



To: Texas Judges Who Hear CPS Cases

From: The Honorable Robin Sage and The Honorable Dean Rucker,
Jurists in Residence, Supreme Court Children's Commission

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RE: Parental Child Safety Placements, or PCSPs

Earlier this year, Governor Abbott requested that DFPS review its handling of Parental Child Safety Placements (PCSP) to ensure that children placed with relatives under this type of agreement are safe and cared for by a stable caregiver. DFPS issued a new PCSP Guide to help caseworkers determine when and under what circumstances a case is appropriate for a PCSP in lieu of, or preliminary to, a removal from the parent's home and entry into foster care. Because this new process may impact the cases you see in your courts, we are sending this Jurist in Residence letter to make you aware of this change and to prepare you for a possible increase in filings of Suits Affecting the Parent-Child Relationship (SAPCR) in your jurisdiction.

Q: What is a Parental Child Safety Placement?

A: When the Department of Family and Protective Services (DFPS) initiates an investigation of a parent for abuse or neglect of a child and makes an initial determination that the child may not be safe with the parent, DFPS may allow the parent to place the child with a family member to help ensure the child's safety while the agency completes the investigation or provides necessary family-based safety services to help prevent or eliminate the need to legally remove the child. To formalize the placement of the child, DFPS will often enter into a Parental Child Safety Placement, or PCSP, recognized and regulated under Texas Family Code Chapter 264, Subchapter L.

Q: Does DFPS consider a PCSP to be a removal from the parent?

A: No, per DFPS policy, placement with a PCSP caregiver is not a "removal" from the parent because the parent retains legal custody of the child. During FY2014, there were over 30,000 children in a PCSP and, of those, DFPS ultimately sought legal custody of less than 4,000. In most cases where DFPS did have to seek legal custody for the safety of the child, the child remained with the PCSP caregiver who became a kinship placement.

Q: What is the duration of a PCSP?

A: While there is no bright line for how long a PCSP may be open, PCSPs are intended to be temporary and short in duration. Ideally within 60 days a decision should be made about the direction of the case. However, because many PCSPs have historically been open for much longer, DFPS's new Guide and process will change the way DFPS handles PCSPs, as well as help ensure PCSPs are closed timely and in a manner that ensures the safety of the children involved.

Q: How is DFPS changing the way it deals with PCSPs?

A: First, DFPS is working to help caseworkers better assess when and under what circumstances a case is appropriate for a PCSP, and closer attention is being paid to whether the issues that brought the family to DFPS' attention can be resolved or ameliorated within a short time, generally within 60-90 days.

Second, DFPS is looking at the best way to end a PCSP while ensuring the safety of the children involved. This may involve assisting caregivers with obtaining authorization agreements under Texas Family Code Chapter 34. Alternatively, in situations where leaving the child with the caregiver is not safe because the caregiver cannot or will not keep the child safe from the parent, DFPS will seek conservatorship of the child under Chapter 262.

Q: What impact will the change in DFPS policy and practice have on my court?

A: Your jurisdiction may see an increase in filings of SAPCRs as DFPS seeks to protect children in cases in which a PCSP has become unstable or can no longer ensure safety of the child. The SAPCR will likely be filed under Texas Family Code Chapter 262. From a legal perspective, placement with a PCSP in lieu of removal to foster care may impact DFPS' ability to later establish immediate danger required for emergency removal under Sections 262.101 or 262.107. However, Family Code Section 262.113 allows DFPS to pursue a non-emergency removal after notice and hearing; this standard does not require immediate danger, and the court may be presented with a show cause order for a hearing to seek custody rather than an ex parte order authorizing the immediate removal of the child from the parent. Under Section 262.113, DFPS is only required to present evidence establishing that reasonable efforts to prevent or eliminate the need to remove the child from the child's home have been made and that allowing the child to remain in the home would be contrary to the child's welfare.

Q: How else might courts be involved when the child cannot reunite with the parent, but the PCSP appears stable and safe?

A: Annually, approximately 2,400 children, or about seven percent of all PCSP placements, remain in a PCSP with no formal conservatorship in place after DFPS closes its case. Going forward, whenever possible, DFPS will assist the caregiver and parent in executing an Authorization Agreement for a Non-Parent under Texas Family Code Chapter 34 before case closure.

Also, though not directly related to the legal process, DFPS staff will also conduct follow up phone calls with the PCSP caregiver within a specified time period to check that circumstances have not changed and the caregiver is still able to care for the child. During a "check in," the staff will ask about whether any needs have arisen that could be met by referrals to available community services or whether circumstances have changed such that a new referral of child abuse or neglect should be made. The assigned caseworker will discuss this "check in" process with the PCSP caregiver prior to closing the case. DFPS has also committed to developing a tool to capture data related to the circumstances and conditions noted during the "check-in" and will use predictive analytics to identify patterns and trends on the cases that do experience recidivism to further inform needed policy and practice changes.

Finally, the Children's Commission and DFPS held a Round Table on August 28, 2015, to discuss PCSPs. A report from the Round Table is forthcoming and will further discuss the legal issues related to PCSPs and how courts may be impacted.