

Could hiding income to avoid paying child support constitute child neglect?

Elisa M. Reiter & Daniel Pollack | December 15, 2021



Based on each parent's income and the cost of caring for their children, child support is periodic financial support paid from one parent to the other. Depending on the state, the exact amount of child support will be determined by taking into account such things as:

- The number of children before the court
- The number of children for whom the obligor has the duty to support who are not before the court
- Statutory guidelines

- Health, education, and childcare expenses
- Each parent's income
- Extraordinary and specialized care expenses

Failure to pay child support may result in enforcement proceedings. If a contempt proceeding is successful, the party prosecuting the case may be awarded legal fees and sanctions. If the failure to support the child has been of sufficient duration, the nonpayment of support may provide a ground for termination of parental rights. On the Texas Attorney General's [website](#), the following appears:

Children do best when they receive the emotional and financial support of both parents. When children do not receive consistent support, it can affect their quality of life. When child support payments aren't made, the Office of the Attorney General can take many actions to enforce the court order. These can include court action, license suspension, credit reporting, passport denial and more.

Might failure to pay child support be construed as a form of child neglect? Child neglect can take a number of forms (See [Fam. Code § 261.001](#)):

- 1) Basic needs. This is the failure to provide a child with basic needs such as food, clothing, and shelter.
- 2) Medical. This is the failure to provide necessary medical or dental care for the child.
- 3) Educational. This is the failure to ensure a child is enrolled, is not truant, and their special education needs are addressed.

[Texas Family Code Section 161.001\(b\)\(1\)\(F\)](#) provides as follows:

(b) The court may order termination of the parent-child relationship if the court finds by clear and convincing evidence:

(1) that the parent has:

(F) failed to support the child in accordance with the parent's ability during a period of one year ending within six months of the date of the filing of the petition. . .

Why consider termination of parental rights? To preserve and protect the best interests of a child, if and when:

1. The risk to the child outweighs preservation of the relationship, versus assurance that the child will have the benefit of being supported emotionally and financially by both parents.
2. The other parent has absented himself or herself and there is nonetheless a need to manage the child's needs (often when Child Protective Services has stepped in, removed the child from a parent's care, and via agreement or court order, the child is placed in foster care).
3. Termination of parental rights is a first step toward adoption, where there is another individual hoping to adopt the child, and to assume the duty and responsibility to support the child.

The Texas Supreme Court held in In re C.W. that:

Texas Family Code section 161.001(b) allows for involuntary termination of parental rights if clear and convincing evidence supports that a parent engaged in one or more of the 21 enumerated grounds for termination and that termination is in the best interest of the child. TEX. FAM. CODE § 161.001(b).

In New York State, termination of parental rights can be predicated on a number of grounds, as set out at <https://www.nycourts.gov>:

A termination of parental right(s) happens when a city agency (like New York City's Administration for Children's Services) or foster care agency files a petition in Family Court asking a judge to end a parent's parental rights. The petition must give a ground (legal reason) for the termination. There are five legal grounds to terminate parental rights: abandonment, permanent neglect, mental illness, mental retardation, and severe and repeated abuse. . .

Because the parent-child relationship is considered so important, if someone is faced with a termination case and the respondent cannot afford a lawyer, the court will appoint a lawyer to represent that individual, to assure that the respondent to the termination case has adequate, zealous representation and is accorded due process. Many years ago, in Lassiter v. Department of Social Services, the United States Supreme Court noted in *dicta* that:

The parent's interest in the accuracy and justice of the decision to terminate parental status is an extremely important one ... the State shares with the parent an interest in a correct decision, has a relatively weak pecuniary interest in avoiding the expense of appointed counsel and the cost of the lengthened proceedings his presence may cause ... the complexity of the proceeding and the incapacity of the uncounseled parent could be, but would not always be, great enough to make the risk of an erroneous deprivation of the parent's rights insupportably high. . .due process would require appointment of counsel.

However, in Lassiter, the Court held that:

the trial judge did not deny petitioner due process of law when he did not appoint counsel for her. The record shows, *inter alia*, that the

petition to terminate petitioner's parental rights contained no allegations of neglect or abuse upon which criminal charges could be based; no expert witnesses testified; the case presented no specially troublesome points of law; the presence of counsel could not have made a determinative difference for petitioner; she had expressly declined to appear at the 1975 child custody hearing; and the trial court found that her failure to make an effort to contest the termination proceeding was without cause.

Should an individual's parental rights be terminated, that person may appeal the decision. In New York state, such a party has 30 days from the date the termination order was made to appeal a Family Court order. Failure to pay child support on a timely basis for six months or more may be grounds for termination of parental rights.

Whether or not hiding income results in formal child neglect charges, parents need to support their children by providing them with financial support, or face the consequences.

Elisa Reiter is a senior attorney at Underwood Perkins, P.C. She is double Board Certified in Family Law and Child Welfare Law by TBLS.

Contact: ereiter@uplawtx.com.

Daniel Pollack, MSW, JD is a Professor at Yeshiva University's School of Social Work in New York. Contact: dpollack@yu.edu.