it does not require court attendance by any person.

2) In some states, a citation issued by a law enforcement officer for a traffic violation or other minor offense is known as a sum-

mons. Citations do require the persons to whom they are issued to appear in court.

TERMINATION OF PARENTAL RIGHTS: A judicial proceeding freeing a child from all custody and control by a parent or parents, so that the child can be adopted by others.

TESTIMONY: A statement or declaration made to establish a fact or facts and given under oath.

TRANSFER: The sending of a case from the juvenile court to adult court for trial. See also CERTIFICATION, FITNESS HEARING, REMAND and WAIVER.

VOIR DIRE: 1) Procedure by which attorneys question prospective jurors to determine any biases or prejudices.

2) In some states, procedure by which lawyers question expert witnesses to determine their qualifications before the experts are permitted to give opinion testimony.

WAIVER: 1) The understanding, and voluntary relinquishment of a known right, such as the right to counsel or the right to remain silent during police questioning.

2) The juvenile court's relinquishment of its jurisdiction over a minor, and transfer of the case to adult court for trial. See also CERTIFICATION, FITNESS HEARING, REMAND and TRANSFER.

WARD: A minor who is under the jurisdiction of the juvenile court for a delinquent act, status offense, or an allegation or finding of abuse, neglect, or dependency. Also, a person who has a legally appointed guardian is the ward of that guardian.

WARRANT: Legal document issued by a judge authorizing the search of a place and seizure of specified items found there (search warrant), or the arrest or detention of a specified person (arrest warrant). No hearing is required and the person need not be notified, but the court must be given probable or reasonable cause to believe that the warrant is necessary for apprehension before it issues a warrant. Affidavits are frequently used in establishing this probable or reasonable cause.

WRIT: An order issued by a court commanding that a certain act or acts be done or not done. There is a wide variety of special writs, and much state-to-state variation in testimony, law and practice.