

What Happens Next?

A PARENTS' GUIDE TO NEW YORK STATE CHILD PROTECTIVE SYSTEM

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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. While most of us want to do what's best for our children, at times we feel as though our kids are just too much to handle. We may respond to problems by striking out at our children or ignoring their needs. This is painful and scary both for us and for our children.

Being involved in a child protective case is an additional stress on the entire family. It is common to feel helpless, alone, and attacked. Not knowing what to expect can make it harder. This booklet was written to help you understand what the child protective process is about and what is likely to happen. It also suggests things that you can do to make the process easier. It is important to ask for help 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 confusing. You may have questions that are not answered here. You may find it helpful to read this with someone else - for example a Child Protective Services caseworker. You may want to call the Prevention Information Resource Center & Parent Helpline with your questions, at 1-800-342-7472 (only in New York State). *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.*

The Purpose of the Law

The purpose of New York State's Child Protective Services Act is to protect children from dangerous situations and to help parents create a safe home for their children. Child protection means protecting children from harm and also providing services to the entire family to help create a safe and healthy home.

How the Law Defines Child Abuse and Maltreatment

According to New York State law, child abuse or maltreatment occurs when a parent (or any person legally responsible for the child's health and safety) causes injury to a child, or creates a risk of serious physical injury, or engages in sexual activity with a child. It is also considered maltreatment if a parent allows someone else to physically or sexually harm a child. A type of maltreatment called "neglect" is when a child is harmed, or is at immediate risk of harm, because the parent fails to provide for the child's basic needs, such as adequate food, clothing, shelter, medical care, or proper supervision. Excessive physical punishment may be either abuse or maltreatment.

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 in New York has a local Child Protective unit that receives and investigates reports of child abuse and neglect in their area. CPS also makes sure that children's needs are met and provides information to parents about the types of services available and where to find them.

Recognition

The state child protective process begins when somebody becomes concerned because they believe that a child is being abused or neglected. Anyone can report suspected maltreatment. Most professionals who come into regular contact with children (for example, doctors, teachers, and police) are required to report, by our state's law.

To make a report, a person only 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 maltreatment or abuse because a child has injuries that are not explained well enough. A neighbor may see young children often left home alone.

Reports are made by calling the New York State Child Abuse & Maltreatment Register -- the "child abuse hotline" -- in Albany. The 24-hour number is 1-800-342-3720. The hotline obtains specific information from the caller. If the information supports a suspicion of child abuse or

neglect, the report is accepted. It is given to the local Child Protective Services (CPS) in the county where the family lives, for them to investigate.

CPS contacts family members, face-to-face, to inform them that the report exists and about its contents. The family also receives written notice about the report. They have the right to receive copies of all reports made to the Register 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.)

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 appropriate services. 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 CPS 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.

Usually, the first steps in investigating a report are to check for previous reports, contact the person who made the report, visit the home, and see the children. The caseworker may also need to talk to other people who know the family. The caseworker must look for facts and evidence of abuse or neglect. During a visit, she or he will try to learn what your home is like, 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, they may be placed temporarily without a court order. But within three working days, a judge must review the temporary placement.

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 frightening experience. It is hard to talk about your family life to strangers. You may fear having your children taken away. This section will try to explain what to expect if you do go to court.

There are two types of courts in New York that may be involved in a child abuse and neglect case, Family Court and Criminal Court. The main role of Family Court 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 focus is to prosecute charges such as assault, battery, sexual abuse, or homicide. 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 neglect. A case may be referred to Family Court because a child is in danger, or because the family is unable to provide minimal 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 neglect is proven.

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

If the CPS caseworker finds no evidence of abuse or neglect after the investigation, the report is said to be "unfounded", and all records are sealed. CPS is required to make this determination within 60 days.

Providing Services

If the CPS caseworker finds some 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. These services may be provided directly by CPS, or by other community agencies. Many of the services try to help relieve the pressures and frustrations of parenthood. For example, they may offer day care or homemaker services. The CPS caseworker might also suggest counseling or a drug or alcohol program, if appropriate.

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.

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 a CPS caseworker. The petition is the official way CPS asks 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 decide what actions are to be taken.

[1] At the *preliminary hearing*, lawyers may be assigned to the parents and to their children. 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 provide their own lawyer, or they may request that one be assigned for them. 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. Then the judge must decide if there is a need for the court to be involved. 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 before going to the third stage. 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 postponed, 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 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.

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, the third stage, a *dispositional hearing*, is held to determine what actions should be taken. Results of physical or psychological examinations and any further investigations 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.

Finally, 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.

[4] 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. Parental rights cannot be terminated as part of the dispositional hearing.

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 a report has been made about them and explain their legal rights.

2. Parents should ask for and should be given the name, department and phone number of the caseworker.
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.
4. Parents may request a copy of all information in the Central Register report, except for information that would identify the people who made the report. Send your request 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 case 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 should be told where the child is, unless that would endanger the child. (But they may not be told the address of the foster home where the child has been placed.) They 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 you refuse services, the caseworker may need to 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 sealed and are made available only to CPS, and only if the Child Abuse Hotline receives another report.
11. If you are a subject of a case that is indicated (found to be abuse or maltreatment, Child Protective Services is required to notify you about your rights and how to seek redress. Parents may request that information in the report be changed or sealed if they believe it is not accurate. *You must make the request within 90 days after receiving a written notice that*

the case 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. 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 child's eighteenth birthday, the record is destroyed.
13. In any Family Court child abuse or neglect hearing, the people charged with abuse or neglect have the right to legal counsel. If you cannot afford a lawyer, one must be provided for you.
14. Parents have the right to appeal any legal decisions or action.

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. Make sure you understand what is expected of you.

Child protective caseworkers and lawyers may be busy or seem rushed, but don't be afraid to ask questions. It is important to let them know that you are concerned about helping your family.

Finding Help: What You Can Do

Constant demands, hassles at work, and worries about money 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 kids. 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 abuse them. Most communities have activities 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, or a Cooperative Extension office.

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 in the Community Services pages at the beginning, by asking the CPS caseworker or agency, or by calling the Prevention Information Resource Center Parent Helpline at 1-800-342-7472 (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.

To Report Child Abuse & Neglect: Call 1-800-342-3720. **NYS Child Abuse & Maltreatment Register**,
NYS Office of Children & Family Services, PO Box 4480 Albany, NY 12204



134 South Swan Street | Albany, NY 12210
518-445-1273 | 1-800-CHILDREN |
fax: 518-436-5889
Helpline: 1-800-342-7472
www.preventchildabuse.org
info@preventchildabuse.org
pirc@pca-ny.org