

# The CPS Investigation

If CPS is investigating you, it is because someone has reported to CPS that he or she thinks your child has been abused or neglected. You probably do not know for sure who made the report – it could have been a family member, a neighbor, a teacher, a doctor, a police officer, or even a stranger. But once a report is filed, it is CPS’s job to investigate the report to see if it is true.



## IMPORTANT

Everyone has a legal duty to let CPS know if they think a child is being abused or neglected and that person (the reporter) do not have to be right about it. But a person should report abuse or neglect to CPS only if they really think something has happened. **Reporting something that you know is not true is called “False Reporting” and is a crime (Class B Misdemeanor).**

## What Can CPS Do During an Investigation?

It is the investigator’s job to gather information that will help determine whether your child is safe and whether CPS needs to become further involved with your family. The investigator has many ways to gather the necessary information. She can:

- Talk to people who have information about the alleged abuse or neglect, including doctors, teachers, neighbors, and relatives
- Talk to people who have knowledge of your family
- Take pictures, including of your child and your home
- Inspect your home
- Examine your child for injuries or poor health
- Get copies of police reports, CPS histories, school records, and medical records
- Have a medical or psychological examination done on your child

## What Can I Do?

There are a lot of things you can do to help your case during a CPS investigation. First, you have the right to show CPS that you can keep your children safe! You also have the right to speak with a lawyer at any point in the investigation. You will not be given a free court-appointed lawyer at the investigation stage, but you always have the right to hire your own lawyer.

Here are some specific things you can do to show CPS that you can keep your children safe:

- Offer names of people who know you well and who can confirm that you are not abusive or neglectful
- If your child was physically hurt (or appears to be physically hurt), give the investigator names and contact information for anyone you think will back up your explanation for how your child got hurt. This could be a neighbor who saw what happened or a doctor who knows that your child has a certain medical condition
- If you have a disagreement with a CPS worker, stay calm and explain your position to her

Only give CPS the names of people who actually know what happened (not just what you told them) or who know you or your child well. You also want to be sure that the people you identify to CPS will be respectful and not create new problems for you and your family. CPS is not required to talk to every person you identify, but a good investigator will talk to as many people as it takes to get an accurate understanding of the situation.

If you feel like CPS is taking advantage of you or not treating you fairly, you should talk to a lawyer or someone who has experience working with CPS. If you do not have money to pay for a lawyer and cannot find a lawyer to help you for free, and you do not know anyone else who can help, you can ask to speak to the caseworker's supervisor. For more info about working with CPS see page 89.

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***“I didn’t know how to be a parent.”***

*– Parent Collaboration Group Parent Liaisons*

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## IMPORTANT

*A CPS investigation can look at issues that were not part of the original report, but that come to CPS's attention during the investigation. Maybe the original report was that you injured your child, but when CPS comes to your house to investigate, they find you with drugs. Now, CPS will investigate not only the physical abuse, but also whether you can parent your child if using drugs.*

## The Investigation Process: What Should I Expect?

**INTERVIEWS:** CPS will talk to many different people and ask them questions about what happened. The information CPS gets from talking to people will make up a big part of the case.

**WHO WILL CPS TALK TO?** A CPS investigator will want to talk to you and anyone else she thinks might have been involved in the abuse or neglect. The investigator may also talk to:

- People who live with you and your child, like roommates, spouses, boyfriends, girlfriends, and other children in the home
- Anyone who witnessed the abuse or neglect, like a neighbor or a police officer
- Doctors who treated your child's injuries
- Teachers who were concerned about your child's health or well-being
- People who know you and your child well, like family members, roommates, and friends
- People who know you and your family, but may not have direct involvement in the alleged abuse or neglect

If the other parent has been abusive towards you, you can request a separate interview from the other parent.

**DO I HAVE TO TALK TO CPS?** No, you can tell the investigator that you do not want to answer any questions, but you risk the CPS investigator thinking you have something to hide. If you are unsure about what to do, you should ask a lawyer for advice, especially if you have an open criminal case.

**WHAT HAPPENS IF I DO TALK TO CPS?** If you do decide to talk to the investigator, she must first tell you who she is, what the report of abuse or neglect said, and what the allegations against you are. She will then ask you to tell your side of the story. If you admit to abusing or neglecting your child, this information can be used as a reason to remove your child in order to keep your child safe. However, being honest about your struggles as a parent can also result in you getting the services you and your family need in order to be happy and healthy.

The caseworker might ask if you would be willing to work out a safety plan (see page 48 for more information on safety planning). She should also ask if you have any relatives or close family friends who might be able to provide a safe home for your child during the investigation. It is a good idea to provide names and contact information for anyone you think would be a responsible person to care for your child, even if you are not sure they will be willing to help.

Will CPS talk to my child? Yes. A CPS investigator can interview any child who is a reported victim of abuse or neglect at any reasonable time or place, including your child's home or school or daycare. The investigator will want talk to your child about:

- Whether she was abused or neglected
- What happened
- Whether she feels safe now
- Whether she thinks the abuse or neglect will happen again

If the investigator tries to interview your child at home, she must get your okay or "consent" first. Consent means that you give someone your okay or permission to do something. Consent must be voluntary, which means that you make the decision yourself, without pressure. No one can force you to give consent. Remember, though, that you are not the only one who can consent. If the child is staying with a relative or babysitter, that person can also consent to CPS interviewing the child.

The CPS investigator will want to talk with your child somewhere private. Most of the time, you will not be allowed to listen to or be involved in the interview. This is so your child can talk freely and honestly.

Most important, never ask your child to lie or pressure her to say things in a certain way. If CPS finds out you did this, it will make you look bad and can get you into trouble with the judge. Asking your child to lie also can make her feel bad and caught in the middle. Remember that CPS in your life is just as scary for your child as it is for you!

If CPS wants to interview your child at school, the rules are a little different. If you are present at your child's school when CPS wants to interview your child, then CPS **MUST** get your consent. But if you are not at the school when CPS wants to interview your child, then the interview can happen without your consent. And if you refused to consent to your child being interviewed at home, CPS cannot then try to get around this by going to the school to interview your child.

### WHAT COUNTS AS CONSENT?

- Saying "yes"
- Nodding your head "yes"
- Opening the door and waving a caseworker inside your house

### WHAT DOES NOT COUNT AS CONSENT?

- Silence
- Saying "no"
- Shaking your head "no"
- Asking someone to leave your house even after you have let them inside

**HOW WILL I KNOW IF MY CHILD WAS INTERVIEWED?** CPS should notify you within 24 hours of your child being interviewed.

**WHAT IF MY CHILD DOES NOT SPEAK ENGLISH OR HAS A COMMUNICATION DISABILITY?** If your child's ability to communicate in English is limited, then CPS has to take steps to provide an interpreter. If your child has a hearing, vision, or speech disability, CPS has to take steps to make sure there is a way for your child and the investigator to communicate during the interview. If your child is not given the assistance that is needed, you should talk to a lawyer.

## Examining Your Child:

The CPS investigator has the right to request different examinations of your child, depending on the type of abuse or neglect that has been reported. The most common exams are **physical**, **sexual abuse**, or **medical**.

CPS must ask for your consent if you are available in person at the time the examination is done – whether at home or at school. You can say yes or no. Your child can also say no. But CPS does not have to get your consent if a court has ordered the exam or if your child is already removed from the home. So, even when you refuse to consent to an examination, CPS will probably ask a court to order the exam anyway.



### IMPORTANT

Remember that even if you choose NOT to consent, CPS can always ask the court to allow them to act anyway. Most of the time, the Court will order the investigation to continue even without your consent, so keep this in mind when deciding what to do.

**DISOBEYING A COURT ORDER TO COMPLY WITH A CPS INVESTIGATION CAN BE USED TO TERMINATE PARENTAL RIGHTS!**

If you are not available in person to give consent, the CPS investigator must tell you that an examination was done and must also tell you if photos were taken.

If your child is feeling nervous, she can ask to have another person stay in the room to help her feel safe.

**PHYSICAL EXAM.** A CPS investigator will usually want to look at (“visually examine”) the child who is the reported victim of abuse or neglect. CPS can also visually examine any other child in the home. The purpose of this exam is to see if the child has any obvious physical injuries, such as bruises, burns, or cuts, or signs of neglect, such as malnourishment, poor hygiene, or severe diaper rash.

Sometimes, the investigator will need to look under your child’s clothes. This often happens with young children who cannot speak or clearly say what happened. Unless your child is a baby, only a woman investigator should examine a female child, and only a man investigator should examine a male child. If this is not possible, another adult must be in the room for the exam.

**SEXUAL ABUSE EXAM.** If a child has been sexually abused or severely physically abused, she will probably go to a special child advocacy center and be interviewed there. Photos may be taken of any injuries and tests will be run to see if there was sexual abuse. Sexual abuse examinations should only be done if: (i) a parent has given consent; (ii) a judge has signed a court order allowing it; or (iii) CPS has conservatorship of the child.

Sexual abuse examinations may only be done by a qualified doctor or nurse. A CPS investigator should **never** conduct a sexual abuse examination.

**MEDICAL EXAM.** A CPS investigator may ask that a medical exam be conducted on your child if the report suggests that your child may have injuries that cannot be seen just by looking, if CPS wants a doctor's opinion on what could have caused an injury, or there are concerns about medical neglect. CPS may also ask for a medical exam if your child has an injury that requires treatment and you have not yet taken your child to see a doctor. The consent rules for medical exams require that you must either go to the doctor with the CPS worker or you must consent to the exam in writing.

## Inspecting Your Home:

CPS does not have to give you any notice before coming to your home. An investigator or caseworker can show up at your door any time of day.

When a CPS worker comes to your door, she must tell you who she is and must ask for your consent to come into your home. If you do not consent, she cannot enter. This is true even if the CPS worker comes with a police officer, which may happen if the CPS caseworker is worried about her own safety or if the police are doing their own investigation. Unless the police officer shows you a warrant, it is still your choice whether to allow them into your house.

You are not the only person who can consent to CPS entering your home! Any other adult living in the home can consent, and even a child can consent if the caseworker decides the child is old enough to make that decision.

However, if you and another adult disagree about whether to consent and at least one of you says "no," then CPS cannot come into your house without a court order.

You can also “withdraw” your consent. Even if you tell a CPS investigator that she can come into your home, you can always change your mind and tell her to leave. The CPS worker will have to leave.

In deciding whether to allow CPS into your house, take time to think through the possible outcomes before saying ‘yes’ or ‘no.’

**YES.** If you say ‘yes,’ the investigator will appreciate that you are cooperating. Also, it could be helpful to show CPS that your home is safe. On the other hand, if CPS finds anything in your house that could be a safety threat, it may be used as a reason to remove your child. Before answering, think about what CPS will see if they walk into your house and start looking around.

**NO.** If you say ‘no,’ the CPS caseworker may think you are trying to be difficult and could hold it against you. And even if you say ‘no,’ CPS may be able to get into your home anyway. One option is for CPS to ask a judge for a court order allowing them into your house. Another option is that the CPS investigator may believe your child is in such a dangerous situation that she must be removed immediately. This is called “exigent circumstances” and is only used when CPS believes the danger to be so great that there is not enough time to get a court order. In this case, a CPS caseworker can come into your house without your permission, but only to remove your child.

## Photographs:

**PICTURES OF YOUR HOME.** If you allow a CPS investigator into your home, she might want to take pictures of your living conditions. You can expect that photos will be taken of any dangerous conditions such as broken glass, animal waste, things people use to take drugs, or weapons that are easily reached. If your house is very dirty (for example, piles of garbage, rotten food, or signs of bugs or rodents) or needs major repairs (for example, toilets that don’t work, loose electrical wiring, or holes in the walls), they will take pictures of these problems as well.

If you are home at the time the CPS worker comes to the house, CPS must get your consent before taking any photos. If you are not at home, and your child is old enough to understand and give consent or there is another adult in the home who gives consent, then CPS can take photos.

**PICTURES OF YOUR CHILD.** If you allow CPS to talk to your child at home or if your child is interviewed at school, the CPS investigator will take pictures of any injuries she sees on your child’s body. If your child is dirty, very sick, or appears hungry, the investigator may take pictures to show how your child looked that day.

If pictures must be taken of body parts underneath your child's clothing, the person taking photos should be the same gender (male or female) as your child. The only reason a caseworker should ever take pictures of a child's genitals or private parts is to document severe diaper rash.

**PICTURES OF OTHER EVIDENCE.** A CPS investigator might go to the place where an injury occurred and take pictures. Pictures may also be taken of physical evidence, such as a belt used to hit a child.

## Record Requests:

**CRIMINAL HISTORY.** CPS will run a criminal background check on you and anyone else who lives in your home. If a person living in your home has been arrested for crimes like assault or drug use, he or she may be considered a safety threat to your child. Household members who have been convicted of sexual offenses may also be considered to be a safety threat. A long criminal history record of any kind may make CPS question your ability to provide for your child, especially if you have spent significant time in jail or will be going to jail soon.

**CPS HISTORY.** CPS will run a check to see if you or anyone else in your home has a history with CPS in Texas. CPS may run child welfare checks in other states too. The investigator will be able to see if CPS has investigated you before or if you have had any other children removed.

If you have been involved with other abuse or neglect reports, CPS will look at how you handled those cases. If you addressed the safety concerns and improved your care of your child (improved your "protective capacity"), CPS will consider this. If you did not fix the problem or refused to cooperate then, this fact may make CPS more concerned about your ability to keep your child safe. CPS will also look for patterns of abuse and neglect. If several reports have been made about you recently, the investigator will be more concerned than if only one report has been made.

**SCHOOL RECORDS.** CPS may ask your child's school for a copy of school records. This information will tell CPS whether your child is absent a lot, whether he gets to school on time, how his grades are, and how he is behaving in school. Just because your child has poor grades or gets into trouble doesn't mean you have abused or neglected him, but sometimes school problems start to show up when there are also problems at home.

**MENTAL HEALTH OR MEDICAL RECORDS.** CPS may ask you to sign a release of information so they can look at the mental health or medical records of you and your child. If you are not sure whether to sign a release form, you should talk to a lawyer.

If you refuse to sign the form, CPS can ask a judge to sign a court order allowing the caseworker to view the records. The court will set a hearing to decide whether CPS should see these records and you will be told when and where the hearing will take place. You or your lawyer can attend the hearing and tell the judge why you think CPS should not have access to the records.

## CPS Investigation Outcomes: What Happens Next?

At the end of every investigation into abuse or neglect, CPS will label the case in one of the following ways:

- **Reason to Believe:** Based on the evidence gathered, CPS believes that abuse or neglect has occurred
- **Ruled Out:** Based on the evidence gathered, CPS believes that abuse or neglect did not occur
- **Unable to Complete:** CPS cannot make a determination because the family cannot be located, moves, or refuses to cooperate with the investigation and a court order requiring cooperation is denied
- **Unable to Determine:** There is not enough evidence to determine whether or not abuse or neglect occurred

At this point, having completed the investigation and entered its findings, CPS will have several options for what to do next.

**SAFETY PLANNING:** CPS may choose to work with you to create a safety plan that will allow your child to stay safely at home while the investigation is going on. Both you and the CPS worker must agree on all of the terms, and you must be willing to follow the plan. If you don't follow the plan, there will be consequences, which may include CPS removing your child. If the other parent has been violent and abusive to you, you can request to have separate safety plans from that parent.

**FAMILY BASED SAFETY SERVICES (FBSS):** If your child can be kept safely at home by using a safety plan, but you need some extra support to ensure long-term safety, then your case may be referred to FBSS. FBSS workers continue to assess the safety of your child and will address any immediate safety concerns while helping you get connected to services like daycare, parenting classes, anger management classes, or treatment services. If you refuse FBSS when offered, then CPS can ask a court to order you to participate.

**PARENTAL CHILD SAFETY PLACEMENT (PCSP):** If your child is not safe in your home, CPS may ask you to send your child to live temporarily with someone else you know and trust who is willing and able to provide a safe home. This is different than a removal. PCSPs are meant to provide temporary safety for your child while giving you a chance to deal with any safety threats in your home. The person you pick should be someone who has a close relationship with you or your child.

Unlike FBSS or other safety planning, PCSP will not allow you to live with your child while you fix the safety threats in your home. Your CPS caseworker will help you identify the things you must do and the changes you must make before your child can be returned home. If you do not complete the requirements, or if you refuse to cooperate with CPS, then CPS may ask the court to grant them temporary managing conservatorship of your child, and your child may or may not stay with the person identified as the caregiver in your PCSP agreement.

A PCSP probably is not an option if there has been severe injury or abuse to your child, or if you violated conditions of an earlier PCSP. Also, CPS will not approve your child's temporary placement if the relatives or friends who will be responsible for the child cannot pass the required background checks, or cannot keep the child safe for some other reason. And a PCSP can end at any time if the relative or friend with whom the child is living refuses to cooperate with CPS or is no longer able to keep the child safe, or if you do not want your child to live there anymore. If there is no other safe placement option, CPS may ask the court to grant them temporary managing conservatorship of your child.

**REMOVAL:** If a safety threat is too great to be prevented by one of the above options and CPS concludes that you are not able to protect your child, then your child will be removed from your home. As mentioned earlier, your child can be removed before CPS gets a court order or immediately after CPS gets the court's permission. See page 51 for more on removal.

## I Disagree With CPS' Findings: Can I Ask for a Review?

If you don't agree with the outcome of your investigation, Texas law requires that CPS give you the chance to have the investigation findings reviewed. You must request the review in writing within 45 days after you get the letter telling you the outcome of the investigation.

You are **not** entitled to review if a court has already signed an order saying you committed the abuse or neglect. Also, you are **not** entitled to review if your parental rights have been terminated.

It is important to know that requesting review does not turn back the clock. Most importantly, it will not prevent your child from being removed if that is what CPS believes is needed to protect your child. What it can do is change how CPS describes the outcome of the investigation in your case file.

You are allowed to attend the review and can bring a lawyer with you or send one in your place. You are allowed to bring any evidence that you think would change CPS's mind about the outcome of the investigation. During the meeting you will be asked questions and your CPS case file will be reviewed.

You will get a letter telling you the result of the review within 45 days after it is held. If no change is made and you are not happy with the result, you can appeal the decision with the DFPS Office of the Office of Consumer Affairs. See page 92 for contact information for the Office of Consumer Affairs and other agencies that provide oversight for CPS.



### IMPORTANT

*If you are unhappy with an investigation or feel like you and your family are not being treated fairly, you always can ask for clarification of the status of the investigation or file a complaint about how the investigation is being conducted. This will be an informal review with the investigation supervisor where you will talk about your concerns. If you request a review, it must be held within 14 days.*

## Can I Get a Copy Of the Investigation File?

In general, CPS records are confidential. However, you can request records about yourself if CPS has investigated you for child abuse or neglect. The records should include information about:

1. The original report of alleged or suspected abuse or neglect, and
2. The files, reports, records, communications, audiotapes, videotapes, and other papers used or created during the investigation

CPS has the right to go through the files before giving them to you and “redact” (cross out or delete) certain confidential information. For example, you will not be given:

1. The name of the person who made the initial report, or
2. Any information that might put someone else’s safety at risk

You can get more information about requesting records by calling DFPS at 877-764-7230 or emailing [Records.Management@DFPS.STATE.TX.US](mailto:Records.Management@DFPS.STATE.TX.US). You will want to ask the office to send you a “Form 4885-G” that you will need to fill out and return.

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***“I didn’t understand what I was doing was neglect and abuse.”***

*– Parent Collaboration Group Parent Liaisons*

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## **HOW CAN I PREVENT SAFETY THREATS?**

*If you have any ideas on how to keep your children safe, you should suggest that they be included in your safety plan. After all, you know your situation better than anyone. Here are some options to think about:*

**ASK FRIENDS AND FAMILY FOR HELP.** *Is there someone who could watch your child for you when you go to work, drive you to interviews, or even let your child stay in their home temporarily?*

**TAKE ADVANTAGE OF COMMUNITY RESOURCES.** *These could include parenting classes, shelters, food banks, job assistance, and legal help. See Appendix D for help on where to find resources.*

**ASK YOUR CPS CASEWORKER FOR HELP.** *Your caseworker can offer home visits, home monitoring, and other case management services like transportation, protective daycare, or substance abuse testing.*

**THINK ABOUT THE PEOPLE YOU LIVE WITH.** *If another adult in the home is the one causing the abuse or neglect, you can tell him or her to leave. In cases of domestic violence, you can ask for a protective order that requires the abuser to leave your home. See page 117 for more information about how to keep yourself and your family safe in cases of domestic violence.*

**MOVE TO A SAFER ENVIRONMENT.** *If the place you are currently staying is not safe, you can move with your child to a relative's house, a friend's house, or a shelter. You could also choose to stay where you are, but place your children with a relative so they can be safe while you are working with CPS.*



## INTERFERING WITH AN INVESTIGATION

*There is a difference between knowing and asserting your rights, and interfering with a CPS investigation. Interfering with a CPS investigation is a criminal offense, and can lead to arrest.*

- It is a Class B Misdemeanor if, during a CPS investigation, you move without giving CPS your new address or try to hide your child from CPS with the intent to interfere with the investigation*
- It is a Class B Misdemeanor if CPS tells you they plan to transport your child and you try to prevent CPS from transporting your child*

*A Class B Misdemeanor is punishable with up to a \$2,000 fine and/or up to 180 days in county jail.*

*If CPS has reason to believe that you might leave the state or the country in order to avoid an investigation, CPS can ask the court for a temporary restraining order. If the restraining order is granted then you will not be able to leave the state with your child.*



## WHEN DO THE POLICE GET INVOLVED?

*CPS has to tell the police about reports it plans to investigate, but this does not mean that the police will be involved in your CPS case.*

*The police get involved in an investigation if there is reason to believe that a crime has been committed. Cases of physical abuse, sexual abuse, and very serious neglect (such as starvation or abandonment) may be investigated as a crime. In these situations, both CPS and the police will investigate the case for different reasons. CPS wants to keep your child safe; the police want to collect evidence to support criminal prosecution.*

*If only CPS comes to your door, they are NOT there to arrest you. They do not have the power to do that. If CPS tries to ask you questions, you will NOT be arrested if you say no.*

*A police officer might come to your house along with the CPS investigator. Sometimes, the officer is only there to protect the CPS worker. Other times, the officer may be doing his own investigation for a criminal case against you. You do not have to let the police into your house unless they have a warrant to enter.*

## TRANSPORTING YOUR CHILD

*In most investigations, CPS can drive your child to a doctor's office or some other place only if you consent or if a judge signs a court order permitting the transport. However, if CPS believes that your child has been abused and may be abused again when she gets home from school, then CPS can pick your child up from school and drive her to a child advocacy center or doctor's office or other location **without your permission** for an interview, an examination, or both.*

*If CPS transports your child, they have to try to give you notice. Most of the time, they will give you notice by talking to you in person or on the phone. But if you cannot be reached, CPS may leave you a phone message or a note.*

*In most cases, CPS will tell you where it took your child. But if CPS thinks your child will be in even more danger if you find out where she is, it has the right not to tell you where your child is.*

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***"I couldn't find the energy to be a mom."***

*– Parent Collaboration Group Parent Liaisons*

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