



Parental Notification of Rights in Child Welfare Investigations

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Key Points

- As confirmed by nearly a century of Supreme Court precedent, parents and children possess a fundamental right to their relationship that government may not interfere with, absent the most compelling reasons.
- State child welfare practice often infringes upon this fundamental right by failing to notify families of their due process rights during investigations.
- The child welfare system is intended to be restorative, not punitive, and should set families up for success to prevent devastating consequences such as removal or termination of parental rights.
- Texas should provide a Miranda-style notification of rights upon initial contact with CPS to reduce the risk of unnecessary trauma and to act in the best interests of children.

Introduction

The Ninth and Tenth Amendments of the United States Constitution outline a fundamental framework that the government does not have rights—people do. While states do have *powers*, these powers must not infringe upon the rights of the individual. Additionally, the Fifth Amendment prohibits the deprivation of an individual's right to life, liberty, and property without due process of law. This ideological framework is critical to understanding the necessity for a comprehensive notification of rights to parents being investigated by state child welfare agencies.

Child welfare investigations may be civil disputes, but they carry one of the most extreme consequences imposed by the state—termination of the relationship between a parent and child. Nearly a century of U.S. Supreme Court precedent has declared the fundamental right to direct the upbringing of one's own child and protected this relationship from government interference absent the most extreme circumstances. Despite the Supreme Court almost consistently affording parental rights the highest protection available in our justice system, practical protections for families who find themselves involved with the child welfare system are inconsistent at best. Unlike defendants in the criminal justice system, parents involved with Child Protective Services (CPS) do not enjoy many protections the public takes for granted, such as the famous Miranda warning. While Miranda warnings are specific to situations where a person is taken into custody and questioned by law enforcement, this paper will consider the impact of requiring a Miranda-style notification of rights in the child protection context. In addition to safeguarding the parent-child relationship and familial due process rights, the goal of a Miranda-style notification of rights is to provide families with the knowledge of available resources, understanding of how to effectively comply with CPS while limiting opportunity for coercion or violations, and an accountability mechanism for investigators and caseworkers to respect an individual's due process rights.

Overview of Parental Rights

Justice Sandra Day O'Connor, writing for a plurality of the Supreme Court in the landmark case *Troxel v. Granville*, famously commented that “the interest of parents in the care, custody, and control of their children is perhaps the oldest of the fundamental liberty interests recognized by this Court” ([Troxel v. Granville, 65](#)). The Court has consistently held that this right is broad, encompassing the most basic decisions that a parent can make for their children, and worthy of protection even in situations where parents have not been “model parents” ([Parham v. J.R., 602](#); [Santosky v. Kramer, 753](#)). The private interest of parents in their relationship with their children is so strong, in fact, that the Court will protect it against government intervention in nearly all cases unless the state has

a compelling interest supporting its intervention (See, e.g., [Stanley v. Illinois](#), 651; [Smith v. Organization of Foster Families for Equality & Reform](#), 844).

Yet, this fundamental right belongs just as much to the child as it does to the parent. In [Smith v. Organization of Foster Families for Equality & Reform](#), the Supreme Court declared that a child’s right to maintaining the “emotional attachments that derive from the intimacy of daily association” with parents and siblings is a constitutionally protected interest ([Smith v. Organization of Foster Families](#)). As the standard has been set that both the parent has the right to the child, and the child has the right to the parent, both parties require thorough due process to protect the sanctity of the parent-child relationship.

While the United States and Texas have explicitly stated families have due process rights during child welfare investigations, failing to provide parents with an explanation of these rights is failing to effectively uphold the standards set by the U.S. Constitution.

Although child welfare investigations are civil cases, they are unique in nature and can lead to devastating consequences. Agency practice must be rooted in acting in the child’s best interest, which includes protecting the family from coercive practices and the trauma of unnecessary separation.

The Problem

Despite the clear constitutional dimensions of the parent-child relationship, state child welfare practice often infringes upon the fundamental rights of families. Parents faced with the frightening possibility of the destruction of their family via state action deserve to be informed of their rights at the outset of a CPS investigation.

Miranda vs. Arizona famously required that law enforcement notify criminal suspects of their constitutional rights prior to a custodial interrogation ([Miranda v. Arizona](#)). While there are parallels between criminal and child welfare investigation procedures and the severity of deprivations that can result, most states, including Texas, do not provide for a “Miranda-style” notification of rights in connection with CPS actions.

It should be noted that, despite their similarities, police actions at issue in *Miranda* are not directly analogous to child protective investigations. Thus, it would be inappropriate to simply apply the ruling in *Miranda* to these cases.

Indeed, the Texas Court of Criminal Appeals ruled in the 2005 case, *Wilkerson v. State*, that CPS investigators are not presumptively agents of law enforcement and therefore not required by law to administer Miranda warnings during child welfare investigations unless it is found that the CPS investigator is working for or in tandem with law enforcement during a custodial interrogation ([Wilkerson v. State](#)). **However, the principles underlying *Miranda*—namely, the restraints government must observe to be consistent with the Constitution and maintain the proper balance of power between citizens and the state—are as important, if not more so, in the child welfare context.** CPS investigators are entrusted with one of the most trauma-inducing powers given to any state agent, but they have yet to be held to the same standards of accountability society expects law-enforcement agents to abide by.

The Texas Family Code, Administrative Code, and CPS Handbook all contain scattered sections detailing the protected rights of families involved with child welfare investigations. Parental rights specifically identified by these sources as protected include:

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1. The right to an attorney ([Tx. Fam. Code Sec. 261.307\(1\)\(C\)\(iv\)](#); [Tx. Fam. Code Sec. 262.201\(c\)\(2\) d](#)).
2. The right to deny consent to interview the child or parent, or enter the home ([DFPS 2241.2](#)).
3. The right to notice of detailed allegations ([DFPS 2246.1](#); [Tx. Admin. Code RULE §700.508](#)).
4. The right to give a response to those allegations ([Tx. Admin. Code RULE §700.508](#)).
5. The right to identify three relative caregivers ([Tx. Fam. Code Sec. 261.307\(2\)\(A\)\(ii\)](#)).
6. The right to challenge findings and make a complaint about CPS conduct ([Tx. Fam. Code Sec. 261.307\(1\)\(C\)\(ii\)](#); [Tx. Fam. Code Sec. 261.307\(1\)\(C\)\(ii\)](#)).

Despite being identified in code as protected, there is no requirement that CPS caseworkers inform families of these rights. This not only leaves families in the dark about their rights, which can result in unnecessary additional trauma and needless separations of families, it also reduces the accountability of the system. For example, at initial contact

with an alleged perpetrator (often a parent), the Texas Administrative Code requires CPS investigators to identify themselves, give a detailed explanation of the complaint or allegation that led to the contact, and ask for a response to each complaint or allegation ([Tex. Admin. Code RULE §700.508](#)). This standard, which comes from federal law under the Child Abuse Prevention and Treatment Act (CAPTA), is intended to ensure investigations are conducted in a transparent manner and aid in determining the validity of maltreatment allegations. Federal law also requires that the investigator disclose the allegations *no matter the communicative avenue* ([CAPTA Sec. 106\(b\)\(2\)\(B\)\(xviii\)](#); [Administration on Children, Youth and Families, Children’s Bureau](#)). Thus, if the first contact is via telephone call, the investigator is required to provide identifying information and disclose the nature of the allegations on that call. Current Texas policy, however, does not comply with federal law in this respect, and this noncompliance recently resulted in a 4-year-old child wrongfully spending four months in foster care.

In June 2019, K.D.P. was removed from his family and placed into foster care by the Texas Department of Family and Protective Services (DFPS). During an initial court hearing, both the investigator and her supervisor testified that they both had, on multiple occasions, refused to provide K.D.P.’s parents or their attorney with information about the allegations prior to the removal despite direct requests—explicitly breaking federal law requiring this notification ([Brief of Texas State Senators Bob Hall, et al. as Amicus Curiae](#)). According to testimony given by the investigator, the reason for this refusal was based on a department policy, which states, “whenever possible, the caseworker conducts interviews face-to-face and in private” ([Brief of Texas State Senators Bob Hall, et al. as Amicus Curiae](#); [DFPS 2246.1](#)). Ultimately, the disregard for the family’s right to notification of allegations led to the department obtaining an emergency order to remove their child under claims of refusal to cooperate ([Brief of Texas State Senators Bob Hall, et al. as Amicus Curiae](#)). However, the Texas Supreme Court later ruled in favor of the family and ordered K.D.P. to immediately return home ([In Re Ashley Pardo and Daniel Pardo, Individually and as Next Friend for K.D.P., a Minor](#)). Shortly thereafter, the department dropped its case against the family ([Friend 2019](#)). A universal notification of rights requirement would have prevented

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In the case of K.D.P., the family was fortunate enough to seek and obtain legal counsel, but nevertheless still had their child illegally removed. However, many families are unaware of this right, or any rights, at the onset of investigations, providing an opportunity for violations of fundamental rights or coercive tactics. Equipping parents with knowledge of their rights at the outset of investigation has the potential to minimize departmental overreach, costly legal intervention, and damage to the parent-child relationship.

A Model Notification of Rights

Requiring CPS to notify families of their constitutional rights at the outset of an investigation is hardly uncharted territory. In 2005, the Washington Legislature passed the Justice and Raiden Act, when it became apparent that there was a lack of parental knowledge surrounding due process rights during the investigative process ([Seattle Times, 2005](#)).

The law explicitly requires its investigators to notify parents of their rights, both verbally and in writing. The Washington Code explains, “parents and children often are not aware of their due process rights when agencies are investigating allegations of child abuse and neglect” ([Revised Code of Wash. Sec. 26.44.100](#)). The code also states that “the legislature wishes to ensure that parents and children be advised in writing and orally, if feasible, of their basic rights...” ([Revised Code of Wash. Sec. 26.44.100](#)).

The Washington Legislature identified this process as being a necessary component to avoiding further trauma and disruption of the family unit, further aligning procedure with the mission to “protect children and strengthen families so they flourish” ([Washington DCYF](#)). Although the state does not require this disclosure upon initial contact, it provides transparent and easily comprehensible resources for families to understand their rights, specifically in cases of dependency or guardianship.

Similar legislation could ensure Texas families are being notified of their rights in order to equip them with the tools needed to make informed decisions for their personal circumstances. The proposed list of federally and state-protected rights that would be given both in writing and verbally prior to CPS questioning could include:

1. The right to detailed contact information and background on the investigator ([Tx. Admin. Code Rule §700.508](#) ; [DFPS 2246.1](#)).
2. The right to notification of the specific allegations upon the first contact no matter the manner of contact, including the date(s) of the allegation(s) and whether the caseworker is considering previous investigations that were closed by the department ([DFPS 2246.1](#); [CAPTA Sec. 106\(b\)\(2\)\(B\)\(xviii\)](#)).
3. The right to remain silent and refuse to answer questions ([DFPS 2241.2](#)).
4. The disclosure that any information gathered during the investigation can be used to remove the child and must be disclosed to law enforcement for possible criminal prosecution ([Tx. Fam Code Sec. 261.307\(1\)\(C\)\(i\)\(a\) - \(b\)](#)).
5. The right to consult with an attorney before speaking with the caseworker and to have an attorney or other third-party witness present during any interview ([Tx. Fam. Code Sec. 261.307\(1\)\(C\)\(iv\)](#)).
6. The right to refuse permission to interview the child either in or outside the presence of the parent, conservator, or their attorney ([DFPS 2243.31](#)).
7. The right to refuse to provide or otherwise authorize the release of certain documentation to the department, including but not limited to medical records, immunization records, and school records ([DFPS 2244.52](#)).
8. The right to refuse entry into the home ([DFPS 2242.1](#)).
9. The right to record the interview with an audio recording device.

10. The right to file a complaint with the Office of Consumer Relations about the conduct of the investigation ([Tx. Fam. Code Sec. 261.307\(1\)\(C\)\(ii\)](#)).

Recommendation

Texas should provide parents a written and verbal Miranda-style notification of rights upon initial contact with CPS to help reduce the risk of the traumatic disruption of the family and advance the best interests of children.

Conclusion

The U.S. Constitution affords familial rights of both parents and children the highest protection our judicial system offers. In addition, the Texas Department of Family and Protective Services and CPS recognize their primary purpose is to protect children by acting in their best interest, and keep the child with the nuclear family except when doing so places the child at imminent risk of harm ([DFPS 1110](#)). However, by refusing to notify families of their rights, they are inadvertently failing to act in the child's best interest and subjecting families to further, often needless, trauma.

For more than 50 years, states have afforded individuals accused of crimes a statement of their constitutional rights in connection with an arrest and interrogation. Yet, states continue to afford families facing the termination of their parental rights fewer due process protections than are provided to even the most heinous criminals. The child welfare system is intended to be restorative, not punitive. These rights are already protected by federal and state government; the agency is just failing to notify parents that these rights exist. A standard notification of rights provides necessary protections for the rights of both parents and children while also providing families with the information and opportunity they need to address the challenges they face. ★

References

- Administration on Children, Youth and Families, Children's Bureau. 2011. [Child Welfare Policy Manual](#). Section 2.1H(2): CAPTA, Assurances and Requirements, Notification of Allegations. Accessed February 21, 2020.
- [Brief of Texas State Senators Bob Hall, et al. as Amicus Curiae in Support of Relators' Petition for Writ of Mandamus](#), *In Re Ashley Pardo and Daniel Pardo, Individually and as Next Friend for K.D.P., a Minor*, No. 19-0760, 6 – 7, 9 (Tex. 2019).
- DFPS (Department of Family and Protective Services). 2019. [Child Protective Services Handbook](#). Accessed February 21, 2020.
- Friend, Daniel. 2019. "[Pardo Family Wins Dismissal by Kaufman County Court, Controversial CPS Case Effectively Ended](#)." *The Texan*, December 3.
- [In Re Ashley Pardo and Daniel Pardo, Individually and as Next Friend for K.D.P., a Minor](#), No. 19-0760 (Tex. 2019) (order partially granting Relators' motion for emergency relief).
- [Miranda v. Arizona](#), 384 U.S. 436 (1966).
- [Parham v. J.R.](#), 442 U.S. 584 (1979).
- [Santosky v. Kramer](#), 455 U.S. 745 (1982).
- Seattle Times staff. 2005. "[Senate passes child-neglect bill](#)." *Seattle Times*, April 25.
- [Smith v. Organization of Foster Families for Equality & Reform](#), 431 U.S. 816, 844 (1977).
- [Stanley v. Illinois](#), 405 U.S. 645, 651 (1972).
- [Troxel v. Granville](#), 530 U.S. 57 (2000).
- Washington DCYF (Washington State Department of Children, Youth & Families). 2020. "[Mission, Vision and Values](#)." Accessed February 21.
- [Wilkerson v. State](#), 173 S.W.3D 521 (2005).

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