

What Happens Next?

A PARENTS' GUIDE TO NEW YORK STATE CHILD PROTECTIVE SYSTEM

Revised: April 2012

Adapted by Prevent Child Abuse New York, Inc. from a piece of the same name
by Margo Hittleman, Resource Specialist, Family Life Development Center, Cornell University, 1984.

INTRODUCTION

Being a parent is often frustrating and sometimes overwhelming. Like all parents, you want to do what's best for your children, but at times you may feel as though your children are just too much to handle. You may respond to problems by striking out at your children or ignoring their needs. This is painful and scary both for you and for your kids.

Being involved in a Child Protective Services (CPS) case is stressful for the entire family. It is common to feel helpless, alone, and unsure. Not knowing what to expect can make it even more difficult. This booklet will help you understand the role and responsibilities of CPS, what is likely to happen, and actions that may be taken throughout a CPS. It also suggests things that you can do to make the process easier. It is important to ask for help when you are feeling overwhelmed, especially if things become so difficult that you're afraid you might take it out on your children.

There is a lot of information here. Some of it may be new information to you so reading it several times may be helpful. You may have questions that are not answered here. You may find it helpful to read this with someone else - for example a friend, relative, or your Child Protective Services caseworker. You may want to call the Parent Helpline with your questions, at 1-800-CHILDREN (244-5373). *The important thing to remember is if you have questions, ask. It is never too late to take control of your situation and help yourself and your family.*

OVERVIEW

The Purpose of the Law

An effective Child Protective Service prevents abused and maltreated (neglected) children from suffering further harm. New York State's Child Protective Services Act¹ encourages reporting of suspected child abuse and neglect and establishes Child Protective Services in each county. Child Protective Services is responsible for investigating reports swiftly and competently, for providing protection for children, and for providing rehabilitative services for children and their parents to create a safe home.

How the Law Defines Child Abuse and Maltreatment

According to New York State law,² child abuse and maltreatment occur when a parent of a child less than 18 years of age, or any person legally responsible for the child's health and safety:

- causes injury to the child or substantial risk of injury, other than by accident,
- creates a risk of death or serious physical injury,
- engages in sexual activity with the child,
- allows someone else to physically or sexually harm the child,
- neglects the child by failing to exercise a minimum degree of care or to provide for basic needs (such as adequate food, clothing, shelter, medical care, or proper supervision) such that the child's physical, mental or emotional condition is impaired or is in imminent danger of becoming impaired.

Child Protective Services

The Child Protective Services (CPS) is the public agency responsible for investigating reports of child abuse or maltreatment. CPS is a part of the local Department of Social Services (DSS). In New York City, Child Protective Services is the responsibility of the Administration for Children Services (ACS).

Every county and borough in New York has a local Child Protective unit that receives and investigates reports of child abuse and neglect in their area. The investigation should include an evaluation of the safety of the child named in the report and any other children in the home, to determine the risk to them if they remain in the home. CPS also makes sure that children's needs are adequately met by the parent (or other person legally responsible) and provides information to parents about the types of services available and where to find them.

¹ Social Service Law Title 6 Section 411

² Family Court Act Section 1012

THE CHILD PROTECTIVE PROCESS

Recognition

The child protective process begins when somebody becomes concerned because they suspect a child is being abused or neglected. Anyone can report suspected maltreatment. Our state law requires most professionals who come into regular contact with children - for example, doctors, teachers, and police - to report suspected child abuse and maltreatment.³

To make a report, a person has to have a "reasonable suspicion" of abuse or neglect, based on observations, behaviors, and other information. The person does not have to have proof. For example, a doctor may suspect abuse because a child has injuries that are not consistent with the parents' explanation of how the child was injured. Another example would be when a neighbor sees children who are too young to care for themselves left home alone.

To report suspected abuse and maltreatment, people call the New York State Child Abuse & Maltreatment Register -- the "child abuse hotline" -- in Albany. The 24-hour number is 1-800-342-3720. Hotline staff asks for specific information from the caller. If the information supports a suspicion of child abuse or neglect, the report is accepted. It is immediately sent to the local Child Protective Services (CPS), in the county where the family lives, to investigate.

It is important to remember that a report is a statement of concern; it is not an accusation. It is up to CPS to investigate whether the report is valid, and to recommend any services needed to reduce risk of harm and eliminate any safety concerns. Your cooperation and honest responses will help you get the information and help that your family needs.

Investigation

When Child Protective Services receives a report of suspected child abuse or neglect, a caseworker is assigned to look into the complaint. The caseworker must gather information about how the family is functioning to (1) determine whether abuse or neglect is occurring and, if so, (2) what steps are required to protect the child and help the family.

CPS must start an investigation within 24 hours of receiving the report. They may initiate their investigation by contacting the subject of the report, face-to-face, to inform them about the report. Other people who may have information helpful to CPS may also be contacted in the first 24 hours or during the complete investigation. The subject of the report also receives written notice about the report. They have the right to receive copies of all reports about them, by sending a written request to the Central Register. (The copies of the reports will not include information that identifies who made the report.)

CPS has 60 days in which to complete their investigation of the report and determine if the report is indicated (abuse or neglect has occurred) or unfounded (unsubstantiated). If the

³ All "mandated reporters" are listed in Social Services Law Section 413.

caseworker does not find some credible evidence of abuse or neglect, the report is unfounded and all records about that report are expunged or deleted.

Usually, the first steps in investigating a report are to check for previous indicated reports, contact the person who made the current report, visit the home to observe the home environment and interview the parent(s) and the children. The caseworker may also need to talk to other people who know the family. The caseworker must conduct a thorough and complete investigation, which includes interviews, observations and review of documents such as medical records, school records, and police records. During a visit, she or he will make an assessment of your home, how you are caring for your children, whether there are problems that need immediate attention, and what might make things different.

The caseworker must decide if immediate action is needed. Children may be removed from their home and placed in protective custody only if the caseworker believes that there is imminent danger to their life or health at home. If so, the caseworker will ask you to agree to place the children for a period of time in a foster care setting or with a responsible relative. If you refuse, the caseworker can ask a Family Court judge to require this be done. If the children are in immediate danger and there is no time to go to court, they may be placed temporarily without a court order. But within three working days, a judge must review the temporary placement and decide whether it is appropriate.

The Role of the Courts

Most child protective cases are not taken to court. This only occurs if the CPS caseworker and supervisor believe that involving the court is necessary to help and protect a child. Going to court can be a difficult and uncomfortable experience. It is hard to talk about your family life to strangers. You may fear having your children taken away. This section will explain what to expect if you do go to court.

Two kinds of courts may be involved in a child abuse and neglect case in New York, Family Court and Criminal Court. The main role of Family Court in CPS matters is to ensure the safety of the children, focusing on the welfare of both the child and the family. The role of the Criminal Court is to prosecute charges such as assault, battery, sexual abuse, or homicide. A Criminal Court trial may result in probation, mandated (required) treatment, or a jail sentence.

Except in the most severe cases, the Family Court is the one that handles child abuse and maltreatment. A case may be referred to Family Court because a child is in danger, or because the family is unable to provide a minimum degree of care to the child even when help is provided. Also, if the family refuses to accept services that CPS considers necessary for the child's health or safety, the case may be referred to Family Court. The Family Court judge has the authority to require a family to receive services. If necessary, the judge may remove children from their home if child abuse or maltreatment is proven and it is believed that parents currently cannot provide a safe environment.

It is important to be aware that if a petition is filed on behalf of the child(ren), the parent or person legally responsible has a right to be represented by an attorney and the child(ren) are assigned an attorney (law guardian).

Usually children are not removed from their home. Unless children are in imminent, immediate danger, the goal is to keep a family together.

Providing Services

If the CPS caseworker finds some credible evidence that the children have been abused or neglected, the report is "indicated". If so, the caseworker will develop a plan, with as much family participation as possible, and identify services that would meet the needs of the child and family in order to make the home safe and decrease or eliminate any safety and/or risk factors. These services may be provided directly by CPS, or by other community agencies. For example, they may recommend individual or family therapy, crisis intervention services, housing services, day care or homemaker services. The CPS caseworker might also suggest counseling or a drug or alcohol program, if appropriate. It is extremely important to have open and honest communication. The goal is to keep families together and help to create a healthy nurturing environment for your child(ren).

The caseworker and agency cannot force your family to use these services. But, if the Child Protective Services staff believes that a child needs care or protection, and the family is not willing to provide it, they will petition the Family Court to order the necessary services.⁴

Except in emergencies, a court hearing is required before a child is removed from the home without parental consent. If the parent requests it, a hearing must be held within 3 business days to decide if a child who was removed from the home should be returned to it. If possible, the hearing should be held within 24 hours.

The Family Court Process

Family Court involvement in a child protective case starts when a petition is filed, usually by the local Department of Social Services' CPS caseworker. The petition is the legal instrument CPS uses to ask the court to protect a child and to ensure the child's future health and safety. Usually, at least three types of hearings will be held so that the judge can hear all sides of the story and objectively decide what actions are to be taken.

[1] At the *preliminary hearing*, lawyers may be assigned to the parents (respondent) and to their child(ren). The children receive their own lawyer, called a Law Guardian, to make sure that their best interests are kept as a primary consideration. Parents may obtain their own lawyer, or they may request that one be assigned to them. In this hearing the parents are

⁴ Family Court Act Section 1012

informed of the allegations made in the petition that the judge is hearing. If the child(ren) had been removed before the hearing, there can also be a hearing in which the parent seeks the immediate return of a child who has been removed, as described above.

[2] A *fact-finding (adjudicatory) hearing* is to determine if what the petition says is true. Evidence is presented, which could include the parents' statements. If there is not sufficient evidence of abuse or neglect, the case will be dismissed.

If the judge determines the children *are* being abused or neglected, there are several options . If children were removed, the judge must decide whether to continue foster care or out-of-home placement or, on the other hand, to return them home with supervision by the CPS caseworker. More examinations and investigations by CPS or the court probation department may be ordered.

The judge also might *adjourn in contemplation of dismissal*. This means that the case is suspended temporarily for up to a year, to allow the parents and CPS to work together to further help the family. The judge will still set conditions that must be followed. One condition will be continued supervision by CPS. Another will be for the parents to show that they are trying to make the home a safer place for their children. In addition, CPS must submit periodic progress reports to the Court.

It is a good idea to ask the CPS caseworker to write down what the judge has required, so you are clear about it. Your lawyer will provide you with an official signed copy of the court order. *Violation of a court order* is a serious matter, so it is important to know exactly what you must do, what you can not do, and for how long. You must meet these conditions. Both you and the CPS caseworker should keep a copy. If the conditions are met during the adjournment period, the case is dismissed at the end of the period.

[3] If the case was not adjourned in contemplation of dismissal, a *dispositional hearing* is held to determine what actions should be taken. Results of any further investigation and of physical or psychological examinations, if those were ordered by the Court, are presented. Again, the judge may make a choice: In neglect cases only, the case may be dismissed, if the judge decides that court involvement is not needed. Otherwise, the judge must decide whether to place the children with a relative, friend, or in a foster home. The judge may decide to return the children to their parents, and/or order continued supervision by CPS.

The judge may issue an Order of Protection that sets certain conditions. For example, it may set visitation rights; it may tell someone to keep away from the children; it may order parents to make the home a proper place for a child; or it may order parents to cooperate with CPS and accept treatment. *It is important to make sure you understand what has been ordered and ask to have it in writing*. Orders can be made for a period of up to one year, and they can be renewed for additional one-year periods, if an extension petition is filed.

Removing children from parents usually occurs only after all other alternatives have been exhausted. If a child is removed, the judge will tell the parents what they must do for their children to be returned and how contact between the parent and child will be maintained.

Parents' rights are terminated only in cases where the judge decides that nothing can be done to help the parents make the home safe for their children, or the parents seem to have no interest in caring for their children, or the children are repeatedly or severely abused. In these cases, another hearing must be held to terminate parental rights (a *termination hearing*). Parental rights cannot be terminated as part of the dispositional hearing. It should also be stressed that throughout all of the hearings, all parties are represented by legal counsel.

About Parents' Rights

The law also guarantees parents certain rights. They are listed below along with suggestions of ways you can help insure your rights.

1. Within seven days, Child Protective Services (CPS) must notify the parents, in writing, that they have been named as subjects of a CPS report. The letter, known as a "notification letter," also explains the subjects' legal rights.
2. Parents should ask for and should be given the name, department and phone number of the caseworker. This can be found in the notification letter.
3. Parents should also ask for and be given the name and phone number of the caseworker's supervisor, and should be able to contact the supervisor if necessary. This also can be found in the notification letter.
4. Parents may request a copy of the Central Register, or hotline, report, except for information that would identify the people who made the report. Your request must be in writing. Include your full name, the full names of the children named in the report, your address and the children's address (if it is different from yours), and the NYS Register number that appears in the corner of the letters you receive from the Child Protective Services. Write to: New York State Central Register, NYS Office of Children & Family Services, PO Box 4480 Albany, NY 12204
5. Parents should be sure to save all they documents receive, including any letters, pamphlets, court orders, etc. dealing with their case.
6. *Parents can ask the caseworker and supervisor about the status of the investigation at any time. It is important that you attend meetings that you are invited to.*
7. If a child is placed in protective custody, the parents must be notified. They must be told where the child is, unless that would endanger the child. Parents (and guardians) may apply to the court for the child's return.
8. The caseworker must explain that the agency cannot make the family use the services they offer. However, if services are refused, the caseworker may petition Family Court to ensure the care and protection of the children.

9. All reports made and information collected are confidential and can be made available only to certain people specified by law. These would not include your friends, neighbors, relatives or the media.
10. If the investigation does not find some credible evidence of abuse or maltreatment, the report is unfounded. All unfounded reports are expunged or destroyed.
11. If you are a subject of a report that is indicated, meaning there is some credible evidence of abuse or neglect, Child Protective Services is required to notify you of your rights. Parents may request that information in the report be revised or expunged if they believe it is not accurate. *You must make the request within 90 days after receiving a written notice that the report was indicated*, by writing to the Commissioner of the New York State Office of Children and Family Services. Include your full name, the full names of the children named in the report, your address and the children's address (if it is different from yours), and the NYS Register number that appears in the corner of the letters you receive from the Child Protective Services. Mail it to:
New York State Central Register
NYS Office of Children & Family Services
PO Box 4480
Albany, NY 12204
12. If a report is indicated, when a child turns 18, the record in the Central Register is sealed and can be opened only if abuse of a brother or sister is suspected. If it is ever unsealed, everyone involved must be notified. Ten years after the youngest child's eighteenth birthday, the record is destroyed.
13. In any Family Court child abuse or maltreatment/neglect hearing, the people who have been charged have the right to a lawyer. If you cannot afford a lawyer, one must be provided for you by the court.
14. Parents have the right to appeal any legal decisions or action. (Discuss this with your lawyer.)

In addition to knowing your legal rights, there are many things you can do to make the situation better. If you don't understand what is happening, ask questions. If you are not getting the services you need, talk to your CPS caseworker or the caseworker's supervisor. Make sure you understand what is expected of you.

Child protective caseworkers and lawyers are busy people, but don't be afraid to ask questions. It is important to let them know that you are concerned about helping your family and that you value the opportunity to talk to them about you and your family.

Finding Help: What You Can Do

Constant demands, responsibilities at work, and worries about providing for a family all make life stressful. We often feel that we must "make it alone". But we all need help and support. It takes courage to pick up the phone and talk to someone about how you feel. Asking for help is the first step towards feeling better about you - as a parent and a person.

Every parent needs breaks from their children from time to time. It can help to keep a list of babysitters, friends, relatives who would help when you "need to get away" for a while. Some communities have a crisis nursery where parents can bring young children if they feel they are going to hurt them. Most communities have resources for children - day care centers, "drop-in centers", Big Brothers/Big Sisters. These can be fun for the children and provide "time out" for parents.

Finding someone to talk with about how you are feeling is often helpful. This person can be a trusted friend or relative who is a good listener, or it may be a parents' phone helpline. Local support groups for parents provide an informal way to meet with other parents who are having problems dealing with their children. Counseling may help some parents, families or individuals.

Finally, just knowing what to expect from children can often help reassure us that our children are not any worse than any others are. None of us are perfect, and neither are our children. Many communities offer classes, workshops, and parent talks on how children grow up, why they act the way they do, discipline, and other concerns that parents have. Good places to check are day care centers, hospitals, public libraries, churches, local colleges, a Cooperative Extension office, local Social Service Departments, mental health clinics and many others that you may think of that are in your community.

The kinds of services available and where they can be found differ from place to place, but most communities have a variety of services to help families. These services can be found in your phone book, by asking the CPS caseworker, or by calling the Parent Helpline at 1-800-CHILDREN (244-5373 - only in New York State).

You can call these agencies to find out what kind of help they can give you for your problem or need. Some programs will not even ask your name. Many are free or can make special arrangements if it will be hard for you to pay. Someone might not be available the minute you call, but don't give up.

Being a parent is one of the most difficult jobs in the world. It can also be the most satisfying. While the demands on you can seem endless, help is there. Ask for it, and you will find that life can change for the better.

Parent Helpline: 1-800-CHILDREN (244-5373)

A program of **Prevent Child Abuse New York**, 33 Elk Street, Albany, NY 12207, 518-445-1273,
info@preventchildabuseny.org

Additional Resources:

- <http://www.ocfs.state.ny.us/main/cps/>
- Title 6 Article 6 of Social Service Law (Section 411-428)
- Article 10 of Family Court Act (Section 1012)