

INSTRUCTIONS

Affidavit in Support of Ex Parte Order To Remove Alleged Perpetrator

March 2016

What is the purpose of this affidavit?

If CPS decides after a child abuse investigation that a child can remain safely in the home if the alleged perpetrator is out of the home, this affidavit can be used to meet the requirements necessary for a court order. CPS has the option to request a protective order (TEX. FAM. CODE CH. 82) instead of, or in addition to, requesting a temporary restraining order under this section. TEX. FAM. CODE § 262.1015(a-1).

If CPS elects to request a temporary restraining order to remove the alleged perpetrator, there must be evidence to show:

- There is an immediate danger to the physical health or safety of the child OR the child has been a victim of sexual abuse;
- There is no time, consistent with the physical health or safety of the child, for an adversary hearing;
- The child is not in danger of abuse from the parent or other adult who will continue to live with the child;
- The parent/other adult who will live with the child is likely to make a reasonable effort to monitor the home and report any attempt by the alleged perpetrator to return to the home to both CPS and law enforcement and;
- The order requested is in the child's best interest.

The caseworker's affidavit must address each of these five points.

TEX. FAM. CODE § 262.1015(b).

Indian Child Status

Every effort should be made to ask a child, parents or extended family about possible tribal connections as early as possible during the investigative stage. If an Order to Remove Alleged Perpetrator (or a protective order) is requested, the court should be informed as to whether each parent, conservator or relative has been asked about tribal affiliation and what information has been provided. Failure to promptly identify a child or family's tribal connection can have a devastating impact on permanency.

Format

This is *one possible* format or template for a caseworker's affidavit in support of an Order to Remove Alleged Perpetrator. If your local court requires a different format, use that format. The use of subheadings is recommended, if your court approves, simply to make it easier for the reader to locate information quickly.

First person/third person

Writing in the first person ("I interviewed Mrs. Smith") allows a more streamlined and natural style than third person ("the undersigned caseworker interviewed Mrs. Smith"), but either one is legally correct. Follow the direction of the local court or CPS management on this issue. With either style, the most important thing is to make sure that the source of any information that is not obtained first hand is clearly identified. In other words, if you are reporting on your own

interview of a doctor, you can say, “Dr. Baines reported that the child had a fractured rib.” However, if another caseworker interviewed a family member or witness, your affidavit can include that information, but the source of the information must be clear. For example, “the case notes indicate that caseworker Edith Ramsey interviewed Dr. Lindsey Baines and reported the child has a fractured rib.”

CAUSE NO: _____

TEXAS DEPARTMENT OF
FAMILY & PROTECTIVE SERVICES
V.

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§
§

IN THE DISTRICT COURT OF

COUNTY, TEXAS

JUDICIAL DISTRICT

**AFFIDAVIT IN SUPPORT OF ORDER TO
REMOVE ALLEGED PERPETRATOR**

Before me, the undersigned authority, personally appeared _____, who was sworn by me and deposed as follows:

My name is _____. I am over the age of 18, of sound mind and capable of making this affidavit. I am an authorized representative of the Texas Department of Family and Protective Services, and the facts and allegations stated in this affidavit and the above petition are within my personal knowledge and are true and correct.

“The following facts show the necessity for an order requiring the alleged perpetrator to leave the residence of an abused child:

1. CHILD(REN)

Name:

DOB:

If a child's date of birth is not available provide an estimated age but indicate the age is an estimate.

Current address:

Any other address during past 6 months:

Repeat as needed for each child.

2. PARENTS - MEMBERS OF

HOUSEHOLD

Mother

Name:

DOB:

Current address:

Father

Name:

Indicate which children he is father of if not all of the above.

DOB:

NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA

Current Address:

Add additional parents as needed.

Other Household Member

Name:

Relationship to child/parent _____

DOB:

Add additional non-parent members of the household as needed.

Relationship - indicate how the person is connected to the household (by marriage, relative, stepparent, friend or other) and which parent or child this relationship is with (i.e. married to Susan Giles (mother) or stepfather to Thomas Giles (child)).

3. INDIAN CHILD STATUS

Mother _

Denies tribal connection

Unavailable/unable to answer.

Describes tribal connection as follows: _____

Father

Denies tribal connection

Unavailable/unable to answer.

Describes tribal connection as follows: _____

Child _____

Denies tribal connection

Unavailable/unable to answer.

Describes tribal connection as follows: _____

_____**(Extended family/other)**

Denies tribal connection

Unavailable/unable to answer.

Describes tribal connection as follows: _____

4. CPS HISTORY

Always include date of referral, allegation, findings & brief explanation of relevant CPS history.

For example: On July 3, 2012, the department received a referral alleging neglectful supervision of 3 year old Stephen Jones by his mother, Mary Smith. Ms. Smith was arrested for DUI and Stephen was found alone and crying in the house six hours after Ms. Smith reported leaving the home. Neglectful Supervision was validated, and the case was opened in Family Based Services.

5. CRIMINAL HISTORY

Only crimes with convictions can be used as evidence to support a removal. If the court requires that all arrest history be listed, even if the charges were dismissed, for example, that information can be included but should not be relied on to demonstrate why an Order for Removal of the

Alleged Perpetrator is necessary.

6. DANGER/ABUSE & URGENCY

Mandatory: *Present the facts that show an immediate danger to health/safety OR that child is victim of sexual abuse AND explain why there is no time for an adversary hearing.*

- There is an immediate danger to the physical health or safety of the child **OR** the child has been a victim of sexual abuse; and
- There is no time, consistent with the physical health or safety of the child, for an adversary hearing;

7. SAFETY & BEST INTEREST

Mandatory: *Present the facts that show that the parent/other adult who will remain in the home does not present a danger to the child, that that person will make a reasonable effort to monitor the home and report any attempt by the alleged perpetrator to return to the home and explain why having the alleged perpetrator leave the home is in the child's best interest.*

- The child is not in danger of abuse from the parent or other adult who will continue to live with the child;
- The parent/other adult who will live with the child is likely to make a reasonable effort to monitor the home and report any attempt by the alleged perpetrator to return to the home to both CPS and law enforcement and;
- The order requested is in the child's best interest.

8. CONCLUSION

The conclusion should summarize the facts that support the relief requested but should not contain any new facts.

Caseworker's signature

Name & title

Affiant

SWORN TO AND SUBSCRIBED before me, the undersigned Notary Public on this the ____ day of _____ 2016.

NOTARY PUBLIC in and for the
STATE OF TEXAS
Commission Expires: