Know Your Rights When CPS Comes Knocking

What Domestic Violence Victims Need To Know About Child Protective Services Investigations

The intent of this guide is to help domestic violence survivors understand what their rights are in the initial stages of a Child Protective Services (CPS) investigation, and to know what Washington's policy is regarding domestic violence and CPS, especially in the early stages of a case, when things are moving fast and may feel scary and confusing.

It is particularly important for survivors of domestic violence to understand their rights and how CPS handles child abuse or neglect cases when domestic violence is present. When CPS investigators contact you, their primary concern is your child's safety. They may be You can find out more general information on parent's rights by going to www.dshs.wa.gov and searching "parent's rights."

worried about domestic violence or they may be focused on another issue. This information is intended to help you know your rights before an investigation begins, as well as after CPS is involved, with a *focus on domestic violence (DV)*.

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Background

What does the Washington Department of Social and Health Services (DSHS)/ Children's Administration have to say about domestic violence when child safety is a concern?

In 2010, Denise Revels Robinson, the Assistant Secretary of DSHS, committed to increasing the safety of children affected by domestic violence by:

- working with domestic violence victims to increase their own safety
- respecting the protective efforts and decision making of adult domestic violence victims
- holding domestic violence perpetrators accountable both for their abuse and for changing to become safe parents

(Social Worker's Practice Guide to Domestic Violence, page 2)

Federal and state laws require DSHS to make "reasonable efforts" to prevent or eliminate the need for removal of a child from the child's home and to provide or offer preventative services when possible. (42 U.S.C. 671(15)(B); RCW 13.34130(2)).

In their Social Workers' Practice Guide to DV (page 17), DSHS/CA defines "reasonable efforts" regarding DV to include:

- Consistent screening for DV
- Conducting *specialized assessments* of identified domestic violence, which consider:
 - the DV perpetrators' tactics of control (i.e., emotional, physical, economic, and sexual abuse)
 - the impact of DV on the children and on the non-DV offending parents (e.g., injuries, loss of housing, behavior problems, trauma)
 - o lethality risks (finding out if the violence is potentially deadly)
 - protective factors (this means everything you have done to keep your kids safe, supports in their lives, and the potential that the DV abuser will change)
- Making efforts to increase children's safety by increasing the safety of adult DV victims
- Holding DV perpetrators accountable (both in documentation and case planning) for the DV they commit. (This means that if you have been abused by your intimate partner, you should be seen as the victim of a crime, and not blamed for what the abuser did.)

Because DSHS/CA defines "reasonable efforts" regarding domestic violence in this way, domestic violence survivors have a right to expect that their social worker will ask about DV, work to understand how it fits into the bigger picture of the case, and make efforts to make it possible for you to have the safety, security and stability to keep your children with you if you are a DV survivor. In this short guide, we'll try to make clear what this might look like.

Your Rights

Your rights and what CPS investigators and social workers must do and should do are determined by a variety of sources. Processes specifically defined in federal law or state law *must* be followed. Additionally, DSHS/CA policy also informs child protective workers. Policy sets forth what they *should* do. Policy and practice guides set forth expectations for social workers, and define best practice, but do not have the weight of a legal requirement.

You have a right to know what DSHS/CA investigators and social workers are instructed to do in DV cases. You can find DSHS/CA's Social Worker's Practice Guide to Domestic Violence here:

Throughout this document, when we say "You have a right to," this refers to your rights that are defined and protected through law. When we say social workers "should," "are expected to," or "are instructed to," this refers to information in the DSHS/CA social worker's policy and practice guides, which define best practice but also leave room for social worker discretion.

http://www.wscadv.org/docs/Social Workers Practice Guide to DV Feb 2010.pdf

You also have a right to know what DSHS/CA's policies and practice guidelines are generally. You can find this information at http://www.dshs.wa.gov/ca/pubs/mnl_pnpg/chapter1.asp.

Is Domestic Violence child abuse or neglect?

You should know that when a child witnesses or lives with domestic violence, it is not in and of itself considered child neglect in Washington State (RCW 26.44.020). However, witnessing a parent or other adult brutalize one's caregiver can have a negative impact on children's emotional and social development. Children also can get hurt by domestic violence abusers when they get in the middle of adults or attempt to protect their parent from abuse. DV victims sometimes inadvertently harm their children as well. For example, in the course of trying to keep a child from witnessing the domestic violence, a survivor might grab a child by the arm and put them in their room, and thus leave a bruise.

How does CPS become involved?

Friends, family members, teachers, and others may be concerned about you and your children; sometimes people will take those concerns to DSHS/CA, the state agency charged with protecting children who are in danger of being abused or neglected.

Some people, including teachers, doctors, child care workers, and some counselors are "mandated reporters," meaning that when they think a child might have been abused or neglected or might be in danger of being abused or neglected, they are required by law to

report this to either law enforcement or CPS. As a parent, you do *not* have a right to know *who* reported their concerns to CPS.

When DSHS/CA receives a call to the child abuse reporting hotline, they use a standard process to decide what action to take. CPS does not follow up on every call; many calls result in no action because the intake worker determines that child abuse or neglect is not taking place. If the intake worker determines a child may be in danger, a CPS investigator (and possibly law enforcement officer) will go out to meet the child and their family to assess whether or not the child is safe. As a parent, you do *not* have a right to stop a CPS investigator from checking on the safety of your children. But you do have some rights regarding how the CA social workers conduct their investigation, and what happens after that. **You have a right** to request that social workers adhere to the laws, policies and guidelines intended to guide their actions as they work to ensure children's safety.

When someone has reported concerns about your child:

You have the right to obtain an independent documentation of your child's physical and emotional condition, if they are in your care. These independent assessments may be useful to you as the CPS investigation proceeds.

If you want independent documentation of bruises or marks on your child's body, or of your child's health and well-being, **You have the right** to take your child to a doctor, and ask that doctor to document the child's physical condition (at your own expense). Like any parent, **you**

have the right to take your child to a psychologist for an independent assessment of their emotional well-being (at your own expense.)

CPS has the right to interview your child without telling you first. They can interview your child at school or another location. However, they must tell you afterwards.

During the initial investigation by CPS:

You do *not* have the right to stop or prevent a CPS investigation. CPS has the right to contact your child and interview them outside your presence. Social workers are instructed to ask children if they would like another supportive adult in the room while they are interviewed, and your child has a right to request this. CPS investigators are instructed to grant these requests unless they think doing so would impede the investigation. (<u>Practices and Procedures Guide, section 2331.D.2.c.</u>)

You (and any other legal parent of your child) have the right to know that CPS has investigated an allegation of child abuse or neglect, but not who made the allegation. CPS may delay telling you or the other parent about the investigation if they think that notification will negatively impact the investigation.

You have the right to have all your communications with CPS, including the initial investigation, take place in the language that you prefer. DSHS/CA must provide an interpreter or a bilingual worker in the language you prefer; you do not have to pay for this. You can request interpretation even if you speak some English. Children should never be used as interpreters for CPS workers; You have the right to refuse to allow your child to function as an interpreter during a CPS interview, and to select another friend or relative to interpret if no other option is

If you think telling your child's other parent will result in danger to you or your child, you can request that CPS delay this until you are more safe, but the decision about notification will be up to the social worker.

available. DSHS/CA policy is to never use children as an interpreter for their parent (<u>DSHS/CA Operations Manual 4320</u>).

Early in the process, the CPS worker will interview you and others to assess your family's situation and come to an understanding of your child's safety. You have the right to talk to the social worker privately: separate from your children, your spouse/boyfriend/girlfriend/any other relatives, and any other adults in the house. Social workers are instructed to conduct private interviews with all members of a family, particularly when DV is identified

(Practices and Procedures Guide, section 2331.D.8.).

The CPS investigator has the obligation to provide you with a strengths-based family assessment. This means the social worker should find out what is going well in your family and the ways that you are a good parent, as well as any challenges. (Practices and Procedures Guide, 2511 and 2540.A You can find out more about DSHS/CA Family-Centered and Strengths-Based philosophy here: http://www.dshs.wa.gov/pdf/ca/FCPModel.pdf.

You have the right to hire an attorney at any point in the process (at your own cost). If CA seeks to remove your child from your care, a public defense attorney will be assigned to you (if you qualify for this service); but you can hire an attorney before that happens. You can also choose not to use a public defender and instead hire your own attorney at your own expense.

When you are asked about abuse or domestic violence:

You have the right to decide whether or not to talk about abuse in your relationship.

CA policy instructs social workers to ask you, your spouse/boyfriend/girlfriend, your children, and any other caregivers about conflict in your family and violence or threats between adults in the household.

Be aware that CPS investigators and social workers have access to police records, Protection Order filings, criminal histories, 911 calls, and past CPS referrals, so they may have information about abuse even if you don't tell them. Interviews with friends, family, teachers, or neighbors may also raise concerns about domestic violence.

You can find a domestic violence advocate by calling Washington State's domestic violence hotline at (800)562-6025

A domestic violence advocate can help you weigh the pros and cons of revealing detailed information about physical or emotional abuse. Domestic violence advocates are mandated reporters, so they will have to report child abuse (keep in mind that witnessing DV is not child abuse or neglect in and of itself).

DSHS/CA policy requires that when CPS intake workers, investigators, or social workers learn that an adult in the home has been threatened with or subjected to violence, they must conduct a "domestic violence assessment." (*Practices and Procedures Guide*, section 2220.A.7, and *Social Worker's Practice Guide to Domestic Violence*, page 33) DSHS/CA policy instructs social workers to ask about:

- strategies your abuser uses to control, scare or hurt you
- the impact of the abuse on you and your kids
- what you've done to try to protect your children from seeing or being affected by the abuse, or from getting hurt.

Investigators and social workers are also instructed to consider the level of danger you are in from the abuser by finding out if your partner is suicidal, keeps guns/weapons in the house, abuses drugs or alcohol, or threatens to hurt or kill you or the children. (<u>Practices and Procedures Guide</u>, section 2220.A.7 and Social Worker's Practice Guide to Domestic Violence pages 33-35) Even if they don't ask, if you feel you are in danger from your abuser, you can tell the investigator or social worker that you are afraid and why. You can ask them to help you figure out a plan to keep yourself and your children safe.

Social workers are instructed to try to understand how abuse by an intimate partner towards a parent might affect your family overall. Even if they don't ask, you can tell a CPS investigator about physical or emotional abuse in your relationship and how that has impacted you and the safety of your children, and what you have done to protect and support your children. You can ask for help with addressing a partner's abuse and its impact on you and your children.

Recognizing safety risks to yourself and your child, understanding the way DV affects your child, and knowing when to ask for help may be seen as strengths by the social worker.

As the investigation proceeds:

If the CPS investigator determines your child is in danger of abuse or neglect, **you have a right** to know the specifically what the CPS investigator is concerned about.

CPS investigators want to find out about "safety threats". The CPS investigator may be concerned about domestic violence that threatens the safety of children. However, not all abusive behavior towards an intimate partner threatens children's safety, so **you have a right** to know how the investigator thinks the domestic violence affects your child's safety or well-being. (Some examples might be that the children get in the middle of conflicts, the abuser uses weapons, or the child is showing signs of emotional distress in response to the abuse.)

Keep in mind that the CPS investigator may be concerned about something other than the domestic violence; for example, lack of supervision of the children or lack of proper medical care.

A DSHS/CA safety
plan is a written
agreement between
you and DSHS; it
contains specific
activities and tasks
for you and others to
make your children
safe from the specific
problems/threats the
worker has
identified

Planning to keep yourself and your children safe from abuse:

If any safety threat is present, CPS investigators/social workers must complete a "safety assessment." (<u>Practices and Procedures Guide</u>, <u>section 1100</u>) If the CPS worker determines your child is unsafe or if impending danger exists, their policies require them to create a safety plan with you for the children. A CA safety plan looks at each circumstance causing your children to be unsafe, and maps out a plan to address those concerns (<u>Practices and Procedures Guide</u>, <u>section 1130</u>).

DSHS/CA policy instructs social workers to work collaboratively with the parent to create a plan to keep your children safe at home with you if at all possible (*Practices and Procedures Guide*, section 1130).

You have a right for the safety plan to be well thought-out, doable, and reasonable.

A safety plan may involve getting the help of friends and family members to help build your and your children's safety; it will include specific roles and tasks for these supportive people. For example, a friend may agree to have your children at her house over the weekend, when your

abuser is home.

DSHS is not an arm of Immigration and Customs Enforcement (ICE), and lack of citizenship status should not interfere with placing a child in a friend or relative's home.

You can ask for support services to make it possible to enact the safety plan, including assistance with transportation, daycare, and housing.

CPS social workers may suggest you file for a Domestic Violence Protection Order if you are experiencing abuse from your intimate partner. **You have the right** to decline to file a protective order if you think it will endanger you and/or your children (*Social Worker's Practice Guide to Domestic Violence*, page 69).

When you know a protection order is not a good option for you, you will need to work with the social worker to identify other ways to address the social worker's concerns about your children's safety.

If you do decide to file for a DV Protection Order, you can ask your social worker for support and assistance. DSHS/CA policy allows social workers to appear in court, write a letter to the judge stating concerns regarding the children, and make a recommendation about whether or not the child would be safe in unsupervised visits with the domestic violence abuser (Social Worker's Practice Guide to Domestic Violence, page 16). A domestic violence advocate can also support you in the protection order process.

If removing your child from your care seems likely:

If the social worker does not think your children can be safe with you, **you have a right** to know exactly what safety concerns the worker thinks you cannot address.

A social worker cannot make the decision to remove a child from your home by themselves. By law, they must have a voluntary placement agreement signed by you, OR a court order, OR law enforcement must agree the child needs immediate protection. (<u>WAC 388.25.0050</u>, RCWs <u>13.34.050</u> and <u>26.44.050</u>)

If a social worker thinks your child must be out of your care to be safe, then they will start looking for other options for where the child could live and stay safe. Because accidents and problems may come up in anyone's life, every parent should think about who could take care of their child if they are unable to care for them. If you have given this some thought, **you have a right** to suggest the friends or family members who might be able to take care of your child while you work to address DSHS/CA's concerns about their safety with you.

The social worker may not agree with you about the best place for your children. DSHS/CA must run background checks on any person who might have a child removed from their home, any person who

"In DV situations, social workers should always consider ways to maximize the safety of all involved, particularly the child, the adult victim, and the workers themselves."

Social Worker's Practice Guide to Domestic Violence, page 55

plans to help with a CA safety plan, and any person who will take a child into their home to keep them safe. Some criminal convictions make a person ineligible to have a child placed with them. Convictions for misdemeanors usually will *not* prevent DSHS from placing a child with someone who otherwise seems to be safe and supportive for the child. (You can find a link to the list of crimes that would disqualify someone here:

http://www.dshs.wa.gov/CA/pubs/mnl ops/chapter5 5500.asp#5522, under section 5522.)

Voluntary Agreements:

A Voluntary Placement Agreement is when the parent and social worker agree the child would be better off in the state's care temporarily. Voluntary Placement Agreements are meant to be short, and do not require a court order. As the name implies, they are voluntary. **You have the right** to revoke your agreement to a voluntary placement at any time by notifying DSHS/CA in writing that you are doing so. DSHS/CA then has 48 hours to return your child or to get a court order to keep your child placement (*Practices and Procedures Guide*, section 4307).

When your child has been removed from your care:

You have the right to notice in writing regarding the placement of your child. You should receive a copy of the court order, the voluntary placement agreement, or police documentation of the need for protective custody (<u>Case Services Policy Manual</u>, section 5741 and <u>RCW</u> 74.14A.020; <u>RCW</u> 26.44.115).

You have a right to inform the social worker of your child's special needs and interests if they are removed from your care. This includes any medical issues, allergies, religious observations, dietary needs or habits, special rituals such as a bedtime story, or anything else that would make being away from you easier for your child (*Practices and Procedures Guide*, section 4262).

You have a right to know your children are safe and being cared for. If they are placed in foster care, **you have a right** to a visit with them. Social workers must make efforts to arrange a visit within 72 hours of your children's placement (*Practices and Procedures Guide*, section 4254).

About Family Team Decision Making Meetings:

If your child is removed from your care, a "Family Team Decision Making" (FTDM) meeting may be held to involve your friends, family, and supportive people in figuring out how to keep your children safe, and where they should live until you are able to have them back in your care. **You have a right** to ask for a FTDM meeting, but your social worker has decision-making power.

The intent of FTDMs is to provide a safe and supportive context for thinking about your child's well-being and safety. **You have a right** to tell your social worker who you would like to have at the meeting. You can invite friends, family, an advocate, a counselor you trust, a teacher, or anyone else who you think would be helpful.

You also have a right to exclude people from the meeting if you feel their attendance is not in the best interests of your child. (CA social workers cannot be excluded.)

You have a right express your concerns about your physical and emotional safety from the abuser before, during, and after an FTDM to your social worker or the FTDM facilitator.

A Family Team Decision
Making meeting (FTDM)
may include you, your
social worker, the
child's grandparents or
other relatives, your
counselor, experts from
the community, and
friends, family or other
supportive people you
may want to invite.

You have a right to tell your worker who might be helpful and supportive to you and have them invited to the FTDM.

If you have a protective order, the abuser will not be allowed to attend the FTDM either in person by telephone. In this case, if the abuser is a parent of your child, a separate FTDM will be offered.

If you do *not* have a protective order, but would prefer the other parent of your child not be present, you can talk to your social worker about this. You can request a separate meeting; but this request may not be granted. If you feel scared or intimidated during the FTDM, you can tell the FTDM facilitator about your concerns.

You have the right to know exactly what must happen in order make your living situation safe enough to be reunited with your child. The steps you need to take should be clearly explained in your case plan. DSHS/CA instructs social workers to make case plans "focused, time limited, behaviorally specific, attainable, relevant, and understandable" (*Practices and Procedures Guide*, section 1150). Case plans should also be tied directly to identified safety threats.

You have the right to ask for assistance to address safety threats. If your children have been removed from your care, or you have signed a voluntary services agreement, you will be eligible for

services to help address safety threats. These can include mental health, substance abuse, housing, child care, and other services.

When domestic violence is an issue:

If the children have been hurt because of domestic violence committed against you, **you have the right** to be seen as a victim of a crime, and not be blamed for being a victim. DCFS social workers are directed by their policy and by their practice guidelines to place "responsibility for child maltreatment as a result of DV ... on the DV perpetrator, not the DV victim" (*Social Worker's Practice Guide to Domestic Violence*, page 17). If domestic violence is the reason your child is being taken out of your care, **you have the right** to services that will "alleviate the effects of DV" in order to make it safe for your child to come home. For example, DSHS might pay for you to get counseling if you need help recovering from trauma, or pay to have your locks changed if this will make your home safer from the abuser (*Social Worker's Practice Guide to Domestic Violence*, page 69).

In case where DV is a concern, social workers are instructed to avoid placing too many burdens upon the domestic violence victim in the case plan, and to avoid creating plans which will compromise DV victims' safety (*Social Worker's Practice Guide to Domestic Violence*, pages 69-70).

You have the right to tell your social worker what you think would increase your safety, your ability to protect your children from harm, and your capacity to parent effectively. You also have the right to tell your social worker if a plan is not working for you or compromises your safety.

You may have different ideas than your social worker about what would be helpful. A domestic violence advocate or an attorney may be helpful in talking with your social worker.

You have a right to refuse "voluntary services." However, it may be more effective to negotiate to voluntarily receive services that will be helpful to you and your child.

You have the right to ask that your address be held confidential if you think having your partner or the child's biological parent obtain that address may compromise your safety. If your partner or the

child's biological parent is entitled to visitation, your can ask your social worker to develop a plan for exchanging the child that will be safe for all of you.

Domestic Violence
advocates have
"privilege": that
means no one can
force them to reveal
the conversations
you have had
without your
permission.
However, your
children's records
must be released to
DSHS if they request
them.

Reasonable Efforts

"Reasonable efforts" is a legal term, and refers to the level of effort DSHS/CA must make to keep your children in your home or make it possible to return them to your home.

You have a right to have your social worker make "reasonable efforts to prevent or eliminate the need for removal of your child." This right is protected by Federal and State law. (42 U.S.C. 671(15)(B); & RCW 13.34130(2))

Regarding domestic violence, Washington defines these "reasonable efforts" to include:

- repeated screening for domestic violence
- thoroughly assessing domestic violence
- efforts by your social worker and DSHS/CA to increase child safety by increasing your safety
- holding the perpetrator accountable for the domestic violence.

(Social Worker's Practice Guide to Domestic Violence, page 17)

DSHS policy instructs social workers to make an effort to identify who is the victim and who is the perpetrator of an ongoing pattern of domestic abuse that results in coercive control.

The determination of the victim/perpetrator in a relationship should take into account emotional abuse, sexual abuse, economic abuse, isolation, and other controlling behaviors, not just individual acts of physical violence (*Social Worker's Practice Guide to Domestic Violence*, page 30).

You have the right to expect DSHS/CA will create a case plan that will hold the parent or caregiver who is a domestic violence perpetrator accountable. This may include requiring attendance at a state-certified domestic violence perpetrator treatment program. Social workers are instructed to avoid referring domestic violence perpetrators to anger management courses, as these do not help with intimate partner abuse (Social Worker's Practice Guide to Domestic Violence page 77).

More about your rights

- You have the right to keep your conversations with a domestic violence advocate private.
- You have the right to a written case plan and child safety plan; You have the right to receive a copy of the case plan or safety plan every time it is updated or modified
- You have the right to access your records and know what your social worker has written in your records. Be aware that the other legal or biological parent of your child can also access these records.
- You have the right to know what your social work can and cannot keep confidential from your abuser.
- You have the right to say you think you've been treated unfairly:
 - You can go to your social worker's supervisor, the Area Administrator, or the Regional Administrator.
 - You can tell the judge, if you are in a dependency process
 - You can call the Children's Administration's office of Constituent Relations at (800) 723-4831 | TTY (206) 464-7471 or the DSHS Olympia Headquarters at (800) 737-0617
 - You can request assistance from the Office of the Family and Children's Ombudsman at (800) 571-7321 | TTY: (206) 439-3789. You can also file a complaint through the website directly <u>here.</u>

Glossary:

Child abuse: sexual abuse, sexual exploitation, or injury of a child by any person under circumstances which cause harm to the child's health, welfare, or safety (RCW 26.44.020)

Child neglect: an act or a failure to act, or the cumulative effects of a pattern of conduct, behavior, or inaction, that evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to a child's health, welfare, or safety (RCW 26.44.020)

Note that the Washington Administrative Code provides a more detailed definition of child abuse and neglect at <u>388-15-009</u>.

Child abuse/neglect: child abuse is generally understood to be actions which harm a child directly (hitting, sexual abuse) whereas child neglect refers to situations in which children are not properly cared for or are unsafe. These might include inadequate supervision, lack of medical care, poor nutrition, or allowing the child to be in an unsafe environment where they could be hurt or traumatized.

DCFS: Department of Children and Family Services – an acronym for local offices housing CPS investigators and Child and Family Services case workers.

Domestic Violence: a pattern of abusive and controlling behaviors perpetrated by an intimate partner. These can include threats, physical abuse, sexual abuse, economic exploitation, enforced isolation, using the children, stalking, monitoring, and other forms of intimidation. The pattern of behaviors results in uneven power between partners, a loss of autonomy on the part of the victim, and the abuser having coercive control over the victim.

DSHS/CA: Department of Social and Health Services/Children's Administration: this is the state agency in charge of child protection and welfare. Child Protection Services investigators, Child and Family Services caseworkers, and foster care are all housed under DSHS/CA.

To find out more about DSHS Policies, Practices, Procedures and Parent rights:

Social Worker's Practice Guide to Domestic Violence:

http://www.wscadv.org/docs/Social Workers Practice Guide to DV Feb 2010.pdf

DSHS/CA Practices and Procedures Guide:

http://www.dshs.wa.gov/ca/pubs/mnl pnpg/chapter1.asp

DSHS/CA Case Services Policy Manual:

http://www.dshs.wa.gov/CA/pubs/mnl case/chapter1.asp

DSHS/CA Practice Model: http://www.dshs.wa.gov/pdf/ca/FCPModel.pdf

DSHS/CA Indian Child Welfare Manual:

http://www.dshs.wa.gov/ca/pubs/mnl icw/chapter1.asp

DSHS/CA Parents' Rights booklet: http://www.dshs.wa.gov/pdf/publications/22-484.pdf

Washington Administrative Code regarding Child Protective Services:

http://apps.leg.wa.gov/wac/default.aspx?cite=388-15

DSHS/CA Child Safety Framework: http://www.dshs.wa.gov/pdf/ca/ChildSafetyFramework.pdf