

# INSTRUCTIONS

## Removal Affidavit

September 2021

### **What is the purpose of this affidavit?**

The purpose is to show the court the facts that satisfy the applicable legal standard for CPS to remove a child. Before beginning, consider which of the three legal standards for removal applies (each is included under paragraph No. 5 below, Facts Necessitating Removal, below).

With the applicable standard in mind, comb through the facts and pull together the relevant facts that demonstrate why each child needs to be removed from the home.

If every piece of information discovered in the investigation is included in an affidavit, the reader will have to work to find the important, relevant information. By extracting only the relevant information you will make the affidavit more succinct and easy to read. The conclusion should be a concise summary of the most important facts, with no new information that has not already been discussed in the body of the affidavit. .

### **Place of Birth & Residence Information**

- A child's residence in the past six months is necessary to establish the court's jurisdiction;
- If a child's place of birth is outside the U.S., notice to the foreign consul may be required and the child may need citizenship or immigration assistance.

### **Indian Child Status**

To avoid a potentially devastating delay caused by failure to identify a child subject to the Indian Child Welfare Act, it is essential to ask about a child or family's tribal connection and to identify any tribe at the time of every removal. If a parent or extended family member is missing or does not have this information immediately available, prompt follow up is critical to get this essential information.

### **Contrary to the Child's Welfare**

In all removal cases, there must be evidence that it is contrary to the child's welfare to remain in the home and the court must make this finding.

If a child is not physically removed from a parent or managing conservator, there must be evidence that it is *contrary to the welfare for the child to remain in the home* of (or be in the care of) the adult(s) the child is legally being removed from, i.e. the parents and any non-parent managing conservator.

## **Format**

This is one possible format or template for an affidavit in support of a removal. 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, who reported the child has a fractured rib.”

**SAMPLE  
[CAUSE NUMBER]**

**[Style]**

**AFFIDAVIT IN SUPPORT OF REMOVAL**

**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 and the above petition are within my personal knowledge and are true and correct.

**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.*

**Place of birth (city/state/country):**

*If a child is not born in the U.S., notice to the foreign consulate may be required and the child may need citizenship or immigration assistance.*

**Current address:**

**Any other address during past 6 months:**

*Repeat as needed for each child.*

**2. PARENTS - MANAGING CONSERVATOR - MEMBERS OF THE HOUSEHOLD**

**Mother**

**Name:**

**DOB:**

**Current address:**

**Any other address during past 6 months:**

**Father**

**Name:**

**DOB:**

**Current address:**

**Any other address during past 6 months:**

**Managing Conservator**

**Name:**

**DOB:**

**Current address:**

**Any other address during past 6 months:**

**Household Member**

**Name:**

**Relationship \_\_\_\_\_ to (identify child/parent) \_\_\_\_\_**

**DOB:**

*(Repeat as needed for each child)*

**3. INFORMATION ON PROTECTIVE ORDERS**

*[If there is a protective order]*

There is a protective order in effect or an application pending, as described in § 102.008(b)(11), Texas Family Code, in regard to a party to the suit or a child of a party to the suit.

*[If we have a copy of the order]*

A copy of the protective order or the pending application required under § 102.008(c), Texas Family Code, is attached.

*[If we don't have a copy of the order]*

A copy of the protective order or the pending application required under § 102.008(c), Texas Family Code is not available at the time of filing. A copy will be filed with the court.

*[If there is no known prior order]*

To the best of the Department's knowledge, there are no protective orders in effect or applications pending, as described in § 102.008(b)(11), Texas Family Code, in regard to a party to the suit or a child of a party to the suit.

#### 4. INDIAN CHILD STATUS

##### **Mother**

- Denies tribal connection
- Unavailable/unable to answer
- Reports tribal connection as follows: \_\_\_\_\_

##### **Father**

- Denies tribal connection
- Unavailable/unable to answer
- Reports tribal connection as follows: \_\_\_\_\_

##### **Child** \_\_\_\_\_

- Denies tribal connection
- Unavailable/unable to answer.
- Reports tribal connection as follows: \_\_\_\_\_

##### \_\_\_\_\_ (**Extended family/other**)

- Denies tribal connection
- Unavailable/unable to answer.
- Reports tribal connection as follows: \_\_\_\_\_

#### ALLEGATIONS

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

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

#### 5. FACTS NECESSITATING REMOVAL

***What does CPS have to prove?** Focus on the applicable standard for the type of removal and then collect the relevant, objective, accurate and detailed facts that support the required findings as to each child.*

##### ***Is it an ex parte order BEFORE removal?***

*CPS must show:*

- Either an **immediate danger** to the physical health or safety of the child, or that the child has been a victim of neglect or sexual abuse;*
- That it is contrary to the child's welfare to remain in the home of (or be in the care of ) the adult the child is legally being removed from (parents and any court appointed managing conservator and*
- Reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need for removal of the child and*

*That there is no time, consistent with the child's physical health or safety, to hold an adversary hearing.*

***Is it an emergency ex parte order AFTER removal?***

*Based on personal knowledge of the person writing the affidavit or [information from another person corroborated by the person writing the affidavit] CPS must show:*

*-There was **an immediate danger** to the physical health or safety of the child;  
The child was a victim of sexual abuse or trafficking under Texas Penal Code §§20A.02;.03*

*The parent or person with possession of the child was using a controlled substance, which use constituted an immediate danger to the physical health or safety of the child OR  
The parent or person with possession permitted the child to remain on premises used to manufacture methamphetamine; AND*

*- Based on the personal knowledge of the person writing the affidavit:*

*It is contrary to the child's welfare to remain in the home of (or be in the care of ) the adult(s) the child is legally being removed from (parents and any court appointed managing conservator);*

*There was no time, consistent with the physical health or safety of the child for a full adversary hearing and*

*-Reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need for removal of the child.*

*NOTE: In assessing "continuing danger" for an ex parte order before or after removal, the court may consider that the household the child would return to includes a person: who has abused or neglected another child in a way that caused serious injury or death OR has sexually abused another child.*

***How can you best organize the facts?***

*Whether you organize by chronology or by subject, use paragraphs to separate incidents and topics and consider inserting subheadings to make it easy for the reader to find information (e.g. "Interview with Benjamin Drake, mother's boyfriend," "Interview with pediatric nurse, Geneva Springer").*

**CPS HISTORY**

***Always include date of referral, allegation, findings & brief explanation***

*For example: On July 3, 2017, 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.*

**CRIMINAL HISTORY**

*Only relevant crimes with convictions can be used as evidence to support a removal (and a nonviolent misdemeanor charge cannot be cited as a basis for 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 removal is necessary.*

**ICPC COMPLIANCE**

At this time no interstate placement is planned. If an interstate placement becomes an option DFPS will comply with the Interstate Compact on the Placement of Children, TEX. FAM. CODE CH. 162, SUBCHAPTER B.

**CONCLUSION**

*The conclusion should not contain any new facts but should draw together the reported facts relating to child safety that support the applicable finding. Always specify what CPS is asking the court to do, whether it is to award temporary managing conservatorship or other relief.*

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[Caseworker's signature]

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[Notary Public]