

Gender-Affirming Care in Texas:

What Parents and Guardians Need to Know

February 24, 2022

On August 23, Rep. Matt Krause requested an opinion from Attorney General Ken Paxton's office about whether certain types of gender-affirming care could constitute "child abuse" under Texas law. On February 21, a week before the Texas primary election, Paxton released a [non-binding opinion](#) to express his belief that certain treatments could constitute "abuse" under Texas law. Governor Abbott then sent [a letter](#) to the Department of Family and Protective Services (DFPS), in which he asked the agency to conduct a review of any reported incidents of "abuse" and ordered all state agencies to "follow the law" in accordance with Paxton's nonbinding and faulty opinion. To be clear, the Paxton opinion did not create new law or change existing law. Here is some general information about what this means for parents and guardians of transgender youth in Texas and how you may be protected.

If you are in Texas and are contacted by DFPS because you support your transgender child or teen, please reach out to the Lambda Legal Help Desk online at <https://www.lambdalegal.org/helpdesk> and 214-219-8585 or the ACLU of Texas: <https://intake.aclutx.org/>

Attorney General Paxton's Opinion and Governor Abbott's Letter are not legally binding.

- An attorney general opinion and letter from the governor have no legal effect and can't change Texas law or curtail anyone's constitutional rights.
- The attorney general and governor can share their opinions, but it is up to the courts to interpret Texas laws and the Constitution.

Gender-affirming care is life-saving, medically necessary care.

- [Every major medical association](#) has made clear that treatments like puberty blockers and hormone therapy are medically necessary for certain youth.
- The AG opinion does not impede parents or guardians from continuing to provide young people with necessary medical care, and the opinion itself states that it "does not address or apply to medically necessary procedures."
- Medical providers can continue to provide medically necessary gender affirming care.

No court here in Texas or anywhere in the country has ever found that medically necessary gender affirming care can be considered child abuse.

- The law is clear that parents, guardians, and doctors can provide transgender youth with treatment in accordance with prevailing standards of care.

Texas law protects families from false reports of child abuse.

- DFPS cannot remove any young person from their parents or guardians without a court order.
- Texas law requires courts and DFPS to consider the opinion of medical providers before removing any young person for abuse or neglect, and the legal standards for removal are very high.

Federal law protects transgender students' privacy in schools.

- The Family Educational Rights and Privacy Act (FERPA) protects young people's private medical information, including whether students are transgender.
- FERPA prohibits teachers, counselors, and school administrators from asking about students' private medical information or sharing with others whether a student is transgender.
- If your child's privacy rights are violated, you have a right to file a [FERPA complaint](#), and you can also report any discrimination, bullying, or

harassment in schools to the U.S. Department of Education's [Office for Civil Rights](#).

It is unconstitutional for the government to deprive transgender young people of necessary medical care.

- A federal court in Arkansas blocked a law that was the first in the country to try to ban gender-affirming medical care.
- That case is on appeal and essential medical care is still being provided in Arkansas and in every state.

Can mandatory reporters accuse you of abuse?

- No one has a legal duty to report someone who is being treated with gender affirming care and/or who is transitioning from the sex they were assigned at birth.
- The Texas mandatory reporter statute was recently amended to require that the person or professional must have "reasonable cause" rather than having "cause" to believe a young person is abused or neglected.
- Recent changes to Texas law require that a person's acts or omissions must now evidence "blatant disregard" for the consequences of their actions or inactions that results in harm or immediate danger to the young person's physical health or safety to rise to "neglect" under law. The conduct must also put the youth in "immediate danger" to constitute neglect.
- Texas law forbids an emergency removal order based solely on the medical opinion of a doctor under contract with DFPS who has not examined the youth. In making a determination as to whether a young person is in immediate danger, the court must consider the opinion of a medical professional obtained by the parent/guardian.
- In other words, there are robust protections in place to protect you against unwarranted intrusions into your and your child's rights.

If you or someone you know is impacted or falsely accused:

- Try to stay calm and remember that you have rights, even though this opinion and letter are deeply concerning.
- Document what is happening and try to get as much information as possible.
- Remember that you and your family have a right to privacy and you do not have to disclose whether your child or teenager is transgender. Nor do you have to disclose any private medical information to anyone. Neither you nor your child needs to disclose personal private information when asked. Do not volunteer information without seeking the advice of an attorney.
- You have a right to an attorney and do not have to speak to anyone from DFPS or law enforcement without an attorney.

If you or anyone you know is impacted by this opinion or any false accusations, please reach out to us. We are actively monitoring this and working to ensure that transgender youth continue to thrive here in Texas.

Lambda Legal:

<https://www.lambdalegal.org/helpdesk>
or 214-219-8585

ACLU of Texas: <https://intake.aclutx.org/>

Please note:

This document only provides general legal information and is not intended as legal advice.