

# **LawHelpNewMexico**

Advancing Fairness and Justice for All

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## **Child Abuse**

### **What is child abuse?**

Under New Mexico law, child abuse includes sexual and other physical injuries that are not accidental—such as burns, broken bones, bruises, and welts. It also includes the use of controlled substances or illegal drugs during pregnancy. If a baby is born with drugs in its system, the hospital would immediately report this to the Children Family and Youth Department (CYFD).

### **What is child neglect?**

Neglect has a broad legal definition. It includes abandonment and the lack of proper care or basic necessities of life—such as food, shelter, medical care or education—through some fault of the parent or guardian. Neglect can include the failure to protect a child if a parent is aware that the child is being harmed by someone else. Behavior that creates severe emotional harm to a child also may qualify as neglect.

### **What can someone do if it appears that a child is being neglected or abused?**

Anyone can call the police or CYFD to report suspected abuse. Some people, such as doctors, teachers, and police, have a duty to report what they think is abuse or neglect. The agency that receives the report cannot tell those who reported about the investigation that follows. Investigations are confidential.

### **What happens after a complaint is filed?**

If the police have reason to believe a child has been neglected or abused, an officer can keep the child until a CYFD investigator takes over. If a doctor or hospital staff believe a child has been neglected or abused, they can keep the child until the police take over and work with CYFD investigators.

If it appears that a child will not be safe if he or she goes back to the parent, CYFD can hold the child in protective custody and briefly put the child in the home of a different relative, a licensed foster home, or a children's shelter. The parent has the right to be told within 24 hours if a child is in protective custody. If, after further investigation, CYFD decides that a child should remain outside the home, it must file a petition for temporary custody in District Court in front of the judge assigned to hear CYFD cases, Children's Court-- within two days. If the petition is not filed within two days, the child must be released to the parent.

## **What happens after CYFD files a petition for temporary custody?**

After the court receives the petition, it must schedule a hearing within ten days to decide if neglect or abuse has occurred. The parent is entitled to be represented by a lawyer at this hearing and can get a court-appointed lawyer if he or she cannot afford to hire one. The child is also represented, but by a different lawyer. This lawyer is to act only in the child's best interests. If the child is under the age of 14, the attorney is called a guardian ad litem. If the court thinks there is not enough proof of neglect or abuse, it will order CYFD to return the child to the parent. If the court thinks it is more likely than not that neglect or abuse has occurred, it will keep the child in protective custody until there is time to have a full hearing. At this time, the court may also order that a CASA (Court Appointed Special Advocate) be involved in the case. A CASA is an independent monitor for the court, serving as the court's eyes and ears and independent of everyone else involved in the case. The CASA submits written reports to the court about the case. The second hearing, called an adjudicatory hearing, must take place within 60 days.

## **What happens at an adjudicatory hearing?**

At this hearing, CYFD must convince the court that based on further investigation, it is extremely likely that abuse or neglect has occurred. After hearing all the evidence, the court has 30 days to issue a dispositional order. If the court disagrees with CYFD, it can return the child to the parent. If the judge agrees that abuse or neglect occurred, the court can return the child to the parent on the condition that the parent enters into a treatment plan with CYFD. The parent can participate in the development of this plan at an Assessment Planning Conference. The parent's attorney can also be present at this conference. This plan can include things like mental health and substance abuse treatment, domestic violence intervention classes, and parenting classes. The court must approve this plan and can make changes and add or take away things from the plan if it disagrees with the plan, or the parent has objections. If the parent completes the plan successfully, the court ends the temporary custody and CYFD's supervision of the family. In some cases, the court will keep the child out of the home while the parent goes through the plan. CYFD pays for any assessments and treatment. There is no cost to the parent in following the treatment plan.

## **What happens during the treatment plan?**

From time to time, CYFD and counselors and therapists involved with the family will make reports to the court about the parent's progress in the plan. They also let the court know how the child is doing if the child is in a different home. If the parent is not making any progress over several months, CYFD is likely to ask the court to terminate the parent's rights over the child. The purpose is to give the child a safe, permanent home when the parent is probably not going to be able to provide one within a reasonable time, if ever.

## **Who pays for the care of the child during the period of the treatment plan?**

When the child is in the care of a third party, both parents are responsible for the costs of the support of the child that they are reasonably able to pay until the child comes back to the family home. The court may also fix the amount of child support at a percentage of the parents' income.

## **How does a person lose parental rights?**

CYFD must petition the court to terminate parental rights. At a hearing, the parents and the child have the right to be represented. CYFD must prove very clearly that the parent is unable in the foreseeable future to make a safe home for the child. Once a person's parental rights are terminated, CYFD can arrange for an adoption or other placement of the child without listening to the parent. The parent loses any right to have contact with the child. The parent's duty to pay child support also ends when his or her parental rights are terminated.

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