

TEXAS LEGISLATURE 2023

Texas should tell parents their rights when it investigates child abuse claims, lawmaker proposes

Most reports of child abuse or neglect turn out to be unfounded. But while under investigation, parents with little understanding of their rights or the process often make decisions that could impact the fate of their families.

BY [ROXANNA ASGARIAN](#) FEB. 16, 2023 5 AM CENTRAL

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Nearly half a million reports of suspected child abuse or neglect were made to the state's hotline last year, and of those more than 166,000 were investigated. Ultimately, a small fraction — about 9,600 children — were removed from their homes.

In about 80% of investigations, the abuse or neglect allegations were unfounded. Parents involved in Child Protective Services cases are supposed to be appointed attorneys if they can't afford one — and many of them can't — but that only happens if the agency actually goes to court seeking to remove a child from their home.

During the investigation phase, parents are under intense scrutiny and may have to make important decisions that could significantly affect whether they keep or lose their children. But they don't have legal help, and many are clueless about their rights at the point where the stakes couldn't be higher for the future of their families.

A bill filed by state Rep. [James Frank](#), R-Wichita Falls, aims to increase due-process protections for parents involved in CPS cases. Frank, chair of the Texas House Human Services Committee, which oversees the Department of Family and Protective Services, said he wants to cut down on children being unnecessarily placed in an overburdened foster care system [already under fire](#) for failing the children in its care.

“We always want to make sure to remove kids when they're in danger. But I think it is becoming clear, in a lot of cases, we're removing kids and putting them in situations that

are worse than they were in,” Frank said. “It causes trauma to the child. It also causes a lot of extra work within CPS that should be better suited towards the most serious cases. If we’re not doing a great job with the absolute most serious cases, we probably shouldn’t be removing [children] at the fringes.”

Frank's [House Bill 730](#) would require caseworkers to notify parents of their rights at the beginning of an investigation. Parents may have no idea why a child protective services caseworker comes knocking on their door, though they can be certain the caseworker has received a report of abuse or neglect. The parent won’t be told who made the call or what they’ve said. Many reports come from teachers or medical professionals, but anyone can anonymously report a parent and the parent will likely never find out who made the call.

Each investigation entails, at the very least, interviewing the child or children in the home and their parents or caregivers. Many also include searches of the home, including medicine cabinets and refrigerators; interviews with neighbors and frequent visitors; and criminal background checks for every person over the age of 14 living there. A caseworker can ask a judge for a court order requiring a parent to submit to a psychological evaluation or even to access a parent’s medical records.

Parents have the right to not speak with CPS investigators and to deny them interviews with their children. But CPS can go directly to a child’s school and speak to children without parental consent. Often, parents learn of a CPS investigation when their children come home from school and tell them they’ve been interviewed.

If the bill passes, caseworkers would need to notify parents of their rights, including that they can decline to share medical records or submit to drug tests, and that they have the right to confer with an attorney. If parents refuse to be interviewed or let caseworkers in their homes, the bill would also require DFPS to show probable cause, a step up from the current standard of “good cause,” to get a court order.

“Parents in this state do have rights, both under law and the Constitution, but are often not at all aware of what those rights are at this stage,” said Cindy Dyar, director of the Family Defense Project at Texas Rio Grande Legal Aid. “That’s why so much happens at that stage that is unchecked — completely unchecked — and the things that happen are highly concerning.”

The legislation would also set limits on “parental child safety plans,” under which CPS asks parents to voluntarily sign agreements for their children to be watched by another caretaker, usually a family member, in lieu of CPS bringing a court case against the parents. Legal advocates have [called those agreements coercive](#), questioning how voluntary they

can be if there's an implicit threat of removing children to foster care. The bill would limit the amount of time a safety plan like this would be valid and would require the state to report each use of such agreements.

Frank says the bill is the latest attempt by a bipartisan coalition of state lawmakers to limit the reach of the state's scandal-plagued foster care system. In 2021, during the last legislative session, lawmakers on both sides of the aisle passed a law that [tightened the definition of neglect](#), resulting in fewer children being removed from their homes, Frank said.

The proposed changes reflect a broader push in [jurisdictions](#) around the country focusing attention on the fact that child protection cases play out in civil court. Caseworkers often do things, like [warrantless searches of homes](#), not allowed in criminal cases.

“Having a child removed is one of the strongest police actions that we can take,” Frank said. “I mean, put me in jail for a year, don't remove my child, right? And yet we have all kinds of checks and balances for getting in jail for any amount of time. Rightfully so. We have checks and balances and we have due process. But child removal? It has due process, but not nearly as consistent.”

A DFPS spokesperson declined to comment on the bill, but noted that the current handbook requires caseworkers to give parents [a guide to the investigation process](#), which includes instructions on how to file complaints. Frank said better legal protections also benefit the caseworkers, who are often put in difficult situations and could use clearer guidance for what the law allows. And those protections help not just parents, Frank said, but their children, too. “This is not like, parent versus child,” Frank said. “We owe it to the child to have due process — in my estimation, this is every bit as much child protection as it is parent protection.”

When Anita, who did not want her last name published because of the stigma attached to being involved in a CPS case, first encountered a CPS caseworker, she was a young, overwhelmed mom of several small children. The investigation resulted in a safety plan, which Anita signed, requiring her to let only approved adults watch her children. At one point, needing to go to work or risk losing her job, she left the kids with their father, who wasn't an approved caretaker.

Anita said she didn't realize her decision would result in her children being taken away. “They just come in and say all these things, and you don't really know what they're talking about,” she said. “They don't really go over the guidelines with you for those types of things. So there was a lot of confusion on my end.”

Anita was appointed a lawyer only after her children were removed, well into her dealings with CPS. She followed her case plan, and her children were returned to her care. But she still felt confused by what happened. “I felt like I really didn’t know my rights in the beginning. And I didn’t learn them until after that whole experience,” she said.

The Family Defense Project, which focuses on early representation for parents involved in investigations, takes referrals from clients in the same [68-county area](#) as its parent organization, Texas Rio Grande Legal Aid, and is one of the only organizations across the state focused on early defense for parents in CPS cases. Dyer, the director, said there are plenty of instances in which a court case could be avoided if only parents understood their rights earlier.

“People love to place stereotypes and things like that on anyone involved with CPS — there’s a lot of, ‘Well, if you don’t have anything to hide, why aren’t you cooperating?’” Dyer said. “And they just truly have no idea what it feels like to have, out of nowhere, CPS show up at your door.”