

# Removal

Texas law gives CPS the right to remove a child from his home if the child needs protection. But CPS's right to remove is not unlimited. CPS can only remove your child if you agree to the removal or if a judge signs an order giving CPS permission to remove your child.

## The Decision to Remove a Child:

**PARENT CONSENT.** As a parent, you can “consent” (agree) to let CPS remove your child. You have consented to a removal if you clearly tell CPS that it is okay to remove your child. Note that if one parent consents to removal but the other parent does not, then CPS cannot remove the child unless they get a court order, or unless immediate removal is necessary to protect the child from serious harm. Sometimes a parent will consent to CPS taking custody of their child in order for the child to receive mental health services. If this is your situation, see page 119 for more information.

**COURT ORDER.** A CPS caseworker can ask for a judge's permission to remove your child. The caseworker will list out all the reasons why your child needs to be removed from your home in order to be safe. The judge will read the list and decide whether there is enough evidence to support removal. If the judge agrees that your child should be removed, then he or she will sign an order allowing CPS to remove the child. (If your child is in immediate danger, CPS can remove your child **before** getting permission from the judge, but must then get the judge's approval within 3 days. See **Exigent Circumstances** section below.)

There is a difference between immediate danger (emergency) and a less urgent situation (non-emergency). CPS will ask the judge to grant an **emergency order** when there is reason to believe that your child is in immediate danger (meaning your child is probably going to be harmed right now or very soon). CPS has to convince a judge that immediate removal is necessary to protect your child. Because CPS believes the situation to be urgent, you probably will not have a chance to attend this hearing. If the judge agrees with CPS, then he or she will sign a court order giving CPS permission to remove your child. The removal can be from your home, the school, or wherever CPS may locate the child. Within 14 days after your child is removed, you will get to attend a hearing where you can tell your side of the story to the judge. The judge may decide to return your child to you at this time or to keep your child in a different home. You can ask for a lawyer at this hearing to help you understand what's going on. See page 79 to understand how to get a lawyer.

If CPS thinks your child is not in immediate danger, the court has more time and will schedule a hearing that both you and CPS will attend. CPS will say why it thinks your child should be removed, and you will get to tell your side of the story to the judge. The judge will decide whether to remove your child after he hears both sides. If the judge decides to let CPS remove your child, he will sign a **non-emergency order** giving CPS permission to do so.

**EXIGENT CIRCUMSTANCES.** If the CPS caseworker and supervisor believe that your child is in immediate danger of physical abuse or sexual abuse, removal can happen without your consent and without a court order. This is done only in the most serious situations. The court must hold an emergency hearing on the first working day after the removal.

A child should not be removed from his home if there are other available options to keep the child safe at home. Alternatives include safety planning, sending the case to Family Based Safety Services (FBSS), or agreeing to a Parental Child Safety Placement (PCSP). See page 45 for information on these other options.

## Parent Notification:

CPS must give parents information about the removal of their child by the next day, if the next day is a weekday. If the removal happens over the weekend, you will get notice on Monday. A CPS worker might come to your house and talk to you in person, or, if you are not home, CPS might leave a “Notice of Removal” letter marked “confidential” at your house.

“Notice of Removal” letters should include the following information:

- The CPS caseworker’s name and contact information
- The facts that led to the removal
- Information on the court process
- Your legal rights and responsibilities, including
  - *The right to receive notice of court hearings*
  - *The right to an attorney, either appointed by the court or one that you hire, depending on your situation*
  - *The right to visit your child, unless specifically denied by the court*

You should immediately contact the name of the person from CPS who removed your child or children to find out information about court hearings where a judge will determine whether CPS can keep your kids away from you.

## Family Notification:

Your family and friends will be one of the most important resources you have during your CPS case. Even if you feel angry or embarrassed about CPS being involved with your family, it is important to reach out to people you trust as soon as possible. Also, you should know that CPS is **REQUIRED** to notify your family of the removal anyway.

Within 30 days of the removal, CPS will give notice to the following **adult** relatives of the child (on both the mother's and father's side) letting them know that the child has been removed from the home and asking them to become involved:

- Grandparents
- Great-grandparents
- Aunts and Uncles
- Nieces and Nephews
- Brothers and Sisters

The notification to family will include the following information:

- The name of the child who has been removed
- An explanation of the options available if that person wants to help take care of your child
- The resources available if that person chooses to help care for your child
- Information on becoming a foster parent
- Information about the upcoming court hearing

Also, shortly after the removal takes place, your CPS caseworker will give you a document called a “Child Caregiver Resource Form.” There is a place for you to write down the names and contact information of any other relatives or family friends you think might take care of your children for you. You must fill out this form. If you do not, the judge likely will order you to fill it out, and if you still do not fill it out, you could be in violation of the court’s order. The CPS caseworker will also ask your child, if he is old enough, to provide names of relatives or family friends who might help take care of him. Notice that your child has been removed from your care will also be given to all of the people whose contact information is provided by you or your child.

The reason your family and friends are notified is because CPS is looking for possible places for your child to live while your case is going on. Also, CPS wants to encourage and support family connections for both you and your child. Most parents prefer to have their child stay with family rather than go into foster care. Your child may feel more comfortable with someone he knows, rather than a stranger. Also, family members may be willing to keep you updated on how your child is doing. In contrast, if your child goes into foster care, you probably won’t know the family and may be told very little about where your child is living or who they are living with.

Keep in mind that just because you ask for your child to live with a family member or friend doesn’t mean that CPS will agree with your request. The relative or friend must be able and willing to provide a safe living environment for your child. Because of this, CPS is very cautious when choosing where a child can live and there are lots of things that could keep a relative or friend from being allowed to care for your child – even someone who is a close relative and spends time with your child. For example, a criminal history (especially drugs, serious assaults, or crimes involving children), drug use, mental health concerns, or past CPS history often will keep a person from caring for your child. If one person in the home is willing to take your child but another person is not, CPS probably will not place your child there. The person must also have enough room in his or her house or apartment for your child and be willing and able to follow the rules the court sets up (for example, only allowing you to see your children when the judge says it’s OK).

## WHO COUNTS AS “FICTIVE KIN”?

*You might hear CPS workers use the phrase “fictive kin.” This means a person who is not related to you or your child by blood or marriage, but who knows your family well. An example might be a godparent, a close friend who your child calls “aunt,” or a person who grew up with your mom or dad.*

*If a CPS worker asks you for names of people who could be “family placements” or “kinship placements,” it is OK to give information about close family friends as well as family members.*

## Frequently Asked Questions:

### **WHAT WILL HAPPEN DURING THE REMOVAL? WILL I GET TO SAY**

**GOODBYE?** This is a complicated question and it depends on the facts of your case. The way your child is removed will depend on how much danger CPS thinks she is in, the place where the removal happens, and how you behave during the removal.

**PLACE OF REMOVAL:** Removals can happen at school, daycare, or a hospital when you are not there. It is also possible that your child could be removed from your house or apartment when you are not home. In these cases, you will not get to say “goodbye” because you will not know about the removal until after it happens. If you can be located, a CPS caseworker will find you and explain what happened and why your child was removed.

Sometimes a removal happens while you are with your child – at your home, at a CPS office or even a police station. In these cases, usually you will be able to say “goodbye.” If the removal happens at home, you may be able to help your child pack a few things. Keep in mind, however, that if you get angry and start fighting or yelling you may not be allowed to say “goodbye” or help pack.

Sometimes your child will already be living with someone else because you have agreed to it as part of a safety plan. In this case, your child may not actually be taken from the place she is currently living, but CPS asks for legal custody and might ask to terminate your parental rights by filing a lawsuit. When this lawsuit is filed, it means certain rights and protections for you and your child kick in, but it also starts a legal case that you will only have 12 months to work out.

**YOUR COOPERATION:** If you have already been working with CPS, CPS may tell you about the removal in advance to give you time to prepare your child.

If CPS believes that your child is in immediate danger, the removal may happen quickly and without warning. This will be scary for both you and your child. It is important to remember that in these cases nothing you say or do will stop what is happening, but how you act at that moment can have a big impact on how your child feels about what is happening.

You may want to try to hold on to your child and keep CPS from taking her, but this will only make things worse. You may also want to fight or yell at the CPS workers, but that will only upset your child more. You should never assault or get violent with a CPS caseworker or any law enforcement officer involved in the removal of your child because that can result in you going to jail and facing prosecution. This will only make getting your child returned to your care more difficult. If you can remain calm, hopefully your child will be less scared and CPS will appreciate your cooperation.

**Staying calm doesn't mean that you are giving up your child for good.** It just means that you understand you will have to go to court and show that you are a safe parent before you can get him back.

**WILL THE REMOVAL BE FORCEFUL?** CPS is not supposed to use force on you or your child, but if a police officer is there, he or she may not be required to follow the same rule. If a parent refuses to let a child be taken from her arms, force might be used against the parent to remove the child. If the child does not want to be removed and fights back, then restraint may be used to get the child away from the parent. But these are worse case scenarios.

It is best for you and your child if these emotional situations can be avoided. That is why if you know your child will be removed you should do your best to prepare her for it. Try telling her that she needs to live with someone else for a little while so you can have some time to work on being the best parent you can be.

If you think that unnecessary force was used against your child during the removal, you can report this to your lawyer, your child's GAL, and your child's Attorney ad Litem.

**WHAT DOES MY CHILD NEED TO TAKE WITH HIM?** If your child is removed from his home, he may be able to pack a few things – like clothes, a jacket, a toothbrush and a favorite toy – to take with him.

If your child is not able to take anything with him, he will be given what he needs by CPS or his foster family.

Later in your case, you may be allowed to bring your child clothes and toys, but only if CPS gives you permission.

**WHERE WILL MY CHILD GO?** CPS can place a child almost anywhere the CPS worker thinks is appropriate where your child will be safe, and where space is available.

CPS may not know for sure where your child will be placed at the time of removal. If a foster family or a kinship placement is not available right then, the CPS caseworker will need to find a place where your child can stay for a short period of time. Your child might go to a single family foster home, a shelter that provides temporary care, or to a group foster home for a few days. If your child needs medical care or extra support, then she might go to a medical facility.

CPS workers try to keep brothers and sisters together, but it is not always possible. Whether all your children go to the same placement will depend on where space is available and on each child's individual needs.

If CPS thinks that you or someone you know might threaten the caregiver or your child's safety, it may not tell you where your child will be living.

**HOW CAN I MAKE SURE THAT MY CHILD STAYS WITH SOMEONE I TRUST?** You should do whatever you can to help your caseworker contact family and friends who may be able to take care of your child.

Fill out the entire "Child Caregiver Resource Form" quickly and give it back to your caseworker. You might also contact your family members in advance and tell them that they may be getting a call from CPS; this way they will be more likely to answer the phone and cooperate with CPS. CPS will run background checks on these friends and relatives and will also do home visits and interviews with them. If CPS agrees that a family member or friend's home is safe and appropriate, there is a good chance that your children will be placed there.

You can provide more names to the caseworker at any time.

If CPS does not approve a family member or friend's home for placement, talk to your lawyer about what you think would be best for your child. Your lawyer may be able to convince the judge to place your child with a family member, even if CPS doesn't agree. Remember that in the end, it is the judge's decision where to place your child.

**WHAT IS FOSTER CARE?** Foster care is the term used when the state takes custody of your child and places him in someone else's home. Foster parents are people who are approved by the state to care for children in their home. So, when your child can't live safely at home and there is no appropriate relative or family friend who is willing and able to care for your child, CPS will put your child in foster care. This means that some other adult will be taking care of your child for you.

Foster care can include:

**FOSTER HOME:** A foster home is a home with one or two parents who are paid by the state to take care of children whose own parents are involved with CPS. All foster homes (or agencies that run foster homes) are approved by the Department of Family and Protective Services, which includes special training for all of the foster parents. The families can choose which children they want to host; some foster homes take just one child at a time, while others will take several children or sibling groups; some foster homes take only babies, while others will take children of any age. And some foster homes are "therapeutic," which means the foster parents have extra training to care for children with special medical, behavioral, emotional, or mental health needs. Children in foster homes usually attend the neighborhood school where the foster home is located, unless the foster parents are willing and able to drive the children to another school.

**SHELTER:** Shelters are usually used to care for children on a short term (up to 30 days) or emergency basis until a more permanent placement can be found.

**GROUP HOME:** If no foster homes are available or if your child needs more structure or supervision than a foster home can provide, your child might be placed in a group home. These homes can have up to six, ten, or even more children living together. Children living in group homes usually attend the neighborhood school where the home is located.

**RESIDENTIAL TREATMENT CENTER (RTC):** RTCs are usually bigger than group homes and will take care of children with more serious medical, behavioral, and emotional needs. They often provide services like counseling and psychiatric care. RTCs sometimes run their own charter schools so that the children can attend school without having to leave the RTC campus.



**KINSHIP PLACEMENT:** This includes your family or friends who agree to have your child stay with them. You can voluntarily place your child in a kinship placement as part of a safety plan you create with your caseworker. Kinship placements may also be used if CPS removes your child. This is the preferred option in most cases, but if CPS cannot find any relative or friend that it deems to be appropriate caregiver, then CPS must place the child in a non-kinship setting. See “Who Counts as Fictive Kin” sidebar on page 54 for more information.

Foster care is meant to be short-term until you convince CPS and the court that you are able and willing to keep your child safe or until some other permanent living arrangement is found for your child. Unfortunately, some children remain in foster care until they turn 18, if no other safe and permanent living arrangements are available.

Foster care may be necessary in many cases, but this does not mean that CPS or anyone else thinks it is perfect. Children in foster care often end up moving around a lot, which forces them to change schools, leave friends, and possibly move far away from family. It is CPS’s job to try and find the best home possible for your child, but the truth is that there are not enough foster homes for all of the children who need them. All the more reason to do everything you can to help CPS to find a relative or kinship placement for your child, and in the end, regain custody.

**HOW CAN I BE SURE MY CHILD WILL BE SAFE IN FOSTER CARE?** The honest truth is that you *cannot* be sure your child is safe in foster care. Foster parents have to go through background checks, home visits, and training, but it is not possible to know for sure that all of them will be good foster parents.

If your child ever tells you that he is being hurt or neglected by a foster parent – or wherever he is living – you should immediately report it to your caseworker, your lawyer, your child’s lawyer, and your child’s GAL.

**HOW MUCH CONTACT CAN I HAVE WITH MY CHILD?** In most cases CPS should arrange for you to see your child within five days after CPS is granted temporary managing conservatorship. However, you will not get your visit if CPS has some reason to believe that it would not be good or safe for your child. This might be the case if your child has suffered serious injuries or if your child is afraid to see you.

To get additional visits with your child, you will have to work with your CPS caseworker to come up with a visitation schedule. Your visitation schedule may change over time. If things are going well with your case and CPS thinks you and the child would benefit from more contact, then you may get to see your child more often. On the other hand, if problems come up during your visits or CPS thinks the visits are no longer in your child's best interest then you might get to see your child less. (See page 95 for more information on visitation.)

**HOW WILL REMOVAL AFFECT MY CHILD?** Removal is hard for almost any child. Many children may cry but others become quiet and withdrawn. The children may feel like they have done something wrong and are being punished. They may also wonder what has happened to you and worry about whether you are safe.

Children often have a lot of questions after they are removed. You should be prepared to answer these questions truthfully. Try not to offer false hope like telling your child she will get to come home soon (unless you know this is true). It may take a long time before your child can come home, if at all. If you are not sure how to answer a question your child asks, it's ok to tell them you do not know the answer, but that you will talk to your caseworker or your lawyer and find out.

**CAN I STILL MAKE DECISIONS ABOUT MY CHILD'S EDUCATION AND RELIGIOUS TRAINING?** If your child goes into foster care, he will probably have to change schools. However, if you believe it would be best for your child to stay in the same school, discuss this with your caseworker and your child's lawyer as soon as possible! Your child has the right to stay in his school, but if the foster home or relative's home is far away, this might not be possible. Sometimes arrangements can be made to keep your child in the same school.

Similarly, if you are concerned about your child's ability to practice her religion while in foster care, talk to your caseworker and the child's lawyer and GAL. They will try to make arrangements with your child's foster parents. Foster parents are supposed to be supportive of your child's religion.

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***"I wanted to feed my child but the drugs wouldn't let me."***

*– Parent Collaboration Group Parent Liaisons*

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**WHAT CAN I DO IF MY CHILD TELLS ME SHE IS SCARED OR IS BEING HURT AT HER FOSTER HOME?**

If your child makes any report of abuse or neglect, you should immediately tell your lawyer, the CPS caseworker, and your child’s lawyer and GAL. Your lawyer, your caseworker and your child’s lawyer and any GAL are required by law to report abuse or neglect of any child, including yours. If your child is in immediate danger, you should call the police.

It is important to remember, though, that your child may really just be feeling unhappy or lonely. This is normal. Listen to your child’s concerns and help her to think up ways to feel better. Your caseworker may be able to offer good advice about ways you can help your child.

**WILL I BE NOTIFIED BEFOREHAND IF MY CHILD HAS TO BE MOVED TO A DIFFERENT PLACEMENT?**

In most circumstances, you will be notified before your child is moved; however, sometimes your child will need to be moved quickly. This might happen if his foster family can no longer keep him or if there is reason to believe that the foster home is no longer safe. In these cases, your child may be moved without your knowledge but the caseworker must notify you of the move soon after it happens.

If there is not a need to immediately move your child, your caseworker should talk with you about the plan to move your child and seek your input on the decision.



***“I felt empty inside and filled the emptiness with drugs and broken relationships and failed to realize that I was emotionally neglecting my kids by doing so.”***

*– Parent Collaboration Group Parent Liaisons*

