

CHILD PROTECTION SYSTEMS

A Comparative Report Prepared for the NSPCC

October 2015



NSPCC

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CHAPTER 1 - INTRODUCTION

1. The NSPCC Helpline is a telephone and online service for adults who are concerned about the welfare of a child or young person. It provides adults with advice, guidance and support, and can take action on their behalf if they have concerns about a child who is either being abused or is at risk of abuse. If there are strong concerns about the safety or the welfare of a child, the matter is forwarded to social services or the police to investigate and take appropriate action. We were instructed to undertake research on the child protection legislation and practice in other countries that the Helpline liaise with.
2. We were provided with a series of five research questions:
 - a. In what circumstances can a child be removed from his or her parents? The NSPCC would benefit from knowing the typical types of threshold that result in the removal of a child. Are they similar to the UK, e.g. demonstrating you have worked with a family where there is significant harm and that this has failed and the child remains at future risk. Do the countries have the concept of significant harm or if not what would be the equivalent?
 - b. What authority, if any, can remove a child from a parent's care if a child is suffering or at risk of suffering significant harm (or similar)? Is this similar to us, i.e. the statutory authorities making applications to magistrates courts? Are they different courts? Do they have Emergency Protection Orders (**EPOs**) / Interim Care Orders (**ICO**)? If not what is the equivalent?
 - c. To what forum (i.e. the Family Court) does the authority apply to remove a child?
 - d. Do certain professions or persons have an obligation to report to an authority if they suspect that a child is at risk of suffering significant harm (or similar) (i.e. "mandatory reporting")?
 - e. If mandatory reporting obligations do exist, to what professions do they apply?
3. The jurisdictions on which we were instructed to undertake research were USA (top five states by population - California, Texas, Florida, New York, and Illinois), Canada, Australia (top two states by population - New South Wales, Victoria), Spain, India and Pakistan. In relation to Canada, we have followed a similar approach to the USA and undertaken research on the four largest provinces - British Columbia, Alberta, Ontario and Quebec.
4. A number of jurisdictions which are covered in this report have federal systems of government. Where appropriate, we have included information on the nature on the constitutional structure of the legal system and how child protection responsibilities are allocated between federal and state levels.
5. By way of general comment on our findings on the five questions asked:
 - a. The United States, Canada, Australia and Spain have child protection systems which include similar concepts to that contained in the Children Act 1989. Family intervention is triggered by tests akin to significant harm. The test for intervention in India is also similar, although the child protection system appears more reliant on the use of long term children's homes. The position in Pakistan is more complex with

slow implementation of the United Nations Convention on the Rights of the Child with some states lacking a child protection system. We cannot comment on the effectiveness of the various child protection regimes;

- b. All jurisdictions provide a mechanism for removal of children at risk of harm, although this is absent from some states in Pakistan. Most jurisdictions have provision for emergency protection of children where there is not time to apply for court approval. Power to remove a child is generally vested in both social work departments and law enforcement agencies, although some jurisdictions provide for a wider class of persons to intervene in child protection matters;
- c. There is considerable variation in the forum to which an application must be made to remove a child. Australia, Spain and some parts of the United States have specialist family courts, whereas elsewhere the application is to the ordinary court. There is also provision in parts of Pakistan for the establishment of child protection courts, but these are not always in place. In India, child protection is within the jurisdiction of child welfare committees which are established by State Governments.
- d. With the exception of Pakistan, all jurisdictions have mandatory reporting requirements, although there is variation between the persons who are under reporting obligations.

CHAPTER 2 - NEW SOUTH WALES, AUSTRALIA

1. Australian Child Protection Systems

a. Background

- i. In Australia, State and Territory governments are responsible for the administration and operation of child protective services.
- ii. However, the Commonwealth also plays an important role through its provision of universal services for families and children, targeted services for vulnerable families, and through the family law system.

b. State-based child protection legislation

- i. Australia is a signatory to the United Nations Convention on the Rights of the Child (1989) (**Convention**), and many of the principles within the Convention are embedded in State-based legislation. In particular, the following principles underpin all State/Territory legislation in this area:
 - a "best interest" principle, whereby paramount importance is placed on the best interests of the child;
 - active use of early intervention services to prevent entry/re-entry into the statutory system;
 - endorsing the participation of children and young people in decision making;
 - recognising the importance of culturally-specific responses to Aboriginal and Torres Strait Islander people (and more generally, placement principles for maintaining a sense of cultural identity and community connectedness for all children);
 - providing for voluntary or court-ordered out-of-home care as a protective option for children deemed to be at risk of maltreatment;
 - understanding young people's need for continuing support after leaving out-of-home care and during their transition towards independence; and
 - providing for permanency planning and stability of care.
- ii. Additionally, the National Framework for Protecting Australia's Children 2009-2020 (**National Framework**) was developed by the Council of Australian Governments and uses a public health approach to place children's interests at the centre of all policy and legislative development. The National Framework aims to provide a shared, national agenda for change in the way Australia manages child protection issues.
- iii. Whilst work is on-going at a policy and practice level to resolve jurisdictional differences, to date there has been no nationally consistent legislation implemented at the State/Territory level.

c. Federal Family Law System

- i. Child protection concerns also commonly arise in the context of disputes between separated parents regarding the care of their children. Typically, such private parenting disputes are dealt with in the federal family law system under the Family Law Act 1975 (Cth) (**FL Act**). However, when allegations of child abuse and/or neglect are raised, it is possible for both the child protection and the federal family law system to become involved. Recent research has demonstrated that families who rely heavily on the family relationship service system, courts, and lawyers to resolve family and parenting disputes tend to be affected by family violence, mental illness and substance addiction issues.¹ Child protection concerns are therefore likely to be pertinent to a significant number of families who have entered the family law system.
- ii. In separated families, child protection concerns commonly arise where either:
 - it is alleged that the child is presently at risk from spending time in either parent's household, through exposure to child abuse, neglect or family violence; and/or
 - concerns have arisen about the treatment of the child by either or both parents prior to separation, and this prior history is argued to be relevant to post-separation parenting arrangements.

2. Research Questions - New South Wales

In New South Wales, the principal Act is the Children and Young Persons (Care and Protection) Act 1998 (NSW) (**NSW Act**). The NSW Act defines a "child" as a person under 16 years and a "young person" as one between 16 and 18 years.

QUESTION 1: IN WHAT CIRCUMSTANCES CAN A CHILD BE REMOVED FROM HIS OR HER PARENTS?

1. A child can be removed from his or her parents in New South Wales in the following circumstances:
 - a. Immediate risk of serious harm:
 - i. A child or young person may be removed from a place of risk without a warrant (including removing the child from their parents' residence) if the Director-General of the Department of Family and Community Services (**Director-General**) or a police officer is satisfied on reasonable grounds that:
 - the child or young person is at immediate risk of serious harm; and
 - the making of an apprehended violence order would not be sufficient to protect them from that risk.²

¹ Kaspiew, R., Gray, M., Weston, R., Moloney, L., Hand, K., Qu, L., & the Family Law Evaluation Team. (2009). 'Evaluation of the 2006 family law reforms.' Melbourne: Australian Institute of Family Studies. (See pp 232-233). Cited in Higgins, D. and Kaspiew, R. (2011). 'Child Protection and family law... Joining the dots.' NCPIC Issues 34. Retrieved from <https://aifs.gov.au/cfca/publications/child-protection-and-family-law%E2%80%A6joining-dots/export>.

² Children and Young Persons (Care and Protection) Act 1998 (NSW) (NSW Act) section 43.

- ii. In these circumstances, there is no requirement that a relevant authority has previously worked with the family and that attempts to mitigate risks to the child have failed. However, evidence of this process must be presented to the Children's Court following the removal of the child or young person. Please refer to Question 2 under the heading "Removal without a warrant".
- b. Living in or frequenting a public place
 - i. The Director-General or a police officer may remove a person from any public place where they suspect that the person is a child, and further suspect on reasonable grounds that the person is:
 - in need of care and protection;
 - not under the supervision or control of a responsible adult; and
 - living in or frequenting a public place.³
 - ii. Evidence of risk of harm is not an express requirement for the removal of a child from a public place under this section.

c. Concerns of child prostitution

The NSW Act also contains provisions for the removal of children where there are concerns relating to child prostitution. Where the Director-General or a police officer suspects that a person is a child or young person, and also suspects on reasonable grounds that the child:

- i. is or has recently been on any premises where prostitution or acts of child prostitution take place or where persons are for the production of child abuse material; or
- ii. is or has recently been participating in an act of child prostitution in any place or is being or has recently been used for the production of child abuse material in any place;

the Director-General or police officer may remove the person from the premises or place or any such adjacent place.

- d. The section regarding concerns about child prostitution applies where suspicions arise in respect of a child or young person. This is broader than the section dealing with living in or frequenting a public place, which allows person to be removed from a public place only where it is suspected that the person is a child (within the meaning of the NSW Act), but does not extend to a young person.
- e. In both cases, there is no requirement that the suspicion as to the person's age be "on reasonable grounds". However, suspicions as to the person's need for care and protection and lack of supervision, or their involvement in prostitution etc. (as the case may be), must be a "suspicion on reasonable grounds".
- f. Also of note is the difference between the two sections as to the locations which the person may be removed from. The section regarding living in or frequenting a public place allows a person to be removed from "any public place", whereas the section dealing with child prostitution permits authorities to remove a person only from the

³ NSW Act section 43(2).

premises where prostitution, acts of child prostitution take place, or the production of child abuse material takes place, or an adjacent place.

g. Assumption of care responsibility without removal

If the Director-General suspects on reasonable grounds that a child or young person is at risk of serious harm, but is satisfied that it is not in the best interests of the child or young person to remove them from a particular premises (for example, a hospital), the Director-General may assume the care responsibility of the child or young person by means of an order in writing without removing the child from that location.⁴ The order must be signed by the Director-General and served on the person who appears to be in charge of the relevant premises.⁵ The Director-General will continue to have responsibility for the child or young person under the order, even if they are transferred to a different premises.⁶

h. Removal Pursuant to Court Order

The Director-General or a police officer may also remove a child or young person from a place or premises pursuant to an order of the Children's Court.⁷ The Children's Court may make an order for the removal of the child or young person from specified places on the making of a care application, and the Director-General or a police officer may enter, search and remove the child or young person from the specified places. Care applications are discussed further below.

QUESTION 2: WHAT AUTHORITY, IF ANY, CAN REMOVE A CHILD FROM A PARENT'S CARE IF A CHILD IS SUFFERING OR AT RISK OF SUFFERING SIGNIFICANT HARM (OR SIMILAR)?

1. In New South Wales, the authority responsible for child protection is the Department of Family and Community Services (**Department**). When it is determined that a child is at risk, the Department may commence a care and action proceeding in the Children's Court. A care order can be sought before or after a child is removed - please refer to our comments at Question 3 in this regard.

a. Removal after making care application

Where a child has not been removed prior to the making of a care application, then, on the making of a care application in respect of a child or young person, the Children's Court may make an order for the removal of the child or young person from any one or more premises or places, and the Director-General or a police officer may enter any premises or place specified in the order and remove the child.⁸

b. Removal prior to making care application

i. If a child or young person is removed from a place or premises without a warrant, a care application must be made in the Children's Court within three days of the removal.

⁴ NSW Act section 44.

⁵ NSW Act section 44(2).

⁶ NSW Act section 44(1).

⁷ NSW Act section 48.

⁸ NSW Act section 48.

- ii. In addition to the powers of removal, the Director-General may also assume the care responsibility for a child by an order in writing where they suspect on reasonable grounds that the child or young person is at risk of serious harm, but are satisfied that it is not in the best interests of the child or young person to remove them from a particular premises (for example, a hospital).⁹ A care application must generally be made in the Children's Court within three working days of assuming the care responsibility for the child.
 - iii. The Director-General need not apply for any order of the Children's Court if this is not considered necessary; however the Director-General must explain to the Children's Court why no care application was made.¹⁰
- c. Care application formalities
- i. A care application must detail:
 - the support and assistance provided for the safety, welfare and well-being of the child or young person; and
 - the alternatives to a care order that were considered before the application was made and the reasons why those alternatives were rejected.¹¹
 - ii. The Children's Court must not dismiss a care application, or discharge a child or young person from the care responsibility of the Director-General, only because the Children's Court considers that an appropriate alternative action was not considered or taken.¹²
 - iii. The Children's Court may make a care order different from, in addition to, or in substitution for the order sought in the care application.¹³ Additionally, the Children's Court may make an interim care order prior to determining whether the child or young person in question is in need of care and protection, provided that:
 - the Court is satisfied that it is appropriate to do so; and
 - the Director-General satisfies the Court that it is not in the best interests of the safety, welfare and well-being of the child or young person that he or she should remain with his or her parents or other persons having parental responsibility.¹⁴
 - iv. As discussed above, the NSW Act contemplates that the person responsible for the physical removal of a child or young person will be the Director-General of the Department (this power is exercised in practice by employees of the Department), or a police officer.

⁹ NSW Act section 44.

¹⁰ NSW Act section 45(3).

¹¹ NSW Act section 63(1).

¹² NSW Act section 63(2).

¹³ NSW Act section 67.

¹⁴ NSW Act sections 62, 69.

QUESTION 3: TO WHAT FORUM DOES THE AUTHORITY APPLY TO REMOVE A CHILD?

1. As noted above, under the New South Wales system, the Department may commence a care application for a care order in the Children's Court. An application would seek one or more of the following care orders:
 - a. an emergency care and protection order,¹⁵ which places the child or young person in the care responsibility of the Director-General or another specified person for a maximum period of 28 days;¹⁶
 - b. an assessment order,¹⁷ for the physical, psychological, psychiatric or other medical examination of a child or young person;¹⁸ or
 - c. any other care order for or with respect to the care and protection of a child or young person.¹⁹
2. A care order may only be made if the Director-General makes a care application, or files a contract breach notice in respect of a parent responsibility contract.²⁰ (A parent responsibility contract is an agreement made between the Director-General and one or more primary caregivers for a child or young person, or expectant parents, which essentially aims at improving parenting skills).
3. Federal Family Law System
 - a. The FL Act contains an express provision that, in any proceedings that may affect the welfare of a child, the court may request a child welfare officer to intervene in the proceedings.²¹ The intervening welfare officer will be deemed to be a party to the proceedings, and assumes all the rights, duties and liabilities of a party.²²
 - b. Under the FL Act, a prescribed welfare authority is also entitled to intervene in proceedings where it is alleged that a child has been abused or is at risk of being abused.²³ Again, the intervening child welfare authority will be taken to be a party to the proceedings.²⁴
 - c. More generally, even where there are no allegations of child abuse or where a court does not invite a child welfare authority to intervene in proceedings, the FL Act contains a general rule that, apart from divorce or validity of marriage proceedings, any person may apply for leave to intervene.²⁵

¹⁵ NSW Act section 45.

¹⁶ NSW Act section 46.

¹⁷ NSW Act section 45.

¹⁸ NSW Act section 53.

¹⁹ NSW Act sections 45, 60.

²⁰ NSW Act sections 61, 61A.

²¹ Family Law Act 1975 (Cth) (FL Act) section 91B.

²² FL Act section 91(2)(b).

²³ FL Act section 92A(2)(d).

²⁴ FL Act section 92A(3).

²⁵ FL Act section 92.

QUESTION 4: DO CERTAIN PROFESSIONS OR PERSONS HAVE AN OBLIGATION TO REPORT TO AN AUTHORITY IF THEY SUSPECT THAT A CHILD IS AT RISK OF SUFFERING SIGNIFICANT HARM (OR SIMILAR) (I.E. "MANDATORY REPORTING")?

1. Mandatory reporting obligations have been enacted in all States and Territories, however differences exist between the jurisdictions as to:
 - a. who is required to report;
 - b. what types of abuse or neglect must be reported;
 - c. what 'state of mind' of the reporter will trigger the requirement to report; and
 - d. to whom the report should be made.
2. In New South Wales, the mandatory reporting requirement exists where:
 - a. a person to whom the section applies has reasonable grounds to suspect that a child is at significant risk of harm; and
 - b. those grounds arise during the course of the person's work.²⁶
3. "Significant risk of harm" means if current concerns exist for the safety, welfare or well-being of the child or young person because of the presence, to a significant extent, of any one or more of the following circumstances:
 - a. the child's or young person's basic physical or psychological needs are not being met or are at risk of not being met;
 - b. the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive necessary medical care;
 - c. in the case of a child or young person who is required to attend school in accordance with the Education Act 1990, the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive an education in accordance with that Act;
 - d. the child or young person has been, or is at risk of being, physically or sexually abused or ill-treated;
 - e. the child or young person is living in a household where there have been incidents of domestic violence and, as a consequence, the child or young person is at risk of serious physical or psychological harm;
 - f. a parent or other caregiver has behaved in such a way towards the child or young person that the child or young person has suffered, or is at risk of suffering, serious psychological harm;
 - g. the child was the subject of a pre-natal report under section 25 of the NSW Act and the birth mother of the child did not engage successfully with support services to eliminate, or minimise to the lowest level reasonably practical, the risk factors that gave rise to the report.
4. The "Director-General", to whom the report must be made, refers to the person holding office or acting as the Director-General of the Department of Family and Community Services.

²⁶ NSW Act section 27(2).

QUESTION 5: IF MANDATORY REPORTING OBLIGATIONS DO EXIST, TO WHAT PROFESSIONS DO THEY APPLY?

1. In New South Wales, mandatory reporting obligations apply to:
 - a. persons who, in the course of their professional work or other paid employment, deliver health care, welfare, education, children's services, residential services, or law enforcement, wholly or partly, to children;
 - b. persons who hold a management position in an organisation the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children's services, residential services, or law enforcement, wholly or partly, to children;²⁷ and
 - c. persons who deliver disability services wholly or partly to children in the course of their professional work or paid employment, or who hold a management position in an organisation which does so.²⁸
2. This may include, for example:
 - a. doctors, nurses, hospital or medical practice managers;
 - b. teachers, teaching assistants, school principals;
 - c. employees and managers at day care and after-hours care facilities;
 - d. officers and management of Housing NSW (an agency of the Department of Family and Community Services) or at other crisis housing facilities or volunteer organisations (such as Youth Off the Streets);
 - e. police officers and management of the Department of Juvenile Justice; and
 - f. disability service providers, including behaviour therapy and intervention services, skill development and community access services, financial services, respite services, supported employment services etc.
3. Federal Family Law System
 - a. Courts exercising FL Act jurisdiction (i.e. the Federal Magistrates Court and the Family Court of Australia) have jurisdiction to make orders relating to the welfare of children, pursuant to section 67ZC of the FL Act. Importantly, however, courts exercising FL Act jurisdiction cannot make orders overriding care arrangements made under state-based welfare legislation, unless they are expressed to come into effect when the child ceases to be in such care, or the order is made with the consent of the child welfare officer in the relevant State or Territory.
 - b. The mandatory reporting requirement for prescribed persons in the federal family law system is contained at sub-section 67ZA(2) of the FL Act, which states:

"(2) If the person has reasonable grounds for suspecting that a child has been abused, or is at risk of being abused, the person must, as soon as practicable, notify a prescribed welfare authority of his or her suspicion and the basis for the suspicion."

²⁷ NSW Act section 27(1).

²⁸ *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) r 15.

- c. Additionally, if a party to family law proceedings alleges that a child is being abused or at risk of abuse, the party must file and serve a notice of this allegation ("**Form 4 Notice**"). Where a Form 4 Notice is filed, the Court must notify the child welfare authority.
- d. Notification requirements apply to the following professions under sub-section 67ZA(1) of the FL Act:
 - i. Registrars or Deputy Registrars of the Family Court of Australia and the Family Court of Western Australia;
 - ii. Registrars of the Federal Magistrates Court;
 - iii. Family consultants;
 - iv. Family counsellors;
 - v. Family dispute resolution practitioners;
 - vi. Arbitrators; and
 - vii. Independent children's lawyers.

CHAPTER 3 - VICTORIA, AUSTRALIA

Chapter 2 sets out the allocation of responsibilities for child protection between federal, state and territory governments in Australia. The main relevant legislation in Victoria is the Children, Youth and Families Act 2005 (Vic) (**Children Act**).

QUESTION 1: IN WHAT CIRCUMSTANCES CAN A CHILD BE REMOVED FROM HIS OR HER PARENTS?

1. The Children Act outlines the circumstances in which a child may be removed from his or her parents in Victoria. According to the Children Act, a child may be removed from his or her parents in two circumstances if he or she is in need of protection:
 - a. pending the hearing of a protection application; and/or
 - b. in accordance with a protection order issued by the Children's Court.
2. These circumstances will be examined in greater detail below.
3. Under section 162(1) of the Children Act, a child is in need of protection if any of the following grounds exist:
 - a. The child has been abandoned by his or her parents and after reasonable enquiries:
 - i. The parents cannot be found; and
 - ii. No other suitable person can be found who is willing and able to care for the child;
 - b. The child's parents are dead or incapacitated and there is no suitable person willing and able to care for the child;
 - c. The child has suffered, or is likely to suffer, significant harm as a result of physical injury and the child's parents have not protected, or are unlikely to protect, the child from harm of that type;
 - d. The child has suffered, or is likely to suffer, significant harm as a result of sexual abuse and the child's parents have not protected, or are unlikely to protect, the child from harm of that type;
 - e. The child has suffered, or is likely to suffer, emotional or psychological harm of such a kind that the child's emotional or intellectual development is, or is likely to be, significantly damaged and the child's parents have not protected, or are unlikely to protect, the child from harm of that type;
 - f. The child's physical development or health has been, or is likely to be, significantly harmed and the child's parents have not provided, arranged or allowed the provision of, or are unlikely to provide, arrange or allow the provision of, basic care or effective medical, surgical or other remedial care.
4. Therefore, the concept of significant harm is present in the Victorian jurisdiction, as shown in grounds (c), (d) and (f). The degree of harm that amounts to significant harm has been interpreted in a case considering an equivalent provision in previous legislation to mean harm that is

"important' or 'of consequence' to the child's emotional or intellectual development" and need not require proof of some lasting or permanent effect.²⁹ Further, the harm may be cumulative.³⁰

5. When determining whether significant harm is likely, the court considers if "there is a real possibility that cannot sensibly be ignored having regard to the nature and gravity of the feared harm in the particular case".³¹

QUESTION 2: WHAT AUTHORITY, IF ANY, CAN REMOVE A CHILD FROM A PARENT'S CARE IF A CHILD IS SUFFERING OR AT RISK OF SUFFERING SIGNIFICANT HARM?

1. The authorities that can remove a child from a parent's care if the child is at risk of harm are Victoria Police and the Victorian Department of Human Services (**Department**). In the Children Act, representatives of these authorities (i.e. police officers and the Secretary to the Department of Human Services (**Secretary**)) are referred to as protective interveners.
2. The process for removal is initiated when a protective intervener receives a report from a person who believes that a child is at risk of being harmed.
3. If, after investigation, a protective intervener is satisfied on reasonable grounds that a child is in need of protection, he or she may make a protection application to the Children's Court to remove the child under a protection order.³²
4. A protective intervener may remove a child from a parent's care into safe custody pending the hearing of a protection application in the Children's Court. This is similar to the emergency power of removal available to a police officer in England under section 46 of the Children Act 1989.³³
5. If the Children's Court finds that the child is in need of protection, it may make a protection order. Protection orders may take the following forms:
 - a. an order requiring a person to give an undertaking;
 - b. a supervision order;
 - c. a custody to third party order;
 - d. a supervised custody order;
 - e. a custody to Secretary order;
 - f. a guardianship to Secretary order;
 - g. a long-term guardianship to Secretary order;
 - h. an interim protection order.³⁴
6. Protection orders vary in terms of the degree of protection. For example, with an order requiring a person to give an undertaking, the child is not removed from the parents and Departmental involvement with the family is minimal provided the parents observe the undertaking. On the other

²⁹ *Director-General of Community Services Victoria v Buckley & Ors* (Unreported, Supreme Court of Victoria, O'Bryan J, 11 December 1992) [5].

³⁰ Children, Youth and Families Act 2005 (Vic) (Children Act) section 162(2).

³¹ *DOHS v Mr K and Ms D* (Unreported, Children's Court of Victoria, Magistrate Power, 15 June 2009) [17]-[18] following *re H & Others (Minors) (Sexual Abuse: Standard of Proof)* 1996 AC 563.

³² Children Act section 240.

³³ Children Act section 241.

³⁴ Children Act section 275.

end of the spectrum is the long-term guardianship to Secretary order where the Secretary retains guardianship of the child until he or she turns 18.

QUESTION 3: TO WHAT FORUM DOES THE AUTHORITY APPLY TO REMOVE A CHILD?

As noted above, under the Victoria system, the protective intervener may make an application for a protection order in the Children's Court.

QUESTION 4: DO CERTAIN PROFESSIONS HAVE AN OBLIGATION TO REPORT TO AN AUTHORITY IF THEY SUSPECT THAT A CHILD IS AT RISK OF SUFFERING SIGNIFICANT HARM?

In Victoria, members of certain professions are required to report to the Secretary to the Department of Human Services if they believe on reasonable grounds that a child is in need of protection.³⁵ The position at federal level is set out in Chapter 2.

QUESTION 5 : WHICH PROFESSIONS ARE SUBJECT TO MANDATORY REPORTING?

1. The following people are subject to mandatory reporting obligations:

- a. a registered medical practitioner;
- b. a nurse;
- c. a teacher;
- d. a school principal;
- e. a police officer;
- f. an owner or worker of a children's service;
- g. a youth worker;
- h. a registered psychologist;
- i. a youth justice officer; and
- j. a youth parole officer.³⁶

³⁵ Children Act section 184.

³⁶ Children Act section 182.

CHAPTER 4 - CANADA

1. In order to understand the system of child protection laws in Canada, some basic knowledge of the legal system in Canada is necessary. In Canada, the Constitution Act 1867 (**Constitution**) apportions legislative power in Canada between the federal and provincial governments. Later devolution of legislative powers granted similar authority to the territorial governments. The power and responsibility for child protection is assigned to the provinces pursuant to section 92(13) of the Constitution. As a result, child welfare law in Canada differs somewhat across 13 different jurisdictions, each with its own legislative scheme and authority over that scheme. Despite these differences, similar broad principles have been embraced by each of the jurisdictions in their child protection legislation.
2. Also of note, the province of Quebec has a different system of law in place than the remainder of the country. While the remaining nine provinces and three territories are subject to common law, Quebec is subject to civil law. That said, many of the principles that apply in Quebec are nevertheless consistent in principle with the other Canadian jurisdictions.
3. For the purpose of simplicity, we have primarily reviewed the systems and legislation in place in Canada's four largest provinces – British Columbia (**B.C.**), Alberta, Ontario and Quebec.

QUESTION 1 : IN WHAT CIRCUMSTANCES CAN A CHILD BE REMOVED FROM HIS OR HER PARENTS?

1. Broadly speaking, a child can be removed from his or her parents where the child is in need of intervention or protection. The bases upon which a child may be in need of intervention are generally the same throughout the provinces. A child is in need of protection where the life, health or emotional well-being of the child is endangered by the act or omission of a person.
2. For example, the relevant legislation in Alberta, the Child, Youth and Family Enhancement Act permits intervention where a child is "in need of intervention". A child is in need of intervention if there are reasonable and probable grounds to believe that the survival, security or development of the child is endangered, including through neglect. The legislation specifies that this includes failure to provide medical treatment, exposure to domestic violence and exposure to sexual abuse including prostitution, as well as emotional injury through a pattern of neglect or deprivation of affection.
3. In B.C. and Ontario, intervention is warranted under the relevant legislation (in B.C., the Child, Family and Community Service Act; in Ontario, the Child and Family Services Act) where a child is in "need of protection". The criteria are substantively similar to the criteria set out in Alberta's legislation.
4. Ontario's legislation further identifies children as being in need of protection where the child suffers serious emotional harm and whose parents are unwilling or unable to provide care; or children under the age of 12 who have physically injured another or damaged another person's property with the encouragement of the person having charge of the child or because of that person's failure or inability to supervise the child adequately.
5. In Quebec, parents exercise their parental authority in accordance with the provisions found in the Civil Code of Quebec (**CCQ**) and other statutes. The term "parental authority" is further defined under the CCQ as all the rights and duties that all parents have, regardless of their civil status (i.e.

whether they are married or not), with respect to their minor children. The set of rights and duties under parental authority include the custody, care, supervision, physical and psychological protection, education and support of a child.

6. A parent can be deprived of his/her parental authority for "grave reasons" and in the interests of a child. The CCQ does not define the meaning of "grave reasons". Quebec case law is consistent in stating that deprivation of parental authority entails a value judgment on the parents' basic failings in exercising their parental authority. It has been held that grave reasons exist in the case of voluntary and intentional abandonment, violence and gross neglect of a child.

QUESTION 2: WHAT AUTHORITY, IF ANY, CAN REMOVE A CHILD FROM A PARENT'S CARE IF A CHILD IS SUFFERING OR AT RISK OF SUFFERING SIGNIFICANT HARM (OR SIMILAR)?

1. There is a statutory authority in each of the provinces that has the obligation and ability to investigate reports of a child suspected of being in need of intervention, and the power to decide to take action with respect to that child.
2. In Ontario, child protection services are provided for by organisations known as "children's aid societies," which are in turn governed by the Child and Family Services Act. They are overseen by the Minister of Children and Youth Services. There are 47 children's aid societies across the province of Ontario; nine of these are aboriginal and three are faith-based. Each society is an independent, non-profit organisation run by a board of directors elected from the local community.
3. In Alberta and B.C., services are provided by provincial government agencies operating under their respective provincial legislation. In Alberta, the agency is known as Child and Family Services, a branch of the province's Human Services Ministry. In B.C., services are provided by the Ministry of Children and Family Development, and also by First Nations child welfare agencies to which authority has been delegated by agreement.
4. In Quebec, the Commission des droits de la personne et des droits de la jeunesse, which has been entrusted with the mandate to ensure the promotion and protection of the rights of children, may refer a case of a child whose security or development is considered to be in danger to the Court of Quebec.
5. Child protection authorities can obtain a warrant for the apprehension of a child where there are reasonable and probable grounds to believe that the child is in need of intervention or protection, as discussed above. If necessary, this can generally be done on an emergency and/or *ex parte* basis. However, in special circumstances, a child protection worker can also apprehend a child without a warrant. In Ontario, where a child protection worker believes on reasonable and probable grounds that a child is in need of protection and there would be a substantial risk to the child's health or safety during the time necessary to bring the matter on for a hearing, the worker may without a warrant bring the child to a place of safety. Similarly, in Alberta and B.C., if a child protection worker has reasonable and probable grounds to believe that the life or health of the child would be seriously and imminently endangered as a result of the time required to obtain an order, they can apprehend the child without order. The statutory authorities and/or police may use force and enter a dwelling house if necessary to apprehend a child.
6. Each province has a separate system for dealing with a child that is in need of intervention, though they generally follow a similar pattern. There are different levels of intervention that can be applied, and the statutory child protection authority can pursue whichever course of action is the most appropriate in the circumstance. For example, they can skip a supervision order and go

straight to a temporary guardianship order if required. That said, courts are required to apply the lowest level of intervention and least disruptive means necessary to protect the child. Courts are also able to order an assessment of the child, the parent or guardian, or any other person who might participate in a plan or custody of the child.

7. In general, the orders available to the provincial child protection agencies outside of Quebec are as follows:

a. Enhanced Family Agreement (Alberta) / Plan of Care (B.C.) / Safety and Service Plans (Ontario)

This is the minimal level of intervention where the authority meets with the child's parent/s or caregiver to determine the needs of the child and they enter into an agreement or plan to ensure that the child's needs are met and his/her safety is protected. Failing to comply with this plan may result in an escalation of authority involvement.

b. Supervision Order (Alberta, B.C., Ontario)

This is a court order that requires a parent or another person to submit to the supervision of the authority with respect to the welfare of the child. In Ontario, this provision can be used to place a child under the care of a relative, neighbour or other member of the child's community or extended family, which the legislation expressly provides must be considered by a court prior to making an order placing the child under the wardship of a society or the Crown.

c. Temporary Guardianship Order (Alberta) / Temporary Custody Order (B.C.) / Society Wardship Order (Ontario)

This is a court order that places the child in the care of the authority for a limited period of time. In Ontario, wardship is granted to an agency for a period not to exceed 12 months. A court can also make a consecutive order providing that the child can be placed in the care of a children's aid society and then placed in the care of a parent under supervision.

d. Permanent Guardianship Order (Alberta) / Permanent Custody Order (B.C.) / Crown Wardship Order (Ontario)

This is a court order that places the child in the permanent care of the authority. In B.C. and Alberta, permanent guardianship can be granted to another suitable person. The authority must show that there is no significant likelihood that the circumstances necessitating the child's removal may improve within a reasonable time. In Ontario, the child becomes a ward of the Crown. Upon review, the child can later be placed back into the care of the parent or another suitable person.

8. With respect to each of the above, the legal burden to show the necessity of the order rests on the authority. In Ontario, the authority must show that intervention through a court order is necessary to protect the child in the future; in Alberta and B.C., the authority must show that the survival, security and development of the child cannot be adequately protected without such measures.

9. In Quebec, any interested person can apply to declare a parent/s, or a third person on whom parental authority may have been conferred (known as a tutor), to be deprived of their parental authority for a grave reason and in the interests of a child. In situations where such a measure is not required but action is necessary, the Superior Court of Quebec may instead declare the withdrawal of a particular attribute of parental authority and has the power to order any provisional measure it considers necessary. The courts have the discretion to dictate restrictions or

adjustments to a particular parental right. This includes the withdrawal of the child's custody. Also in the context of applications relating to parental authority, a court may, even on its own motion, order the establishment of a tutorship council to obtain its legal opinion on the designation of a person who is to exercise parental authority or on the appointment of a tutor.

10. Procedurally, the provinces differ somewhat with respect to how many hearings are required, lengths of time between hearings etc., and notice requirements.

QUESTION 3 : TO WHAT FORUM DOES THE AUTHORITY APPLY TO REMOVE A CHILD?

1. Generally, in most of the provinces and territories of Canada, the forum for child protection orders in each province is the provincial or territorial court. A provincial/territorial court is a local court of limited jurisdiction established in the provinces and territories of Canada. The territory of Nunavut does not have a territorial court and all cases are therefore heard before Superior Courts.
2. In addition, some issues may require going before the Superior Courts.
3. In Quebec, the Superior Court of Quebec has subject-matter jurisdiction to make all decisions and determinations with respect to parental authority. However, as discussed above, in situations where the security or development of a child is in danger, the provincial Court of Quebec also has the power to order that the exercise of certain attributes of the parental authority be withdrawn from the parents. Moreover, the Court of Quebec has the power to grant said attributes to the director of youth protection appointed for an institution operating a child and youth protection centre or any other person designated by said court.

QUESTIONS 4 AND 5: DO CERTAIN PROFESSIONS OR PERSONS HAVE AN OBLIGATION TO REPORT TO AN AUTHORITY IF THEY SUSPECT THAT A CHILD IS AT RISK OF SUFFERING SIGNIFICANT HARM (OR SIMILAR) (I.E. "MANDATORY REPORTING")? IF MANDATORY REPORTING OBLIGATIONS DO EXIST, TO WHAT PROFESSIONS DO THEY APPLY?

1. In each of the provinces except Quebec, all persons with information that leads the person reasonably to believe that a child is or might be in need of protection or intervention have a duty to report, with the possible exception of solicitor-client privileged information. The duty is not limited to certain professions or persons.
2. In Ontario and Nova Scotia, this duty to report applies even where the information comes by way of a confidential relationship, such as solicitors, doctors and therapists. Other provinces, such as B.C., Alberta, Manitoba, Saskatchewan, New Brunswick and Newfoundland, exclude a duty to report where the information is privy to solicitor-client or Crown privilege.
3. In Quebec, there is no general duty to report all cases of abuse or neglect. There are, however, duties on certain professions to report. Every professional who, by the nature of his/her profession, provides care or any other form of assistance to children and who, in the practice of his/her profession, has reasonable grounds to believe that the security or development of a child is or may be considered to be in danger must bring the situation to the attention of the director of youth protection appointed for an institution operating a child and youth protection centre. The same obligation applies to any employee of an institution, any teacher, any person working in a childcare establishment or any police officer, if, in the performance of his/her duties, he/she has reasonable grounds to believe that the security or development of a child is or may be considered to be in danger. In such cases, this obligation applies even if the person is bound by professional secrecy, except to a lawyer acting in the course of his/her profession.

4. In Quebec, in addition to mandatory reporting for certain professions, there is mandatory reporting on any person, other than the certain professionals as discussed above, who has reasonable grounds to believe that the security or development of a child is considered to be in danger in a situation of physical or sexual abuse. There is further discretionary reporting for persons, excepting the professionals discussed above, who have reasonable grounds to believe that the security or development of a child is or may be considered to be in danger in a situation of abandonment, neglect, psychological ill-treatment or serious behavioural disturbance.
5. Even when the information is subject to privilege, and thus normally not reportable, there is jurisprudence in Canadian courts that such privilege may be waived and certain information can be reported in exceptional circumstances. In *Smith v Jones* [1999] 1 SCR 455, the Supreme Court of Canada outlined the public safety/future harm exception (**public safety exception**). Where there is a significant concern for public safety as a result of information that a client has told a lawyer, privilege may be waived. The requisite test requires fulfilment of the following in order for the duty to apply:
 - a. There is a clear risk to an identifiable person or group of persons;
 - b. The risk is of serious bodily harm or death; and
 - c. The danger is imminent.
6. Accordingly, the public safety exception could apply if a client told a lawyer of the abuse being carried out on a child.
7. The public safety exception has been applied in Quebec, but has not yet been considered in this particular context.
8. The public safety exception has been incorporated into the Canadian Bar Association Code of Professional Conduct, and within each of the Canadian provinces which has adopted the model code of the Canadian Bar Association. Overall, the public safety exception allows for a lawyer to waive the solicitor-client privilege over certain information, but only to the extent required to prevent the harm.
9. The foregoing is only a summary of a complicated area of the law – any particular issue must be dealt with on a case by case basis.
10. Where there is a duty to report a child in need of protection, failing to do so is an offence in each of the provinces.

CHAPTER 5 - PAKISTAN

1. Introduction

- a. The Islamic Republic of Pakistan ratified the United Nations Convention on the Rights of the Child (**UNCRC**) on 12 November 1990³⁷ and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography on 5 July 2011.³⁸ At the time of ratification of the UNCRC, Pakistan made a general reservation that the provisions of the UNCRC shall be interpreted according to the principles of Islamic Laws and values, which was withdrawn only on 23 July 1997. Unfortunately, the progress towards the implementation of the UNCRC in Pakistan has been slow. This is partially due to the fact that unless enabling legislation has been passed to incorporate a treaty into national law, treaty rights and obligations cannot be applied by the Pakistani courts. The issue is further aggravated by the fact that Pakistan is a federal republic in which every province has separate legislation on issues of family law and child welfare.
- b. Pakistan is party to a number of other international and regional instruments aimed directly or indirectly at improving the rights of the child, for instance (i) the Stockholm Declaration and Agenda for Action adopted at the issue of the World Congress against Commercial Sexual Exploitation of Children, which was signed in 1996 and reaffirmed by the Yokohama Global Commitment in 2001; (ii) the International Labour Organisation Convention on the Worst Forms of Child Labour (No. 182), ratified by the Government of Pakistan in 2001; and (iii) the International Labour Organisation Minimum Age Convention (No. 138), ratified by the Government of Pakistan in 2006. According to Article 35 of the Constitution of the Islamic Republic of Pakistan, the State shall, inter alia, protect the child. Furthermore, Articles 25(3) and 26(2) of the Constitution allow for positive discrimination, stating that nothing "shall prevent the State from making any special provision for the protection of women and children".
- c. The Federal Government of Pakistan is currently working on several comprehensive bills, in order to fulfil at the national, rather than provincial, level the country's obligations under different international treaties in general and the UNCRC in particular. The National Commission on the Rights of Child Bill 2015, which aims to protect the rights of the child as contained in the UNCRC and other domestic laws through a National Commission on the Rights of the Child, is currently being reviewed by the National Assembly of Pakistan.³⁹

2. Federal Structure and Legislation

- a. Pakistan is a federation consisting of:
 - i. four provinces: Balochistan, Khyber Pakhtunkhwa (previously known as the North-West Frontier Province), Punjab and Sindh;

³⁷ Available at: https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-11&chapter=4&lang=en.

³⁸ Available at: https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=iv-11-c&chapter=4&lang=en.

³⁹ Draft text of the bill available at: http://www.na.gov.pk/uploads/documents/1429632250_240.pdf.

- ii. the Federal Capital, i.e. the Islamabad Capital Territory (**ICT**);
 - iii. the Federally Administered Tribal Areas (**FATA**); and
 - iv. the self-governing region of Gilgit-Baltistan.
- b. The governing laws are generally divided into federal and provincial laws. Federal laws are applicable across Pakistan, whereas provincial laws are applicable only in the province in which they have been promulgated.
 - c. Federal and provincial laws become applicable to the FATA and the Provincially Administered Tribal Areas (**PATA**), if the president of Pakistan (**President**) or the governor of the respective province so directs. In the absence of a federal law, the President may by order make a provision for peace and good government for any part of Pakistan, which does not form part of a province.
 - d. Generally, there are various federal and provincial laws in Pakistan on the welfare and protection of children. Such laws are aimed, inter alia, at the prohibition of child marriages, preventing the employment of minors and at the protection of nutrition for infants and young children. The non-exclusive list of such laws can be found at Appendix 1.

QUESTION 1: IN WHAT CIRCUMSTANCES CAN A CHILD BE REMOVED FROM HIS/HER PARENTS? TYPICAL TYPES OF THRESHOLD THAT RESULT IN THE REMOVAL OF A CHILD.

1. Balochistan, ICT and FATA

- a. There is no federal legislation currently in force which specifically addresses the situations in which a child may be removed from parental/guardian custody. Therefore, the removal of a child from custody appears to be unregulated in the ICT and FATA region of Pakistan. However, a Child Protection System Bill 2014, which seeks to enact a Child Protection System Act in the Islamabad Capital Territory, is at the time of writing being reviewed by the National Assembly of Pakistan.
- b. Among provinces, Balochistan is the only one which has so far not promulgated any legislation on the removal of a child from parental/guardian custody.

2. Khyber Pakhtunkhwa

- a. Under section 20 of the Khyber Pakhtunkhwa Child Protection and Welfare Act 2010 (**2010 Act**), a child at risk can be removed from his/her parents or guardian if such child is either found begging or is a victim of an offence alleged to have been committed by his/her parents or guardian. Generally, the 2010 Act also extends to the PATA region of Khyber Pakhtunkhwa.
- b. Under section 2 of the 2010 Act, a "child at risk" means a child in need of protection who:
 - i. is at risk, including an orphan, child with disabilities, child of migrant workers, child working and or living on the street, child in conflict with the law and child living in extreme poverty;
 - ii. is found begging;
 - iii. is found without having any home or settled place of abode or without any ostensible means of subsistence;

- iv. has a parent or guardian who is unfit or incapacitated to exercise control over the child;
 - v. lives in a brothel or with a prostitute or frequently visits any place being used for the purpose of prostitution or is found to associate with any prostitute or any other person who leads an immoral or depraved life;
 - vi. is being or is likely to be abused or exploited for immoral or illegal purposes or gain;
 - vii. is beyond the parental control;
 - viii. is imprisoned with the mother or born in jail;
 - ix. has lost one or both of his/her parents and has no adequate source of income;
 - x. is victim of an offence punishable under the 2010 Act or any other law for the time being in force and his/her parent or guardian is convicted or accused of the commission of such offence; or
 - xi. is left abandoned by his/her parent or parents as the case may be, which will include a child born out of wedlock and left abandoned by his/her parent.
- c. Offences punishable under the 2010 Act are as follows:
- i. Corporal punishment;
 - ii. Fraud or deceit on a child;
 - iii. Violence against a child;
 - iv. Harmful practices;
 - v. Dealing in organs of a child;
 - vi. Unauthorised custody;
 - vii. Cruelty to a child;
 - viii. Employing child for begging;
 - ix. Giving intoxicating liquor or narcotics drug to child;
 - x. Permitting child to enter places where liquor or narcotic drugs are sold;
 - xi. Child pornography;
 - xii. Inciting child to bet or borrow;
 - xiii. Exposure to seduction;
 - xiv. Abetting escape of child;
 - xv. Child trafficking; and
 - xvi. Sexual abuse.

3. Punjab

- a. Section 24 of the Punjab Destitute and Neglected Children Act 2004 (**2004 Act**) (as amended by the Punjab Destitute and Neglected Children (First Amendment) Act 2007) contains the same provisions as section 20 of the 2010 Act. However the concept of a "child at risk" is substituted with the concept of a "destitute and neglected child".
- b. Under section 3 of the 2004 Act, a "destitute and neglected child" means a child who:

- i. is found begging;
 - ii. is found without having any home or settled place of abode and without any ostensible means of subsistence;
 - iii. has a parent or guardian who is unfit or incapacitated to exercise control over the child;
 - iv. lives in brothel or with a prostitute or frequently visits any place being used for the purpose of prostitution or is found to associate with any prostitute or any other person who leads an immoral or depraved life;
 - v. is being or is likely to be abused or exploited for immoral or illegal purpose or unconscionable gain;
 - vi. is beyond the parental control;
 - vii. has lost one or both of his/her parents and has no adequate source of income;
 - viii. is victim of an offence punishable under the 2004 Act or any other law for the time being in force and his/her parent or guardian is convicted or accused for the commission of such offence.
- c. The special offences against children which are punishable under the 2004 Act are the same as the offences set out above for Khyber Pakhtunkhwa under the 2010 Act.

4. Sindh

- a. Under section 17 of the Sindh Child Protection Authority Act 2011 (**2011 Act**), a child in need of special protection measures can be taken into custody.
- b. "Child in need of special protection measures" includes a child who:
 - i. is a victim of violence, abuse and exploitation;
 - ii. is subjected to physical and psychological violence, sexual abuse or commercial sexual exploitation;
 - iii. is forced into the worst forms of the child labour, exploitative labour, or beggary;
 - iv. is subject to human trafficking within and outside Pakistan;
 - v. is being misused for drug trafficking or is subjected to abuse of substances like glue, drugs, or spirits;
 - vi. is engaged in an armed conflict;
 - vii. is a child without primary caregivers; and
 - viii. is affected or infected with HIV / Aids.

5. Gilgit–Baltistan

- a. Section 22 of the Gilgit-Baltistan Child Protection and Welfare Act 2013 (**2013 Act**) contains the same provisions as section 20 of the 2010 Act. A "child at risk" under section 2(e) of the 2013 Act has the same definition as provided under section 2(e) of the 2010 Act.
- b. The special offences against children which are punishable under the 2013 Act are the same as the offences set out at paragraph 1.2 a) – p) above. However, section 34 of the 2013 Act also includes child marriage as a special offence against children.

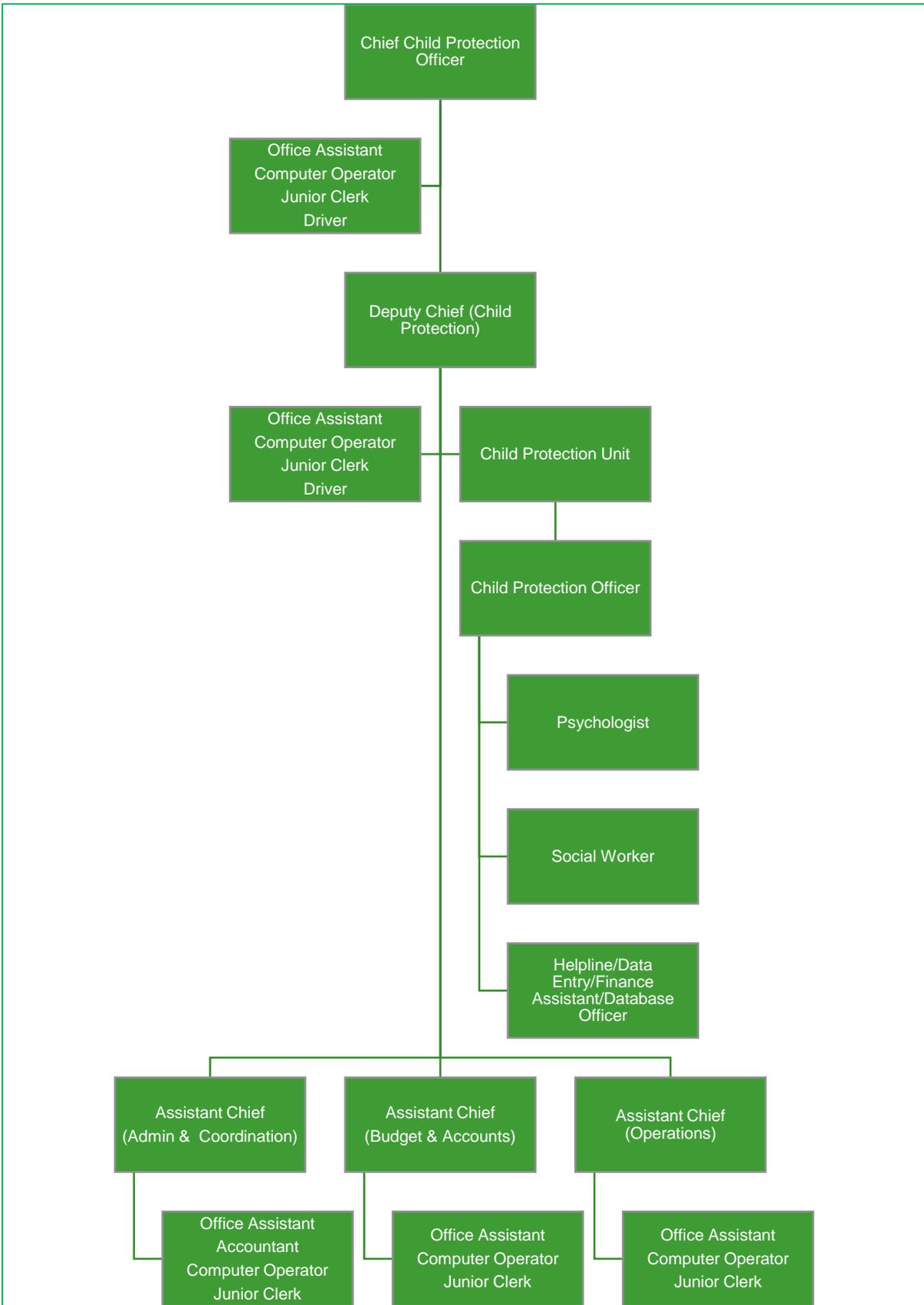
- c. Although there is no concept of "significant harm" in the law of the Islamic Republic of Pakistan, its approximation would be the definitions of (1) a child being "at risk" (as per the 2010 Act and the 2013 Act, respectively), (2) a "destitute and neglected child" (as per the 2004 Act), and (3) a "child in need of special protection measures" (as per the 2011 Act).

QUESTION 2: WHAT AUTHORITY, IF ANY, CAN REMOVE A CHILD FROM A PARENT'S CARE IF A CHILD IS SUFFERING OR AT RISK OF SUFFERING SIGNIFICANT HARM (OR SIMILAR)? IS THIS SIMILAR TO THE UK?

1. In general, the provincial legislation has established a process, which involves statutory authorities initiating proceedings for the protection of child welfare by making applications to courts. Further details of such statutory authorities are provided below. The details of courts that deal with such applications are set out in Question 3 below.
2. Balochistan, ICT and FATA
 - a. As explained above, there is no federal legislation currently in force which specifically addresses the situations in which a child may be removed from parental/guardian custody.
3. Khyber Pakhtunkhwa
 - a. Under section 20 of the 2010 Act, upon information or complaint a Child Protection Officer appointed by the Khyber Pakhtunkhwa Child Protection and Welfare Commission (**Commission**) may take into protection a child at risk and shall produce him before the Court (as defined within the 2010 Act) within 24 hours of taking the child at risk into such protection.
 - b. Under section 4 of the 2010 Act, the Commission has the following powers and functions:
 - i. to act as a focal point for effective supervision and coordination of child rights matters at provincial and local levels, and develop and coordinate activities programmes and plans for the development, protection, survival, participation and rehabilitation of children at risk;
 - ii. to coordinate with the National Commission on the Rights of Children (**NCRC**);
 - iii. to implement policies for the prevention, protection, rehabilitation and reintegration of children at risk;
 - iv. to review all provincial laws, rules and regulations affecting the status and rights of children and propose new laws in this regard, wherever necessary, to safeguard and promote the interests of children in accordance with the Constitution of the Islamic Republic of Pakistan and obligations under international covenants and commitments, provided that these obligations and covenants are not repugnant to the injunctions of Islam;
 - v. to provide technical and other support in the interests of children to the Provincial Departments, local governments or civil society organisations and create awareness and educate the public about the status of children at risk through print and electronic media as well as holding lectures and seminars etc.;

- vi. to monitor the implementation and violation of laws related to child protection, welfare and rights including prevention of child labour, child sexual abuse, child sexual exploitation, prostitution, child pornography, child trafficking and any form of violence against children and to take necessary measures by enquiring into or referring individual complaints for their redress to other appropriate authorities or departments or agencies;
- vii. to establish, manage, supervise and control Child Protection Units;
- viii. to provide protective measures, inter alia, food and shelter, education and training to children at risk by establishing, managing and recognising Child Protection Institutions in accordance with the criteria laid down by the Commission;
- ix. to prohibit physical and corporal punishments of any kind which may result in endangering the life, physical, mental, spiritual, moral or social development of the child, both within the family, and in any institution;
- x. to mobilise financial resources through national and international agencies for programmes relating to child protection, welfare and rights;
- xi. to improve rules and procedures concerning compulsory birth registration and registration of children without birth documents, including registration of an abandoned child with the State filling in for his parentage;
- xii. to reform, monitor and ensure the safety of children in residential care and juvenile detention facilities by efficient reorganisation to meet with minimum standards and regular monitoring of each such institution;
- xiii. to build a rapid-response child protection intervention capability for provincial level emergencies such as natural disasters or the outbreak of armed conflict;
- xiv. to develop a system, if necessary, for entering into partnerships with private organisations for the management or funding or both of any or all child protection institutions, which may include arranging "kafalat" of a child by private citizens;
- xv. to revise the minimum age of criminal responsibility to a nationally acceptable level;
- xvi. to develop a uniform structure for data collection and computerised data recording, to facilitate evidence-based policy formulation; and
- xvii. to do all such acts and things as are ancillary or incidental to any of the functions stated above and any other functions, which may be assigned to it by Government.

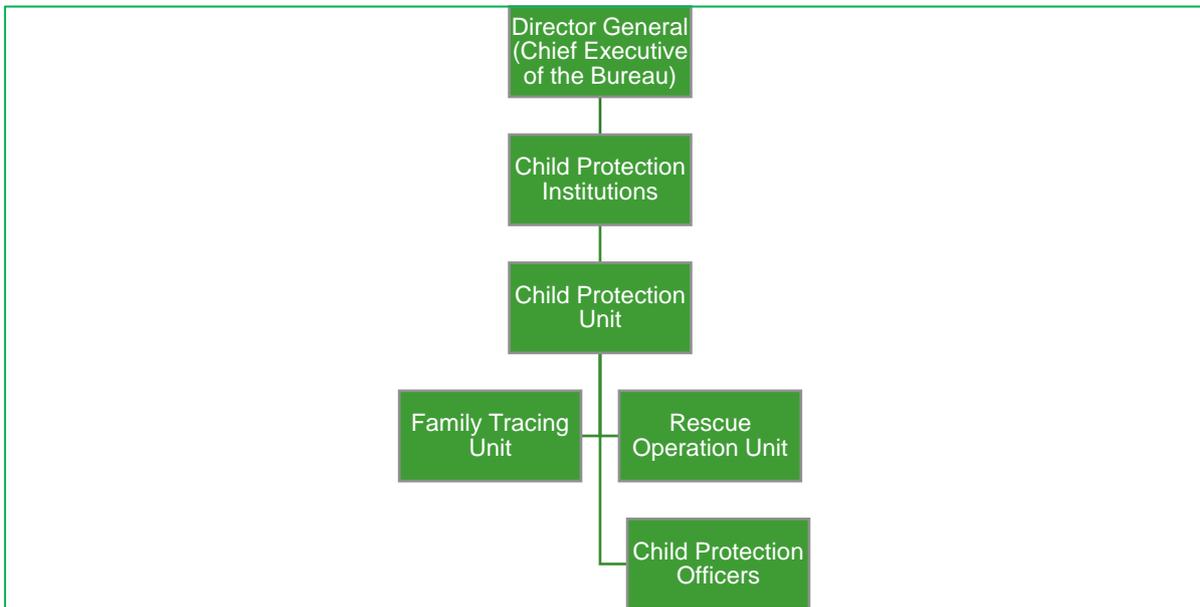
c. The structure of the Commission is as follows:



4. Punjab

- a. Under section 24 of the 2004 Act, upon information or complaint a Child Protection Officer appointed by the Child Protection and Welfare Bureau (**Bureau**) may take into custody a destitute and neglected child and produce him before the Court (as defined within the 2004 Act) within 24 hours of taking the child into such custody.
- b. Under section 9 of the 2004 Act, the Board of Governors of the Bureau shall exercise such powers and take such measures as may be necessary for carrying out the purposes of the 2004 Act, including:
 - i. to take steps for the establishment of the Destitute and Neglected Children's Welfare Fund in the manner provided in section 18 of the 2004 Act, for carrying out the purposes of the Bureau;
 - ii. to establish, manage and recognise child protection institutions;
 - iii. to exercise control over child protection institutions and look after the operation and maintenance of all essential services provided in the institutions;
 - iv. to regulate the affairs of the child protection institutions;
 - v. to arrange, purchase or acquire land wherever necessary within the Province of the Punjab;
 - vi. to supervise prosecution of the persons accused of the offences created under the 2004 Act;
 - vii. to sell or dispose of assets, movable or immovable, of the Bureau in the manner as may be determined by the Board;
 - viii. to appoint and authorise employees with designations and terms and conditions as the Board may determine;
 - ix. to authorise spending from the Destitute and Neglected Children's Welfare Fund;
 - x. to delegate any of these powers and functions to a member, members, official or officials of the Bureau;
 - xi. to regulate its meetings and all matters connected with or ancillary to a meeting; and
 - xii. to do such acts as are ancillary and incidental to the above functions.

c. The structure of the Bureau is as follows:



5. Sindh

- a. Under section 17 of the 2011 Act, a Child Protection Officer may, in case of a child in need of special protection measures, ask the relevant authorities for appropriate action. A Child Protection Officer may, in consultation with the Child Protection Committee, apply to the nearest magistrate to take into custody a child requiring special protection measures. Whenever a child is taken into custody, he shall immediately be taken to the nearest Child Protection Institution for temporary custody till appropriate orders are passed by the appropriate authorities.
- b. Under section 2 of the 2011 Act, "Child Protection Officer" means an officer appointed by the Government of Sindh for carrying out the purposes of the 2011 Act. "Child Protection Institution" means an institution, established or recognised under the 2011 Act or the relevant rules, for the admission, care, protection and rehabilitation of children requiring special protection measures.
- c. The Child Protection Officers and Institutions are subordinate to the Sindh Child Protection Authority (**Authority**). Under section 10 of the 2011 Act, the Authority has the following powers:
 - i. to coordinate and monitor child protection related issues at the provincial and district level;
 - ii. to ensure the rights of children in need of special protection measures;
 - iii. to support and establish institutional mechanisms for child protection issues;
 - iv. to make necessary efforts to enhance and strengthen the existing services of different children welfare institutions;

- v. to set minimum standards for social, rehabilitative, reintegrative and reformatory institutions and services and ensure their implementation;
 - vi. to supervise in the light of minimum standards the functions of all such institutions established by government or the private sector for the special protection measures of the children;
 - vii. to set minimum standards for all other institutions relating to children (like educational institutions, orphanages, shelter homes, remand homes, certified schools, youth offender work places, child parks and hospitals etc.) and ensure their implementation;
 - viii. to review laws, propose amendments to the relevant law, wherever necessary, so as to bring the law into line with the relevant international instruments ratified by Pakistan and to propose new laws;
 - ix. to recommend development of a Policy and Plan of Action for children;
 - x. to monitor and report on the violation of national and provincial laws and international instruments and to take suitable remedial measures for the protection of children;
 - xi. to set up a child protection management information system and prepare annual reports;
 - xii. to mobilise financial resources for programmes relating to the special protection of children through provincial, national and international agencies;
 - xiii. to promote and undertake systematic investigation and research on child protection issues;
 - xiv. to initiate through relevant authorities the prosecution of offenders when children are victim of the offence;
 - xv. to establish and manage the Sindh Child Protection Authority Fund;
 - xvi. to do such acts as are ancillary and incidental to the above functions;
 - xvii. to investigate or cause investigation, on its own or upon a complaint, into any matter having bearing on the interest of the children; and
 - xviii. any other functions, which may be assigned to it by Government of Sindh.
- d. Unfortunately, the Authority has not been established in Sindh yet.

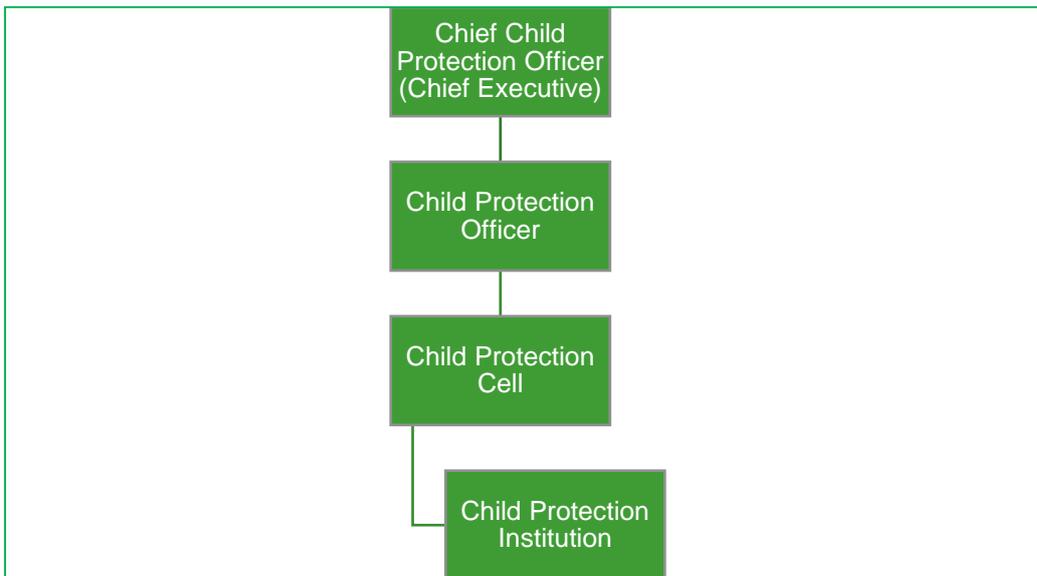
6. Gilgit-Baltistan

- a. Under section 22 of the 2013 Act, upon information or complaint a Child Protection Officer appointed by the Child Protection Commission (**Child Protection Commission**) may take into protection a child at risk and shall produce him before the Court (as defined within the 2013 Act) within 24 hours of taking the child at risk into such protection.
- b. Under section 5 of the 2013 Act, the Child Protection Commission has the following functions and powers:
 - i. to act as a focal point for the effective supervision and coordination of child rights matters at regional and local levels, and approve activity programmes and plans

for the development, protection, survival, participation and rehabilitation of children at risk;

- ii. to supervise and oversee implementation of policies for the prevention, protection, rehabilitation and reintegration of children at risk;
- iii. to ensure implementation of child protection, welfare and rights including prevention of child labour, child sexual abuse, child sexual exploitation, prostitution, child pornography, child trafficking and any form of violence against children and to take necessary measures;
- iv. to supervise the district Child Protection Cells;
- v. to establish, manage and recognise Child Protection Institutions to provide protective measures, inter alia, food and shelter, education and training to children at risk;
- vi. to improve rules and procedures concerning compulsory birth registration and registration of children without birth documents including registration of an abandoned child with the Government filling in for his parentage;
- vii. to set minimum standards for Child Protection Institutions for the purpose of their recognition and for residential care and juvenile detention facilities for the purpose of regular monitoring of each such institution;
- viii. to develop a uniform structure for data collection and computerised data recording, to facilitate evidence-based policy formulation;
- ix. to constitute such committees as it deems necessary and delegate any of its powers and functions or assign duties in connection to its powers and functions for giving effect to the provisions of the 2013 Act;
- x. to coordinate with the recognised body relevant to child rights at the national level;
- xi. to review all applicable laws, rules and regulations affecting the status and rights of children and propose new laws in this regard, wherever necessary, to safeguard and promote the interests of children in accordance with the Constitution of the Islamic Republic of Pakistan and obligations under international covenants and commitments;
- xii. to provide technical and other support in the interests of children to Government departments, local governments or civil society organisations and create awareness and educate the public about the status of children at risk through print and electronic media as well as holding lectures and seminars, etc.; and
- xiii. to do all such acts and things as are ancillary or incidental to any of the functions stated above and any other functions, which may be assigned to it by the Government.

c. The structure of the Child Protection Commission is as follows:



QUESTION 3 : TO WHAT FORUM (I.E. THE FAMILY COURT) DOES THE AUTHORITY APPLY TO REMOVE A CHILD? IN (2) ABOVE.

1. Balochistan, ICT and FATA

As explained above, there is no federal legislation currently in force which specifically addresses the situations in which a child may be removed from parental/guardian custody.

2. Khyber Pakhtunkhwa

The Child Protection Court. Under section 15 of the 2010 Act, the Government may, in consultation with the Peshawar High Court, notify different Courts of Sessions as Child Protection Courts. The Court has the power to issue orders in respect of handing over the custody of a child at risk that is brought before it, either to his parents, guardian, a suitable person or a Child Protection Institution.

3. Punjab

The Child Protection Court. Under section 22 of the 2004 Act, the Government may, by notification, establish one or more Child Protection Courts for a local area. Until a Court is established for a local area, the Lahore High Court may confer the powers of the Court for a local area upon a Sessions Judge or an Additional Sessions Judge.

4. Sindh

In Sindh, there is no provision for a Child Protection Court in the 2011 Act. Under section 17(2) of the 2011 Act, a Child Protection Officer may, in consultation with the Child Protection Committee, apply to the nearest magistrate to take into custody a child requiring special protection measures. section 17(3) states that whenever a child is taken into custody, he shall immediately be taken to the nearest Child Protection Institution for temporary custody until appropriate orders are passed by the appropriate authorities.

5. Gilgit-Baltistan

The Child Protection Court. Section 17(1) of the 2013 Act states that the Government may, in consultation with the Gilgit-Baltistan Chief Court and by notification in the Gazette, notify different

Courts of Sessions as Child Protection Courts under the 2013 Act. Section 18 details the powers and functions of the Court. Section 18(1) provides that the Court may issue orders in respect of handing over the custody of a child at risk that is brought before it, either to his parents, guardian, a suitable person or a Child Protection Institution, as the case may be.

QUESTION 4: DO CERTAIN PROFESSIONS OR PERSONS HAVE AN OBLIGATION TO REPORT TO AN AUTHORITY IF THEY SUSPECT THAT A CHILD IS AT RISK OF SUFFERING SIGNIFICANT HARM (OR SIMILAR) (I.E. "MANDATORY REPORTING")?

In Pakistan, there is no obligation on persons to report if they suspect a child is at risk of harm.

QUESTION 5: IF MANDATORY REPORTING OBLIGATIONS DO EXIST, TO WHAT PROFESSIONS DO THEY APPLY?

Not applicable.

APPENDIX 1: LAWS IN PAKISTAN ON CHILD PROTECTION AND WELFARE

Please find below some examples of the federal and provincial laws which specifically deal with the protection and welfare of children/juveniles/minors in Pakistan.

A. FEDERAL LAWS

No.	Name of Statute	Applicable	Preamble of the Statute	Status
1.	The Guardian and Wards Act, 1890	Extends to the whole of Pakistan.	This Act relates to appointment, duties and liabilities of a guardian of a child.	In force
2.	Child Marriage Restraint Act, 1929	Extends to the whole of Pakistan except the provinces of Sindh and Punjab.	The Act restrains the solemnisation of child marriages.	In force
3.	Factories Act, 1934	Extends to the whole of Pakistan except the provinces of Khyber-Pakhtunkhwa and Punjab.	This Act provides for the regulation of labour in factories.	In force
4.	Employment of Children Act, 1991	Extends to the whole of Pakistan except the province of	This Act prohibits the employment of children in certain	In force

No.	Name of Statute	Applicable	Preamble of the Statute	Status
		Punjab.	occupations and regulates the conditions of work of children.	
5.	Bonded Labour System (Abolition) Act, 1992	Extends to the whole of Pakistan.	This Act is enacted to abolish the bonded labour system with a view to preventing the economic and physical exploitation of the labour class.	In force
6.	Abolition of Whipping Act, 1996	Extends to the whole of Pakistan.	This Act is enacted to abolish the punishment of whipping.	In force
7.	The Juvenile Justice System Ordinance, 2000	Extends to the whole of Pakistan.	This Ordinance provides for the protection of children involved in criminal litigation and their rehabilitation in society.	In force
8.	Protection of Breast-Feeding and Child Nutrition Ordinance, 2002	Extends to the whole of Pakistan, except the provinces of Balochistan, Sindh and Punjab.	This Ordinance is enacted to ensure safe and adequate nutrition for infants and young children by promoting and protecting breast-feeding.	In force
9.	Prevention and Control of Human Trafficking	Extends to the whole of Pakistan.	This Act is enacted to prevent human	In force

No.	Name of Statute	Applicable	Preamble of the Statute	Status
	Ordinance, 2002		trafficking and to protect and assist the victims of such trafficking.	

B. PROVINCIAL LAWS

I. Balochistan

No.	Name of Statute	Applicable	Preamble of the Statute	Status
1.	The Balochistan Borstal Institutions Act, 2014	This Act extends to the whole of Balochistan except for the Tribal Areas.	This Act is enacted to provide for the establishment and regulation of Borstal Institutions in Balochistan for the detention of juveniles for their education and training for their mental, moral and psychological development.	In force
2.	The Balochistan Compulsory Education Act, 2014	This Act extends to the whole of Balochistan except for the Tribal Areas.	This Act is enacted in order to provide compulsory education especially for female children in the province of Balochistan in pursuance of Article 25A of the Constitution of the Islamic Republic of Pakistan, 1973.	In force
3.	The Balochistan	This Act extends	This Act is	In force

No.	Name of Statute	Applicable	Preamble of the Statute	Status
	Protection and Promotion of Breast-Feeding and Child Nutrition Act, 2014	to the whole of Balochistan except for the Tribal Areas.	enacted to ensure safe and adequate nutrition for infants and young children by promoting and protecting breast-feeding.	

II. Khyber Pakhtunkhwa

No.	Name of Statute	Applicable	Preamble of the Statute	Status
1.	Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010	It extends to the whole of the province of the Khyber Pakhtunkhwa and PATA.	This Act provides for the protection, maintenance, welfare, training, education, rehabilitation and reintegration of children at risk.	In force
2.	Kyber Pakhtunkhwa Borstal Institutions Act, 2012	It extends to the whole of the province of the Khyber Pakhtunkhwa.	This Act is enacted to provide for the establishment and regulation of Borstal Institutions in the Province of the Khyber Pakhtunkhwa for the detention of juveniles, for giving them basic education and training for their mental, moral and psychological development.	In force
3.	Khyber	It extends to the	This Act provides	In force

No.	Name of Statute	Applicable	Preamble of the Statute	Status
	Pakhtunkhwa Factories Act, 2013	whole of the province of the Khyber Pakhtunkhwa.	for the regulation of labour in factories.	

III. Punjab

No.	Name of Statute	Applicable	Preamble of the Statute	Status
1.	The Punjab Borstal Act, 1926	It extends to the whole of the province of Punjab.	This Act is enacted to provide for the establishment and regulation of Borstal Institutions in Punjab for the detention and training of adolescent offenders.	In force
2.	Factories Act, 1940 (as amended by the Factories (Amendment) Act, 2012)	It extends to the whole of the province of Punjab.	This Act provides for the regulation of labour in factories.	In force
3.	The Child Marriage Restraint Act, 1929 (as amended by the Punjab Child Marriage Restraint (Amendment) Act, 2015)	It extends to the whole of the province of Punjab.	This Act restrains the solemnisation of child marriages.	In force
4.	Punjab Destitute and Neglected Children Act, 2004	It extends to the whole of the province of Punjab.	This Act provides for the rescue, protective custody, care and	In force

No.	Name of Statute	Applicable	Preamble of the Statute	Status
			rehabilitation of destitute and neglected children.	
5.	Employment of Children Act, 2011 (as amended by the Employment of Children (Amendment) Act, 2011)	It extends to the whole of the province of Punjab.	This Act prohibits the employment of children in certain occupations and regulates the conditions of work of children.	In force
6.	Protection of Breast-Feeding and Child Nutrition Ordinance, 2002 (as amended by the Punjab Protection of Breast-Feeding and Child Nutrition (Amendment) Act, 2012)	It extends to the whole of the province of Punjab.	This Ordinance is enacted to ensure safe and adequate nutrition for infants and young children by promoting and protecting breast-feeding.	In force
7.	The Punjab Free and Compulsory Education Act, 2014	It extends to the whole of the province of Punjab.	This Act is enacted to provide the right to education to all children as envisaged in Article 25A of the Constitution of Islamic Republic of Pakistan, 1973.	In force
8.	The Punjab Reproductive, Maternal, Neo-Natal and Child Health Authority Act, 2014	It extends to the whole of the province of Punjab.	This Act is enacted to establish an Authority for the purpose of providing a legal	In force

No.	Name of Statute	Applicable	Preamble of the Statute	Status
			framework for managing affairs of the employees and staff of national programme for primary healthcare and family planning.	

IV. Sindh

No.	Name of Statute	Applicable	Preamble of the Statute	Status
1.	Sindh Child Protection Authority Act, 2011	It extends to the whole of the province of Sindh.	This Act is enacted to provide for the establishment of the Sindh Child Protection Authority and to ensure the rights of the children in need of special protection measures.	In force
2.	Sindh Right of Children to Free and Compulsory Education Act, 2013	It extends to the whole of the province of Sindh.	This Act is enacted to provide the right to education to all children as envisaged in Article 25A of the Constitution of Islamic Republic of Pakistan, 1973.	In force
3.	The Sindh Child Marriages Restraint Act, 2013	It extends to the whole of the province of Sindh.	This Act restrains the solemnisation of child marriages.	In force

No.	Name of Statute	Applicable	Preamble of the Statute	Status
4.	The Sindh Protection and Promotion of Breast-Feeding and Child Nutrition Act, 2013	It extends to the whole of the province of Sindh.	This Act is enacted to ensure safe and adequate nutrition for infants and young children by promoting and protecting breast-feeding.	In force

CHAPTER 6 - SPAIN

1. Spain is a party to a number of international instruments which include provisions related to the protection of children such as the Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, the Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, Charter of Fundamental Rights of the European Union of 7 December 2000 and the UN Convention of 20 November 1989 on the Rights of the Child. Additionally the Spanish Constitution, in section 39.2, imposes an obligation on public authorities to guarantee full protection to children.
2. Legislation that protects children is scattered among a number of laws, including the Spanish Civil Code and the Civil Procedure Act, and is based on the general principle of protection of children.
3. A new draft law is currently being discussed in the Spanish Parliament. This legal project would provide for a new framework of rights and obligations of children in Spain. The draft law is particularly focused on the protection of the most vulnerable children, and changes substantially most regulations in this regard, e.g. foster homes/families, risk situations detection, etc.

QUESTION 1: IN WHAT CIRCUMSTANCES CAN A CHILD BE REMOVED FROM HIS OR HER PARENTS?

1. The Spanish Civil Code states that a child can be removed from his or her parents when in a situation of neglect. Regional laws have developed what is to be understood by situations of neglect and state the following specific cases, amongst others, in which a child can be removed from his/her parents:
 - a. lack of regular schooling of the child;
 - b. induction to begging, prostitution or crime or any other similar economic exploitation of the child;
 - c. drug addiction or habitual alcoholism of the child with the consent or tolerance of the parents;
 - d. existence of physical or psychological or sexual abuse by either persons in the household or third parties, with the parents' consent;
 - e. the severe mental disorder of parents or guardians preventing the normal exercise of parental authority or guardianship of the child; or
 - f. a family environment that seriously deteriorates the moral integrity of the child or harms the development of his/her personality.
2. The Spanish Supreme Court (**Tribunal Supremo** or **TS**) has also ruled on this matter in several instances, establishing that a child can be removed from parental custody when the parents have a mental disorder and lack the necessary financial resources within the family (TS Judgement no. 1275/2001 dated 31 December), or when there is an unacceptable disregard of parental duties which is constant, severe and dangerous for the child (TS Judgement no. 315/2014 dated 6 June).
3. The equivalent to "significant harm" in Spanish law would be a "situation of neglect" which, in accordance with article 172 of the Spanish Civil Code, exists *de facto* as a result of non-

compliance with, or the impossible or inadequate exercise of, the protection duties set forth by the laws for the custody of children, when they are being deprived of the necessary moral or material assistance.

QUESTION 2: WHAT AUTHORITY, IF ANY, CAN REMOVE A CHILD FROM A PARENT'S CARE IF A CHILD IS SUFFERING OR AT RISK OF SUFFERING SIGNIFICANT HARM (OR SIMILAR)?

1. The courts may remove a child from the custody of a parent as a collateral result of a criminal or matrimonial law judgment (article 170 of the Spanish Civil Code);
2. When parents or guardians, as a result of serious circumstances, cannot take care of the child, they may request of their own volition that the competent public entity assume custody for the necessary period of time (article 172.2 of the Spanish Civil Code);
3. The public entity entrusted with the protection of children in the respective territory (generally the regional social services agency) may also take measures on its own. In accordance with article 172.1 of the Spanish Civil Code, once it becomes aware that a child is in a situation of neglect, it shall have by operation of law the guardianship of such child, and must adopt the necessary protection measures. It should make the Public Prosecutor aware of this, and should give notice to parents, guardians or carers in due and legal form within 48 hours. Should the minor be in an extreme situation of neglect and should an urgent decision be required, the minor can be preventatively removed from the carers' custody without judicial authorisation. No specific procedure is contemplated in order to adopt such a decision, but it must be made on the basis of a case by case risk assessment.
4. The Spanish system is similar to the English system of applications to magistrates courts, with the distinction that in the Spanish system the public entity must notify the Public Prosecutor. The Public Prosecutor will then carry out a preliminary investigation as to whether the child is in a situation of neglect or not and, if applicable, will report the situation to the Family Judge, so that a formal investigation can be launched. During that period the child will stay in a public institution or in a foster home.
5. The public entity must stick to the applicable administrative procedure formalities to be in a position to declare that a minor is in situation of neglect. The procedure is as follows:
 - a. Previous Research
At this stage, the public entity will seek evidence confirming that the minor is in a situation of neglect. The time to be actually devoted to this research shall depend on whether the minor is in a blatant situation of neglect or, to the contrary, there are only minor suspicions in this respect.
 - b. Initiation
Should the public entity have reasonably clear hints that a minor is in a situation of neglect, it shall immediately initiate proceedings to protect the minor. The first step will be to inform the parents, tutors or guardians of the minor that an investigation has been started. Note that the public entity must issue an initiation decision where it will make a deep analysis of the situation and include the legal foundation supporting any measures to be adopted.
 - c. Information Stage

Once the parents, tutors or guardians are informed about the initiation of the proceedings, they have the right to request legal assistance. Also an updated assessment of the actual situation of the minor should be made, as well as a medical, psychological, socio-familial and legal analysis of the situation of the minor.

d. Audience

At this stage those who are in a position, and want, to take care of the minor (and also the parents, tutors or guardians from whom the minor could be removed) will be heard.

e. Hearing the Minor

Minors will be heard if mature enough. This is something which shall be determined by research conducted by the public entity at the relevant school centre. If the minor is 12 years old or older, or in case of doubt, the minor will be heard.

f. Draft Decision

Once the above mentioned parties have been heard, a draft decision on the situation of the minor and the persons to be entrusted with the guardianship of the minor will be issued.

g. Decision

The final decision will be notified to all parents, tutors or guardians of the minor.

h. Enforcement

Once the decision is notified to the parents, tutors or guardians of the minor, the minor will be removed from them and sent to the foster home or public centre entrusted with custody.

6. Pursuant to article 172 of the Spanish Civil Code, the parents, tutors or guardians of the minor cannot appeal the decision issued by the relevant public entity. If they do not agree with the decision, they will have to initiate civil judicial actions to have their custody rights reinstated.
7. Regardless who detected that a minor is in a situation of neglect, aid or help should be initially provided by the corresponding public entity of each Autonomous Community. If the public entity suspects that a child is in a situation of neglect, it must adopt the necessary protection measures within 48 hours. These interim measures must later be ratified in court.
8. In the same direction, article 173 of the Spanish Civil Code states that the public entity may decide, in the interest of the child, to place the child in temporary foster care with a family or in a public institution until the court ratifies or otherwise decides on the appropriate measures. The public entity, after performing the requisite formalities and upon completion of the proceedings, must submit a proposal to the judge immediately and, in any event, within 15 days from the beginning of the proceedings.
9. The Public Prosecutor shall be responsible for the high-level supervision of the guardianship arrangements, foster care or custody of the child, checking on his/her situation at least every semester. A legal challenge to the administrative decision by which the parents lose their custody of the child must be formulated within three months from its notification, in accordance with section 780 of Civil Procedural Law, and a legal challenge to any other administrative decisions issued

concerning the protection of children must be formulated within two months, such as competence of the judge or rules of procedure.

10. During this interim period, during which the parents lose custody of the child in favour of the public authorities, and until the judge decides if the child is in a situation of neglect, the parents lose temporarily, in accordance with article 172 of the Spanish Civil Code, their *patria potestad* or parental authority. This authority can be defined as the power and rights granted to the parents by law in relation with their children while they are underage, including the management of any property held by the child.
11. The Procedural Civil Law states that any matters related to children will be given priority treatment in court in order to reduce damage caused to the child.

QUESTION 3: TO WHAT FORUM DOES THE AUTHORITY APPLY TO REMOVE A CHILD?

This type of procedure is heard in specialised Family Courts, called *Juzgados de Familia*, which were created by Royal Decree 1322/1981 dated 3 July (**Royal Decree**). After the public entity alerts the Public Prosecutor, they will report to the judge assigned to these courts, which, in accordance with section 1 of the Royal Decree, are called Family Judges, who will bring proceedings *ex officio*.

QUESTION 4 : DO CERTAIN PROFESSIONS OR PERSONS HAVE AN OBLIGATION TO REPORT TO AN AUTHORITY IF THEY SUSPECT THAT A CHILD IS AT RISK OF SUFFERING SIGNIFICANT HARM (OR SIMILAR) (I.E. "MANDATORY REPORTING")?

Yes, please see details below.

QUESTION 5: IF MANDATORY REPORTING OBLIGATIONS DO EXIST, TO WHAT PROFESSIONS DO THEY APPLY?

The persons under an obligation to report to the authorities are any entities which are in contact with the child, such as hospitals (the medical sector in general), schools or social services among others. These persons must inform the public entities authorised in each Autonomous Community, i.e. the police, the Public Prosecutor or the judge, so that any of them can carry on with the investigations to verify the situation of the child.

APPENDIX: MAIN (CURRENTLY) APPLICABLE LAWS

1. Spanish Constitution (*Constitución Española*).
2. Spanish Civil Code (*Código Civil*).
3. Act 1/2000, dated 7 January, of Civil Procedure (*Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil*).
4. Circular 1/2008 on the time limits for challenging administrative decisions related to the protection of minors after the reform introduced by law 54/2007 dated 28 December (*Circular 1/2008 sobre limitaciones temporales a la oposición a las resoluciones administrativas en material de protección de menores tras la reforma operada por Ley 54/2007 de 28 de diciembre*).
5. Royal Decree 1322/1981, dated 3 June, by which the Family Courts are created (*Real Decreto 1322/1981, de 3 de junio, por el que se crean los Juzgados de Familia*).
6. Act 4/1994, dated 10 November, for Protection of Minors of Extremadura (*Ley 4/1994, de 10 de noviembre, de Protección de Menores de Extremadura*).

7. Act 7/1994, dated 5 November, of Childhood of Valencia (*Ley 7/1994, de 5 de diciembre, de la Infancia de Valencia*).
8. Act 1/1995, dated 27 January, of Protection of Minors of Asturias (*Ley 1/1995, de 27 de enero, de Protección del Menor de Asturias*).
9. Act 3/1995, dated 21 March, of Murcia (*Ley 3/1995, de 21 de marzo, de Murcia*).
10. Act 6/1995, dated 29 March, of Guarantees of Children and Adolescents of Madrid (*Ley 6/1995, de 29 de marzo, de garantías de la infancia y la adolescencia de Madrid*).
11. Act 14/1998, dated 27 May, of rights and opportunities in childhood and adolescence (*Ley 14/2010, de 27 de mayo, de los derechos y las oportunidades en la infancia y la adolescencia*).
12. Act 1/1997, dated 17 February, of Minors in the Canary Islands (*Ley 1/1997, de febrero, Menores de Canarias*).
13. Act 3/1997, dated 9 June, of Legal, Economic, and Social Protection of Family, Childhood and Adolescence of Galicia (*Ley 3/1997, de 9 de junio, de Protección jurídica, económica y social de la familia, infancia y adolescencia de Galicia*).
14. Act 1/1998, dated 20 April, of Rights and Attention to Minors of Andalucía (*Ley 1/1998, de 20 de abril, de los derechos y la atención al Menor de Andalucía*).
15. Act 3/1999, dated 31 March, of Minors of Castilla La-Mancha (*Ley 3/1999, de 31 de marzo, del Menor de Castilla-La Mancha*).
16. Act 7/1999, dated 28 April, of Protection of Childhood and Adolescence of Cantabria (*Ley 7/1999, de 28 de abril, de Protección de la Infancia y Adolescencia de Cantabria*).
17. Act 12/2001, dated 2 July, of Childhood and Adolescence of Aragón (*Ley 12/2001, 2 de julio, de la Infancia y Adolescencia de Aragón*).
18. Act 14/2002, dated 25 July, of Promotion, Attention and Protection of Childhood of Castilla y León (*Ley 14/2002, de 25 de julio, de Promoción, atención y protección de la infancia en Castilla y León*).
19. Act 3/2005, dated 18 February, of Attention and Protection of Childhood and Adolescence of País Vasco (*Ley 3/2005, de 18 de febrero, de Atención y Protección a la Infancia y Adolescencia del País Vasco*).
20. Foral Law 15/2005, dated 5 December, of Childhood and Adolescence of Navarra (*Ley Foral 15/2005, de 5 de diciembre, de Infancia y Adolescencia de Navarra*).
21. Act 1/2006, dated 28 February, of Protection of Minors of La Rioja (*Ley 1/2006, de 28 de febrero, de protección de Menores de La Rioja*).
22. Act 17/2006, dated 13 November, of Comprehensive Care and Rights of Children and Adolescents in the Balearic Islands (*Ley 17/2006, de 13 de noviembre, integral de la atención y de los derechos de la infancia y adolescencia de las Illes Balears*).

CHAPTER 7 - INDIA

QUESTION 1: IN WHAT CIRCUMSTANCES CAN A CHILD BE REMOVED FROM HIS OR HER PARENTS?

1. The framers of the Constitution of India incorporated a number of provisions into the Constitution of India, which were designed to ensure the holistic development of children in India. Within the scope of Articles 21, 21A, 45 and 51(k) of the Constitution of India, 1950, the State has sought to provide for the education of the children in India. Further, extending the constitutional goals, the Union and the State legislatures have sought to address dangers and menaces such as child marriage, child trafficking, child abuse, child labour, etc., which act as obstacles in the way of providing a safe environment for children. The following Acts are some of the legislation, which include provisions in respect of child care:
 - a. The Bonded Labour System (Abolition) Act, 1976;
 - b. The Child Labour (Prohibition and Regulation) Act, 1986;
 - c. The Commission for Protection of Child Rights Act, 2006;
 - d. The Factories Act, 1948;
 - e. The Guardians and Wards Act, 1890;
 - f. The Hindu Adoption and Maintenance Act, 1956;
 - g. The Immoral Traffic Prevention Act, 1986;
 - h. The India Penal Code and Child related offenses;
 - i. The Juvenile Justice (Care and Protection of Children) Act, 2000 (**Juvenile Justice Act**);
 - j. The Pre-natal Diagnostic Techniques Act, 1994;
 - k. The Prohibition of Child Marriage Act, 2006;
 - l. The Protection of Children from Sexual Offences Act 2012;
 - m. The Right of Children to Free and Compulsory Education Act, 2009.
2. In the said plethora of legislation on child care in India, the legislature has adopted different meanings of the term "child" depending upon the purpose of the legislation. For instance, the Child Labour (Prohibition and Regulation) Act, 1986 applies in respect of children who have not completed 14 years of age.
3. The Juvenile Justice Act concerns the adjudication and coordination of matters concerning juveniles in conflict of law [*sic*] and concerning children in need of care and protection by adopting child-friendly methods and practices aimed at securing the best interests of the concerned child. The Juvenile Justice Act focuses on the rehabilitation of juveniles in conflict of law and children in need of care and protection. Under section 2(k) of the Juvenile Justice Act, a child or juvenile is defined as a "person who has not completed eighteenth year of age."
4. Further, under section 2(l) of the Juvenile Justice Act, a "juvenile in conflict of law" is defined as a "juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence." Under section 2(d) of the Juvenile Justice Act, a "child in need of care and protection" has been defined as follows:

"Child in need of care and protection" means a child:

- a. who is found without any home or settled place or abode and without any ostensible means of subsistence;
 - b. who is found begging, or who is either a street child or a working child;
 - c. who resides with a person (whether a guardian of the child or not) and such person:
 - i. has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out; or
 - ii. has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person;
 - d. who is mentally or physically challenged or ill, including children suffering from terminal diseases or incurable diseases who have no one to support or look after them;
 - e. who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child;
 - f. who does not have a parent and no one is willing to take care of him, or whose parents have abandoned or surrendered him, or who is missing, and runaway children whose parents cannot be found after reasonable inquiry;
 - g. who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts;
 - h. who is found vulnerable and is likely to be inducted into drug abuse or trafficking;
 - i. who is being or is likely to be abused for unconscionable gains;
 - j. who is victim of any armed conflict, civil commotion or natural calamity."
5. In respect of parents being unfit or incapacitated to exercise control over the child, such parents can be declared unfit on the grounds such as:
- a. physical or sexual abuse of child by the parent, i.e. if the parent neglects or abuses or inflicts violence on the child or exploits his or her child;
 - b. parents found to be drug users;
 - c. parents who are terminally ill and are unable to take care of the child;
 - d. parents suffering from severe mental illness (when parents are mentally challenged, they have to be declared so by the district court);
 - e. parents accused of child abuse or rape; and
 - f. parents serving a prison term.
6. In the above mentioned circumstances where the family situation is dangerous or harmful for the child, or where the family is not able to take care of the child, the said family can be declared unfit by the appropriate authority. It is standard practice that where one of the parents is unfit, the concerned child shall be entrusted to the other parent/kin in order to keep the child in the family. Only in the event that the other parent or nearest kin in the family are unable to keep the child, the appropriate authority shall remove the child from the family.

7. The equivalent of "significant harm" is adopted under Indian Law by virtue of factors to be considered by the appropriate authority while declaring a parent/parents unfit or incapacitated to exercise control over the child. Further, as noted above, under section 2(d) of the Juvenile Justice Act, the circumstances or significant harms under which the appropriate authority needs to take steps to ensure the safety and protection of the concerned child are enumerated therein.

QUESTION 2: WHAT AUTHORITY, IF ANY, CAN REMOVE A CHILD FROM A PARENT'S CARE IF A CHILD IS SUFFERING OR AT RISK OF SUFFERING SIGNIFICANT HARM (OR SIMILAR)?

1. In respect of juveniles in conflict with law, under Chapter II of the Juvenile Justice Act, the Juvenile Justice Board is empowered to exclusively deal with adjudication of matters involving juveniles in conflict with law in accordance with the provisions of the Juvenile Justice Act.
2. Further, in respect of the child in need of care and protection, under section 29 of the Juvenile Justice Act, the State Government is required to constitute a Child Welfare Committee (**CWC**) for every district to discharge the powers and functions in relation to children in need of care and protection in accordance with provisions laid down under the Juvenile Justice Act. Under section 31 of the Juvenile Justice Act, the constituted Child Welfare Committees shall have the final authority to dispose cases involving "care, protection, treatment, development and rehabilitation" of children in need of care and protection. The Child Welfare Committees are the appropriate authority to decide on whether children in need of care and protection should be removed from the custody of the parents, or is likely to suffer any harm warranting his movement to a state institution (children home/shelter homes, etc.) in accordance with the provisions of the Juvenile Justice Act.
3. Under section 32 of the Juvenile Justice Act, any of the following shall produce the child in need of care and protection before the CWC (a) any police officer or special juvenile police unit or a designated police officer; (b) any public servant; (c) Childline, a registered voluntary organisation or by such other voluntary organisation or an agency as may be recognised by the State Government; (d) any social worker or a public spirited citizen; (e) the child himself. While producing such a child before the CWC, such person producing the child shall ensure that the child is produced before CWC without any loss of time but within a period of 24 hours excluding the time necessary for the journey. Further, under section 32 of the Juvenile Justice Act, the State Governments are directed to adopt appropriate rules for the production of children before the CWC. For instance, under the Maharashtra Juvenile Justice (Care & Protection Rules), 2002, such persons or institutions producing children before the CWC are required to file a report in respect of circumstances in which the child came to the notice of such person/institution and the efforts made by the institution to approach the police in respect of those circumstances.
4. On production of the child in need of care and protection, the CWC shall conduct an inquiry on its own or on report by another person under section 32 of the Juvenile Justice Act in the manner prescribed in the Juvenile Justice Act. The CWC may also pass an order to send such a child to a children's home for speedy enquiry by a social officer or a child welfare officer. Such interim measures in India are equivalent to Emergency Protection Orders/Interim Care Orders. Pursuant to the inquiry, if the CWC is of the opinion that the concerned child is in continued need of care and protection, it may allow the child to remain in the children's home or shelter home till suitable rehabilitation is found for him or till he attains the age of 18 years.

QUESTION 3: TO WHAT FORUM (I.E. THE FAMILY COURT) DOES THE AUTHORITY APPLY TO REMOVE A CHILD?

1. As noted above, the listed categories of persons under section 32 of Juvenile Justice Act can apply to the CWC for removal of a child from the custody of his or her parents. Under section 29(5) of the Juvenile Justice Act, it is noted that in respect of children in need of care and protection, the CWC shall function as a bench of Magistrates and shall have the powers conferred by the Code of Criminal Procedure, 1973 on a Metropolitan Magistrate, or as the case may be, a Judicial Magistrate of the first class. Under section 52 of the Juvenile Justice Act, an appeal can be preferred from the order of the CWC to the Court of Sessions within 30 (thirty) days of such order or such other time period as permitted by the Court of Sessions. Further, in respect of the order of the Court of Sessions, under section 53 of the Juvenile Justice Act, no second appeal shall lie with the High Court and only a revision can be filed before High Court in respect of the order of the Court of Sessions.
2. In respect of the exclusive jurisdiction of the CWC, in the case of *Legal Services Committee v. Union of India*⁴⁰ the Delhi High Court was faced with a situation where two girls below the age of 18 years who had been found in police actions involving violations of Immoral Traffic (Prevention) Act, 1956 were handed over to the custody of their father by the concerned magistrate. However, it was noted that the question of custody of such minor girls was required to be exclusively decided by the CWC. Further, in *Prerna v. State of Maharashtra*⁴¹ the Bombay High Court upheld the jurisdiction of CWC to decide questions of custody of minor girls recovered from police actions involving immoral trafficking.

QUESTION 4: DO CERTAIN PROFESSIONS OR PERSONS HAVE AN OBLIGATION TO REPORT TO AN AUTHORITY IF THEY SUSPECT THAT A CHILD IS AT RISK OF SUFFERING SIGNIFICANT HARM (OR SIMILAR) (I.E. MANDATORY REPORTING)?

1. As noted above, any persons in the categories listed in section 32 of the Juvenile Justice Act can approach the CWC about any harm or dangers being faced or likely to be faced by a child. Specifically in respect of sexual offences against children, under section 19 of the Protection of Children from Sexual Offences Act, 2012 (**Sexual Offences Act**), any person who has an apprehension that an offence under the Sexual Offences Act is "likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to (a) the Special Juvenile Police Unit; or (b) the local police." Further under section 20 of the Sexual Offences Act, it is provided that "*any personnel of the media or hotel or lodge or hospital or club or studio or photographic facilities, by whatever name called, irrespective of the number of persons employed therein, shall, on coming across any material or object which is sexually exploitative of the child (including pornographic, sexually-related or making obscene representation of a child or children) through the use of any medium, shall provide such information to the Special Juvenile Police Unit, or to the local police, as the case may be.*"
2. In the event that the concerned persons fail to provide the information as mandated under sections 19 and 20 of the Sexual Offences Act, section 21 provides that (a) such person shall be punished with imprisonment of either description [*sic*] which may extend to six months or with a fine or with

⁴⁰ In *Criminal Revision No. 443/2009 & Criminal Miscellaneous Application No. 3071 of 2010*, as decided on 12 August 2014.

⁴¹ 2003 (2) MHLJ 105.

both; and (b) if such person, being in-charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub-section (1) of section 19 in respect of a subordinate under his control, the person in-charge shall be punished with imprisonment for a term which may extend to one year and with a fine.

QUESTION 5: IF MANDATORY REPORTING OBLIGATIONS DO EXIST, TO WHAT PROFESSION DO THEY APPLY?

As noted above in respect of sexual offences, there exists a general obligation on any person who has an apprehension that an offence under the Sexual Offences Act is likely to be committed or has knowledge that an offence under Sexual Offences Act has been committed to report the same. Further, personnel employed in media or hotel or lodge or hospital or club or studio or photographic facilities have an additional obligation to report sexual exploitation of a child.

CHAPTER 8 - CALIFORNIA, UNITED STATES

QUESTION 1: IN WHAT CIRCUMSTANCES CAN A CHILD BE REMOVED FROM HIS OR HER PARENTS?

1. The primary legislation is Cal. Welf. & Inst. Code § 16000. It is the intent of the California legislature to preserve and strengthen a child's family ties whenever possible, removing the child from the custody of his or her parents only when necessary for his or her welfare or for the safety and protection of the public. If a child is removed from the physical custody of his or her parents, preferential consideration shall be given whenever possible to the placement of the child with a relative as required by law. If the child is removed from his or her own family, it is the purpose of this chapter to secure as nearly as possible for the child the custody, care, and discipline equivalent to that which should have been given to the child by his or her parents. It is further the intent of the legislature to reaffirm its commitment to children who are in out-of-home placement to live in the least restrictive, most family-like setting and to live as close to the child's family as possible. Family reunification services shall be provided for expeditious reunification of the child with his or her family, as required by law. If reunification is not possible or likely, a permanent alternative shall be developed.
2. Each county welfare department must maintain and operate a 24 hour response system to take reports of children endangered by abuse, neglect or exploitation. If a report needs an in-person response, there are two response times available:
 - a. A report that describes a child to be in immediate danger is an Immediate Response (**IR**), and requires an in-person response within 24 hours.
 - b. A report that describes risk to a child, but not immediate danger requires an in-person response within ten calendar days.
3. The Department of Social Services Child Protective Services (**CPS**) investigate reports of child abuse or neglect. Both law enforcement agencies and CPS have authority to accept child abuse reports and investigate child abuse reports. CPS investigates allegations of abuse and neglect of children, as defined by Penal Code (**PC**) §11165.6, Welfare & Institutions Code (**W&I**) §300 and California Department of Social Services' Division 31-100 Regulations.
4. As part of the social worker's investigation of the referral, CPS uses Structured Decision Making (**SDM**) Tools, which is an evidenced-based practice that ensures that every worker is assessing the same items in each case, and that the responses to these items lead to specific decisions regarding child safety. SDM tools guide social workers to assess the child's safety in the home and to determine whether there are any protective measures or reasonable means available that would allow the child to remain in the care and custody of the parents while ensuring the child's safety. Safety concerns can include: physical or sexual abuse of the child by someone in the home and a failure to protect the child; failure to provide proper supervision for a child; failure to provide basic provisions such as food, clothing, shelter or necessary medical treatment.
5. If the IR social worker (or a police officer) determines that the child cannot remain safely at home, immediate steps are taken to remove and place the child in a safe environment, such as a temporary shelter or emergency foster care. The child can be placed into protective custody for up

to 48 hours. During that 48 hours, a social worker will assess whether the child can safely be returned home with supportive services or whether the intervention of the juvenile court is needed. In cases of serious abuse, the perpetrator may also be arrested and referred to the district attorney for criminal prosecution. It is thus possible to have two parallel court proceedings occurring in the juvenile dependency court and criminal court. If the social worker determines that the protection of the juvenile court is needed, he or she must prepare and file a petition with the juvenile dependency court within 48 hours after the child has been removed from the parent or guardian. The petition is a legal document containing evidence that court intervention is necessary for the safety of the child. A petition may also be filed if the social worker allows the child to remain at home with caregivers that refuse to accept voluntary Family Maintenance services.

6. Exigent circumstances which justify a social worker placing a child into protective custody are those circumstances in which a social worker has reasonable cause to believe that:
 - a. the child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the wilful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the wilful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability; or
 - b. the child has been left without any provision for support; physical custody of the child has been voluntarily surrendered and the child has not been reclaimed within 14 days; the child's parent has been incarcerated or institutionalised and cannot arrange for the care of the child; or a relative or other adult custodian with whom the child resides or has been left is unwilling or unable to provide care or support for the child, the whereabouts of the parent are unknown, and reasonable efforts to locate the parent have been unsuccessful; and
 - c. the child has an immediate need for medical care, or the child is at imminent risk of serious physical injury and there is no time to obtain a court order.
7. Law enforcement agencies can also place a child into protective custody when the officer has reasonable cause to believe the child is a person described as above and the child has an immediate need for medical care, or is at imminent risk of serious physical injury and there is no time to obtain a court order.
8. A judge or other judicial officer may make a written direction requiring a law enforcement officer or a social worker to place a child into protective custody due to suspected abuse or neglect, or risk thereof. The court will make the order based on the petition and the written declaration (warrant application) of the social worker which contains the facts and evidence gathered during the investigation regarding the risk to the child.
9. A court may order the removal of the child from the custody of the parents based on the evidence presented in the Detention Report. This is generally done when the children are not residing with their parents, but are residing in a safe place such that the current home environment does not

endanger the child (i.e. parent voluntarily places child with a safe relative or at the crisis nursery, etc.).

10. Once a child is removed from the custody of the parents, CPS must locate temporary placement. CPS shall first assess able and willing relatives and Non Related Extended Family Members (**NREFM**) who request temporary placement of the child and who pass the requirements set forth in W&I §309, which include an in-home safety inspection, a criminal records check, and a child welfare records check. If there are no relatives or NREFMs available, a foster care placement will be made for the child.
11. CPS must take steps to immediately notify all parents/guardians of a child's removal and the date, time and location of the detention hearing. CPS must make diligent and reasonable efforts to ensure regular telephone contact between the parent and child of any age, prior to the detention hearing, unless that contact would be detrimental to the child. The initial telephone contact shall take place as soon as practicable, but no later than five hours after the child is taken into custody. CPS must obtain contact information from parents and/or the child about any additional relatives to consider for placement. CPS must conduct home assessments on all relatives that come forward.
12. A Juvenile Court dependency proceeding may begin with children being removed from their parents and placed in protective custody. If the children are not in immediate danger of neglect or abuse, and are living with a parent, relative, or friend, they may be allowed to remain there pending the court proceedings. The law allows law enforcement to detain children up to 72 hours, for their protection, if the officer or social worker believe that there is a substantial risk of neglect or abuse if the children are not removed. In San Joaquin County, the children are normally taken to the local Children's Shelter (Walter Britten Children's Center) for processing. If the children are very young, they will be immediately placed in a pre-approved emergency foster home. When children are taken into protective custody, the officer or social worker will normally immediately attempt to notify the parents or guardian.
13. The first investigation is made by the social worker in the Intake Unit of the Department of Social Services. In San Joaquin County, the Human Services Agency Child Protective Intake Unit has been delegated this responsibility by the California State Department of Health and Human Services.
14. If the social worker decides that the children are not significantly at immediate risk for further abuse or neglect, the children can be released to the parent. The social worker decides whether to take court action. If the social worker chooses not to take the matter to court, the social worker may request the parent sign a Family Maintenance Agreement, which requires the parents to sign and agree certain conditions, classes or programmes in order to keep the children in the home and without having to go to court. If the parent abides by the Family Maintenance Agreement for a period of time, normally six months, no further action will be taken. If there is another report of neglect or abuse of the children, or the parent fails to abide by the Agreement, the children can be removed from the home and a petition may be filed with the Juvenile Court.
15. On the other hand, if the social worker decides the children are at immediate risk of further abuse or neglect, the children will remain out of the home pending the court hearing. The Department of Health and Human Services must file a petition with the Juvenile Court within 48 hours. The Petition includes necessary legal information and a statement telling the parents why a dependency proceeding is considered necessary for the safety of the children. In response to the

petition, a detention hearing is held before a Judge or Referee the next court day after the petition is filed. The social worker will meet with the parents, investigate the facts of the case, and prepare a report for the court hearing.

16. In the event the children were removed from the home, the first hearing will be a detention hearing. If the children were not removed, the first hearing is called an arraignment or initial hearing. Both hearings advise parties of the allegations, appoint counsel, and set a future hearing date. However, the detention hearing addresses the additional element regarding the custody status of the children pending the next hearing which is called the jurisdiction hearing. At the first hearing, a social worker will meet with the parents, normally before the case is called. They will provide the parents (and the parents' attorney, if a private attorney has been retained) with a copy of the petition (a written report containing the allegations of neglect or abuse) filed by the Human Services Agency.
17. The social worker will tell the parents what the Human Services Agency will be recommending to the Court with regard to whether the children should or should not be temporarily detained from the parents. If the parents do not have an attorney, the Judge or Referee will ask if they want an attorney to represent them. If the parents answer yes, either an attorney from the public defenders' office, or from a panel of private attorneys, will be appointed by the Court. Usually a separate attorney is appointed for each parent, because sometimes it is the case that only one of the parents has caused the abuse to the children. If the children are not released to the parents, they will remain detained in their current placement. The report written for the hearing by the social worker will include an evaluation of the case, a preliminary reunification/service plan, and recommendations to the Court regarding placement of the children.
18. The social worker will also arrange visits, if Court approved, between the parents and the children and coordinate services for the parents and the children. Visitation for the parents is normally set for at least one hour one time per week. Initially the social worker must make referrals for services that the social worker believes might assist the parent in reunifying with the children. Initially these are not Court ordered, but voluntary. At a later time (at the dispositional hearing) the court might order the parent to participate in services, but at this point it is voluntary. These services may include referrals to parenting classes, counselling, drug and/or alcohol testing, or whatever other services would be appropriate. It is important for the parents to cooperate with both their attorneys and the social worker. If the parents make a positive effort to participate in the services, the Court will take this into consideration in deciding whether and when to return the children.
19. The proceeding at which the Court determines whether allegations of abuse or neglect concerning a child are true or not is called a jurisdictional hearing. This hearing provides the basis for state intervention into a family. The parents are entitled to a trial to prove or disprove the allegations as stated by the social worker's petition. The standard for this hearing is very low. Unlike a criminal court, where a person is found "guilty" "beyond a reasonable doubt", the dependency court finds the petition "true" or "false" by a "preponderance of the evidence". If the court finds the petition to be true, it does not mean that the parent goes to jail. Rather, it only means that the court is going to intervene on behalf of the children and protect them from further abuse by the parent.
20. The disposition hearing addresses where the child will live and identifies the services to be offered to the child and the parent. Sometimes, the child is permitted to be returned home with the agreement from the parent that the parent will comply with the Reunification/Service Plan or Case

Plan. Other times the child has to remain out of the care of the parents and wait for the parents to make progress in the Case Plan. If a child is out of the care of the parents, the child is living in foster care, with a relative, or with another parent that is not involved in the allegations that brought the child before the court.

21. The Reunification/Service Plan or Case Plan tells the parent what s/he needs to do to resolve the problems that brought the child's case before the Court. It is at this time that the Court will order that the person must comply with the relevant plan. Up until this point, the parent's participation in the plan has been voluntary. This plan may include parenting classes, counselling, visitation requirements, and drug/alcohol counselling, domestic violence counselling, psychological evaluations, and many other types of services. On some rare and serious cases, the court might order that the parent be "bypassed" and that the social worker not give services to the parents. If this happens, the parent is not given the opportunity to have the child placed in their care ever again. This normally happens with severe intentional child abuse cases (torture) and sexual abuse cases, or the death of a child.
22. The Court is required to review the status of each dependent child regularly. These review hearings are held every six months. Prior to each review, the supervising social worker will prepare a report and discuss the recommendation with the parent. This report describes the services offered so far in the case, and what additional services should be provided to the parent to correct the problems which resulted in the child becoming a dependent of the Juvenile Court. It also discusses the parents' progress and cooperation in these services. If the child is with the parents, the report contains information about the progress of the parents in the case plan and makes a recommendation as to whether there is a need for continuing supervision by the court. If the report indicates that the family problems are resolved, the Court may terminate dependency at this time.
23. Further, if the child has remained out of the home, the report will state what progress has been made by the parents in the case plan and whether the child can be returned to the parents. If the parent has not made good progress in the Case Plan, it is possible that the Court might stop the services and order the social worker to develop an alternative permanent plan for the child. If problems remain which require the help of the Department of Health and Human Services, dependency will continue. Such reviews occur as long as the child remains a dependent.
24. If the child was removed from the parent and placed in temporary foster care, and the Court determines at a second (sometimes even a third) six-month review that reunification of child and parent is not likely, the Court will attempt to find a permanent home for the child. It is normally after this second or third review hearing in which the social worker will ask the court to "Terminate Reunification Services". This means that the services such as parenting classes, domestic violence classes, counselling, substance abuse programmes that are being offered to the parent and paid for by social services are about to come to an end. This is normally requested when the parents have not made "sufficient progress" in their reunification plan. If services to the parent are terminated, a permanency planning hearing will follow within 120 days to consider adoption, guardianship or a Planned Permanent Living Arrangement (i.e. long term foster care).
25. After a termination of reunification services hearing, the Court is no longer really concerned about the parent's rights, or the progress made by the parent in the reunification process. At this stage, the court is only concerned about the child and what is in the child's best interest. A parent might

have one more shot if they file a "changed circumstances" motion also known as a "388" petition, however the parent will have to show that despite the fact that the reunification services were terminated, that they managed to become a suitable parent and it is in the child's best interest to be returned to the parent.

26. If the long term plan is for the child to be adopted, the Court must proceed to terminate the parental rights of the parent. This normally means that visitation with the parent stops as well, because it is normally in the best interest of the child to move on, and to be adopted by the relative or the foster care provider that has been caring for the child. The parent loses the right to legal and physical custody of the child and normally loses his/her right to visit the child. If visitation is allowed, it would be in the sole discretion of the adopting parents.
27. If the long term plan is not adoption, but is a guardianship, then the parent will still lose legal and physical custody, but the court can order the guardians to allow visitation between the parents and the children. Further, under a guardianship arrangement, the court does not terminate parental rights. Lastly, if the court orders a Planned Permanent Living Arrangement, the Court keeps legal custody of the child, gives the social worker the right to determine the physical custody of the child until the age of 18 and will normally order continued visitation between the child and the parents, if visitation is in the best interest of the child.

QUESTION 2: WHAT AUTHORITY, IF ANY, CAN REMOVE A CHILD FROM A PARENT'S CARE IF A CHILD IS SUFFERING OR AT RISK OF SUFFERING SIGNIFICANT HARM (OR SIMILAR)?

The county welfare department and law enforcement agency have power to remove a child as described above.

QUESTION 3: TO WHAT FORUM (I.E. THE FAMILY COURT) DOES THE AUTHORITY APPLY TO REMOVE A CHILD?

1. The Juvenile Dependency Court is a division of the County Superior Court that handles child abuse and neglect cases concerning children under 18 years of age and has ultimate authority over what happens to children who are at risk of or have suffered abuse or neglect while in their parent's or guardian's care. California Welfare and Institutions Code (WIC) 300 provides the legal basis for juvenile court jurisdiction and authorizes the court to remove children from the care and custody of their parents if such action is necessary to keep them safe.
2. The first goal of the Juvenile Dependency Court is to preserve families by identifying the problems that have caused the removal of the children and to offer the parents the education or counselling necessary to get the children back in their home. If it is not possible to return the children to the parents, the Court seeks out a permanent home for the children through adoption, guardianship or long term foster care. The children can be placed with relatives or people qualified to accept children into their homes (also known as professional foster care parents). For the most part, the California Law that applies to these hearings is found in Welfare and Institutions Code Section 300, et. seq.

QUESTION 4: DO CERTAIN PROFESSIONS OR PERSONS HAVE AN OBLIGATION TO REPORT TO AN AUTHORITY IF THEY SUSPECT THAT A CHILD IS AT RISK OF SUFFERING SIGNIFICANT HARM (OR SIMILAR) (I.E. MANDATORY REPORTING)?

1. Child abuse must be reported when one who is a legally mandated reporter "...has knowledge of or observes a child in his or her professional capacity, or within the scope of his or her

employment whom he or she knows or reasonably suspects has been the victim of child abuse or neglect..." (PC 11166[a]). "Reasonable suspicion" occurs when "it is objectively reasonable for a person to entertain such a suspicion based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse" (PC 11166[a][1]). Reports must be made immediately, or as soon as practically possible, by phone. A written report must be forwarded within 36 hours of receiving the information regarding the incident.

2. The report must be made to a county welfare department, probation department (if designated by the county to receive mandated reports), or to a police or sheriff's department, not including a school district police or security department (PC 11165.9). Reports by commercial print and photographic print processors are to be made to the law enforcement agency having jurisdiction over the case (PC 11166[e]).
3. When two or more mandated reporters jointly have knowledge of suspected child abuse or neglect, a single report may be made by the selected member of the reporting team. Any member of the reporting team who has knowledge that the designated person has failed to report must do so him or herself (PC 11166[h]).
4. In order to protect mandated reporters from repercussions for reporting as required, the Child Abuse and Neglect Reporting Law (California Penal Code (PC) section 11165.7) (**CANRA**) includes specific safeguards as follows:
 - a. Those persons legally mandated to report suspected child abuse have immunity from criminal or civil liability for reporting as required, even if the knowledge or reasonable suspicion of the abuse or neglect was acquired outside of their professional capacity or scope of employment. Mandated reporters and others acting at their direction are not liable civilly or criminally for photographing the victim and disseminating the photograph with the report (PC 11172(a)).
 - b. A person who fails to make a required report is guilty of a misdemeanor punishable by up to six months in county jail and/or up to a \$1000 fine. He or she may also be found civilly liable for damages, especially if the child victim or another child is further victimised because of the failure to report. Furthermore PC 11166.01[b] states that "any mandated reporter who wilfully fails to report abuse or neglect, or any person who impedes or inhibits a report of abuse or neglect... where that abuse or neglect results in death or great bodily injury, shall be punished by not more than one year in a county jail, by a fine of not more than five thousand dollars (\$5,000), or by both that fine and imprisonment."

QUESTION 5: IF MANDATORY REPORTING OBLIGATIONS DO EXIST, TO WHAT PROFESSION DO THEY APPLY?

1. Under CANRA, legally mandated reporters include, but are not limited to:
 - a. Clergy Members (i.e., a priest, minister, rabbi, religious practitioner, or similar functionary of a church, temple, or recognised denomination or organisation);
 - b. Any custodian of records of a clergy member;
 - c. Child Care Providers (e.g. an administrator of a public or private day camp; an administrator or employee of a public or private youth center, recreation programme,

or organisation; a licensee, administrator, or employee of licensed community care or a child day care facility; an employee of a child care institution (such as foster parents, group home personnel, or personnel of residential care facilities));

- d. Educators (e.g. teachers; instructional aides; teacher's aides or assistants employed by any public or private school; classified employees of any public school; administrative officers or supervisors of child welfare and attendance, or certificated pupil personnel employees of any public or private school; any employee of a County Office of Education or the State Department of Education whose duties require direct contact and supervision of children; Head Start Program teachers);
- e. Law Enforcement (i.e. any employee of any police department, county sheriff's department, county probation department, or county welfare department; peace officers; firefighters (except for volunteer firefighters); and animal control officers or humane society officers);
- f. Medical Professionals (e.g. nurses, paramedics, EMTs, physicians, dentists, chiropractors, alternative health practitioners, physical therapists); and
- g. Mental Health Professionals (e.g. clinical social workers, trainees and interns; marriage, family and child counsellors, trainees and interns; school counsellors; psychologists, psychological assistants, and interns; alcohol and drug counsellors).

CHAPTER 9 - FLORIDA, UNITED STATES

1. Overview

- a. Florida's Department of Children and Families (**Department**) works with the courts to determine when children should be removed from a home where there are allegations of abuse or neglect. The courts have a number of options in responding to allegations of abuse, and, because removal of a child can be a traumatic experience, removal will often be the last resort. For example, the court can allow the child to remain in the home while the parents receive services and participate in drug or alcohol treatment. The court might require one parent to leave the home to allow the children and the alleged non-abusive parent to remain in a stable environment, pending the investigation and resolution of the case.
- b. Parents maintain their rights during dependency proceedings, although they can lose limited rights to make educational or medical decisions, where it is in the best interest of the child. Parents are generally allowed visitation with their children, although it may be required to be supervised. Parents may also be required to pay child support to the County while the Department is caring for their children.
- c. Depending on the severity of the situation, and only in limited circumstances, the Department can petition for parental rights to be terminated before any dependency proceedings occur. This is an attempt to balance parental rights with the benefits of placing a child in a permanent adoptive situation as soon as possible. Once parental rights are terminated, the child is eligible for adoption.

QUESTION 1: IN WHAT CIRCUMSTANCES CAN A CHILD BE REMOVED FROM HIS OR HER PARENTS?

1. Injunctions to Prevent Child Abuse

- a. Chapter 39 of the Florida Statutes provides courts and the Department a process for obtaining an injunction to protect children from abuse, neglect, and domestic violence. At any time after a protective investigation has been initiated under Chapter 39, the court shall have the authority to issue an injunction to prevent any act of child abuse, Fla. Stat. § 39.504(1). The Department often files the motion, but law enforcement, the state attorney, another responsible person, or the court itself, may, if there is reasonable cause, file for an injunction to prevent any act of child abuse, Fla. Stat. § 39.504(1). Reasonable cause for the issuance of an injunction exists if there is evidence of child abuse or if there is a reasonable likelihood of such abuse occurring based upon a recent overt act or failure to act, Fla. Stat. § 39.504(1).
- b. The petitioner seeking the injunction shall file a verified petition, or a petition along with an affidavit, setting forth the specific actions by the alleged offender from which the child must be protected and all remedies sought. Upon filing the petition, the court must set a hearing to be held at the earliest possible time. Pending the hearing, the court may issue a temporary *ex parte* injunction, with verified pleadings or affidavits as evidence. The temporary *ex parte* injunction pending a hearing is effective for up to 15 days and the hearing must be held within that period unless good cause is shown

for it to be continued, which may include obtaining service or process, in which case the temporary *ex parte* injunction shall be extended for the continuance period. The hearing may be held sooner if the alleged offender has received reasonable notice, Fla. Stat. § 39.504(2). Before the hearing, the alleged offender must be personally served with a copy of the petition, all other pleadings related to the petition, a notice of hearing, and, if one has been entered, the temporary injunction.

- c. Following the hearing, the court may enter a final injunction. The court may grant a continuance of the hearing at any time for good cause shown by any party. If a temporary injunction has been entered, it shall be continued during the continuance, Fla. Stat. § 39.504(3). The primary purpose of the injunction must be to protect and promote the best interests of the child, taking the preservation of the child's immediate family into consideration, Fla. Stat. § 39.504(4). The terms of the final injunction shall remain in effect until modified or dissolved by the court. The petitioner, respondent, or caregiver may move at any time to modify or dissolve the injunction. Notice of hearing on the motion to modify or dissolve the injunction must be provided to all parties, including the Department. The injunction is availing and enforceable in all counties in the state, Fla. Stat. § 39.504(4)(c).
- d. The injunction applies to the alleged or actual offender in a case of child abuse or acts of domestic violence. The conditions of the injunction shall be determined by the court, which may include ordering the alleged or actual offender to:
 - i. refrain from further abuse or acts of domestic violence, Fla. Stat. § 39.504(4)(a)(1);
 - ii. participate in a specialised treatment program, Fla. Stat. § 39.504(4)(a)(2);
 - iii. limit contact or communication with the child victim, other children in the home, or any other child, Fla. Stat. § 39.504(4)(a)(3);
 - iv. refrain from contacting the child at home, school, work, or wherever the child may be found, Fla. Stat. § 39.504(4)(a)(4);
 - v. have limited or supervised visitation with the child, Fla. Stat. § 39.504(4)(a)(5); and/or
 - vi. vacate the home in which the child resides, Fla. Stat. § 39.504(4)(a)(6).
- e. Upon proper pleading, the court may award the following relief in a temporary *ex parte* or final injunction:
 - i. Exclusive use and possession of the dwelling to the caregiver or exclusion of the alleged or actual offender from the residence of the caregiver, Fla. Stat. § 39.504(4)(b)(1);
 - ii. Temporary support for the child or other family members, Fla. Stat. § 39.504(4)(b)(2); and/or
 - iii. The costs of medical, psychiatric, and psychological treatment for the child incurred due to the abuse, and similar costs for other family members, Fla. Stat. § 39.504(4)(b)(3).
- f. An adult member of the same family who is a victim of domestic violence is not precluded from seeking protection for himself or herself under § 741.30. Service of

process on the respondent shall be carried out pursuant to § 741.30. The Department shall deliver a copy of the injunction to the protected party, to a parent, caregiver, or individual acting in the place of a parent who is not the respondent. Law enforcement officers may exercise their arrest powers as provided in § 901.15(6) to enforce the terms of the injunction, Fla. Stat. § 39.504(5). Failure to comply is a first degree misdemeanor, Fla. Stat. § 39.504(6). The person against whom an injunction is entered under § 39.504 does not automatically become a party to a subsequent dependency action concerning the same child, Fla. Stat. § 39.504(7).

2. Dependency Process

- a. A child is determined to be a "dependent", when there is concern about the safety of the child. Dependency status is an interim status whereby the state agency is caring for the child while working with the parents towards a goal of reunification, unless and until that goal appears futile, at which point termination of parental rights will be sought. Another option is to file a petition for expedited termination of parental rights, Fla. Stat. § 39.402(8)(a). During the dependency process, the child can be allowed to remain in the home, or removed on a temporary basis while certain services are provided to the parents.⁴²
- b. The initial removal of the child will be reviewed by the attorney for the agency for probable cause. If probable cause is insufficient, the child will be returned to the home. If sufficient probable cause exists, the Department is required to request a shelter hearing within 24 hours of removal, Fla. Stat. § 39.401(3). Sometimes the ruling on probable cause will be withheld while more evidence is collected, with the shelter hearing continued for up to 72 hours. The shelter hearing determines the placement of the child while dependency proceedings are implemented or an investigation is conducted.
- c. A child can be removed upon a sworn statement that:
 - i. The child has been abused, neglected, or abandoned, or is suffering from or is in imminent danger of illness or injury as a result of abuse, neglect, or abandonment:
 - Abuse:
Any wilful act or threatened act that results in any physical, mental or sexual injury or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired, Fla. Stat. § 39.01(2).
 - Neglect:

⁴² Notably, Florida recently passed new legislation in June of 2014 increasing child protection investigators and shifting the focus of investigations from keeping families together to protecting the best interest of the child. This legislation was precipitated by a report from the Miami Herald which found that over the last six years almost 500 children died from neglect or abuse after their families had come to the attention of the Department of Children and Families (report available online at <http://media.miamiherald.com/static/media/projects/2014/innocents-lost/stories/overview/>). The resulting legislation will hopefully lead to a more thorough analysis when deciding whether to remove a child from the home.

Deprivation of necessary food, clothing, shelter, or medical treatment, or a child is permitted to live in an environment where such deprivation or environment causes the child's physical, mental or emotional health to be significantly impaired or to be in danger of being significantly impaired, Fla. Stat. § 39.01(44).

– Abandonment:

The parent or legal custodian or, in the absence of a parent or legal custodian, the caregiver, while being able, makes no provision for the child's support and has failed to establish or maintain a substantial and positive relationship with the child, Fla. Stat. § 39.01(1).

– Harm:

Physical, mental or emotional injury, Fla. Stat. § 39.01(32).

- ii. That the parent or legal custodian of the child has materially violated a condition of placement imposed by the court; or
 - iii. That the child has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care, Fla. Stat. § 39.401(1).
- d. Depending on the allegations and the facts surrounding the allegations, the child can be placed temporarily with:
- i. A parent or legal custodian;
 - ii. A responsible adult approved by the court when limited to temporary emergency situations;
 - iii. A responsible adult relative or the adoptive parent of the child's sibling who shall be given priority consideration over a non-relative placement when this is in the best interests of the child; or
 - iv. A responsible adult approved by the Department; or
 - v. An authorised agent of the Department, Fla. Stat. § 39.401(2).
- e. Shelter Hearing

A shelter hearing takes place within 24 hours of removal and is meant to determine whether the child should be placed or remain in an out-of-home placement pending adjudication of dependency. The petitioner has the burden to show probable cause and the court considers all relevant and material evidence, Fla. Stat. §§ 39.395-39.402; Fla. R. Juv. P. 8.300-8.305. A child may not be held in a shelter for more than 60 days without an adjudication of dependency. A child may not be held in a shelter for more than 30 days after the entry of an order of adjudication, unless an order of disposition has been entered by the court, Fla. Stat. §39.402.

f. Arraignment and Shelter Review

If the child is in shelter (placed outside the home), this hearing must take place within 28 days of the shelter hearing or seven days after a dependency petition is filed if a demand for early filing has been made. If the child is living with the parents, this hearing must take place within a reasonable time after the dependency petition is filed. This hearing is meant to advise the parents of their right to counsel, and to have the parent or legal custodian admit, deny or

consent to the findings of dependency alleged in the petition and to review any shelter order currently in place, Fla. Stat. § 39.506; Fla. R. Juv. P. 8.310-8.315.

g. Adjudication

This hearing takes place as soon as possible after the filing of the dependency petition, but no later than 30 days after arraignment. The purpose is to determine whether or not the facts support the allegations stated in the petition, Fla. Stat. § 39.507; Fla. R. Juv. P. 8.330-8.335.

h. Disposition

If the parent admits/consent, the disposition hearing takes place within 15 days of the arraignment. If there is an adjudicatory hearing, the disposition takes place within 30 days of that hearing. The purpose of this hearing is to determine the most appropriate protections, services and placement for the child, and to approve the case plan, Fla. Stat. § 39.507(8) and § 39.521; Fla. R. Juv. P. 8.340-8.410.

i. Permanency Hearings

No later than 12 months from when the child was removed, or no later than 30 days after a court determines that reasonable reunification efforts are not required, and every 12 months thereafter, a permanency hearing should be held. The purpose of this hearing is to determine when the child will achieve the permanency goal or whether modifying the current goal is in the best interest of the child, Fla. Stat. § 39.621; Fla. R. Juv. P. 8.425.

j. Placement options in order of preference

- i. Reunification;
- ii. Adoption;
- iii. Permanent guardianship;
- iv. Permanent placement with a fit and willing relative;
- v. Placement in another planned permanent living arrangement, Fla. Stat. § 39.621(2);
- vi. The permanency plan is guided by the best interest of the child, Fla. Stat. § 39.621(5). Permanent placements are expected to continue until the child is aged 18, and may not be disturbed absent a finding that it is no longer in the best interest of the child. Guardianship, placement with a relative or in another permanent living arrangement does not terminate parental rights so the parents can move for reunification or increased contact.

k. Termination of Parental Rights

- i. A petition for termination of parental rights can be filed at any time, Fla. Stat. § 39.401(5). The department is required to file for termination of parental rights within 60 days if:
- ii. The child is not returned to the physical custody of the parents at the 12 month review;
- iii. The child has been in state supervised out-of-home care for 12 of the most recent 22 months;
- iv. A parent has been convicted of certain crimes (i.e. murder) against the other parent or child;

- v. The court determines that reasonable efforts to reunify the child and parent are not required.
 - vi. UNLESS the child is with a relative or the department has a "compelling reason."
- I. The grounds supporting termination of parental rights are:
- i. Voluntary surrender of parental rights and consent to award of custody to the department, Fla. Stat. § 39.806(1)(a);
 - ii. Abandonment when identity of parents cannot be ascertained by diligent search within 60 days, Fla. Stat. § 39.806(1)(b);
 - iii. When the parent or parents are engaged in conduct toward the child or toward other children that demonstrates that the continuing involvement of the parent or parents in the parent-child relationship threatens the life, safety, wellbeing, or physical, mental, or emotional health of the child irrespective of the provision of services, Fla. Stat. § 39.806(1)(c);
 - iv. When the parent is incarcerated for a "significant portion of the child's minority," or where the parent has committed certain violent or sexual crimes, or where a continuing parental relationship with the incarcerated parent would be harmful, Fla. Stat. § 39.806(1)(d);
 - v. When the child has been adjudicated as dependent and the child continues to be abused by the parent as evidenced by a failure to comply with a case plan for 12 months from the adjudication of the child as a dependent or placement of the child in shelter care, Fla. Stat. § 39.806(1)(e)(1);
 - vi. When the parent(s) materially breach the case plan such that it is unlikely or impossible to comply with the case plan before the allotted time expires, Fla. Stat. § 39.806(1)(e)(2);
 - vii. The parent or parents are engaged in egregious conduct or had the opportunity and capability to prevent and knowingly failed to prevent egregious conduct that threatens the life, safety, or physical, mental, or emotional health of the child or the child's sibling, Fla. Stat. § 39.806(1)(f);
 - viii. The parent or parents have subjected the child or another child to aggravated child abuse, sexual battery or sexual abuse, or chronic abuse, Fla. Stat. § 39.806(1)(g);
 - ix. The parent or parents have committed the murder, manslaughter, aiding or abetting the murder, or conspiracy or solicitation to murder the other parent or another child, or a felony battery that resulted in serious bodily injury to the child or to another child, Fla. Stat. § 39.806(1)(h);
 - x. The parental rights of the parent to a sibling of the child have been terminated involuntarily, Fla. Stat. § 39.806(1)(i);
 - xi. The parent or parents have a history of extensive, abusive, and chronic use of alcohol or a controlled substance which renders them incapable of caring for the child, and have refused or failed to complete available treatment for such use during the three year period immediately preceding the filing of the petition for termination of parental rights, Fla. Stat. § 39.806(1)(j);

- xii. The child tested positive for drugs at birth, and the biological mother had another child who had been adjudicated dependent after a finding of harm due to exposure to controlled substances or alcohol, after which the mother had the opportunity to participate in substance abuse treatment, Fla. Stat. § 39.806(1)(k);
 - xiii. On three or more occasions the child or another child of the parent or parents has been placed in out-of-home care pursuant to this chapter, and the conditions that led to the child's out-of-home placement were caused by the parent or parents, Fla. Stat. § 39.806(1)(l);
- m. In a hearing on a petition for termination of parental rights, the court shall consider the manifest best interests of the child. This consideration shall not include a comparison between the attributes of the parents and those of any persons providing a present or potential placement for the child. For the purpose of determining the manifest best interests of the child, the court shall consider and evaluate all relevant factors, including, but not limited to:
- i. Any suitable permanent custody arrangement with a relative of the child. However, the availability of a non-adoptive placement with a relative may not receive greater consideration than any other factor weighing on the manifest best interest of the child and may not be considered as a factor weighing against termination of parental rights. If a child has been in a stable or pre-adoptive placement for not less than six months, the availability of a different placement, including a placement with a relative, may not be considered as a ground to deny the termination of parental rights;
 - ii. The ability and disposition of the parent or parents to provide the child with food, clothing, medical care or other remedial care recognised and permitted under state law instead of medical care, and other material needs of the child;
 - iii. The capacity of the parent or parents to care for the child to the extent that the child's safety, wellbeing, and physical, mental, and emotional health will not be endangered upon the child's return home;
 - iv. The present mental and physical health needs of the child and such future needs of the child to the extent that such future needs can be ascertained based on the present condition of the child;
 - v. The love, affection, and other emotional ties existing between the child and the child's parent or parents, siblings, and other relatives, and the degree of harm to the child that would arise from the termination of parental rights and duties;
 - vi. The likelihood of an older child remaining in long-term foster care upon termination of parental rights, due to emotional or behavioural problems or any special needs of the child;
 - vii. The child's ability to form a significant relationship with a parental substitute and the likelihood that the child will enter into a more stable and permanent family relationship as a result of permanent termination of parental rights and duties;
 - viii. The length of time that the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;

- ix. The depth of the relationship existing between the child and the present custodian;
- x. The reasonable preferences and wishes of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference;
- xi. The recommendations for the child provided by the child's guardian *ad litem* or legal representative.

QUESTION 2: WHAT AUTHORITY, IF ANY, CAN REMOVE A CHILD FROM A PARENT'S CARE IF A CHILD IS SUFFERING OR AT RISK OF SUFFERING SIGNIFICANT HARM (OR SIMILAR)?

The Department of Children and Families has power to remove a child on the basis of a sworn statement that the child has been abused, neglected, or abandoned, or is suffering from or is in imminent danger of illness or injury as a result of abuse, neglect, or abandonment.

QUESTION 3: TO WHAT FORUM DOES THE AUTHORITY APPLY TO REMOVE A CHILD?

1. In 1993, Congress created the Court Improvement Program (**CIP**), a grant program to assist state courts in improving the handling of child abuse and neglect cases (also known as dependency cases). Unlike other court case types, there are federal mandates governing dependency cases. Congress recognised the effects of these mandates by the passage of the CIP legislation. This initial grant program, within the Promoting Safe and Stable Families Programme, expanded in 2005 when Congress authorised additional training and data grants for state courts. These three grants, awarded to the highest court in each state, are the only federal funds that state courts receive for the purpose of improving state court oversight of dependency cases.
2. In Florida, the Circuit Court has exclusive original jurisdiction over Chapter 39 proceedings. Jurisdiction attaches at the initial shelter petition, the dependency petition, when the termination of parental rights petition is filed, or when a child is taken into the custody of the department, Fla. Stat. § 39.013(2).

QUESTION 4: ARE THERE MANDATORY REPORTING REQUIREMENTS, AND IF SO, TO WHOM DO THEY APPLY?

1. Mandatory reporting applies to anyone with knowledge or reasonable suspicion of physical or sexual abuse by parent/guardian, adult, or child, Fla. Stat. § 39.201(a)-(c). Reporting is generally anonymous, but the following professions are required to disclose their name when making a report:
 - a. Physician, osteopathic physician, medical examiner, chiropractic physician, nurse, or hospital personnel engaged in the admission, examination, care, or treatment of persons;
 - b. Health or mental health professional other than one listed in paragraph (a) immediately above;
 - c. Practitioner who relies solely on spiritual means for healing;
 - d. School teacher or other school official or personnel;
 - e. Social worker, day care centre worker, or other professional child care, foster care, residential, or institutional worker;
 - f. Law enforcement officer; or

CHAPTER 10 - NEW YORK, UNITED STATES

QUESTION 1: IN WHAT CIRCUMSTANCES CAN A CHILD BE REMOVED FROM HIS OR HER PARENTS?

1. The Family Court Act (**Family Court Act**) contains provisions to protect the physical, mental and emotional health of abused and neglected children. Its goal is to provide due process for assessing when the State, acting on behalf of the child, may intervene against the wishes of the parent (e.g. remove a child from the family) to ensure that the child's needs are met. Under the Family Court Act, a child may be removed from his/her parents or other persons legally responsible for the care of the child⁴³ by consent, by order, or without consent when he/she has been abused or neglected or is in imminent danger of being abused or neglected.
2. Definitions
 - a. Abused Child. Under the Family Court Act, an "abused child" is "a child less than eighteen years of age whose parent or other person legally responsible for his care
 - i. inflicts or allows to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ; or
 - ii. creates or allows to be created a substantial risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ; or
 - iii. commits, or allows to be committed, a sex offense against the child, as defined in the penal law, e.g., Promoting Prostitution in first, second or third degree, Incest in the first, second, or third degree, or Sexual Performance by a Child."⁴⁴
 - b. Neglected Child. The Family Court Act defines a "neglected child" as "a child less than eighteen years of age:
 - i. whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of the child's parent or other person legally responsible for the child's care to exercise a minimum degree of care:
 - in supplying the child with adequate food, clothing, shelter, education . . . , or medical, dental, optometrical, or surgical care, though financially able to do so or offered financial or other reasonable means to do so; or
 - in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof, including

⁴³ A person "legally responsible" is defined as the "child's custodian, guardian or any other person responsible for the child's care at the relevant time, including any person who lives in the household or visits at regular intervals", NY CLS Family Ct. Act § 1012(g).

⁴⁴ NY CLS Family Ct. Act § 1012(e); see also NY CLS Soc. Serv. § 371(4-b).

the infliction of excessive corporal punishment; or by misusing a drug or drugs; or by misusing alcoholic beverages to the extent that he loses self-control of his actions; or by any other acts of a similarly serious nature requiring the aid of the court; provided, however, that where the respondent is voluntarily and regularly participating in a rehabilitative program, evidence that the respondent has repeatedly misused a drug or drugs or alcoholic beverages to the extent that he loses self-control of his actions shall not establish that the child is a neglected child in the absence of evidence establishing that the child's physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as set forth in paragraph (i) of this subdivision; or

- ii. who has been abandoned . . . by his parents or other person legally responsible for his care.⁴⁵

3. Removal

a. Removal of Child by Consent

Under section 1021 of the Family Court Act, a peace officer, police officer, or agent of a duly authorized agent may, with the written consent of the child's parent or other person legally responsible for the child, remove a child suspected of abuse or neglect from the place where he/she resides. The officer is required to give written notice to the parent or other person legally responsible of his/her due process rights, family court hearing information, right to an attorney or to be assigned an attorney, and contact information for the child. This notice must be appended to the abuse and neglect petition and made part of the permanent record. If the child is not returned within three court days of removal, a child protective petition must be filed and a hearing must be held no later than the following court day after filing.⁴⁶

b. Removal by Order

Under section 1022 of the Family Court Act, a temporary removal order may be obtained before a petition is filed under certain limited circumstances, such as: (1) when a parent or other person legally responsible is absent or, if present, refuses to consent to a temporary removal; (2) immediate removal is necessary to avoid imminent danger to the child's life or health; or (3) there is not enough time to file a petition and hold a preliminary hearing.⁴⁷ The court will immediately calendar the matter for that day and determine whether temporary removal of the child is necessary.⁴⁸

c. Emergency Removal without Court Order

- i. Section 1024 of the Family Court Act permits the emergency removal of a child without court order by a peace or police officer, law enforcement officials, designated employees of the city or county departments of social services, and

⁴⁵ NY CLS Family Ct. Act § 1012(f); see also NY CLS Soc. Serv. § 371(4-a).

⁴⁶ NY CLS Family Ct. Act § 1021.

⁴⁷ *Id.* at § 1022.

⁴⁸ *Id.* at § 1022(a)(ii).

physicians when (1) "the child is in such circumstance or condition that his or her continuing in said place of residence or in the care and custody of the parent or person legally responsible for the child's care presents an imminent danger to the child's life or health"; and (2) there is not enough time to file a petition in the Family Court.⁴⁹

- ii. A child who is removed without a court order must be brought to a place approved for this purpose by the local social services department unless the person who removed the child is a treating physician and the child is or will be admitted to a hospital.⁵⁰ The person removing the child must provide written notice to the parent or other person legally responsible regarding the right to apply to the Family Court for the child's return pursuant to section 1028 of the Family Court Act.⁵¹
- iii. If a physician removes the child and is a staff member of a hospital or institution, he/she must notify the person in charge of the hospital or institution who then becomes responsible for the care of the child.⁵² The physician may keep custody of the child until it is transferred to police authorities or social services, but no longer than the next Family Court session.⁵³ If the child is not returned on the same day that the child was removed on an emergency basis, it must begin a child protective hearing at the next Family Court session.⁵⁴
- iv. Authority for 24-Hour Hold By Hospitals. A hospital is required to take action to protect a child (e.g. retain custody until the next week day session of Family Court when a child protective proceeding may commence) where there is reasonable cause to believe that there would be imminent danger to the child's life or health if he or she remained in his or her residence.⁵⁵ This is required whether or not additional medical treatment is required.⁵⁶
- v. The person in charge of the hospital or institution that retained custody of a child is required to immediately notify the appropriate local child protective service, which must then begin an investigation and either have a child protective proceeding in Family Court on the next court date or recommend to the Court at that time that the child be returned to his/her parents or guardian. The hospital has no authority to hold the child at the end of the next regular weekday. If medical treatment is no longer necessary, the child protective service must take

⁴⁹ *Id.* at § 1024(a)(i)-(ii).

⁵⁰ *Id.* at § 1024(a).

⁵¹ *Id.* at § 1024(b).

⁵² *Id.* at § 1024(d).

⁵³ *Id.* at § 1024(e).

⁵⁴ *Id.* at § 1024(e).

⁵⁵ NY CLS Soc. Serv. §417(2).

⁵⁶ *Id.*

all necessary measures to protect the child, including, when appropriate, taking the child into custody.⁵⁷

QUESTION 2: WHAT AUTHORITY, IF ANY, CAN REMOVE A CHILD FROM A PARENT'S CARE IF A CHILD IS SUFFERING OR AT RISK OF SUFFERING SIGNIFICANT HARM (OR SIMILAR)?

1. Child Protective Services (**CPS**) is the agency that is responsible for investigating reports of child abuse and neglect. Each county in New York has its own CPS unit which conducts a range of services to protect children from abuse.⁵⁸ While CPS is widely known for investigating reports of abuse and neglect, for filing child protective proceedings in Family Court, and for placing children in foster care, its primary focus is the family and the child within the family.⁵⁹ As such, in theory, the removal of a child from a family is considered a last resort when all other means to protect the child are not feasible.
2. Other authorized persons are allowed to take children into protective custody, including peace or police officers, law enforcement officials, designated employees of the city or county departments of social services, and physicians.⁶⁰

QUESTION 3: TO WHAT FORUM DOES THE AUTHORITY APPLY TO REMOVE A CHILD?

The Family Court has jurisdiction over child removal cases.

QUESTION 4: DO CERTAIN PROFESSIONS OR PERSONS HAVE AN OBLIGATION TO REPORT TO AN AUTHORITY IF THEY SUSPECT THAT A CHILD IS AT RISK OF SUFFERING SIGNIFICANT HARM (OR SIMILAR) (I.E. "MANDATORY REPORTING")?

1. Certain professions or persons have an obligation to report to an authority if they have reasonable cause to suspect that a child is at risk of suffering significant harm. The types of professionals who are required to report are listed in section 413 of the New York Social Services Law (Persons and officials required to report cases of suspected child abuse or maltreatment) (see answer to Question 5 below for the list of professionals required to report).
2. Duty to Report
Mandated reporting obligations exist when an obligated person or official has reasonable cause to suspect that (1) a child coming before them in their professional or official capacity is an abused or maltreated child, or (2) a child is an abused or maltreated child where the parent, guardian, custodian or other person legally responsible for such child comes before them in their professional or official capacity.⁶¹
3. Penalties for Failing to Report or Making a False Report
Professionals and officials may be civilly and criminally liable for intentional failure to make a report or making false reports. Wilful failure to report a case of suspected child abuse by a person,

⁵⁷ *Id.*

⁵⁸ In New York City, the Administration for Children's Services (**ACS**) has responsibility for CPS.

⁵⁹ See NY CLS Soc. Sec. § 384-b(1)(iii) ("[T]he state's first obligation is to help the family with services to prevent its break-up or to reunite it if the child has already left home.").

⁶⁰ NY CLS Family Ct. Act § 1024(a).

⁶¹ NY CLS Soc. Serv. § 413(1)(a).

official or institution required to do is a class A misdemeanor.⁶² Knowingly and wilfully failing to report a case by a person, official, or institution required to do so may result in civil liability for damages proximately caused by the failure.⁶³ Knowingly making a false report is a class A misdemeanor.⁶⁴

QUESTION 5: IF MANDATORY REPORTING OBLIGATIONS DO EXIST, TO WHAT PROFESSIONS DO THEY APPLY?

1. Mandatory reporting obligations fall on the following persons and officials:⁶⁵

- a. any physician;
- b. registered physician assistant;
- c. surgeon;
- d. medical examiner;
- e. coroner;
- f. dentist;
- g. dental hygienist;
- h. osteopath;
- i. optometrist;
- j. chiropractor;
- k. podiatrist;
- l. resident;
- m. intern;
- n. psychologist;
- o. registered nurse;
- p. social worker;
- q. emergency medical technician;
- r. licensed creative arts therapist;
- s. licensed marriage and family therapist;
- t. licensed mental health counsellor;
- u. licensed psychoanalyst;
- v. licensed behaviour analyst;
- w. certified behaviour analyst assistant;
- x. hospital personnel engaged in the admission, examination, care or treatment of persons;
- y. a Christian Science practitioner;

⁶² *Id.* at § 420(1).

⁶³ *Id.* at § 420(2).

⁶⁴ NY CLS Penal § 240.50(4).

⁶⁵ NY CLS Soc. Serv. § 413(1)(a).

- z. school official, which includes but is not limited to school teacher, school guidance counsellor, school psychologist, school social worker, school nurse, school administrator or other school personnel required to hold a teaching or administrative licence or certificate (note that effective July 1, 2015, the list also includes full or part-time compensated school employees required to hold a temporary coaching licence or professional coaching certificate);
- aa. social services worker;
- bb. director of a children's overnight camp, summer day camp or traveling summer day camp, as defined in section 1392 of the public health law;
- cc. day care centre worker;
- dd. school-age child care worker;
- ee. provider of family or group family day care;
- ff. employee or volunteer in a residential care facility for children that is licensed, certified or operated by the office of children and family services or any other child care or foster care worker;
- gg. mental health professional;
- hh. substance abuse counsellor; alcoholism counsellor; all persons credentialed by the Office of Alcoholism and Substance Abuse Services;
- ii. peace officer;
- jj. police officer;
- kk. district attorney or assistant district attorney;
- ll. investigator employed in the office of a district attorney.

CHAPTER 11 - TEXAS, UNITED STATES

QUESTION 1: IN WHAT CIRCUMSTANCES CAN A CHILD BE REMOVED FROM HIS OR HER PARENTS?

1. The Texas Department of Family and Protective Services (**Department**) through its Child Protective Services (**CPS**) division must review every report of child abuse and neglect in order to ensure accurate advice, correct referrals, timely and appropriate investigations, and effective interventions.⁶⁶ Constitutional privacy protections require that the state avoid unwarranted intrusion into the child and family's lives. The need to protect the child, however, remains the chief concern.
2. Definitions of "abuse", "neglect" and "person responsible for a child's care, custody or welfare"⁶⁷
 - a. "Abuse" includes the following acts or omissions by a person:
 - mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;
 - causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;
 - physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;
 - failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;
 - sexual conduct harmful to a child's mental, emotional, or physical welfare, including conduct that constitutes the offence of continuous sexual abuse of a young child or children under Section 21.02 Penal Code, indecency with a child under Section 21.11 Penal Code, sexual assault under Section 22.011 Penal Code, or aggravated sexual assault under Section 22.021 Penal Code;
 - failure to make a reasonable effort to prevent sexual conduct harmful to a child;
 - compelling or encouraging the child to engage in sexual conduct as defined by Section 43.01 Penal Code;
 - causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child, if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene as defined by Section 43.21 Penal Code, or pornographic;
 - the current use by a person of a controlled substance as defined by Chapter 481 Health and Safety Code in a manner or to the extent that the use results in physical, mental, or emotional injury to a child;

⁶⁶ Sources: Texas Family Code and/or CPS Handbook; National Association of Counsel for Children 2009 Texas Training Series.

⁶⁷ Section 261.001, Texas Family Code.

- causing, expressly permitting or encouraging a child to use a controlled substance as defined by Chapter 481 Health and Safety Code;
- causing, permitting, encouraging, engaging in or allowing a sexual performance by a child as defined by Section 43.25 Penal Code; or
- knowingly causing, permitting, encouraging, engaging in or allowing a child to be trafficked in a manner punishable as an offence under Section 20A.02(a)(5), (6), (7) or (8) Penal Code, or the failure to make a reasonable effort to prevent a child from being trafficked in a manner punishable as an offence under any of those sections.

b. "Neglect" includes:

- leaving a child in a situation where the child would be exposed to a substantial risk of physical or mental harm, without arranging for necessary care for the child, and the demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of the child;
- the following acts or omissions by a person:
- placing a child in or failing to remove a child from a situation that a reasonable person would realise requires judgment or actions beyond the child's level of maturity, physical condition or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child;
- failing to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting a substantial risk of death, disfigurement or bodily injury, or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child;
- failure to provide a child with food, clothing or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused;
- placing a child in or failing to remove the child from a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child;
- placing a child in or failing to remove the child from a situation in which the child would be exposed to acts or omissions committed against another child that constitute abuse under the Texas Family Code; or
- failure by the person responsible for a child's care, custody or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away.

c. "Person responsible for a child's care, custody, or welfare" means a person who traditionally is responsible for a child's care, custody, or welfare, including:

- a parent, guardian, managing or possessory conservator, or foster parent of the child;

- a member of the child’s family or household as defined by Chapter 71 of the Texas Family Code;
- a person with whom the child’s parent cohabits;
- school personnel or a volunteer at the child’s school; or
- personnel or a volunteer at a public or private childcare facility that provides services for the child or at a public or private residential institution or facility where the child resides.

3. Initiating an Investigation

After receiving a report, the Department must make a determination of whether a formal investigation should be made. An investigation requires abuse or neglect, or the risk of abuse or neglect (as defined by law and agency rule), by a person responsible for the child’s care, custody or welfare. To warrant an investigation, the person responsible for the child does not have to directly participate in the abuse or neglect. Instead, failure to protect a child from abuse or neglect is sufficient for an investigation. To the extent the abuse or neglect has already occurred, there must be a threat or likelihood that the abuse will happen again in the foreseeable future.

4. Procedures to Protect the Health and Safety of the Child

a. Introduction

- i. Chapter 262 of the Texas Family Code authorises police, juvenile probation officers and the Department’s caseworkers to take possession of a child in an emergency. This may be done either with prior written court approval or without such an order if the situation warrants immediate state intervention to rescue a child from dangerous circumstances. Actual practice and procedures in counties around Texas vary considerably, but all should comply with the basic framework set out in the statutes discussed here. Many of the statutory requirements governing child protection cases stem from federal mandates imposed by the Child Abuse Prevention and Treatment Act (**CAPTA**) and the Adoption and Safe Families Act (**ASFA**).
- ii. If the child is not safe in the home and the caseworker cannot develop an agreed upon plan to ensure the child’s safety, the caseworker may remove the child from the parent’s custody. To do so, however, the caseworker must first have a court order for removal or exigent circumstances permitting emergency removal. The other option is to arrange the removal from the home of the parent causing the protection issue.
- iii. Chapter 262 provides three options to the Department for the removal of a child from its home:
 - emergency removal prior to obtaining a court order;
 - removal after obtaining an *ex parte* order; or
 - removal after notice and hearing.
- iv. However, regardless which option the Department takes, a full adversary hearing must occur no later than the 14th day after the Department takes a child into its possession.

- b. Emergency removal prior to obtaining a court order
- i. If there is no time to obtain a temporary restraining order or attachment before taking possession of a child consistent with the health and safety of that child, an authorised representative of the Department, a law enforcement officer or a juvenile probation officer may take possession of a child without a court order under the following conditions only:
- on personal knowledge of facts that would lead a person of ordinary prudence and caution to believe that there is an immediate danger to the physical health or safety of the child;
 - on information furnished by another that has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe that there is an immediate danger to the physical health or safety of the child;
 - on personal knowledge of facts that would lead a person of ordinary prudence and caution to believe that the child has been the victim of sexual abuse;
 - on information furnished by another that has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe that the child has been the victim of sexual abuse;
 - on information furnished by another that has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe that the parent or person who has possession of the child is currently using a controlled substance as defined by Chapter 481 Health and Safety Code, and the use constitutes an immediate danger to the physical health or safety of the child; or
 - on personal knowledge or information furnished by another, that has been corroborated by personal knowledge, that would lead a person of ordinary prudence and caution to believe that the parent or person who has possession of the child has permitted the child to remain on premises used for the manufacture of methamphetamine.⁶⁸
- ii. Guidance issued by the Department following a decision in a federal appeals court with authority over Texas states that in order to remove a child without a court order and without the consent of its parents, there must be 'exigent circumstances'.⁶⁹ In the case cited by the guidance the court defined 'exigent circumstances' as "*based on the totality of the circumstances, there is reasonable cause to believe that the child is in imminent danger of physical or sexual abuse if he remains in his home*".
- iii. The guidance issued by the Department states that "*According to this definition and the other portions of the case, we can do emergency removals without a*

⁶⁸ Family Code §262.104.

⁶⁹ Texas Department of Family and Protective Services, 'Memorandum', dated 22 August 2008, available at <https://www.dfps.state.tx.us/handbooks/CPS/documents/Legal%20Advisory%20RE%20Gates%20Case.doc>

court order only if the danger is truly imminent or immediate and only if it is tied to physical or sexual abuse. To believe that a child is in imminent danger, we must have reason to believe that life or limb is in immediate jeopardy or that sexual abuse is about to occur". The factors which should be considered include: 1) time available to obtain a court order; 2) the nature of the abuse (its severity, duration and frequency); 3) the strength of the evidence supporting the allegations of abuse; 4) the risk that the parent will flee with the child; 5) the possibility of less extreme solutions to the problem; and, 6) any harm to the child that might result from the removal.

- iv. When a child is taken into possession without a court order, the person taking the child into possession, without unnecessary delay, shall:
 - file a suit affecting the parent-child relationship;
 - request the court to appoint an attorney *ad litem* for the child; and
 - request an initial hearing to be held by no later than the first working day after the date the child is taken into possession.⁷⁰
- v. If the Department of Protective and Regulatory Services⁷¹ files a suit affecting the parent-child relationship seeking termination of the parent-child relationship, the Department shall file the suit not later than the 45th day after the date the Department assumes the care, control, and custody of a child under §262.303.
- vi. The court in which a suit has been filed after a child has been taken into possession without a court order by a governmental entity shall hold an initial hearing on or before the first working day after the date the child is taken into possession.⁷² The court shall render orders that are necessary to protect the physical health and safety of the child. If the court is unavailable for a hearing on the first working day, then, and only in that event, the hearing shall be held no later than the first working day after the court becomes available, provided that the hearing is held no later than the third working day after the child is taken into possession. Family Code §262.106 further provides that:
 - the initial hearing may be *ex parte* and proof may be by sworn petition or affidavit if a full adversary hearing is not practicable;
 - if the initial hearing is not held within the time required, the child shall be returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian who is presently entitled to possession of the child; and
 - for the purpose of determining the first working day after the date the child is taken into possession, the child is considered to have been taken into possession by the Department of Protective and Regulatory Services on the

⁷⁰ Family Code §262.105.

⁷¹ Until 2003, the Department of Family and Protective Services was known as the Department of Protective and Regulatory Services, and the Texas Family Code in some sections still refers to the Department by the previous agency title.

⁷² Family Code §262.106.

expiration of the five day period permitted under Section 262.007(c) or 262.110(b), as appropriate.

- vii. Family Code §262.107 states that the court shall order the return of the child at the initial hearing regarding a child taken in possession without a court order by a governmental entity unless the court is satisfied that:
 - there is a continuing danger to the physical health or safety of the child if the child is returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian who is presently entitled to possession of the child or the evidence shows that the child has been the victim of sexual abuse on one or more occasions, and that there is a substantial risk that the child will be the victim of sexual abuse in the future;
 - continuation of the child in the home would be contrary to the child’s welfare; 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.
- viii. In determining whether there is a continuing danger to the physical health or safety of a child, the court may consider whether the household to which the child would be returned includes a person who has:
 - abused or neglected another child in a manner that caused serious injury to or the death of the other child; or
 - sexually abused another child.

c. Removal after obtaining an *ex parte* order

- i. Family Code §262.101 states that an original suit filed by a governmental entity that requests permission to take possession of a child without prior notice and a hearing must be supported by an affidavit sworn to by a person with personal knowledge and stating facts sufficient to satisfy a person of ordinary prudence and caution that:
 - there is an immediate danger to the physical health or safety of the child or the child has been a victim of neglect or sexual abuse and that continuation in the home would be contrary to the child’s welfare;
 - there is no time, consistent with the physical health of 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 the removal of the child.
- ii. Before a court may, without prior notice and a hearing, issue a temporary restraining order or attachment of a child in a suit brought by a governmental entity, the court must find that:

- there is an immediate danger to the physical health or safety of the child or the child has been a victim of neglect or sexual abuse and that continuation in the home would be contrary to the child's welfare;
 - there is no time, consistent with the physical health or safety of the child and the nature of the emergency, 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.⁷³
- iii. In determining whether there is an immediate danger to the physical health or safety of a child, the court may consider whether the child's household includes a person who has:
- abused or neglected another child in a manner that caused serious injury to or the death of the other child; or
 - sexually abused another child.
- iv. If the court grants a temporary restraining order or attachment allowing removal of the child, it will expire not later than 14 days after the date it is issued, unless it is extended as provided by the Texas Rules of Civil Procedure or in a full adversary hearing under Family Code §262.201.
- d. Removal after notice and hearing
- i. An original suit filed by a governmental entity that requests to take possession of a child after notice and a hearing must be supported by an affidavit sworn to by a person with personal knowledge and stating facts sufficient to satisfy a person of ordinary prudence and caution that:
- reasonable efforts have been made to prevent or eliminate the need to remove the child from the child's home; and
 - allowing the child to remain in the home would be contrary to the child's welfare.
- ii. Family Code §262.205 states that the suit shall be promptly set for hearing. The court will permit removal of the child by issuing an appropriate temporary order if there is sufficient evidence to satisfy a person of ordinary prudence and caution that:
- reasonable efforts have been made to prevent or eliminate the need to remove the child from the child's home; and
 - allowing the child to remain in the home would be contrary to the child's welfare.
- iii. Unless it is not in the best interest of the child, the court shall place a child who has been removed from its home following notice and a hearing with:
- the child's noncustodial parent; or

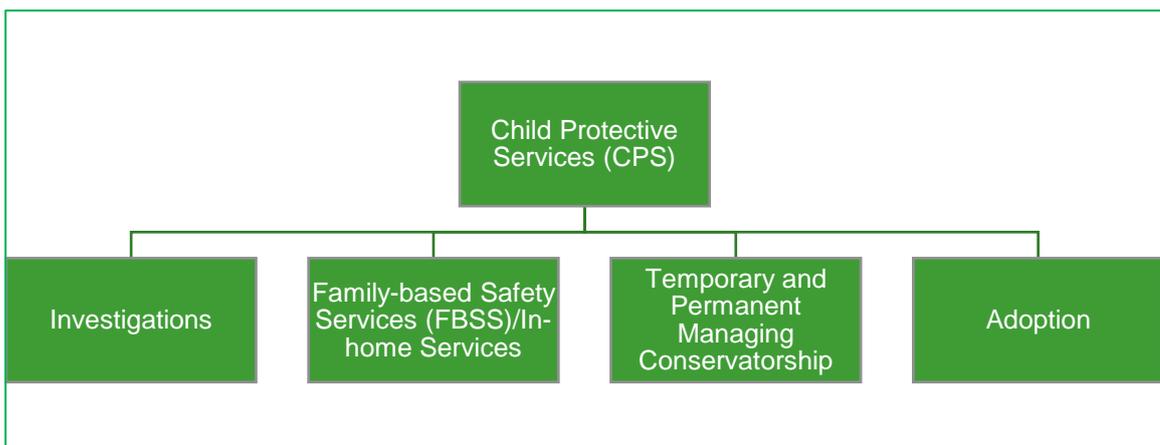
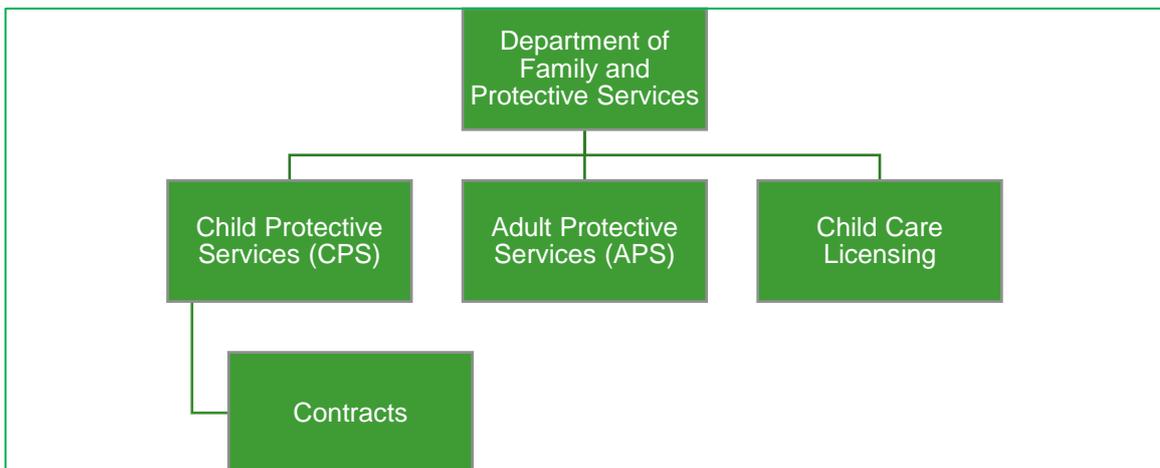
⁷³ Family Code §262.102.

- another relative of the child if placement with the noncustodial parent is inappropriate.

QUESTION 2: WHAT AUTHORITY, IF ANY, CAN REMOVE A CHILD FROM A PARENT’S CARE IF A CHILD IS SUFFERING OR AT RISK OF SUFFERING SIGNIFICANT HARM (OR SIMILAR)?

1. Child Welfare Agency Organisational Structure

The Texas Department of Family and Protective Services, through its Child Protective Services division, is the agency responsible for protecting children. CPS investigates reports of abuse and neglect of children, provides services to children and families in their own homes, places children in foster care, provides services to help youth in foster care make the transition to adulthood, and places children in adoptive homes. Until 2003, the Department of Family and Protective Services was known as the Department of Protective and Regulatory Services, and the Texas Family Code in some sections still refers to the Department by the previous agency title.



QUESTION 3: TO WHAT FORUM DOES THE AUTHORITY APPLY TO REMOVE A CHILD?

1. The basic structure of the present court system of Texas was established by an 1891 state constitutional amendment. The amendment established the Supreme Court, the highest state appellate court for civil matters, and the Court of Criminal Appeals, which makes the final

determination in criminal matters. There are 14 courts of appeal which exercise intermediate appellate jurisdiction in civil and criminal cases.

2. The state trial courts of general jurisdiction are the district courts. In addition to these state courts, the Legislature has established statutory county courts, designated as county courts at law or probate courts, in the more populous counties. These statutory county courts are in addition to the county court in each county established by the state constitution. Though most of these statutory county courts primarily assist the constitutional county judge, who has probate and misdemeanour jurisdiction, many of these statutory county courts also have concurrent jurisdiction with the district courts in some matters, including family law and child protection cases.
3. Specialty child protection courts were created in Texas to assist trial courts in rural areas in managing their child abuse and neglect dockets. Like child support associate judges, also known as Title IV-D judges, the associate judges who hear child protection cases are appointed by regional administrative presiding judges. Although the child protection court judges receive their appointments from the regional administrative presiding judges, they are state employees of the Texas Office of Court Administration. At the discretion of the regional administrative presiding judge, visiting judges may also be appointed to hear these cases in lieu of associate judges.
4. Child protection specialty court judges solely hear child abuse and neglect cases. Currently, there are child protection specialty courts operating in 130 counties.⁷⁴
5. The court to which an application for removal of a child must be made varies from county to county in Texas.

QUESTION 4: DO CERTAIN PROFESSIONS OR PERSONS HAVE AN OBLIGATION TO REPORT TO AN AUTHORITY IF THEY SUSPECT THAT A CHILD IS AT RISK OF SUFFERING SIGNIFICANT HARM (OR SIMILAR) (I.E. "MANDATORY REPORTING")?

1. CAPTA requires that every state has a provision for mandatory reporting of suspected child abuse or neglect. The Texas Family Code mandates that any person who has cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall immediately make a report to the appropriate agency.⁷⁵ In addition, any professional who is licensed or certified by the state or who works in a licensed facility has a mandatory obligation to report abuse or neglect within 48 hours of first suspecting that the abuse or neglect has taken place.⁷⁶ This includes teachers, doctors, nurses, daycare employees, juvenile probation and detention officers. Even individuals who are entitled to certain privileged communications, including doctors, lawyers and members of the clergy, have a duty to report, although an attorney who reports abuse may not be required to testify to the details of attorney-client communications that led to the report.
2. Failure to report when required is punishable as a class B misdemeanour.
3. Although the statute permits reports to be made to law enforcement and certain other agencies, by far the bulk of reports of suspected abuse or neglect are made through the Department's 24 hour toll-free telephone hotline 800-252-54009 or online at <http://www.txabusehotline.org>.

⁷⁴ Texas Office of Court Administration. More information on the specialty courts is available at <http://www.courts.state.tx.us/courts/specialty.asp>.

⁷⁵ Family Code §261.101(a).

⁷⁶ Family Code §261.101(b).

4. The reporter has the option to identify himself or remain anonymous. But even if a reporter chooses to identify himself, the identity of the reporter is kept confidential and is not subject to the Open Records Act. As long as the reporter is acting in good faith, he is immune from criminal or civil liability. Knowingly making a false report, however, is punishable as a felony with a civil penalty of \$1,000.
5. In taking the report, the intake worker seeks information from the reporter regarding what happened and the background and demographics of the family. Upon request, the parent or other legal representative of the child is entitled to the information obtained at intake and through the investigation, although the name of the reporter remains confidential.

QUESTION 5: IF MANDATORY REPORTING OBLIGATIONS EXIST, TO WHAT PROFESSIONS DO THEY APPLY?

1. The mandatory reporting requirement set out in Family Code §261.101(b) applies to "professionals".
 - a. "Professional" means an individual who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a licence or certification is required, has direct contact with children. The term includes teachers, nurses, doctors, day-care employees, employees of a clinic or health care facility that provides reproductive services, juvenile probation officers, and juvenile detention or correctional officers;
 - b. The requirement to report imposed on professionals applies without exception to an individual whose personal communications may otherwise be privileged, including an attorney, a member of the clergy, a medical practitioner, a social worker, a mental health professional, an employee or member of a board that licenses or certifies a professional, and an employee of a clinic or health care facility that provides reproductive services. However, an attorney who reports abuse may not be required to testify to the details of attorney-client communications that led to the report.

CHAPTER 12 - ILLINOIS, UNITED STATES

QUESTION 1: IN WHAT CIRCUMSTANCES CAN A CHILD BE REMOVED FROM HIS OR HER PARENTS?

1. In Illinois, the circumstances where a child may be removed from the custody of his or her parents are set forth in two Illinois acts, the Abused and Neglected Child Reporting Act and the Juvenile Court Act of 1987.
2. Removal and Procedures under the Illinois Abused and Neglected Child Reporting Act
 - a. The Illinois Abused and Neglected Child Reporting Act provides that a law enforcement officer, a designated employee of the Department of Children and Family Services, or a physician treating a child may take or retain temporary protective custody of a child without the consent of the person responsible for the child's welfare if:
 - i. the person has reason to believe that the child cannot be cared for at home or in the custody of the person responsible for the child's welfare without endangering the child's health and safety;
 - ii. there is not time to apply for a court order for temporary custody of the child under the Illinois Juvenile Court Act of 1987.
 - b. The person taking the child into temporary protective custody must immediately notify the Department of Children and Family Services (**Department**). The Department must then initiate proceedings under the Illinois Juvenile Court Act of 1987 for the continued temporary custody of the child (as described below).
 - c. The Department is responsible for protecting the health, safety, and best interests of children through the investigation of suspected abuse or neglect by parents and other caregivers. Upon receiving a report of suspected child abuse or neglect, the Department determines whether to conduct a family assessment or an investigation. If the report involves substantial child abuse or neglect, the Department will conduct an investigation. If the report does not allege substantial child endangerment, the Department will conduct a family assessment. A family assessment involves a comprehensive assessment of child safety, the risk of subsequent child maltreatment, and family strengths. The Department will determine whether services are needed to address the safety of the child and the risk of subsequent abuse and neglect. If services are needed, the Department will prepare a family preservation plan and refer services to the family.
 - d. Unlike a family assessment, an investigation is used by the Department to determine whether there is credible evidence that the child has been abused or neglected. The investigation will also assess the family's needs for services and develop a service plan for the family's acceptance or refusal. In addition to preparing and implementing an appropriate service plan, the Department also has the authority to petition the Juvenile Court under the Illinois Juvenile Court Act of 1987 to remove the child from the parents' custody.

3. Removal and Procedures under the Illinois Juvenile Court Act of 1987

The Illinois Juvenile Court Act of 1987 authorises removal of a child from the custody of his or her parents only when the child's safety or welfare cannot be adequately safeguarded without removal. The Juvenile Court looks to the health, safety and best interests of the child when determining whether a child should be removed from the parents' custody.

4. Temporary Custody

- a. Under the Illinois Juvenile Court Act of 1987, a law enforcement officer may take a child into temporary custody whom the officer with reasonable cause believes the child is a neglected or abused minor, and must thereafter immediately notify the Illinois Department of Children and Family Services. Temporary custody means the temporary placement of the minor out of the custody of his or her parent or guardian. After a minor is taken into temporary custody, a probation officer or an officer designated by the court must investigate the circumstances of the minor and determine whether further temporary protective custody is necessary. If the officer determines that no further temporary protective custody is necessary, the minor must be released to his parent or guardian or to a responsible relative. If, however, the officer determines that further temporary protective custody is necessary, he must cause a petition to be filed with the Juvenile Court alleging that the minor is abused or neglected and it is in the best interests of the child and of the public that the child be adjudged a ward of the court.
- b. Once a minor is taken into temporary protective custody under the Illinois Juvenile Court Act of 1987, the minor must be brought before a judicial officer within 48 hours (exclusive of weekends and court-designated holidays) for a temporary custody hearing, unless the minor is released prior to close of that 48 hour window. At the temporary custody hearing, the Juvenile Court determines whether there is probable cause to believe that the minor is abused or neglected. Upon such a finding, the Juvenile Court must take action in accordance with the health, safety and best interests of the minor, which may include an order that the minor stay in a facility designated by the Department of Children and Family Services, a licensed child welfare agency, or another suitable place designated by the court away from the child's home (referred to as "shelter care"). In order for the court to issue such an order directing that a minor be placed in shelter care, the court must find that it is a matter of immediate and urgent necessity for the safety and protection of the minor, and that reasonable efforts have been made to prevent or eliminate the necessity of removal of the minor from his or her home. After an order is issued directing that the minor be held in a shelter care facility, the minor may not be returned to the parent, custodian or guardian until the court finds that placement in the shelter care facility is no longer necessary for the minor's protection.

5. Petition Alleging Abused or Neglected Minor and Procedures

The Illinois Juvenile Court Act of 1987 also provides that any adult person, any agency, and the State's Attorney may file a petition alleging that a minor is abused or neglected, and that it is in the minor's best interests that he or she be adjudged a ward of the court. Within 90 days of the service

of the petition upon the minor, the minor's parents and any legal guardian or custodian, the Juvenile Court must hold an adjudicatory hearing to determine whether the minor is abused or neglected. Upon finding that a child has been abused or neglected, the Juvenile Court must issue an order stating its determination and the facts supporting its determination, and must advise the child's parents that they must cooperate with the Department of Children and Family Services, comply with the terms of a service plan prepared by the Department, and correct the conditions at hand, otherwise the parents will risk the termination of their parental rights. Within 30 days of entry of the court's finding that the child is abused or neglected, the court must hold a dispositional hearing where the court determines whether it is consistent with the health, safety and best interests of the child that he or she be made a ward of the court. At the dispositional hearing, the court may also terminate the parental rights of a parent if certain conditions are met, including finding that the parent is unfit to care for the child.

6. Definitions of Abuse and Neglect.

The Illinois Juvenile Court Act of 1987 and the Illinois Abused and Neglected Child Reporting Act contain similar definitions of "abuse" and "neglect". Both sets of definitions are included below as Appendices A & B.

QUESTION 2: WHAT AUTHORITY, IF ANY, CAN REMOVE A CHILD FROM A PARENT'S CARE IF THE CHILD IS SUFFERING OR AT RISK OF SUFFERING SIGNIFICANT HARM (OR SIMILAR)?

As described above, a law enforcement officer, a designated employee of the Department of Children and Family Services, or a physician treating a child may take or retain temporary protective custody of a child if the person has reason to believe that the child cannot be cared for at home or in the custody of the person responsible for the child's welfare without endangering the child's health and safety. In addition, a law enforcement officer may take a child into temporary custody if the officer has reasonable cause to believe the child is abused or neglected. Only a court, however, may permanently remove a child from the custody of his or her parents.

QUESTION 3: TO WHAT FORUM DOES THE AUTHORITY APPLY TO REMOVE A CHILD?

The Juvenile Court of Illinois handles petitions alleging child abuse and neglect and has authority to issue orders requiring removal of a child from the parents' custody.

QUESTION 4: DO CERTAIN PROFESSIONS OR PERSONS HAVE AN OBLIGATION TO REPORT TO AN AUTHORITY IF THEY SUSPECT THAT A CHILD IS AT RISK OF SUFFERING SIGNIFICANT HARM (OR SIMILAR) (I.E. "MANDATORY REPORTING")?

Yes, Illinois requires that certain individuals having reasonable cause to believe that a child known to them in their professional or official capacity may be an abused or neglected child shall immediately report to the Department of Children and Family Services.

QUESTION 5: IF MANDATORY REPORTING OBLIGATIONS EXIST, TO WHAT PROFESSIONS DO THEY APPLY?

7. Under Illinois law (325 ILCS 5/4), the following individuals have mandatory reporting obligations:
 - a. Physician;
 - b. Resident;
 - c. Intern;

- d. Hospital;
- e. Hospital administrator and personnel engaged in examination, care and treatment of persons;
- f. Surgeon;
- g. Dentist;
- h. Dentist hygienist;
- i. Osteopath;
- j. Chiropractor;
- k. Podiatric physician;
- l. Physician assistant;
- m. Substance abuse treatment personnel;
- n. Funeral home director or employee;
- o. Coroner;
- p. Medical examiner;
- q. Emergency medical technician;
- r. Acupuncturist;
- s. Crisis line or hotline personnel;
- t. School personnel (including administrators and both certified and non-certified school employees);
- u. Personnel of institutions of higher education;
- v. Educational advocate assigned to a child pursuant to the School Code;
- w. Member of a school board or the Chicago Board of Education or the governing body of a private school (but only to the extent required in accordance with other provisions of this Section expressly concerning the duty of school board members to report suspected child abuse);
- x. Truant officers;
- y. Social worker;
- z. Social services administrator;
- aa. Domestic violence programme personnel;
- bb. Registered nurse;
- cc. Licensed practical nurse;
- dd. Genetic counsellor;
- ee. Respiratory care practitioner;
- ff. Advanced practice nurse;
- gg. Home health aide;
- hh. Director or staff assistant of a nursery school or a child day care centre;
- ii. Recreational or athletic programme or facility personnel;
- jj. Early intervention provider as defined in the Early Intervention Services System Act;

- kk. Law enforcement officer;
- ll. Licensed professional counsellor;
- mm. Licensed clinical professional counsellor;
- nn. Registered psychologist and assistants working under the direct supervision of a psychologist;
- oo. Psychiatrist;
- pp. Field personnel of the Departments of Healthcare and Family Services, Juvenile Justice, Public Health, Human Services (acting as successor to the Department of Mental Health and Developmental Disabilities, Rehabilitation Services, or Public Aid), Corrections, Human Rights, or Children and Family Services;
- qq. Supervisor and administrator of general assistance under the Illinois Public Aid Code;
- rr. Probation officer;
- ss. Animal control officer or Illinois Department of Agriculture Bureau of Animal Health and Welfare field investigator;
- tt. Any other foster parent, homemaker or child care worker;
- uu. Any member of the clergy having reasonable cause to believe that a child known to that member of the clergy in his or her professional capacity may be an abused child;
- vv. Any physician, physician's assistant, registered nurse, licensed practical nurse, medical technician, certified nursing assistant, social worker, or licensed professional counsellor of any office, clinic, or any other physical location that provides abortions, abortion referrals, or contraceptives having reasonable cause to believe a child known to him or her in his or her professional or official capacity may be an abused child or a neglected child;
- ww. If an allegation is raised to a school board member during the course of an open or closed school board meeting that a child who is enrolled in the school district of which he or she is a board member is an abused child, the member shall direct or cause the school board to direct the superintendent of the school district or other equivalent school administrator to comply with the requirements concerning the reporting of child abuse.

APPENDIX A

Definitions of "Abused Child" and "Neglected Child" under the Abused and Neglected Child Reporting Act 325 ILCS 5/3

1. Definition of Abused Child

- a. "Abused child" means a child whose parent or immediate family member, or any person responsible for the child's welfare, or any individual residing in the same home as the child, or a paramour of the child's parent:
 - i. inflicts, causes to be inflicted, or allows to be inflicted upon such child physical injury, by other than accidental means, which causes death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function;

- ii. creates a substantial risk of physical injury to such child by other than accidental means which would be likely to cause death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function;
 - iii. commits or allows to be committed any sex offense against such child, as such sex offenses are defined in the Criminal Code of 2012 or in the Wrongs to Children Act, and extending those definitions of sex offenses to include children under 18 years of age;
 - iv. commits or allows to be committed an act or acts of torture upon such child;
 - v. inflicts excessive corporal punishment;
 - vi. commits or allows to be committed the offense of female genital mutilation, as defined in Section 12-34 of the Criminal Code of 2012, against the child;
 - vii. causes to be sold, transferred, distributed, or given to such child under 18 years of age, a controlled substance as defined in Section 102 of the Illinois Controlled Substances Act in violation of Article IV of the Illinois Controlled Substances Act or in violation of the Methamphetamine Control and Community Protection Act, except for controlled substances that are prescribed in accordance with Article III of the Illinois Controlled Substances Act and are dispensed to such child in a manner that substantially complies with the prescription; or
 - viii. commits or allows to be committed the offense of involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons as defined in Section 10-9 of the Criminal Code of 2012 against the child.
- b. A child shall not be considered abused for the sole reason that the child has been relinquished in accordance with the Abandoned Newborn Infant Protection Act.

2. Definition of Neglected Child

"Neglected child" means any child who is not receiving the proper or necessary nourishment or medically indicated treatment including food or care not provided solely on the basis of the present or anticipated mental or physical impairment as determined by a physician acting alone or in consultation with other physicians or otherwise is not receiving the proper or necessary support or medical or other remedial care recognised under State law as necessary for a child's well-being, or other care necessary for his or her well-being, including adequate food, clothing and shelter; or who is subjected to an environment which is injurious insofar as (i) the child's environment creates a likelihood of harm to the child's health, physical wellbeing, or welfare and (ii) the likely harm to the child is the result of a blatant disregard of parent or caretaker responsibilities; or who is abandoned by his or her parents or other person responsible for the child's welfare without a proper plan of care; or who has been provided with interim crisis intervention services under Section 3-5 of the Juvenile Court Act of 1987 and whose parent, guardian, or custodian refuses to permit the child to return home and no other living arrangement agreeable to the parent, guardian, or custodian can be made, and the parent, guardian, or custodian has not made any other appropriate living arrangement for the child; or who is a newborn infant whose blood, urine, or meconium contains any amount of a controlled substance as defined in subsection (f) of Section 102 of the Illinois Controlled Substances Act or a metabolite thereof, with the exception of a controlled substance or metabolite thereof whose presence in the newborn infant is the result of

medical treatment administered to the mother or the newborn infant. A child shall not be considered neglected for the sole reason that the child's parent or other person responsible for his or her welfare has left the child in the care of an adult relative for any period of time. A child shall not be considered neglected for the sole reason that the child has been relinquished in accordance with the Abandoned Newborn Infant Protection Act. A child shall not be considered neglected or abused for the sole reason that such child's parent or other person responsible for his or her welfare depends upon spiritual means through prayer alone for the treatment or cure of disease or remedial care as provided under Section 4 of this Act. A child shall not be considered neglected or abused solely because the child is not attending school in accordance with the requirements of Article 26 of The School Code, as amended.

APPENDIX B

Definitions of "Neglected or Abused Minor" under the Juvenile Court Act of 1987 705 ILCS 405/2-3

1. Definition of Neglected

- a. Those who are neglected include:
 - i. any minor under 18 years of age who is not receiving the proper or necessary support, education as required by law, or medical or other remedial care recognised under State law as necessary for a minor's wellbeing, or other care necessary for his or her wellbeing, including adequate food, clothing and shelter, or who is abandoned by his or her parent or parents or other person or persons responsible for the minor's welfare, except that a minor shall not be considered neglected for the sole reason that the minor's parent or parents or other person or persons responsible for the minor's welfare have left the minor in the care of an adult relative for any period of time, who the parent or parents or other person responsible for the minor's welfare know is both a mentally capable adult relative and physically capable adult relative, as defined by this Act [i.e. the Juvenile Court Act of 1987]; or
 - ii. any minor under 18 years of age whose environment is injurious to his or her welfare; or
 - iii. any newborn infant whose blood, urine, or meconium contains any amount of a controlled substance as defined in subsection (f) of Section 102 of the Illinois Controlled Substances Act, as now or hereafter amended, or a metabolite of a controlled substance, with the exception of controlled substances or metabolites of such substances, the presence of which in the newborn infant is the result of medical treatment administered to the mother or the newborn infant; or
 - iv. any minor under the age of 14 years whose parent or other person responsible for the minor's welfare leaves the minor without supervision for an unreasonable period of time without regard for the mental or physical health, safety, or welfare of that minor; or

- v. any minor who has been provided with interim crisis intervention services under Section 3-5 of this Act [i.e. the Juvenile Court Act of 1987] and whose parent, guardian, or custodian refuses to permit the minor to return home unless the minor is an immediate physical danger to himself, herself, or others living in the home.
- b. Whether the minor was left without regard for the mental or physical health, safety, or welfare of that minor or the period of time was unreasonable shall be determined by considering the following factors, including but not limited to:
 - i. the age of the minor;
 - ii. the number of minors left at the location;
 - iii. special needs of the minor, including whether the minor is physically or mentally handicapped, or otherwise in need of ongoing prescribed medical treatment such as periodic doses of insulin or other medications;
 - iv. the duration of time in which the minor was left without supervision;
 - v. the condition and location of the place where the minor was left without supervision;
 - vi. the time of day or night when the minor was left without supervision;
 - vii. the weather conditions, including whether the minor was left in a location with adequate protection from the natural elements such as adequate heat or light;
 - viii. the location of the parent or guardian at the time the minor was left without supervision, the physical distance the minor was from the parent or guardian at the time the minor was without supervision;
 - ix. whether the minor's movement was restricted, or the minor was otherwise locked within a room or other structure;
 - x. whether the minor was given a phone number of a person or location to call in the event of an emergency and whether the minor was capable of making an emergency call;
 - xi. whether there was food and other provision left for the minor;
 - xii. whether any of the conduct is attributable to economic hardship or illness and the parent, guardian or other person having physical custody or control of the child made a good faith effort to provide for the health and safety of the minor;
 - xiii. the age and physical and mental capabilities of the person or persons who provided supervision for the minor;
 - xiv. whether the minor was left under the supervision of another person;
 - xv. any other factor that would endanger the health and safety of that particular minor.
- c. A minor shall not be considered neglected for the sole reason that the minor has been relinquished in accordance with the Abandoned Newborn Infant Protection Act.

2. Definition of Abused

Those who are abused include any minor under 18 years of age whose parent or immediate family member, or any person responsible for the minor's welfare, or any person who is in the same family or household as the minor, or any individual residing in the same home as the minor, or a paramour of the minor's parent:

- a. inflicts, causes to be inflicted, or allows to be inflicted upon such minor physical injury, by other than accidental means, which causes death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function;
- b. creates a substantial risk of physical injury to such minor by other than accidental means which would be likely to cause death, disfigurement, impairment of emotional health, or loss or impairment of any bodily function;
- c. commits or allows to be committed any sex offence against such minor, as such sex offences are defined in the Criminal Code of 1961 or the Criminal Code of 2012 , or in the Wrongs to Children Act, and extending those definitions of sex offences to include minors under 18 years of age;
- d. commits or allows to be committed an act or acts of torture upon such minor;
- e. inflicts excessive corporal punishment;
- f. commits or allows to be committed the offense of involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons as defined in Section 10-9 of the Criminal Code of 1961 or the Criminal Code of 2012 , upon such minor; or
- g. allows, encourages or requires a minor to commit any act of prostitution, as defined in the Criminal Code of 1961 or the Criminal Code of 2012, and extending those definitions to include minors under 18 years of age. A minor shall not be considered abused for the sole reason that the minor has been relinquished in accordance with the Abandoned Newborn Infant Protection Act.

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