

Legal Issues for Foster Parents in CPS Investigations

Margaret A. Burt, Esq,
Copyright 2013

How often does this happen?

- 2006 - 2,309 reports/ 234 indicated (per child)
 - 2007 - 2,432 reports/ 229 indicated
 - 2008 - 2,565 reports/ 259 indicated
 - 2009 - 2,608 reports/ 325 indicated
 - 2010 - 2,593 reports/ 304 indicated
- In 2009 there were 24,000 kids in care so maybe 10% -15% of foster children get reported
And about 9-11% of the reports are indicated which is far below the average percentage of indicated reports

Why do foster parents get reported if there isn't A/N?

- Foster children report for a variety of reasons
- More service providers are involved with foster families and they may be concerned about criticism if they did not call
- Birth parents and their families report
- People can be more judgmental re foster families

The child is adopted and there are these problems.....

- I am really having problems with an adopted child, I fear CPS reports among other issues, can I "revoke" the adoption? NO, not under NYS law
- Can I place the child back in foster care? MAYBE, the agency might be willing to consider a voluntary placement, a "VPA" but they do not HAVE TO
- Can I file a PINs or a JD or criminal charges? MAYBE depending on what child has done, but no guarantee that the child will be placed back in foster care or in jail - a Judge is in charge of that decision

What if a report is made against a foster parent?

- Should I get a lawyer right away? Depends.....
- Should I refuse to cooperate? You do have a right to refuse to cooperate with a CPS investigation but that may be unwise in that they would likely close your home, remove the foster child
- If I do cooperate, will they take the foster child from my house while the investigation is ongoing? Depends.....
- Best advice - keep records about what goes on in your home and keep records during any investigation

What if the agency/DSS/ACS wants to move the child?

- If it is agency/DSS/ACS who want to move child - then foster parents have a right to a written 10 day notice, an internal agency conference (in 10 days, with 5 days notice and decision in 5 days, no movement for 3 days after decision) BEFORE any movement EXCEPT- if they claim move is for "health and safety" reasons
- Have this right no matter how long child has been in the home - longer in the home, more likely stronger argument
- Possible attorney at this point?
- 18 NYCRR §443-5, SSL §400, SSL §22

Moving the Child

After the internal conference and decision and the 3 days – they can then move the child if they have not already moved the child for “health and safety”

You can then ask for a state fair hearing on the removal if the child has been removed before the 10 days or after

OCFS handles the fair hearings – they have the power to order the child back into the home if they agree with you – problem if you become uncertified in the meantime

You may want to seriously consider an attorney for this

Moving the Child

- Can you get the Family Court Judge to stop them? If they have not moved the child yet, some Judges may be willing to order them not to move the child or even to move the child back – Judges CAN do this but not all of them will. You would likely want an attorney to seek this but the AFC might also be willing to do it if the child wanted to stay with you
- Can the Judge order them to move the child from your home without this 10 day notice or these rights/hearings? YES – you may be able to appeal if you are a party or someone else may appeal it

Moving the child

- Remember : If they decide that there is abuse or neglect that has occurred and that it is so serious that the child is at imminent risk of serious injury, they could bypass the whole process we just discussed and bring you into Family Court as a respondent to an Abuse and/or Neglect petition and then the Judge would be the sole person deciding about removing child(ren) from your home
- You would most definitely want an attorney for this situation

What will the investigation be like for me and my family?

- 60 days – but may take longer – CPS will do it
- Come to your house, talk to you (if you are willing), any and all children, the source, teachers, doctors, neighbors, relatives, other service providers
- What will people think? Will they tell these people later that I did nothing wrong?
- Will they tell me who made the report against me?
- Will I be entitled to see any records they make?

What else?

- Could they involve the police in the investigation?
- Will they listen to my position?
- Will they take into account the problems the child has that might have caused them to claim something happened that didn't?
- Only 2 options – “indicated” or “unfounded” – and a new program called FAR

So what should I do?

- Show any notes, requests for help you have made and while investigation is happening - cooperate but keep notes
- Consider who you might want to tell, who you may ask to speak to the CPS worker
- If I suspect the child is the reporter, should I ask them to remove the child from my home?
- If I suspect that one of the professionals helping me with my child is the reporter, should I ask to switch professionals?

What if the report is unfounded?

- Unfounded means CPS did not find any credible evidence (believable) that you neglected or abused a child - they will still keep the records but they will be **"sealed"** and only available if there are future investigations. The sealed report is then fully **expunged** (destroyed) 10 years after the receipt of the report.
- Unfounded means that the report will not be revealed to anyone like potential employers or a court - except to CPS or possibly law enforcement if there is another report on you

Unfounded?

- You can ask for a more **immediate expungement** under SSL§ 422 (5)c if can show a criminal conviction for false reporting or "clear and convincing evidence that affirmatively refutes" the allegations
This does not require a hearing, simply write and tell them why you think it was a false report - no reason not to! Some people have hired attorneys to help them write such letters, many people have just written on their own and OCFS has in some cases expunged the unfounded report

What if I am getting constant false and harassing reports?

- How can I stop the SCR from accepting the reports?
- Can I bring criminal charges against the person making the reports? Would the agency help me do this? Penal Law § 240.50, SSL § 422-a (14)
- Can I sue the person making the reports? -SSL §419
- Can I tell CPS that I will refuse to cooperate with any more investigations?

When would they decide to "indicate"?

- The CPS caseworker along with the supervisor decide that there is "some credible evidence" that a child in your home has been abused or neglected by you or that you were aware of or should have been aware that someone else who is regularly in your home and engaged in parental type activities with the child and abused or neglected the child

What are my rights if a report is indicated?

- You can ask for a fair hearing - you will get info with the indication letter - file with the state within 90 days - fair hearing does have the power to reverse the indication, may want to hire an attorney SSL§ 422 (8)
- Report is kept on you at SCR for 10 years past the 18th birthday of the youngest child (possibly 28 years!) and could prevent you from getting a job, being a foster parent or an adoptive parent
- If indicated, will they close my foster home? They are not required to, but might do it

What is a "fair hearing" like?

- It is similar to court with an attorney employed by the state listening to both sides instead of a Judge
- You can tell your side of the story and you can present witnesses - parties can present "hearsay" evidence
- The hearing officer may agree with you and order that the report be "unfounded" and sealed.
- You can do this without an attorney but you may want to strongly consider hiring an attorney, even if you have limited income, you are not entitled to a free attorney.

What is a “fair hearing” like?

- The level of proof in this hearing is higher - “clear and convincing” so you really do have a chance of getting it unfounded and sealed as the hearing officer may think there is not enough proof
- Also, they can decide that even though the report is still indicated that it does not “reasonably relate” to employment with children and so the existence of the report would still be indicated but it would not be revealed to potential employers or courts

Do I only get a hearing if they take the child?

- No, you are entitled to a hearing on the indicated report if they take the child or not
- Even if you agreed to them taking the child out of your home, you could still seek a fair hearing on the indicated report
- What’s the point if they child is gone and I do not want the child back?

Consequences to an indicated report include problems with jobs, fostering or adopting in the future, custody issues

Could they remove my birth/ adopted kids also?

- They could with an indicated report if they also took you to court and filed an abuse and neglect petition against you and proved to a Family Court Judge that your children were at imminent risk
- You cannot try to get a report expunged if you are found by a court to have abused or neglected a child or if you agree or consent to the court making such a finding

Loss of license

- It is important to remember that although an indicated report does not necessarily mean that a child will be removed or that your home will be closed, it is a distinct possibility
- Also it is important to know that an agency or county can remove a child and/or close your home even if you do not have an indicated report, a home could be closed for not following foster care standards even though there is no indicated report – an example would be the use of corporal punishment on a foster child

Questions? Comments?