

INSTRUCTIONS

Affidavit in Support of Order In Aid of Investigation [*OPTIONAL* and Request for Restraining Order]

March 2016

What is the purpose of this affidavit?

This affidavit is designed to show the court the evidence of possible abuse or neglect to show good cause to order specific further investigation in a child protection case. TEX. FAM. CODE §261.303. An Order in Aid of Investigation can be used to gain entry into the home, school or any place where a child may be. An order can also be used to obtain records or a medical, psychological or psychiatric examination.

If there is concern that a parent or caretaker may flee from Texas with the child, the affidavit can also be used to show there is reason to believe a person responsible for the care, custody or welfare of the child may remove the child from the state, that there is probable cause to conduct the investigation and that a restraining order is necessary. TEX. FAM. CODE §261.306. If the flight risk is within the state, a court is also authorized to prohibit a person from removing a child beyond a geographical area identified by the court. TEX. FAM. CODE §105.001(a)(4).

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. When an Order in Aid of Investigation 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 an affidavit in support an Order in Aid of Investigation (and Request for Restraining Order). 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 firsthand 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 § IN THE DISTRICT COURT OF
OF FAMILY & PROTECTIVE §
SERVICES § _____ COUNTY, TEXAS
§
V. § _____ JUDICIAL DISTRICT

AFFIDAVIT IN SUPPORT OF ORDER IN AID OF INVESTIGATION (IF APPLICABLE AND REQUEST FOR RESTRAINING ORDER)

STATE OF TEXAS

COUNTY OF _____

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 are within my personal knowledge and are true and correct.

The following facts show the necessity for an order in aid of investigation:

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:

Current Address:

Add additional parents as needed.

Other Household Member

Name:

Relationship to child/parent _____

DOB:

Current Address:

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. ALLEGATIONS

What was reported? Describe the specific facts reported regarding abuse or neglect of one or more children.

What kind of reporter made the report?

Anonymous or named?

Professional or member of public?

Did reporter have 1st hand information (i.e. did reporter tell CPS something they saw or heard?) or did the reporter repeat what someone else said?

DO NOT give the name of the reporter, or refer to any witness as the reporter. The reporter is always entitled to remain confidential.

For more information, See Practice Guide, SECTION 11, TOOLS, Affidavits, Bolstering Child Abuse and Neglect Allegations Without Revealing Reporters.

5. THE INVESTIGATION

What steps in the investigation have been completed? If your investigation has been interfered with before you could make much progress, you won't be able to answer most of these questions. That's not a problem. If you have already completed some part of the investigation, however, that is extremely helpful evidence and should be included in this affidavit.

Who have you interviewed (again, NOT identifying the reporter)? What information relevant to the allegations did you obtain?

What other evidence is relevant to the allegations? Describe any medical records, bruises, conditions in home observed, police reports, photographs or other evidence that will show the court why CPS believes child safety requires further investigation.

Is there a pattern of evidence that supports the allegation of abuse or neglect? By summarizing facts that may be scattered in the narrative, you can often best demonstrate the importance of the information. For example, a father's single DUI conviction may not be important by itself, but if coupled with the fact that he was released from jail after a conviction for assault less than three months ago, that he denies that anyone who only drinks beer has a drinking problem and that he tried to choke his wife when she suggested he enter a detox program, these facts together paint a vivid picture of someone with alcohol and anger management problems. By pulling related facts together, the caseworker can make it easier for the court to see the overall pattern the evidence may show.

Is there information that conflicts with the allegations? For example, the alleged perpetrator states that the child got hurt when she fell off the couch. Most investigations will reveal some conflicting information. Simply explain why, despite some conflicting information, there is good cause to investigate further.

6. CPS HISTORY

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

For example: On July 3, 2008, 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.

7. CRIMINAL HISTORY

Only relevant crimes with convictions can be used as evidence. If the local 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 in Aid of Investigation is necessary.

8. INTERFERENCE WITH INVESTIGATION

What's missing? The court needs to know what part of the DFPS investigation has not been completed because of interference or other circumstances. List as many of the following that apply, being careful not to select contradictory assertions, and to add required details where indicated.

- *DFPS was denied access to the child's home, school, or other location where the child is located. [SPECIFY THE LOCATION, WHO DENIED ACCESS AND WHEN THIS OCCURRED].*
- *DFPS was denied consent to transport a child to [SPECIFY DESTINATION] for purposes related to an interview or other purpose related to the investigation by [SPECIFY WHO DENIED CONSENT AND WHEN].*
- *DFPS was denied access to this child's medical, psychological or psychiatric records by [SPECIFY WHO AND WHEN].*
- *DFPS was denied the opportunity to obtain a [SELECT ALL THAT APPLY] medical, psychological or psychiatric] examination of the child by [SPECIFY WHO DENIED CONSENT AND WHEN].*
- *DFPS did not request consent to [ENTER, TRANSPORT, OBTAIN EXAM OR OTHER] because [DETAIL CIRCUMSTANCES, e.g. flight risk or other factor that indicates risk to child may increase if family has advanced warning of DFPS intervention].*

Summarize why the missing information is necessary to the investigation of abuse and neglect and essential to child protection, essentially why there is good cause for the

court to issue the order. In some cases, it may seem obvious but a sentence or two describing the crux of the problem is always useful to a busy judge who is reading many documents every day.

9. FLIGHT RISK [DELETE UNLESS RESTRAINING ORDER IS REQUESTED]

There is probable cause to conduct the investigation. If you have demonstrated good cause for an order in aid of investigation (above), the same facts almost certainly will demonstrate probable cause for the investigation.

A restraining order prohibiting removing the child from the state or from a geographic area identified by the court is necessary. If you are concerned that a parent or caretaker may flee the state or a specific geographic area with the child, what facts demonstrate that this a risk? Relevant information would include any past history of a parent fleeing; any threat the parent/caretaker has made to abscond with the child; evidence of preparations to leave (purchase of tickets, securing passports, and the like); or proof of an established residence abroad or out of state.

10. CONCLUSION:

Based on the foregoing facts, I believe there is good cause to issue an order to aid in this investigation and request that the court order that DFPS and its authorized representatives be granted specific authority to:

What needs to be ordered? Remember to add required details where indicated.

- *Enter the [home, school, OTHER SPECIFIC LOCATION] of [CHILD(REN)'S NAME(S)] in order to: [SELECT ONE OR MORE OPTIONS BELOW, AS APPLICABLE];*
 - *[INTERVIEW AND/OR EXAMINE] this child; and/or*
 - *Observe the child's home (or other location where the alleged abuse or neglect occurred, if applicable) and immediate surroundings for evidence of abuse or neglect.*
- *Obtain any and all medical, psychological, or psychiatric records relating to [CHILD(REN)'S NAME(S) AND DATE(S) OF BIRTH];*
- *Obtain [DESCRIPTION OF OTHER NON-MEDICAL RECORDS THAT ARE NEEDED TO LOCATE THE FAMILY OR OTHERWISE AID IN THE INVESTIGATION];*
- *Transport [CHILD(REN)'S NAME(S)] to a [Children's Advocacy Center, medical doctor; psychologist, psychiatrist or other medical specialist, or other specific location] for an [INTERVIEW AND/OR EXAMINATION];*

[DELETE UNLESS RESTRAINING ORDER IS REQUESTED] Based on the foregoing facts, I believe there is reason to believe that a person responsible for the child's care, custody or welfare may remove the child from the state [or a specific

designated geographic area] before the investigation is completed, that there is probable cause to conduct the investigation, and that a restraining order prohibiting [INSERT NAME OF PARENT/CARETAKER FLIGHT RISK] from removing the child from the state [or a specific designated geographic area] is necessary for the safety and welfare of the child. On that basis the Department requests that this Court issue:

A restraining order prohibiting [INSERT NAME OF PARENT/CARETAKER FLIGHT RISK] from removing the child from the state [or a specific designated geographic area] is necessary for the safety and welfare of the child.

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: