

# When States Investigate Gender-Affirming Care as Child Abuse: Resolving the Dilemma for Forensic Interviewers and Children's Advocacy Centers

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## A Dilemma We Cannot Ignore

In February of 2022, Texas Governor Greg Abbott instructed the state's Department of Family and Protective Services (DFPS) to begin investigating parents whose children were receiving gender-affirming medical care – labeling such parental support as child abuse.<sup>3</sup> While this order has currently been stayed by multiple legal injunctions,<sup>4</sup> the future for Texas families is far from certain. Meanwhile, many more states have followed suit. As of early May 2023, eighteen states have enacted bans against gender-affirming care for minors and another thirteen have legislation under consideration.<sup>5</sup> The details of the laws and bills vary, including with respect to whom is penalized if services are sought, supported, or rendered. And for several bills currently under consideration, parents who facilitate access to gender-affirming services for their children could face penalties.<sup>6</sup>

If parental support of gender-affirming care is defined as child abuse, it triggers existing systems into response from statutorily mandated reporters to child protective services (CPS) agencies and their multidisciplinary partners. In the current best practice model of investigating claims of child abuse, CPS and law enforcement often coordinate with the local Children's Advocacy Center (CAC) to arrange a forensic interview.

A forensic interview is a neutral, developmentally appropriate, fact-finding inquiry that is conducted by a trained professional as one component of a multidisciplinary investigation. Child forensic interviewers are trauma-informed and seek to prevent additional harm from the investigative process, in part by minimizing the number of times a child is interviewed and conducting the

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<sup>3</sup> <https://gov.texas.gov/news/post/governor-abbott-directs-dfps-to-investigate-gender-transitioning-procedures-as-child-abuse>

<sup>4</sup> <https://www.aclu.org/press-releases/texas-court-expands-injunction-blocking-state-targeting-families-trans-youth-who-are>

<sup>5</sup> Alabama, Arkansas and Texas are currently stayed by temporary injunctions. <https://www.hrc.org/resources/attacks-on-gender-affirming-care-by-state-map>

<sup>6</sup> Id.

interview in a child friendly setting. In some states, such as the authors' home state of South Carolina, these practices are codified in law.<sup>7</sup>

## Child Forensic Interviewers Are Expected to Comply with Ethical Standards of Care

Nationwide, forensic interviewers come from a wide variety of educational and professional backgrounds. There is no unifying code of ethics for practicing forensic interviewers. Many, though not all, forensic interviewers are licensed mental health professionals who must comply with the ethical guidelines adopted by their respective state licensing boards. Beyond that, there are multiple professional organizations that play leadership roles in informing the daily practice of forensic interviewing, and some of these have ethical codes or standards for its members to follow. Chief among them is the National Children's Alliance (NCA), which is the accrediting body for CACs. In the 2023 edition of its National Standards of Accreditation, the NCA renamed Standard Two from "Cultural Competency and Diversity" to "Diversity, Equity and Access."<sup>8</sup> The NCA notes, "proactive, culturally relevant planning and outreach should focus on culture, experience of acculturation, ethnicity, religion, socioeconomic status, disability, **gender, gender identity and expression** [emphasis added], and sexual orientation."<sup>9</sup>

Individual professionals in child maltreatment may also be members of the American Professional Society on the Abuse of Children (APSAC), which has an ethical code<sup>10</sup> whose "Major Principles" begin with "Best Interests of the Child," noting,

We conduct ourselves at all times in a manner consistent with the best interests of the child, and hold this principle above all others... When certain objectives or purposes compete, the APSAC member makes the best interests of the child the priority...<sup>11</sup>

Its second principle affirms "the inherent dignity and worth of every human being,"<sup>12</sup> and its final principle is "Non-Discrimination," stating that,

APSAC members are aware of cultural and individual differences, including those due to socioeconomic status, age, **gender** [emphasis added], sexual orientation, race, ethnicity, national origin, language, religion, and disability. APSAC members strive to ensure that their

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<sup>7</sup> "The legislation requires law enforcement or child protective services to take a victim of suspected child abuse to one of South Carolina's Child Advocacy Centers. At the center, a team of trained professionals begins the investigation and conducts a single interview specifically tailored to not retraumatize the child. Then, a multidisciplinary team of medical professionals, law enforcement, child protective services, and other professionals review the case and decide the best way to move forward." <https://governor.sc.gov/news/2021-09/gov-henry-mcmaster-signs-child-abuse-response-protocol-act>

<sup>8</sup> National Standards for Accreditation of Children's Advocacy Centers, 2023 Edition, p. 22.

<sup>9</sup> Id.

<sup>10</sup> [https://www.apsac.org/\\_files/ugd/4700a8\\_6a46ba45db5a4794b06497c98d9c4281.pdf](https://www.apsac.org/_files/ugd/4700a8_6a46ba45db5a4794b06497c98d9c4281.pdf)

<sup>11</sup> Id at p. 2.

<sup>12</sup> Id at p. 2

work is free of **biases based on those factors** [emphasis added], and do not **knowingly participate in or condone unfair discriminatory practices**.<sup>13</sup>

Forensic interview training programs are also imbued with ethical and evidence-informed standards. For example, Zero Abuse Project's ChildFirst® Protocol teaches the foundational principle of the best interest of the child.<sup>14</sup>

## Relevant National Organizations Declare Restrictions on Gender-Affirming Care for Transgender Youth Unethical and Oppose CAC Involvement

Many national organizations have endorsed the evidence-based care and treatment of transgender youth as being in their best interests.<sup>15</sup> Consistent with adhering to evidence-based practice and the best interests of children, national organizations supporting the work of CACs have aligned with these views. In the NCA March 2022 Newsletter, CEO Teresa Huizar wrote: "No self-respecting Children's Advocacy Center (CAC) can have any part of investigations tied to a child's or youth's gender identity, gender expression, or sexual orientation. This is entirely antithetical to the values of our movement and our Diversity, Equity, and Access National Standard for Accreditation."<sup>16</sup> Zero Abuse Project put out a position statement on the Texas directive stating that these laws serve only to "drag the child welfare system along with every mandated reporter in Texas, into a conflict which only detracts from the real and critical work of keeping children safe."<sup>17</sup> Likewise, APSAC issued a Position Statement which read, in part, "APSAC strongly opposes recent attempts to criminalize and prohibit gender-affirming care as child abuse. Gender affirming care is not child abuse... Because gender-affirming care is so important to the health and well-being of transgender youth, traditionally a group at high risk of maltreatment, APSAC declares its support for transgender youth and rejects any characterization of gender-affirming care as 'child abuse' or criminal activity."<sup>18</sup>

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<sup>13</sup> Id at p.3

<sup>14</sup> "The overriding principle of the ChildFirst® model is the best interest of the child." <https://www.zeroabuseproject.org/>

<sup>15</sup> Specifically, the Endocrine Society, the American Medical Association, the American Psychological Association, the American Psychiatric Association, and the American Academy of Pediatrics, have published policy statements and guidelines on how to provide age-appropriate gender-affirming care. See Boerner, H. What the Science on Gender-Affirming Care for Transgender Kids Really Shows. *Scientific American*, online edition May 12, 2022 <https://www.scientificamerican.com/article/what-the-science-on-gender-affirming-care-for-transgender-kids-really-shows/>

<sup>16</sup> NCA Statement by CEO Teresa Huizar, March 1, 2022 email to NCA listserve

<sup>17</sup> Zero Abuse Project – Facebook post March 1, 2022

<sup>18</sup> APSAC Position Statement "Gender-Affirming Care Is Not Child Abuse" March 7, 2022

## The Forensic Interviewer's Quandary

Despite the many outcries and assertions of professional organizations since 2022, the bans on gender-affirming care have continued to proliferate. Hence, it seems it is only a matter of time before a CAC and its interviewers are faced with requests to interview children whose parents are supportive of their gender-affirming medical or mental health care. So where does that leave forensic interviewers? How does it affect their role in the multidisciplinary team (MDT) and investigative process? The types of abuse the forensic interviewer is asked to explore range from sexual and physical abuse to psychological abuse and witness to domestic violence or violent crime. The result of the interviewer's involvement may include testifying in legal proceedings to provide evidence of child abuse which was revealed during the interview. In response to the NCA's directive to be inclusive, many CACs have updated their paperwork to ask parents what their children's pronouns are, as well as their gender identity. Forensic interviewers then use that information to shape their language in videorecorded conversations. These inclusive practices place interviewers in a moral and ethical dilemma, especially since so much weight would most likely be placed on the evidence collected during the interview.

Robert Barker and Douglas Branson in their book, *Forensic Social Work*, write that "professional ethics should not be contrary to the laws of the jurisdiction in which the profession is practiced" and that "most ethical principles held by a profession are consistent with the relevant law."<sup>19</sup> Similarly, in its Code of Ethics, APSAC states, "APSAC members practice in compliance with applicable state and federal laws, regulations and ethical standards of their specific academic or professional disciplines."<sup>20</sup> While this harmony between ethics and laws may generally exist, in the present circumstance, it clearly does not. How, then, should forensic interviewers balance these laws with their professional ethics?

The National Association of Social Workers (NASW), in its position paper on the Texas directive, took a strong position on their professionals' ethical moorings, writing, "Because the Texas Attorney General's discriminatory opinion does not qualify as a change in statute, it does not change evidence-based standards for the delivery of care nor does it change guiding ethical codes of professional conduct."<sup>21</sup> Despite that strongly worded opinion on the narrow issue of the Texas executive directive and given that many states are now writing bans on gender-affirming care into law, it appears that forensic interviewers are headed straight into an unprecedented ethical dilemma. When faced with a referral that requires an interviewer to either follow ethical guidelines or comply with the law, a choice will have to be made.

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<sup>19</sup> *Forensic Social Work; Legal Aspects of Professional Practice*, Second Edition, Robert L. Barker and Douglas M. Branson, The Haworth Press, 2000

<sup>20</sup> [https://www.apsac.org/\\_files/ugd/4700a8\\_6a46ba45db5a4794b06497c98d9c4281.pdf](https://www.apsac.org/_files/ugd/4700a8_6a46ba45db5a4794b06497c98d9c4281.pdf)

<sup>21</sup> <https://www.socialworkers.org/News/News-Releases/ID/2406/NASW-Condemns-Efforts-to-Redefine-Child-Abuse-to-Include-Gender-Affirming-Care>

## The Option of Recusal

*1. Recusal from conducting the interview and denying permission for it to occur at the CAC.* There are multiple justifications which support recusal by the CAC and its forensic interviewers in order to avoid a conflict between their ethical obligations and the law. These include:

**a. Licensing.** Forensic interviewers who are licensed mental health professionals are likely justified in recusing themselves from interviewing transgender youth referred as part of any investigation into their gender-affirming care, by virtue of their codes of ethics. To do otherwise, would most likely violate their professional ethics and create a basis for sanctions by a licensing body. Forensic interviewers who are licensed mental health professionals may wish to consult their licensing boards to determine what specific professional ethics exist that they are required to uphold.

**b. Best interests of the child standard.** Child forensic interviewers may recuse themselves from interviewing youth in these investigations on the basis that conducting the interview betrays the duty to the child's best interests. Interviewers and CAC Directors may rely on the cited position statements in this article (e.g., NCA, NASW, APSAC, Zero Abuse Project), and may find additional supporting authorities as well.

**c. NCA Standards of Accreditation.** Standard 02 (Diversity, Equity and Access) is incompatible with interviewing children to develop evidence against caregivers who are supportive of their child's gender-affirming medical or mental health care. Therefore, participating in these investigations means risking the loss of accreditation, which provides a strong justification for CAC recusal.

**d. Adherence to evidence-based practices.** CAC services in general are rooted in research. Whether it is evidence-based therapy or research-driven protocols for child forensic interviewing, CAC staff strive to provide care that is effective and legally defensible. Major medical and mental health associations are endorsing the science behind gender-affirming care for transgender youth, which includes the importance of parental support. Therefore, to investigate parents whose children are receiving gender-affirming medical care and labeling such parental support as child abuse is contrary to evidence-based practices and would not be defensible based upon the body of contemporary research.

*2. Recusal or Advocacy as MDT participants.* Additional recusals from any case discussions or MDT meetings may be warranted to avoid liability or tacit approval of the process. Alternatively, a forensic interviewer could participate for the explicit purpose of educating team members as to the risks of harm to the affected children and families.

## A Call to Prepare

All CACs and forensic interviewers should be discussing such scenarios now - both in-house and with their MDT partners - as the number of states capable of implementing this child abuse framework is likely to grow. If a written MDT investigative protocol exists within a jurisdiction, consideration should be given to updating it in order to address how such an investigation would be handled, if at all. The wave of legislation against trans children and their parents presents an unprecedented threat to our core principles of listening to children and putting their needs above all others. Therefore, we believe the only ethical choices for forensic interviewers and CACs are recusal, opposition, and education.