

# Child Protective Services

Reference: *Texas Family Code – Chapter 261* - <http://law.justia.com/texas/codes/fa/005.00.000261.00.html>

## Who Should/Can Report Child Abuse/Neglect?

1. General duty to report abuse/neglect – this includes anyone

“A person having CAUSE to believe that a child’s physical or mental health or welfare has been adversely affected by abuse or neglect by any person SHALL immediately make a report” (*Texas Family Code 261.101*)

2. Professional duty to report abuse/neglect –

Professional duty to report abuse/neglect – includes

“An individual who is licensed or certified by the state or who is an employee of a facility licensed, certified or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. The term includes teachers, nurses, doctors, day-care employees, employees of a clinic or health care facility that provides reproductive services, juvenile probation officers, juvenile detention or correctional officers” (*Texas Family Code 261.101*)

“If a professional has CAUSE to believe that a child has been abused or neglected or may be abused or neglected...the professional SHALL [*must or may risk losing certification/license*] make a report [*to CPS*] not later than the 48<sup>th</sup> hour after the hour the professional first SUSPECTS [the professional is not the investigator; IF there is CAUSE to believe, the professional SHALL make a CPS report] that the child has been or may be abused/neglected...A professional may not delegate to or rely on another person to make the report” (*Texas Family Code 261.101*)

## Ways to Report Abuse

1. Call the Abuse Hotline toll-free 24 hours a day, 7 days a week, nationwide – **1-800-252-5400.**
2. Make the report through a secure web site; you will receive a response within 24 hours. CPS cannot accept e-mail reports of suspected abuse or neglect. - [www.txabusehotline.org](http://www.txabusehotline.org) or [http://www.dfps.state.tx.us/Contact\\_Us/report\\_abuse.asp](http://www.dfps.state.tx.us/Contact_Us/report_abuse.asp)

## What To Report

1. child's name and address (if known)
2. name and address of person/s responsible for the care, custody, or welfare of the child (if known)
3. any other pertinent information concerning the alleged or suspected abuse/neglect

## What Happens After the Report is Made to CPS?

CPS **investigates**. CPS assigns priorities and prescribes investigative procedures based on the severity and immediacy of the alleged harm to the child. This is out of the reporter's hands; CPS assigns a "level of care" once the report is made. There are three (3) levels of care:

1. **IMMEDIATE** – involves circumstances in which the death of the child or substantial bodily harm to the child could result if CPS does not immediately intervene
2. **Within 24 hours** – highest priority other than immediate
3. **Within 72 hours** – 2<sup>nd</sup> level of concern

Most CPS visits take place at school; parents do not have to be informed by reporter or by CPS in order for CPS to question children. Reporter will remain anonymous to caregiver (*Texas Family Code 261.301*).

## What Happens After Investigation?

CPS has three options after investigation:

1. **Rule it Out** – after investigation, there is no evidence of danger to the child
2. **Unable to determine** – after investigation, there is not enough evidence to rule that the child is in danger of abuse/neglect
3. **Reason to Believe Child is in Danger** - If CPS determines there is danger to the child in his/her current home setting, CPS will remove the child from the

current setting. The parent or person having legal custody of the child is given a proposed child placement resources form to identify three (3) individuals who could be relative caregivers or designated caregivers. The parent/caregiver is screened for drugs upon removal. If drugs are found in the parent's/caregiver's system, the parent/caregiver must attend drug court in which the foster parents are invited to attend. Depending on the county, this drug court takes place weekly.

4. The family will be provided with in-home and/or out-of-home services (*Texas Family Code 261.307*).

## **Now What?**

If sufficient grounds for filing a suit exist, CPS will submit the investigation report and recommendations to the court, the district attorney, and the appropriate law enforcement agency. Once the report and recommendations are received, the court will direct CPS to file a petition to request appropriate relief – (time line – 30 days) (*Texas Family Code 261.308*).

## **The Lawsuit...**

A governmental entity with an interest in the child may file a suit affecting the parent-child relationship – known as a suit affecting a parent-child relationship (SAPCR).

## **What is Standard?**

The Federal Adoption and Safe Families Act of 1997 (AFSA), 42 USCA 678, requires that the paramount concern in protective services cases is the CHILD'S HEALTH & SAFETY – not the rehabilitation of a dysfunctional family. In other words, the agency must act in the best interest of the child.

## **The Ultimate Goal - Child Safety**

1. Petition for the parent/caregiver to participate in services to help the child (counseling)
2. Plea for state custody of the child
3. Request for the termination of parental rights

## **The Hearing**

1. Shall be held not later than the 14<sup>th</sup> day after the date the child was removed
2. The child **MUST** be returned to the parent unless
  - a. Court finds sufficient evidence that
    - i. the child was in physical danger
    - ii. the person entitled to the possession of the child failed to protect the child from danger
    - iii. the child must be removed immediately in order to be protected
    - iv. CPS has made reasonable efforts to return the child to his/her home, but there is a substantial risk of danger if the child is returned

## **After the Hearing**

1. The court will enter a temporary order that requires submission of the child's placement resources form.
2. A scheduling order is given determining all upcoming court dates.

## **Status Hearing**

1. Must take place within 60 days after the temporary hearing.
2. A service plan is developed

- a. Return the child to the child's home if the child has been in foster care
- b. Let the child remain in the home while providing in-home or out-of-home services to the family (counseling, drug court, family intervention)
- c. Provide a safe, permanent placement for the child

## **Permanency Hearing**

1. 120 day intervals – one at six months and one at nine months
2. Foster parents can attend and must receive a ten day's notice
3. Child shall attend unless the judge deems child attendance unnecessary

## **Permanency Plan & Permanency Progress Report**

The initial hearing is not later than the 180<sup>th</sup> day after the date the court renders a temporary order appointment.

## **Final Order**

1. End of one year
2. Choices include
  - a. returning child home
  - b. termination of parental rights
  - c. custody to relative
  - d. adoption
  - e. permanent custody to the state
  - f. mediation

## **Facts**

- 90% of children are removed from their home because of the parent's/caregiver's drug addictions
- Mediation is the most common result; mediation cannot be appealed
- Many parents avoid trials because all of the "dirty laundry" is brought out
- Parents have an appeal process once rights are terminated
- The family of parents who have children removed have 90 days after the final order to intervene to take care of the child
- **INVOLUNTARY TERMINATION OF PARENT-CHILD RELATIONSHIP.** The court may order termination of the parent-child relationship if the court finds by clear and convincing evidence that the parent has:
  - voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return;
  - voluntarily left the child alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the child, and remained away for a period of at least three months;
  - voluntarily left the child alone or in the possession of another without providing adequate support of the child and remained away for a period of at least six months;
  - knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child;
  - engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child;
  - failed to support the child in accordance with the parent's ability during a period of one year ending within
  - six months of the date of the filing of the petition;

- abandoned the child without identifying the child or furnishing means of identification, and the child's identity cannot be ascertained by the exercise of reasonable diligence;
- voluntarily, and with knowledge of the pregnancy, abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care for the
- mother during the period of abandonment before the birth of the child, and remained apart from the child or failed to support the child since the birth;
- contumaciously refused to submit to a reasonable and lawful order of a court under Subchapter D, Chapter 261;
- been the major cause of:
- the failure of the child to be enrolled in school as required by the Education Code; or
- the child's absence from the child's home without the consent of the parents or guardian for a substantial length of time or without the intent to return;
- executed before or after the suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided by this chapter;
- been convicted or has been placed on community supervision, including deferred adjudication community supervision, for being criminally responsible for the death or
- serious injury of a child under the following sections of the Penal Code or adjudicated under Title 3 for conduct that caused the death or serious injury of a child
- violation of one of the following Penal Code sections:
  - murder
  - capital murder
  - manslaughter
  - indecency with a child
  - assault
  - sexual assault
  - aggravated assault

- aggravated sexual assault
- injury to a child, elderly individual, or disabled individual
- abandoning or endangering a child
- prohibited sexual conduct
- sexual performance by a child
- possession or promotion of child pornography