

# Child Abuse and Neglect Cases in New York

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### What is child abuse or neglect?

- Child abuse means a parent or a person responsible for the child seriously injures the child or places the child at risk for serious injury.
- Child neglect means a parent or a person responsible for the child harms the child physically, mentally, or emotionally or places the child at risk of harm by failing to care for the child or by failing to supervise him properly, or by abandoning the child.

### What is the process of an abuse or neglect case?

- Report and investigation - Someone reports neglect or abuse to Child Protective Services. Child Protective Services investigates the report. They have 60 days to complete their investigation. It used to be that if there was "some credible evidence" that the report is true, the report would be "indicated". As of 2022, if the abuse or neglect is not shown by "a fair preponderance of evidence," then the report is unfounded. If there is "a fair preponderance of the evidence" that the report is true, the report is "indicated". If there is no "fair preponderance of the evidence", the report is unfounded. Indicated reports are kept in the Statewide Central Register of Child Abuse and Maltreatment. Employers who work with children and agencies for foster care and adoption have access to that Registry. The accused parent has the opportunity to request that the indicated report be changed to unfounded or sealed for employment

purposes. The accused care giver also has 90 days to request a hearing challenging the "indicated" finding.

- As of January 1, 2022, changes were made regarding how long the report about neglect will be retained in the NY registry (reduced to 8 years), and what proof is needed for a report to be founded. Abuse findings may still be in the registry until the child reaches age 28. The required proof is now “ a fair preponderance of evidence.” More information about that is available at this link: <https://www.risemagazine.org/2022/01/what-new-scr-legislation-means-for-parents/>
- Services - CPS can provide services to the family when the report is indicated.
- Court process -
  - CPS can begin a family court case by filing a neglect or abuse petition against the parent or person responsible for the child. This is more likely to happen if the parent refuses to cooperate with “preventative services” after there is an indicated CPS report.
  - CPS may want to take the child away from the parent to place him/her with relatives or foster parents. If the parent does not agree with this plan, the parent can have a removal hearing for the Court to decide whether there is "imminent risk of harm" to the child and whether CPS made "reasonable efforts" to keep the family together in a safe way.
  - The judge must decide, either by agreement or by trial, whether the allegations in the neglect or abuse petition are true. This is called Fact Finding. If the court decides there was abuse or neglect, then the Court must decide, again by agreement or trial, where the child should live and the responsibilities of the parent.
  - If the child remains with relatives or foster parents, the Court will confirm at a permanency hearing the goal of the case, services for the parent and child, and the visitation plan. A permanency hearing is held eight months after the child is placed with relatives or foster parents and then every six months.
  - The Court can return the child to the parent's care at any point in this process. In some cases the parent may need to complete parenting classes and/or substance abuse or mental health treatment for that to happen.
  - If the child remains in foster care for 15 of the most recent 22 months, CPS must file a petition to terminate the parent's rights. It is less likely that CPS will file that petition if the children are placed with relatives who are

not foster parents, but it still possible. The Court will have a trial to decide whether the parent's rights should be terminated or if the parent should have more time to work toward the child's return to the parent. At that time, the parent may choose to surrender his or her parental rights with or without conditions for post-adoption contact with the child.

### **Does a parent have the right to an attorney?**

- A parent or parent substitute has the right to an attorney for a neglect or abuse petition and a petition to terminate parental rights. If the person cannot afford an attorney, one can be assigned to represent him/her.
- An Attorney for the Child will be assigned to represent the child regarding those petitions.

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This article provides general information about this subject. Laws affecting this subject may have changed since this article was written. For specific legal advice about a problem you are having, get the advice of a lawyer. Receiving this information does not make you a client of our office.

Last Review Date: September 2024

Last updated on September 10, 2024.

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