

Foster Care Services: Placement Authority

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PLACEMENT AUTHORITY

TYPES OF PLACEMENT AUTHORITY

1002.1

Requirement

The county department derives placement authority for children in care by any of the following means:

- Juvenile court order giving temporary custody;
- Juvenile court order terminating parental rights;
- Voluntary Consent to Place Child in Foster Care (Form 3 or Form 5);
- Consent to Remain in Care (Form 7);
- Voluntary surrender of parental rights;
- Superior court order; or
- Request for short-term emergency care (DFCS Authorization to Accept Responsibility for Short-Term Emergency Care).

1002.1 PRACTICE ISSUES

1. Preserving and strengthening families to prevent the unnecessary removal of children from their homes is an integral part of permanency planning. It recognizes that most children's need for permanency is best met by insuring the continuity of family relationships.
2. The health and safety of children is the paramount concern when making critical decisions about whether a child should be removed from the home as the only alternative for the child to be protected and safe.
3. Placement authority for the majority of children in care is derived from an order of the court. In many ways, the court acts as "gatekeeper" for children entering and exiting the foster care system. Consequently, DFCS and the court must work together and share the accountability in assuring permanency at the earliest possible time for all children.

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4. The Juvenile Court Code lists four circumstances in which a child may be considered “deprived.”
 - When the child is without proper parental care or control necessary for his physical, mental or emotional health or morals;
 - When the child has been placed for care or adoption in violation of the law;
 - When the child has been abandoned by his parents or other legal custodian; or
 - When the child is without a parent, guardian or custodian.

An exception to the above is specifically described in the Code; that is, “No child who in good faith is being treated solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination...shall, for that reason alone, be considered a deprived child.” However, it may be necessary for DFCS to intervene when a child’s life or long-term health may be in danger.
5. The decision to file a complaint or petition alleging deprivation is an extremely critical one made in child protective services. However, despite reasonable efforts to correct or improve the circumstances or conditions responsible for the abuse or neglect, a child may remain in imminent danger or be a victim of maltreatment. For the child’s safety and health, removal may be the only alternative.
6. The juvenile court has exclusive jurisdiction over a child who is alleged to be deprived. However, the juvenile court will not accept a deprivation petition filed by one parent against another as a possible attempt to modify a custody award.
7. The deprivation petition is filed in the county in which the child resides or in any county where the child is present when the proceeding is commenced. This is referred to as “venue.”
8. Whenever an order of disposition incorporates a reunification plan and the residence of the parent is not in the county of the court with jurisdiction or the residence of the parent changes to a county other than the county of the court with jurisdiction, the court **may transfer jurisdiction** to the juvenile court of the residence of the parent(s) to whom reunification is directed. (See 1002.29 regarding the limited circumstances in which a transfer of jurisdiction may be appropriate.) The transferring court has 30 days from the filing of the transfer order to provide the receiving court with certified copies of the adjudication order, the order of disposition, the order of transfer, the case plan and other such court documents deemed necessary.

JUVENILE COURT PROCESS

1002.2

Requirement

The Case Manager needs to be knowledgeable about the following legal issues:

- (1) The rights, roles and responsibilities of the county department when serving as custodian of children in care;
- (2) The procedural safeguards for the parents of children in care;
- (3) The juvenile court process;
- (4) The applicable sections of the Juvenile Court Code and Federal law (PL96-272 & PL105-89);

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- (5) The court order requirements for enhanced federal matching funds; and
- (6) The time frames for custody and other legal actions.

JUVENILE COURT PROCESS		
Action	How Accomplished (Process)	Outcome
Child removed from home for his safety and protection and is placed in care	<ul style="list-style-type: none"> • DFCS files a deprivation complaint or petition; or • Court issues an ex parte order or other such order granting authority; or • Law enforcement or officer of the court removes and obtains approval from the court or a designated intake officer authorizing DFCS to take placement responsibility; or • A verbal order is issued by a juvenile court judge (only if followed by a written order which is obtained the first work day after the issuance of a verbal order). 	Child considered in protective custody until an informal detention hearing within 72 hours is held. A written order signed by the judge (or designated court personnel) should be obtained for the case record as the documented legal authority to hold a child.
72-Hour Hearing (Detention Hearing)	<ul style="list-style-type: none"> • Scheduled as a result of the filing of a deprivation complaint or petition. • Purpose is to allow the court to determine whether there is probable cause to believe that the allegations of the complaint are true. 	If probable cause found, the judge may order that the child remains in shelter care. A petition must be presented to the court within five calendar days of the 72-hour hearing. The order issued as a result of the 72-hour hearing must contain the <i>“contrary to the welfare of the child”</i> * or <i>“placement is in the best interest of the child.”</i> * Additionally, any order issued up to 60 days from removal must contain the <i>“reasonable efforts to prevent removal”</i> * finding. See Appendix E for “Model Order for Shelter Care.” <p style="text-align: right;">* IV-E requirement</p>
Adjudicatory (10-Day) Hearing	<ul style="list-style-type: none"> • Held within ten calendar days (unless continued by the court) of filing the deprivation petition. • Purpose is to determine whether the allegations in the petition are true and if the child is “deprived” for purposes of the Juvenile Court Code. • A dispositional hearing may be held immediately following the adjudicatory hearing or continued until another date. 	After hearing the evidence, the court will make and file findings regarding the child's deprivation, including whether such deprivation is found as a result of alcohol or other drug abuse. Such findings become the basis of the initial Case Plan for Reunification. Judicial determination may be made at this time (or in a later order) as to whether DFCS is making <i>“reasonable efforts to preserve and reunify families.”</i>

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Action		
Dispositional Hearing	<ul style="list-style-type: none"> • Purpose is to determine what actions and recommendations are in the best interest of the child now that he/she has been found "deprived." • If available, DFCS should share the results of the Comprehensive Assessment with the court to assist decision-making re: the placement and needed service activities. • The initial Case Plan may be incorporated into the dispositional order of the court (or in a later supplemental order). 	<p>The possible dispositional alternatives are:</p> <ul style="list-style-type: none"> -Permit the child to remain with parent or other custodian, possibly with supervision; -Transfer temporary legal custody to DFCS, another agency or any individual (including a putative father) who has been studied and approved for the care of the child.
Motion Hearing (Extension of Custody)	<ul style="list-style-type: none"> • Held within 12 months from the date the child is removed from the home for purposes of extending custody. It is recommended that DFCS files for a motion hearing within 90 to 120 days of the expiration of the temporary custody order. 	<p>If granted, this single extension of custody is for a period not to exceed 12 months.</p>
(Case Plan) Review Hearing	<ul style="list-style-type: none"> • Held if the parent disagrees with Case Plan and exercises his/her right to request a hearing before the court within 5 days of receipt of the Plan. 	<p>Upon reviewing the Case Plan and hearing evidence, the court may issue a supplemental order to incorporate any changes/revisions.</p>
Permanency Hearing	<ul style="list-style-type: none"> • Held whenever a Non-Reunification Case Plan is submitted to the court, then a hearing shall be scheduled within 30 days from the filing of the Plan; or held within 12 months of removal of the child (whichever comes first) to determine the permanency plan and set the future course of the case. • Thereafter, held every 12 months as long as the child remains in care. (Can be held in conjunction with the Motion Hearing to extend custody.) 	<p>A permanency plan finding is made as well as a judicial determination to the effect that "reasonable efforts to finalize the permanency plan."** Other findings, if applicable, are made with respect to the child in out-of-state placement or for the youth age 14 and over. An order is entered (usually within 30 days of the permanency hearing documenting the court's findings).</p> <p style="text-align: center;"><i>*IV-E requirement</i></p>
Review Hearings	<ul style="list-style-type: none"> • May be held at any time by the court to determine the continued appropriateness of the Case Plan goals / services and the progress to date; overall case outcome for permanency is the focus. 	<p>At the time of every review, DFCS will be expected to indicate whether and when the agency intends to file a petition for termination of parental rights. A supplemental order may be entered if there are Case Plan revisions.</p>

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TEMPORARY COURT ORDERS

A. DURATION OF ORDERS AND DISPOSITION OF DEPRIVED CHILD

1002.3

Requirement

Initial orders granting temporary custody to **DFCS** are in effect no longer than **12 months** from the date of removal of the child from the home. (See 1002.11 for "Extensions of Custody.")

An order granting temporary custody of a child to an entity or individual **other than DFCS**, continues in force for not more than **two years**. The court may terminate its order earlier than the two years or may extend its duration for further periods.

1002.3 PRACTICE ISSUES

1. A legal **custodian** of a child is defined as:
 - A **person** other than a parent or legal guardian, who stands in loco parentis to the child; or a person to whom legal custody has been given; or
 - A **public or private agency or other organization** licensed or otherwise authorized by law to receive and provide care for a child.
2. The rights and duties of a custodian (including DFCS) include:
 - To have physical custody of the child;
 - To determine the nature of care and treatment of the child (including ordinary medical care);
 - To provide for the care, protection, training, and education and the physical, mental and moral welfare of the child;
 - To provide for what otherwise would be the rights and duties of the child's parents or guardian.
3. Subject to the conditions and limitations of the order, the county department as the child's legal custodian may:
 - Determine and monitor the place the child will live to assure the child's safety and well-being;
 - Select an appropriate training/educational facility for the child;
 - Delegate to someone else (i.e., a foster parent or group residential facility), the day-to-day care and supervision of the child, including approval of supplemental care; i.e., day care, babysitters, etc.;
 - Obtain routine medical and dental care;
 - Provide for usual recreational activities;
 - Approve out-of-town trips;
 - Arrange for purchase of appropriate clothing, haircuts, etc.
 - Inform parents of injuries, accidents and illnesses of the child;

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- Arrange for and monitor visitation between the child and parents/other family members.
4. Subject to the conditions and limitations of the order, the parent retains the right to:
- Participate in permanency planning for the child;
 - Visit the child;
 - Petition the court at any time for the return of custody;
 - Determine the child's religious affiliation;
 - Consent to the child's adoption, marriage or enlistment in military service; driving an automobile or traveling out-of-state;
 - Grant permission for major, non-emergency surgery; in some instances, the court may empower the county department by language in the court order to consent for all surgery or the county department may determine that an additional special court order is necessary when obtaining parental consent is not possible;
 - Receive notice of any changes in the child's placement.
5. If a child is found to be deprived, the court may make any of the following orders of disposition best suited to the protection and physical, mental, and moral welfare of the child: (1) Permit the child to remain with his or her parents, guardian, or other custodian, including a putative father, or (2) transfer temporary legal custody to any of the following persons or entities:
- Any relative or individual, including a putative father, who has been studied and approved;
 - An agency or other private organization licensed or legally authorized to receive and provide care for a child;
 - Any public agency authorized by law to provide care for the child; or
 - An individual in another state (see ICPC Section 1017).

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B. REASONABLY DILIGENT SEARCH

A reasonably diligent search is required by law (O.C.G.A. § 15-11-55) to identify those individuals who may be considered a resource for placement or custody of the child. The search includes the parents or relatives of the child, as well as other persons who have demonstrated an ongoing commitment to the child. Information-gathering usually begins during the CPS investigation process. Once the child is removed, the search intensifies. The CPS and/or PLC case manager share in the responsibility of obtaining relevant information and documenting the search efforts. The law specifies a limited time frame in which the search must be completed, the results documented and filed with the court for review and approval. Conducting the search on the “front-end” increases the likelihood of making sound placement decisions for the child as well as expediting permanency.

1002.3.1

Requirement

At a minimum, the SSCM conducts the search by identifying the following individuals in the child’s life:

Parent of the child

Includes legal mother and legal father of the child. (Also includes the legal father who is not the biological father of the child.)

Relative of the child

Includes those related to the child by blood or marriage on both the maternal and paternal sides of the child’s family (great-grandparents, grandparents, uncles, aunts, adult cousins and adult siblings). Also includes the biological father who is not the legal father of the child and his relatives.

Other persons who have demonstrated an ongoing commitment to the child

Includes those considered “significant” to the child: i.e., one who has had a positive, meaningful and/or parent-like relationship to the child prior to his/her coming into care. Non-related persons such as a family friend, stepparent, “play” aunt, godparent; etc., may be identified by the child, family or others.

1002.3.1 Practice Issues

1. Some courts may provide the Department with suggestions and expectations concerning the diligent search. Every effort should be made to meet these expectations.
2. In conducting the search, degrees of relationship are not specified by the law. However, if there is a relative by blood or marriage whose

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relationship to the child is more distant than the ones specified above, then it would be appropriate to include that relative (within reason) in the scope of the search.

3. In the case of an American Indian Child who may have some degree of Indian Heritage, see the provisions in 1002.32 regarding the requirements of the Indian Child Welfare Act.
4. Should DFCS wish to pursue a placement with or establish the biological relationship of a child to an alleged father, the following options may assist in the search:
 - See 1002.16 regarding legitimation in juvenile court.
 - See 1003.20 regarding the Diligent Search Request for Parent Locator Services provided through Child Support Enforcement (CSE).
 - See 1003.21 regarding DNA testing by CSE as part of a referral for child support collection.
 - See 1016.15 regarding the use of Wrap-Around funds to pay for DNA testing.

B. CONDUCTING THE SEARCH

1002.3.2

Requirement

In conducting the search, the SSCM follows the steps:

- a. Interviews the child and the child's family about the identification of extended family and others significant to the child;
- b. Reviews the Basic Information Worksheet (Form 450) to identify the names of household members, significant others, absent parents and other client information;
- c. Uses the Family Team Meeting, initial Case Planning meeting and/or the Multi-Disciplinary Team (MDT) meeting as an opportunity to interview parents and other participants regarding extended family and others significant to the child. Obtains contact and any other information concerning who might be a potential placement resource (short-term and permanent, if necessary, for the child);
- d. Reviews the Family Assessment Report portion of the Comprehensive Child and Family Assessment that provides information about the family system. Attention is given to the following sections of the report:
 - Key Data (listing of key family members, their relationship and documentation of any contact)
 - Form 419 (Background Information for State Agency Child)
 - Genogram

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- Results of any reference contacts (if made by the Assessment provider)
- b. Checks the following DFCS data systems for information concerning individuals identified in the search who may be potential placement resources:
 - SUCCESS
 - IDS online: Click: Master Index” and “Other Links” for CPS (PSDS Screening) and Criminal Search (GBI Sex Offender Search and Georgia Department of Corrections)
 - Any other known source of information
- c. Contacts any other person involved with the child or family who may have information to share about those known by and interested in the child/family; e.g., CASA, Child Advocate, attorney guardian ad litem, CCFA Provider, day care or school staff, etc.
- d. Makes direct contact via telephone, mail or face-to-face to determine the individual’s interest and suitability in being a placement resource (See Sample Letter in Addendum to Section 1002.)

1002.3.2 Practice Issues

1. Since CPS case managers are usually involved with the family prior to and/or shortly after the removal of the child, identifying information is recorded in the Basic Information Worksheet (Form 450) from interviews with the child, family and others. The form 450 is updated, as additional information becomes known.
2. During an initial court hearing, the judge may request the parent to identify the names, addresses, phone numbers and other contact information of any related or non-related individual who may be a resource or potential resource for the child.
3. There are many informal ways to search for and/or obtain contact information on relatives and others. The SSCM may find it helpful to contact the postal service for establishing the last known address or a forwarding address; neighbors or landlords, the Department of Motor Vehicles, local law enforcement, telephone and utility companies, employers, etc.
4. The individual circumstances of the case may dictate how and to what extent the search is conducted. For example, if reunification is imminent, then conducting an extensive search for a placement resource for a child may not be necessary. In such case, the court may provide DFCS with the parameters and scope of conducting what is considered “reasonably diligent.”
5. For children who enter care as a result of a Voluntary Placement Agreement, search efforts will be required along with documentation of the results via

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Case Plan Reporting System. Should the county department obtain temporary custody at a later time, the results of the earlier search would be filed with the court, along with any revisions or updates known to DFCS.

6. For children who enter care as a result of a Voluntary Surrender, search efforts will require the SSCM to secure as much background information as possible using Form 419. The SSCM needs to explore with the parent contemplating surrender, all possible alternate plans, including relative assistance or placement. Note: If both parents voluntarily surrender rights to a child, no diligent search is required. The gathering of background information is still required by policy and law but it is for purposes of disclosure to prospective parents and to preserve history for the adoptee's eventual access. (See Section 103.2, Adoption Services Manual.)

C. TIMELINESS of the SEARCH

1002.3.3

Requirement

The search is completed, the results summarized via the CPRS, and a hard copy printed and filed with the court no later than **60 days of the child's removal**. Only in rare and unusual circumstances would the search continue up to 90 days of the child's removal. In such case, the SSCM would file an amended report with the court documenting the department's "**Diligent Search Efforts.**"

1002.3.3 Procedures

1. If the search is completed prior to the submission of the initial case plan to the court, print out the following CPRS screens: Face Sheet and Plan Group. Attach a cover letter to identify the documents as the department's "**Diligent Search Efforts**" and file with the court.
2. If both the search and the department's initial case plan are ready at the same time for submission to the court, separate the Face Sheet and Plan Group; attach a cover letter and file the written "Diligent Search Efforts" with the court. (The CPRS in its entirety may then be submitted to the court in the usual way, either electronically or in writing.)
3. If the initial case plan has already been submitted and the search continues up to 60 days, print out the screens identified above. Attach a cover letter to identify the documents as the department's "Diligent Search Efforts" and file with the court.
4. If there are extraordinary circumstances that prevent the SSCM from completing the search within 60 days of the child's removal, an explanation

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must be documented in the case record. Attach a cover letter to identify the documents as the department's "Diligent Search Efforts" and file with the court (no later than 90 days from removal). Note: Diligent Search is never extended beyond 90 days in any circumstance.

1002.3.4 Practice Issues

1. While the legal requirement for the reasonably diligent search states that the results must be documented in writing and filed "at the time of the first review," waiting until that time to file the search results is not good practice because the first review may not be completed until six months following removal. Therefore, good practice dictates that the completion of the diligent search and the filing of the results occur within 60 days of the child's removal. Filing the results in the first 60 days will permit the court to study the report prior to the expiration of the 90-day search deadline.
2. The search results must be documented in writing and should summarize information contained in the following such source documents as Forms 450, 452, 419, the Comprehensive Child and Family Assessment (CCFA), etc.
3. Pending the completion of the search and the entering of the dispositional order, the child may be placed in the temporary legal custody of DFCS or any other appropriate person or entity.
4. All reasonable efforts should be made to conduct the search prior to the initial dispositional hearing. An order granting temporary custody cannot become the "final" until the search is completed, documented, filed and approved by the court.

Because the final disposition cannot be made until the diligent search is conducted, the final disposition order should address the diligent search. The court may include language such as "A reasonably diligent search for the parents, relatives, and person who have demonstrated an ongoing commitment to the child(ren) has been conducted by the _____ County Department of Family and Children Services and has been filed in this Court.

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D. DOCUMENTING the SEARCH

1002.3.4

Requirement

The SSCM summarizes the results of the diligent search in CPRS via the completion of the following screens:

- **Face Sheet** and Plan Group (Including the Caretakers, Relative, Caseworkers, and Children); and the
- **Comment** field (for entering additional information concerning the identified individual).

Once completed the SSCM follows the normal print process to obtain a “hard” copy of the Face Sheet section of the case plan. This document summarizes the results of the department’s diligent search that will be filed with the court for review and approval.

1002.3.5 Practice Issues

1. The “**Caretaker**” **screen** reflects any individual who may have cared for the child at the time of removal or at any time in the past. The mother of the child is always entered. The SSCM may also add non-related caretakers as long as the individual acted in a “caretaker” role at some point in the child’s life. The specific relationship of the individual to the child is entered on the “Child” screen.
2. The “**Relative**” **screen** reflects any other individual identified in the search. Always specify the individual’s relationship to the child in the “Comment” field. Fictive Kin, other persons who have demonstrated an ongoing commitment to the child, stepparents, godparents, etc., may be identified using this screen. The specific relationship to the individual to the child is entered and/or explained on the “Child” screen.
3. The SSCM enters as much identifying information as possible, but at least such basic information as the name, address, and phone number of the individual for contact purposes. It may be necessary to use other sources of information such as phone directories, directory assistance, etc., to obtain this type of specific information.
4. The purpose of the “Comment” field is to enter additional information on the identified person including the type of contact made, the date, the SSCM, the source of information, the outcome/response, the stated interest of the individual in being considered a resource, the specific checks performed to determine suitability, etc. Examples of remarks related to the

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outcome/response of contacts as documented in the “Comment” field are:

- o “Paternal uncle checked and cleared the following DFCS data systems (specify)...”
- o “Adult sibling to the child (age 23) has no prior CPS history with the agency”
- o “Maternal grandmother responded favorably to the search letter sent on (date)...”
- o “Maternal cousin interviewed (date) as part of the FP/BP Child and Family Assessment; placement not recommended due to...”
- o Godparent of child called agency (date) and stated she was unable to be a placement resource due to health reasons”
- o “Maternal great-grandmother cared for child from age 3 to 5 and stated via telephone interview on (date) that she is interested in becoming a short-term placement if needed”
- o “Paternal aunt lives in Beach City, South Carolina and would like to be a relative foster home provider; ICPC request initiated 8/28/03 for foster home assessment”
- o “Whereabouts of child’s father unknown; Diligent Search Request submitted 8/28/03 to Child Support Enforcement for Parent Locator Services – as of (date), awaiting results”
- o Results of DNA testing dated 8/28/03 establish that Mr. Clark is the biological father of James.

Custody in Effect Until Age 18

A. Order of the Court and Disposition

1002 .3.6

Requirement

A child in DFCS custody may be placed by the court into the custody of one of the following persons or entities, and in such case, the order remains in effect until the child’s 18th birthday:

- A. A **relative** of the child who is willing, and after study by the probation officer or other person or agency designated by the court, is found by the court to be qualified to care for the child.
- B. A **non-relative** who, after study by the probation office or other person or agency designated by the court is found by the court to be qualified to care for the child;
- C. A suitable **custodian in another state** (see Section 1017, ICPC); or
- D. If the court finds that there is compelling reasons that a placement in any of the above (A, B or C) is NOT in the child’s best interest), an **agency or**

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organization which is licensed or otherwise authorized by law to receive the child and which is operated in a manner that provides care much like that provided in a family home as defined in the court's order.

Before the court may enter such an order, **two findings of fact** must be made:

- "Reasonable efforts to reunify a child with his or family would be detrimental to the child" (Non-Reunification);
- AND
- "Referral for termination of parental rights and adoption is not in the best interest of the child."

DATE:

(Name)
(Address)

RE: Name of Child _____ DOB: _____ Age: _____ Sex: _____

The above-named child is in foster care with the _____ County Department of Family and Children Services (DFCS). When children cannot live with their parent(s), DFCS considers placing the children with family members. It is our policy to ask family members whether or not they would be available as a possible temporary or permanent placement home for a related child. It is critical for us to identify all interested relatives as soon as possible to minimize the number of moves a child may experience. We understand that you may be a relative of this child. We would like for you to identify other relative(s) for us to contact. We ask that you please complete the information below and return this form **postmarked within 14 days of receipt**.

Please understand that stating you have an interest in being a temporary or permanent placement home **does not guarantee** that the child will be placed with you. After a relative tells us of his/her interest, we may do an evaluation. This includes a complete study of your

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home as a suitable placement for the child, including a criminal record check. The decision to place a child in a home is based on what is in the child's best interest with regard to safety, permanency and/or financial resources to support the placement.

It is important that you respond back to us within the time frame of 14 days. If you do not return this form to us, then DFCS will assume that you do not wish to be considered as a placement home for the child. Further, we will assume that you have no additional information about other family members. If you want to talk to someone before you sign and return this form you may contact a DFCS Case manager: _____ (name) _____ at _____ (phone) _____. If the case manager is not available to speak with you when you call, please leave a message including your name, address, telephone number, the name of the child and your relationship to the child.

bb

Please provide your initials in the blank next to the most appropriate statement(s):

____ I am interested in being considered as a possible placement resource for this child. My relationship to the child is _____. Please contact me additional information.

____ I am not interested in being considered as a possible placement resource at this time because. _____

____ I am aware of other family members who may be interested in being a placement resource for this child. Their names, addresses, home phone numbers, relationship to child, etc., is listed on the back of this form.

Please sign and date: _____

AND

Return the form to: _____

ATTN: _____ (Case manger's Name) _____

CUSTODY IN EFFECT UNTIL AGE 18

A. ORDER OF THE COURT AND DISPOSITION

1002.3.7

Requirement

Upon the filing of a proper petition, the court may enter an order which remains in effect until the child's 18th birthday and places the child in the custody of one of the following persons or entities:

- A. A **relative** of the child who is willing, and after study by the probation officer or other person or _____ agency designated by the court, is found by the court to be qualified to care for the child;

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- B. A **nonrelative** who, after study by the probation office or other person or agency designated by the court, is found by the court to be qualified to care for the child;
- C. A suitable **custodian in another state** (see Section 1017, ICPC); or
- D. (If the court finds that there is a compelling reason that a placement in any of the above (A, B or C) is NOT in the child's best interest), an **agency or organization** which is licensed or otherwise authorized by law to receive the child and which is operated in a manner that provides care much like that provided in a family home as defined in the court's order.

Before entering an order, **two findings** by the court are required:

- *"Reasonable efforts to reunify a child with his or her family would be detrimental to the child" (Non-Reunification); AND*
- *"Referral for termination of parental rights and adoption is not in the best interests of the child."*

An order granting custody is in effect until age 18 or until modified by the court following a petition for modification by a party (including DFCS) or upon motion of the court.

1002.3.7 PRACTICE ISSUES

1. Whenever a child is placed in the custody of an agency or organization, such facility must be licensed or authorized by law to receive and provide care of the child.
2. In the event the agency or organization's license is placed on probation, suspended, revoked or surrendered, the facility must notify the court within 10 days. The court, in response, must conduct a judicial review within 10 days of any notification by an agency or organization that it is no longer licensed. A determination is made whether the child needs to be placed in another setting.

B. COURT REVIEW OF CUSTODIAN AS QUALIFIED

1002.3.8

Requirement

Periodically, a probation officer, Judicial Citizen Review Panel, or other person or agency (including DFCS) designated by the court, is required to study or review the placement, and submit a report to the court. The report addresses whether the custodian continues to be qualified to receive and care for the child.

The frequency of the reviews is dependent upon the type of custodian:

- **If the custodian is a relative**, then the review and report are due within 36 months of the placement and every 36 months thereafter; or

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- If the custodian is a nonrelative, out-of state individual or an agency or organization, then the review and report are due within 12 months of the placement and every 12 months thereafter.

“CONTRARY TO THE WELFARE”

The “contrary to the welfare” determination is a long-standing protection afforded to children and their families. The requirement recognizes the severity of removing a child, even temporarily, from the home. Judicial oversight is intended to prevent state agencies from acting too quickly and removing children unnecessarily. ***The determination must be made in the first court ruling sanctioning the removal of the child.*** In Georgia, the order that is issued as a result of the 72-hour hearing is required to contain this finding. Not only is this judicial determination a statutory protection, but a criterion for establishing title IV-E eligibility.

1002.4

Requirement

The court’s first ruling sanctioning the removal of a child from the home (i.e., the order issued as a result of the 72 -hour hearing) must contain a judicial determination *to the effect that:*

Continuation in the home is “*contrary to the welfare of the child*”
OR
Placement is in the “*best interest of the child.*”

1002.4 PRACTICE ISSUES

1. The “contrary to the welfare” finding should be explicitly documented in the court order and must be made on a case-by-case basis; that is, based on the individual circumstances/facts of the case which led the judge to conclude the finding. The order may contain the specific facts or may reference facts in the complaint, court report, psychological, etc.
2. If the “contrary to the welfare” determination is NOT made in the first court order, the child is not eligible for IV-E Foster Care maintenance payments for the duration of the child’s stay (placement episode) in foster care. (See Chapter 1003, Eligibility, regarding determinations for IV-E eligibility.)

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“REASONABLE EFFORTS TO PREVENT REMOVAL”

Federal law (PL 96-272) requires that support services be provided to families to strengthen and support them in their ability to provide for the safety and care of their children. The desired outcome is to avoid the unnecessary removal of the child. However, should removal be necessary because of safety concerns, a judicial determination is required by the court as to whether reasonable efforts were made by DFCS to prevent the need for removal of the child. Once the child is in foster care, the court must make a determination as to whether reasonable efforts are being made to provide reunification services which would make it possible to safely reunify the child with the family.

The Adoption and Safe Families Act and state law provide additional clarifications about the provision of “reasonable efforts:”

- The health and safety of the child are of paramount concern in providing and continuing with reasonable efforts to prevent placement or to reunify a child and family;
- Certain circumstances are identified in Federal and State law that would **not** require the agency to provide reasonable efforts to prevent removal. (See 1002.6);

1002.5

Requirement

Any initial court order, **issued within 60 days of the child’s removal**, must contain a judicial determination *to the effect* that prior to the placement of a child in foster care,

“Reasonable efforts were made to prevent or eliminate the need for removing the child from the child’s home.”

1002.5 PRACTICE ISSUES

1. In order for the court to make a “reasonable efforts” finding that steps were actively taken to prevent placement, documentation contained in the Affidavit of Efforts, the complaint, court report, etc. must detail the services offered and provided to the family, and the family’s level of response and cooperation. Various Child Protective Services forms also provide supportive documentation (See CPS Manual). For example, the Safety Assessment (Form 455A) may be used to document “reasonable efforts.” The 30-Day Case Plan also addresses efforts made to prevent placement.

2. The judicial determination of “reasonable efforts to prevent removal” must be found in any of the following orders issued within 60 days of removal: Detention Order, Shelter Care Order, Temporary Custody Order, Final Order, etc. The timing of the order (within 60 days of removal) is more significant than the type of order containing the finding. For IV-E

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determination purposes, it is recommended that the finding be obtained in the earliest possible order.

3. The finding must be explicitly documented in the court order and made on a case-by-case basis; i.e., based on the individual circumstances/facts of the case which led the judge to conclude this finding. The court order may contain the specific facts or may reference facts in the petition, court report, Comprehensive Child and Family Assessment, etc.

4. If the finding is **NOT** made within 60 days of the child's removal, the child is not eligible for IV-E Foster Care maintenance payments for the duration of the child's stay (placement episode) in foster care. (See Chapter 1003, Eligibility, regarding IV-E eligibility determinations.)

5. See Appendix E for the model orders for "Shelter Care" and "Temporary Placement" which contain the required "reasonable efforts" language for initial orders.

6. If the order inadvertently omits the finding, the only Federally accepted verification that the required judicial determination was made at a hearing, is a transcript of the court proceedings.

7. Affidavits or court orders which reference the Juvenile Court Code to substantiate the judicial determination, are not federally acceptable ways to document that such a finding was made.

8. ***Nunc pro tunc*** orders need to be carefully reviewed to determine if only the judge's signature, and NOT the FINDINGS of the court, are dated back to the time of the actual hearing.

9.

"REASONABLE EFFORTS TO PREVENT REMOVAL NOT REQUIRED"

1002.6

Requirement

When immediate removal of the child is required for his/her safety and protection, and no attempts were made under such certain circumstances to preserve the family, then a judicial determination must be made **within 60 days of the child's removal**, to the effect that

"Reasonable efforts to prevent removal were not required."

1002.6 PRACTICE ISSUES

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1. Under certain circumstances specified in Federal and State law, reasonable efforts to preserve a family are not required. The court must determine that

The parent has subjected the child to “aggravated circumstances” which may include (but not limited to) abandonment, torture, chronic abuse or sexual abuse;

The parent has been convicted of murder of another child (of the parent); voluntary manslaughter of another child (of the parent); aiding or abetting, attempting, conspiring, or soliciting to commit murder or voluntary manslaughter; or a felony assault that results in serious bodily harm to the child or another child (of the parent); and/or

The parental rights of the parent with respect to a sibling have been terminated involuntarily.

2. A “reasonable efforts to prevent removal” finding may not be possible in emergency situations where the child is removed from the home before DFCS has an opportunity to work with the family. In such case, the judge may find to *the effect* that it is “reasonable to make no efforts to maintain the child in the home;” or “reasonable efforts were not appropriate or in the best interest of the child to prevent removal.”

3. The court order containing this finding needs to provide a sufficient explanation about the individual circumstances/facts of the case which led the judge to make such determination.

4. An order containing a finding of “reasonable efforts to prevent removal were not required” still meets the requirements as one of the IV-E criteria. However, such a finding must still be made by the court within 60 days of removal.

“REASONABLE EFFORTS TO REUNIFY”

1002.7

Requirement

Following removal and placement of the child in foster care, the court makes a judicial determination at each subsequent review of its order *to the effect* that:

“Reasonable efforts are being made to safely reunify the child and family.”

1002.7

PRACTICE ISSUES

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1. For the court to make a “reasonable efforts to reunify” finding, the Case Plan for Reunification needs to provide a description of the specific actions and services required of the parent and agency in order for the child to be safely returned. Such judicial findings, when made at each stage of juvenile court proceedings, clarify what services were offered and provided to the parent and their outcome. Later, should termination of parental rights be pursued, then such findings may be used as evidence. (See Section 1016, Fiscal, regarding First Placement/Best Placement Wrap-Around Services to promote safe and stable families and early reunification.)
2. The finding may be found in any of the following orders: Detention Order, Order for Shelter Care, Dispositional, Temporary Custody, Order on Court Review, etc.
3. The finding must be explicitly documented and based on the individual circumstances of the case. The court order may contain the specific facts or may reference the Case Plan, the Comprehensive Child and Family Assessment, etc.
4. There are certain circumstances prescribed in Federal and State law that dictate that “reasonable efforts to reunify” are not required or are “detrimental to the child.” (See 1002.7, “Reasonable Efforts to Reunify Not Required.”)
5. See Appendix E for the model orders for “Shelter Care” and “Temporary Placement” which contain the required “reasonable efforts” language for initial orders.

“REASONABLE EFFORTS TO REUNIFY NOT REQUIRED”

Some circumstances or conditions do not require DFCS to reunify families. However, the court must make a judicial determination based on clear and convincing evidence following the submission of a Case Plan to the court recommending that reunification services are not appropriate. Such reasons, specified in both Federal and State law, are considered potentially harmful to the child’s health and safety. A hearing is held within 30 days of the filing of a Non-Reunification Case Plan. At such hearing, the court determines whether reunification services will be detrimental to the child or not required by law, and enters a finding to that effect. The court also holds a permanency hearing (see 1002.11).

1002.8

Requirement

Reasonable efforts to preserve or reunify a family may be inappropriate when there are serious safety considerations. Depending on the circumstances and the requirements of law, the court will either:

1. Determine if the specific circumstances prescribed in Federal and State law exist as a result of a court of competent jurisdiction determining that:

The parent has subjected the child to “aggravated circumstances” which may include (but not limited to) abandonment, torture, chronic abuse or sexual abuse;

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The parent has been convicted of murder of another child (of the parent); voluntary manslaughter of another child (of the parent); aiding or abetting, attempting, conspiring or soliciting to commit murder or voluntary manslaughter; or a felony assault that results in serious bodily harm to the child or another child (of the parent); and/or

The parental rights of the parent with respect to a sibling have been terminated involuntarily.

In such case, the court enters a finding (based on clear and convincing evidence) *to the effect* that:

“Reasonable efforts are not required to reunify the child and family (because of one of the above circumstances)”

OR

2. Make a “presumption” that it is reasonable to make no efforts to reunify the child and family when:

The parent has unjustifiably failed to comply with a previous court-ordered plan designed to reunite the family;

- The child has been removed from the home on at least two previous occasions and reunification services were made available on those occasions; and/or

Any of the grounds for terminating parental rights exist (See TPR statutes in 1007.4, 1007.9 and 1013).

AND enter a finding (based on clear and convincing evidence) *to the effect* that:

“Reasonable efforts to reunify a child and family will be detrimental to the child and that reunification services, therefore, should not be provided or should be terminated.”

1002.8 PRACTICE ISSUES

1. Whenever a Non-Reunification Case Plan is submitted to the court, proper notice is provided to the parent of a hearing to be held within 30 days following the filing of the Case Plan. The purpose of such hearing is for the judge to review the determination by DFCS that a plan for reunification services is not appropriate.

2. As with all hearings and reviews, the court is informed as to whether and when, DFCS

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intends to proceed with termination of parental rights. Note: If DFCS indicates that it does not intend to petition for the termination of parental rights, the court may appoint a guardian ad litem and charge such guardian with the duty of determining whether termination proceedings should be commenced.

3. At the time of the hearing, the judge will also conduct a permanency hearing to consider the county department's proposed permanency plan (other than reunification) and the steps to be taken to finalize the permanent placement of the child.

4. Once the court determines that reunification services are no longer required of DFCS, then the court requires that reasonable efforts be made to finalize an alternative permanency plan. (See 1002.9.)

"REASONABLE EFFORTS TO FINALIZE A PERMANENCY PLAN"

1002.9

Requirement

Within 12 months of a child's removal, and every 12 months thereafter, a judicial determination must be made *to the effect* that:

"Reasonable efforts are being made to finalize the permanency plan in effect."

1002.9 PRACTICE ISSUES

1. The finding of "*reasonable efforts to finalize a permanency plan*" is critical for a child to maintain his/her IV-E funding. (See 1003, Eligibility, regarding IV-E re-determinations.)

2. If the finding is not made by the court within 12 months of removal, the child cannot be IV-E reimbursable from the end of the 12th month until the judicial determination is made. If the finding is not made in a subsequent order, the child cannot be IV-E reimbursable from the end of the month in which the most recent finding was made. Once the finding is made, the child may again receive IV-E payments. (See 1003, Eligibility, regarding reimbursability issues.)

3. The "reasonable efforts" finding is made at the permanency hearing conducted by the court or, where designated, the Judicial Citizen Review Panel.

3. The "permanency plan in effect" is the one in place at the time the county department is seeking such a determination; e.g., reunification, adoption, guardianship, permanent placement with a fit and willing relative or another planned permanent living arrangement. The order of the court must specify the permanency plan.

4. Reasonable efforts must be made to place the child in accordance with the permanency

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plan including, if appropriate, through an interstate placement.

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CONCURRENT REASONABLE EFFORTS

1002.10

Requirement

Reasonable efforts to finalize an alternate permanency plan may be made concurrently with reasonable efforts to reunify the child and family.

1002.10 PRACTICE ISSUES

1. If concurrent reasonable efforts are being made, a judicial finding to this effect is not required. "Reasonable efforts to reunify" continue, while DFCS also plans toward an alternative permanency plan. The Case Plan needs to document activities related to both permanency plans.
2. See Section 1006.3, Assessment and Permanency, regarding case circumstances where concurrent planning is best used as a strategy for expediting permanency.
3. Reasonable efforts to place a child for adoption or with a legal guardian, including identifying appropriate in-State and out-of-state placements, may be made concurrently with reasonable efforts to reunify the child and family.

EXTENSIONS OF CUSTODY

1002.11

Requirement

Should the county department determine that the child cannot be safely returned and temporary custody must be extended, a petition must be filed and a motion hearing held **prior to the expiration of the current order**.

Only a single extension of custody, for a period not to exceed 12 months, may be granted. If custody must remain with the county department beyond this point, it will be necessary to file a new deprivation action in juvenile court.

1002.11 PROCEDURES

1. As a recommendation to ensure timeliness, file motions to extend custody at least 90 - 120 days **prior** to the expiration of the current order to ensure that a timely hearing can be held.
2. Submit to the court a copy of the current Case Plan for Reunification (or other Case Plan should reunification not be appropriate) in advance of the hearing. Make sure steps to be taken to achieve the permanency outcome are outlined in the plan.
3. Include a written statement to accompany the Case Plan, which notifies the court whether and when DFCS intends to proceed with filing a petition for termination of parental rights.

1002.11 PRACTICE ISSUES

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1. A permanency hearing (see 1002.12) may be held by the court at the time of the hearing on a motion to extend custody.
2. Consent orders for the purpose of continuance do not satisfy Federal requirements. However, if a hearing is convened, it is acceptable to obtain a consent order containing findings of fact to which the parent has stipulated.

PERMANENCY HEARINGS

The purpose of permanency hearings is to finalize the permanency goal for the child, along with steps and time frames for achievement. The plan adopted by the court is entered into a court order and, at least every 12 months, efforts to achieve permanency are monitored by subsequent permanency hearings. Hopefully, the plan will result in the child's timely exit from foster care into a safe, permanent home. Both federal and state statutes govern the time frames in which permanency hearings must be held. There are also specific requirements that DFCS and the court, including the Judicial Citizen Review Panel (if designated to conduct such hearings), are to follow in conducting permanency hearings.

A. WHEN CONDUCTED

1002.12

Requirement

A permanency hearing is either held: (a) within 30 days of the submission of a Non-Reunification Case Plan to the court or (b) no later than 12 months after the removal of the child (whichever comes first). Thereafter, a permanency hearing is held every 12 months as long as the child remains in the department's care and custody. The permanency hearing may be held by the court at the time of a hearing on a motion to extend custody.

B. WHO MAY CONDUCT

1002.12.1

Requirement

The permanency hearing may be conducted by either (a) a juvenile court judge (associate court judge/ judge pro tempore) or (b) a Judicial Citizen Review Panel (at the direction of the court, only).

Exception: Citizen Panels may not conduct permanency hearings that are held as a result of a DFCS Case Plan that recommends Non-Reunification. In such case, only the court can conduct the permanency hearing.

1002.12.1 PROCEDURES

The Case Plan submitted to the court or Judicial Citizen Review Panel must:

1. Recommend a permanency plan for the court's consideration (see 1002.12.2) and

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provide a time by
which the plan can be achieved;

2. Document a "compelling reason" should the department select "another planned permanent living arrangement" as the child's permanency plan and explain why none of the other permanency options are in the best interest of the child (See 1002.12.3); and
3. Document the specific steps to be taken by DFCS to finalize the permanent placement of the child (See 1002.12.4).

C. NOTICE REQUIREMENTS and OPPORTUNITY TO BE HEARD

1002.12.2

Requirement

At least five days in advance of the permanency hearing, the court provides written notice or directs that a party (such as DFCS) provide the notice and the right to be heard to the caregivers of the child. Such notice is consistent with the form and timing of notice to parties and is provided to:

- The child's custodian, foster parent, pre-adoptive parent or relative caring for the child.
(Note: Such notice shall not be construed to require that these individuals be made party to the hearing solely on the basis of having received notice and opportunity to be heard.)
- Youth in custody shall be accessible to the court for consultation when a permanency hearing is held, including any hearing regarding the transition of the youth from foster care to independent living.

1002.12.2 PRACTICE ISSUES

1. The notice requirements for caregivers ensure that those who often know the child best, have the opportunity to provide critical input into planning and decision-making for the child's future.
2. During the hearing, the court hears the evidence, including oral and written testimony offered by the parents, the custodian, the foster parents, the preadoptive parents, the relatives and DFCS to assist in making a deposition that is in the best interest of the child.

D. SUBMISSION OF THE DFCS CASE PLAN FOR PERMANENCY

1002.12.3

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Requirement

At the time of the permanency hearing, DFCS submits for the court's consideration a Case Plan recommending a permanency plan for the child and proposing when the plan may be achieved. The Case Plan must also include documentation of the steps to be taken by DFCS to finalize the permanent placement of the child. The options for permanency, **in order of preference**, are:

1. Returned to the parent;
2. Referred for termination of parental rights and placed for adoption;
3. Referred for legal guardianship;
4. Placed permanently with a fit and willing relative; OR
5. Placed in another planned permanent living arrangement; e.g., emancipation, long-term foster care by agreement. (See 1002.12.4 regarding documentation of "compelling reasons.")

In the case of child whose permanency plan is not to return to the parent, the permanency hearing shall consider in-State and out-of-State placement options.

1002.12.3 PRACTICE ISSUES

1. Federal and state law specifically require that if the permanency plan is referral for termination of parental rights and adoption, then the Case Plan must include specific recruitment efforts such as the use of local, state, regional and national adoption exchanges. Electronic exchange systems are also to be used to expedite efforts to find a permanent adoptive home for a child.
2. See Section 1006 (Assessment and Permanency) and 1007 (Case Planning and Review) for documentation of steps in the Case Plan to achieve the other outcomes of permanency.
3. Should DFCS recommend that the child be placed in another planned permanent living arrangement, a compelling reason must be provided in the Case Plan to document why none of the other permanency options are in the best interest of the child. Examples of "compelling reasons" are:

The case of an older teen who specifically requests that emancipation be established as his/her permanency plan; or in

The case of a parent and child who have a significant bond, but the parent is unable to care for the child because of an emotional or physical disability. The child's foster parents may have committed to raising him/her to the age of majority.

Should the compelling reason justify the court adopting a permanency plan of

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"another planned permanent living arrangement" for a child, then the court's order must document the plan and the **arrangement as defined by the court** and specify the **compelling reason**.

E. ENTERING A SUPPLEMENTAL ORDER BY THE COURT

1002.12.4

Requirement

After the court or Judicial Citizen Review Panel (where authorized) conducts the permanency hearing, the supplemental order of the court is entered and contains the following:

- The permanency plan adopted by the court, including all elements the court finds essential to achieve the proposed permanency plan;

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- Findings of fact regarding:
 - a. “Reasonable efforts to finalize the permanency plan” which is in effect at the time of the hearing;
 - b. In the case of a child placed out of the state, if the out-of-state placement “continues to be appropriate and in the best interest of the child;”
 - c. In the case of a child who has attained the age of 14 and older, if the “services needed to assist the child to make a transition from foster care to independent living are appropriate.”

1002.12.4 PRACTICE ISSUES

1. The above findings of fact are made a part of the Findings and Recommendation of the Judicial Citizen Review Panel to the court and any supplemental order entered by the court.
 2. The court's supplemental order adopting the permanency plan must be entered within 30 days after the following:
 - (a) Whenever the court has determined that reunification efforts will not be made; OR within 12 months after the removal of the child (whichever is first); and THEN
 - (b) At least every 12 months thereafter while the child is in foster care.
- NOTE: If the court cannot meet the 30-day timeframe outlined in the Juvenile Court Code, the court must find good cause why such an order cannot be entered.
3. Federal regulations do not consider paper reviews, *ex parte* hearings, consent orders, or other actions or hearings which are not open to the participation of the parents of the child, the child (if of appropriate age), and foster parents, relatives or preadoptive parents (if any) as permanency hearings.
 4. DFCS ensures that certain safeguards for the rights of the parent and child are applied:

Notice (via the petition) was provided to the parent regarding the removal of the child from the home of the parent;

Notice (per DFCS policy) was provided to the parent concerning any change in a child's placement; and

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Notice (per DFCS policy) was provided to the parent regarding any determinations affecting visitation privileges of the parent.

JUVENILE COURT ORDER TERMINATING PARENTAL RIGHTS

Court orders terminating parental rights shall be without limit as to duration. Once issued and not overturned by appeal, the order is permanent. The parent (and extended family) lose all parental rights to and responsibilities for the child; the child loses all rights to the parent (and extended family), including the rights of inheritance.

If the court commits the child to the custody of DHR, the county department has all the rights and responsibilities of the legal custodian, including the authority to: (1) consent to marriage; (2) consent to enlistment in military service; and (3) consent to any surgical or other medical treatment for the child. DHR, acting through the county DFCS offices, has the authority to consent for adoption.

When parental rights are terminated, there is the expectation that the child will achieve permanency through adoption. To make sure that agency efforts are directed toward achieving this outcome, both Federal and State law require certain status reports, hearings and Case Plan documentation as a way to provide judicial oversight of agency efforts to place the child in an adoptive home.

1002.13

Requirement

Whenever parental rights are terminated, the child's status in achieving the desired case plan outcome of adoption must be carefully monitored and documented by the Case Manager in accordance with the chart:

<i>If rights are terminated and.....</i>	<i>Then, the Court Review requirements are:</i>
The child has not been placed in an adoptive home.....	Within one year after the date of the termination order (and yearly thereafter), prepare and submit a status report for the court's review and include the following: (1) the circumstances of the child;

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	<p>(2) the child specific recruitment strategies such as the use of state, regional and national adoption exchanges and/or electronic exchanges which have been used to identify a home; and (3) any other steps taken to achieve permanency through adoption. (NOTE: Since similar documentation is required in the Case Plan which is submitted every six months for Judicial or Citizen Review, determine if the judge requires a separate status report. In addition, request the SAAG to file a petition for a permanency hearing every 12 months until the child is in a finalized adoptive placement (a requirement mandated by Federal law).</p>
<p>The child is in an adoptive placement with a signed Form 33 or 37, but no petition to finalize the adoption has been filed.....</p>	<p>Within one year after the date of the termination order (and yearly thereafter), prepare and submit a status report for the court's review and include the following: (1) the date of placement; (2) the child's progress in placement; (3) steps taken (or to be taken) to finalize the adoption; and (4) the anticipated date of filing a petition. NOTE: Since similar documentation is required in the Case Plan which is submitted every six months for Judicial or Citizen review until the adoption is finalized, determine if the judge requires a separate status report. In addition, request the SAAG to file a petition for a permanency hearing every 12 months until the child is in a finalized adoptive placement (a requirement mandated by Federal law).</p>
<p>The child is in an adoptive placement with a petition filed to finalize the adoption.....</p>	<p>There is no requirement for the court to receive a status report for review. However, until the adoption is finalized, request the SAAG to file a petition for a permanency hearing every 12 months (a requirement mandated by federal law). In addition, the Case Plan is submitted every six months for Judicial or Citizen Review and must contain documentation similar to the above.</p>
<p>The child is in a finalized adoptive home placement.....</p>	<p>There are no further requirements of the court or DFCS.</p>

MANDATE TO FILE FOR TERMINATION

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1002.14

Requirement

A petition to terminate parental rights must be filed for children in the following circumstances:

1. *If a child has been in foster care under the responsibility of the state for 15 out of the most recent 22 months;*
2. *If a court has determined a child to be an abandoned infant; * or*
3. *If a court has made a determination that the parent has been convicted of murder of another child of the parent; voluntary manslaughter of another child of the parent; aiding or abetting, attempting, conspiring, or soliciting to murder or voluntary manslaughter; or a felony assault that results in serious bodily harm to the child or another child (of the parent). **

* The petition must be **filed within 60 days of the court's determination** of abandonment or a parent's felony conviction.

The only **EXCEPTIONS** to this mandate are described in 1002.17:

- A child is being cared for by a relative; or
- The Case Plan documents a "compelling reason" for determining that filing such a petition would not be in the best interest of the child; or
- DFCS is required to make "reasonable efforts to reunify" the child and family, yet services have not been provided within the time frame specified in the Case Plan for the child to be safely returned.

1002.14 PROCEDURES

Children in Care "15 out of 22"

1. Proceed with a petition to terminate parental rights whenever it is in the child's best interest to do so. Consider the "15 out of 22" as the maximum length of time in months that a child can be in care before mandated termination action takes place (or the relevant exception is documented in the Case Plan).
2. Track carefully the length of time a child has been in care since removal from the home. (For a child who has been in continuous care and for whom the IDS was properly entered, system reports calculate and display the length of time in care.)
3. Count the 15 months (out of the most recent 22 months) on a *cumulative basis*, rather than consecutively. Do not count the time the child was physically out of care; e.g., trial placement with the parent or runaway episode.
4. Count partial months by dividing a month into 4 weeks or fractions of a month (rounding off to the nearest whole week.)

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5. File the petition to terminate parental rights by the *end* of the 15th month in foster care.
6. Apply the "15 out of 22" requirement only once while the child is in care. Otherwise, evaluate if and when it is advisable to terminate parental rights at every periodic review and hearing (in particular, the permanency hearing) as required by law.

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Abandoned Infant

1. Apply the Juvenile Court Code's definition of "abandonment" to determine how and when the court makes such a determination:

"...the identity of the parent cannot be ascertained despite diligent searching and the parent has failed to come forward and claim the child within three (3) months."

2. File the petition to terminate parental rights within 60 days of the above determination by the court.

Parent's Felony Conviction

1. Obtain documentation of criminal offenses through conducting a criminal records search or by accessing court and/or other legal documents that provide evidence of serious felony offenses, including those specified in the law.
2. File the petition to terminate parental rights within 60 days of the above determination by the court.

SEEKING TO BE JOINED AS A PARTY TO A PETITION

1002.15

Requirement

If a petition to terminate parental rights has already been filed by another party, then DFCS must seek to be "joined" as a party to the petition unless the county can document that one of the EXCEPTIONS in 1002.17 exists.

1002.15 PROCEDURE

Consult with the county department's SAAG regarding how DFCS becomes "joined" as a party to a petition which has already been filed by another party on the child's behalf.

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CONCURRENT EFFORTS TO FIND AN ADOPTIVE HOME

1002.16

Requirement

Regardless of whether DFCS files the petition for termination of parental rights or seeks to be “joined” as a party, it is expected that DFCS **concurrently identify, recruit, process and approve a qualified family for adoption in anticipation of termination.**

1002.16 PRACTICE ISSUE

This requirement in Federal and State law is intended to expedite the permanent placement of a child. Rather than wait for all the proceedings to conclude and then begin an adoptive home search, DFCS must explore placement options before the termination proceedings are concluded.

EXCEPTIONS TO FILING A TERMINATION PETITION

1002.17

Requirement

Based on what is in the best interest of a child, a petition to terminate parental rights does **NOT** have to be filed or “joined” as required in 1002.14, if:

The child is being cared for by a relative;

The Case Plan documents a “compelling reason” for determining that filing such a petition would not be in the best interest of the child; or

DFCS is required to make “reasonable efforts to reunify” the child and family, yet services have not been provided within the time frame specified in the Case Plan for the child to be safely returned.

1002.17 PROCEDURES

1. Complete an “Addendum” (see attachment to Section 1002) to thoroughly document the reasons, which support the county department’s decision **not** to comply with the mandated filing of a petition to terminate.
2. Attach the “Addendum” to the Case Plan and submit to the court (or Judicial Citizen Review Panel) for the child’s next scheduled review.

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1002.17 PRACTICE ISSUES

“Child is Being Cared for by a Relative” Exception

1. The county department must continue to develop and re-evaluate the permanency plan for the child and continue to have permanency hearings conducted.
2. Having a child placed with a relative should not preclude consideration of legalizing the permanency of the placement through adoption or guardianship or recommending transfer of custody to the relatives if this best meets the child's needs.
3. Documentation in an “Addendum” includes such information as:
 - Where the child is placed
 - Length of time in that home
 - Adjustment of the child
 - Stability of the placement
 - Fitness and capability of the relative
 - Safety and quality of care the child receives
 - Commitment of the relative to the child (present and future)
 - Potential for legalizing the permanency of the placement through adoption, guardianship, etc.

“Compelling Reason” Exception:

1. The determination of what constitutes a “compelling reason” is based on the individual circumstances of the child and family.
2. Examples of why termination of parental rights is NOT in the child's best interest may include, but are not limited to:
 - Adoption is not the appropriate permanency goal for the child (with reasons documented).
 - No grounds to file a petition to terminate parental rights exist.
 - The child is 14 (or older), has been counseled about the decision and its ramifications, and maintains his/her objection to being adopted.
 - The child is in a residential treatment facility where his/her therapeutic needs are being met; adoption is unlikely or undesirable.
 - The child has spent a significant portion of his life in the home of his parents and has a positive and meaningful attachment to them.

“DFCS and Continued Reunification Services” Exception:

1. If reunification cannot occur within the time frame specified in the Case Plan, but it is not appropriate to abandon it as the permanency plan, reunification efforts may continue within a reasonable extension of time which is consistent with the child's developmental needs.
2. When it is determined that DFCS is responsible for the delay in services being provided to the family, supervisors need to carefully review the case circumstances and to ensure that action steps are taken to remedy. This information must be shared in writing with the County Director and the Regional Director.

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3. Documentation includes such information as:

- The specific reunification services that have not been provided but are considered necessary for the child's safe return.
- The reasons that such services are delayed or behind schedule with the time frames stated in the Case Plan.
- The likelihood that the successful achievement of such services will bring about safe reunification within a specified period of time (e.g., three to six months).

VOLUNTARY AGREEMENT TO PLACE CHILD IN FOSTER CARE

A **Voluntary Agreement to Place Child in Foster Care** is executed by a parent(s) signing Form 5. A similar form, Form 3, is signed by a parent(s) when placing a child for whom adoptive planning is being considered. The county department is under no obligation to accept a Voluntary Agreement. Used appropriately, the county department may recognize that a family may be experiencing a short-term crisis with an anticipated ending date. The signing of a Voluntary Agreement by both legal parents avoids court action being taken and allows foster care services to be provided for a time-limited period. However, **the county department does not accept a Voluntary Agreement if family circumstances clearly indicate that the child is in imminent danger of abuse or neglect and court involvement is necessary.** Having a record of the findings and conclusions of the court may be advantageous in protecting the child from present and future harm. The rights and duties of the county department are the same as if DFCS had a court order for temporary custody. Parental rights and duties are also the same, except the parent has the right to have the child returned within 5 working days of submitting the written request, Form 518, **Termination of Voluntary Agreement to Place Child in Foster Care.** The same individual (s) who signed the Voluntary must sign the Form 518.

1002.18

Requirement

The signed **Voluntary Agreement to Place Child in Care**, Form 3 or 5, shall be in effect for a maximum of ninety (90) days with the possibility of one additional ninety (90) day extension. After 180 days, the Voluntary Agreement is no longer valid.

1002.18 PROCEDURES

The county department is responsible for the following actions:

- Determining if an extension is necessary before the expiration of the initial 90 day Agreement;
- Assisting the parent in submitting a written request for return of the child, if necessary;
- Petitioning the court when the parent submits a written request for return of the child and the child cannot be safely returned home;

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- Petitioning the court before the second Voluntary Agreement expires if the child cannot be safely returned home. **NOTE: The petition must be filed in time for a hearing to be held, a judicial determination made and the order obtained and signed within 180 days of the date the original Agreement was signed.**
- Ensuring that the order entered for temporary custody contains language to the effect that "it is in the child's best interest to remain in care."
- Tracking the months the child has been in care (**including the months on Voluntary Agreement**) so that within 12 months, a petition to extend custody (if necessary) is filed;
- Ensuring that a permanency hearing is held within 12 months of removal as required by Federal law. (Note: The permanency hearing may be held at the time of the motion to extend hearing.)

SHORT-TERM EMERGENCY CARE

The county department is authorized to provide short-term emergency care to a child without seeking a court order for a period **not to exceed seven calendar days**. Such authority is exercised only under a unique set of circumstances:

(a). There is an immediate emergency or illness of the person having physical and legal custody of the child making such person unable to provide for the care and supervision of the child; **and**

(b). The child is **NOT at imminent risk of abuse or neglect** (other than the potential risk arising from being without a caretaker).

The request for emergency care (using the form **DFCS Authorization to Accept Child for Short-Term Emergency Care**) must be made by a person legally authorized to do so (see Requirement 1002.19). The county department has the same rights and powers with regard to the child as the custodian, including the authority to consent to medical care. Immediately upon receiving emergency custody, the county department is responsible for beginning a diligent search for a relative, or other designee of the legal custodian, who can provide for the safety, care and supervision of the child. The legal custodian (i.e., the parent, a legal guardian or a legal custodian chosen by the court) may request the return of the child during the seven calendar days or may designate someone else to assume care and supervision. The form, **Termination of DFCS Responsibility for Short-Term Care**, is signed and relieves DFCS of all responsibility. If the child is not released upon expiration of seven calendar days, or if DFCS determines that there is an issue of neglect, abandonment or abuse, the county department will immediately begin a deprivation proceeding in juvenile court.

1002.19

Requirement

A request for short-term emergency care (not to exceed seven calendar days) must be made by a legally authorized person (i.e., a person having physical and legal custody of a child, law enforcement officer, emergency personnel employed by a licensed ambulance provider, fire rescue personnel or hospital administrator/administrator's designee) using the form,

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DFCS Authorization to Accept Child for Short-Term Emergency Care.

1002.19 PROCEDURES

22704.The CPS Intake Case Manager receives the call for short-term emergency care and fills out all information on Form 453 (Child Abuse/Neglect Intake Worksheet). Unless the report includes circumstances of abuse or neglect (other than those risks incurred by a child being without a caretaker), the report is screened out for a CPS investigation. The reason for screen out is "short-term emergency care request." (See CPS Manual.)

22705.The request is assigned for an immediate response to determine the child's emergency care needs resulting from the emergency or illness of the physical and legal custodian. At any time during the planning for and provision of emergency care, it is determined that risk to the child exists; immediate steps are taken to initiate a deprivation proceeding in juvenile court.

22706.A referral for short-term emergency care requires the following case management actions:

- Document the referral (request) on Form 453 (Child Abuse/Neglect Intake Worksheet) and screen out for CPS.
- Open a case record for a request for short-term emergency care.
- Document all activity in the case record on Form 452 (Contact Sheet).
- Complete Form 590 (Internal Data System) and indicate the "Primary Service" code as 01 (PLC) and the "Legal Status" code as 06 Short-Term Emergency Care (7 day custody).
- Note that the following are **NOT** required: 30-Day Case Plan and Family Assessment

22707.The assigned Case Manager immediately establishes contact with the person requesting emergency care and:

- Determines that there is no imminent risk of abuse or neglect, other than risks incurred by a child being without a caretaker;
- Obtains the approval of the County Director or supervisor to proceed with accepting the child for short-term emergency care;
- Completes, with the assistance of the person requesting the emergency care, the **DFCS Authorization to Accept Child for Short-Term Emergency Care** (See Appendix J and duplicate form as needed. Fill out all requested information. Use Form 452 as needed.)
- Explains that this referral must be handled as a regular CPS report if factors of child maltreatment are present. (If placement authority must then be obtained, contact the juvenile court.)

22708.The Case Manager determines the condition of the child and documents:

- Is medical attention needed?
- Does the child have any medical problems or allergies)? Is the child taking

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any medications? Describe.

- Is the child school age? If so, where does the child attend school?
- Does the child understand the separation from the physical and legal custodian?

22709. The Case Manager determines the physical and legal custodian's plan for care and documents:

- Does the physical and legal custodian have a specific plan to regain physical custody within seven calendar days? (Describe the plan.)
- Does the physical and legal custodian have a plan for the child to go to another parent, a relative or someone else within seven calendar days? (Describe the plan.)
- Has the physical and legal custodian or other person requesting care, been informed that the department must immediately petition the juvenile court for transfer of legal custody if the custodian's plan cannot be completed within seven calendar days?

22710. The Case Manager proceeds with short-term care arrangements:

- As needed, utilize county emergency shelter or place child in foster care.
- If the person requesting short-term emergency care for a child is the parent or legal custodian,* that person can designate whomever he/she wishes as a resource for the child.
- If the person requesting short-term emergency care for a child is **not** the parent or legal custodian (e.g., a law enforcement officer), this person cannot designate for the child to be returned to anyone but the parent/legal custodian.
- If in doubt about the ability of the parent or legal custodian to designate (person is heavily medicated, etc.), request the physician's opinion, preferably in writing, of the person's ability to make this decision. (See related section on the form, **Termination of DFCS Responsibility for Short-Term Emergency Care** and have physician complete.)
- Begin **immediate attempts** to contact the person named as a resource for the child. To the extent possible, make a quick determination of whether the person named has a CPS history and, if so, the extent. Other relevant questions include: Is there a known history of criminal activity of a nature that would impact the person's ability to meet the child's needs? Are there known physical, psychological, emotional or intellectual limitations that would impair the person's ability to care for the child?

NOTE: There is not enough time to do an exhaustive search; however, all available resources (IDS Statewide Master Index search, Protective

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Services Data System, Sex Offender Registry, etc.) should be checked. When a resource lives in another state, request that state to check its resources for information. When there is negative information on a designee and no other options have been named, file immediately in juvenile court.

***The legal custodian may be a parent, a legal guardian or a legal custodian chosen by the court.**

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1002.20

Requirement

If at any time during the seven-day period, the legal custodian or legal custodian's designee is able to assume care and control of the child, DFCS must immediately release the child subsequent to completing the form, **Termination of DFCS Responsibility for Short-Term Emergency Care**. (See Appendix J and duplicate form as needed.)

1002.20 PROCEDURES

22772. Complete the **Termination of DFCS Responsibility for Short-Term Emergency Care** and obtain the necessary signatures.

22773. Request that the physician sign the above form in the section which relates to parental capacity, whenever there is any question about the competence of the parent or legal custodian to make the decision designating a caretaker for a child.

22774. Notify immediately the legal custodian of the child's transfer to the designated caretaker whenever it is someone other than the legal custodian.

1002.20 PRACTICE ISSUE

It is always preferable for the child to be transferred to a designated caretaker by the parent or legal custodian. This can be done by taking the child to the location of the parent/legal custodian, who can then transfer the child directly to the designated caretaker. When this is not possible, the person receiving the child must provide the Case Manager with picture identification prior to the child's release.

1002.21

Requirement

If it has not been (or does not appear) possible to return the child to the parent or legal custodian or to a designated caretaker within the seven days, a deprivation petition shall be filed in juvenile court following established procedures for obtaining placement authority.

1002.21 PROCEDURES

1. File the actual deprivation complaint or petition by the close of business on the sixth day so that the department has an emergency order when the time expires on the seventh day.
2. Begin a CPS investigation.

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CONSENT TO REMAIN IN FOSTER CARE

1002.22

Requirement

A youth, age 16 or over and in agency custody, shall periodically be advised verbally and in writing of the agency's criteria for granting approval to continue in foster care placement beyond age 18.

1002.22 PROCEDURES

The Case Manager is responsible for:

- Providing the youth, beginning at age 16, with detailed guidelines regarding the eligibility requirements for remaining in foster care beyond age 18 as well as the maximum length of care.
- Discussing the options with the youth regarding his/her care beyond age 18, including aftercare services, should the youth elect to emancipate.
- Referring the youth to the assigned IL Coordinator (ILC) for Independent Living Services.
- Arranging for a staffing with the youth, care giver and ILC to plan for transition after foster care.

1002.23

Requirement

Upon reaching 18, a youth in care shall sign a Consent to Remain in Foster Care, Form 7, provided that DFCS and the youth mutually agree that continued foster care placement is consistent with the youth's Written Transitional Living Plan (WTLP) goals. If the county department is not in agreement with the youth's request to remain in care, the youth may request a staffing with the Regional Director or Social Services Director.

1002.23 PROCEDURES

The county department is responsible for ensuring that:

- Continued foster care placement, for a reasonable period of time, ultimately assists the youth in making a successful transition to independent living;
- The contents of Form 7 are thoroughly explained to the youth, including the responsibilities that the youth is expected to assume upon reaching the age of majority;
- Services considered necessary for the youth to successfully emancipate are arranged/provided;
- The WTLP is developed with the youth, periodically monitored/reviewed; and shared with the ILC.

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- At least sixty (60) days in advance, written notice is provided to the youth should DFCS determine that continued foster care cannot be provided. Reasons to support this decision are documented in the record. A staffing must be held with the youth to plan for transition after foster care.

VOLUNTARY SURRENDER OF PARENTAL RIGHTS

1002.24

Requirement

A properly executed Voluntary Surrender of parental rights shall be without limit as to duration if the parent does not withdraw the surrender within the ten-day revocation period.

1002.24 PRACTICE ISSUES

1. If the parent has not withdrawn the surrender within ten days, the Voluntary Surrender stands on its own and no further court action to validate the surrender is necessary.
2. Children entering care via a Voluntary Surrender are eligible for IV-E Adoption Assistance if the county department:
 - Initiates the process to obtain a judicial determination within 6 months of the child's removal that continued placement is in the "best interest" or that remaining in the home is "contrary to the welfare" of the child. (See Appendix E for a model **ex parte** petition and order); and
 - Holds permanency hearings every 12 months until the child is adopted and the placement is finalized. (Request the SAAG to file a petition for a permanency hearing as required by Federal law.)
3. In the event that parental rights are surrendered subsequent to DFCS having court-ordered custody, a permanency hearing is held every 12 months until an adoptive placement is made and finalized.
4. Whenever a permanency hearing is held, request that the court review: (1) the circumstances of the child; the child-specific recruitment strategies the county department has used such as the use of state, regional and national adoption exchanges and/or electronic exchanges; and (3) any other steps taken by DFCS or the Office of Adoptions to pursue a permanent home for the child.
5. The Juvenile Court Code does not require the county department to prepare and submit an annual status report to the court. The court is advised of agency efforts to seek a permanent placement for the child at the required permanency hearings and through periodic Judicial Review of the Case Plan.
6. If the child is released to DHR, the rights and duties of the county department are the same as if parental rights had been terminated in court.
7. The parent (and all extended family) loses all parental rights and responsibilities to the

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child. However, the parent may be obligated to pay child support until such time as the adoption is finalized.

8. The child loses all rights to the parents (and extended family), including the rights of inheritance. (Note: This does not effect the child receiving Social Security Survivors/Disability Benefits on the birth parent's account.)

9. Voluntary Surrenders are **only** taken when adoption is a viable plan for the child. (See Adoption Services Manual, Section 103.2.)

SUPERIOR COURT ORDER

1002.25

Requirement

An order issued by the superior court granting custody/ placement authority to the county department, sets time limits for duration, and specifies the custodian and the custodian's rights and duties. An order without time limits stands until another order is issued. The county department shall strictly adhere to the requirements set forth in the superior court order, including the submission of any court reports.

1002.25 PRACTICE ISSUES

1. Superior court orders giving a county department placement authority usually occur in connection with divorce proceedings. The placement may be time-limited while the parents and/or others are being evaluated to determine the appropriate custodian. It is possible for the placement to be longer in duration if the county department is ordered to supervise, offer services to the parents or others and/or determine the appropriate custodian.

2. The superior court is responsible for making the final decision about placement.

3. It may become necessary to consult with the agency's SAAG should the superior court order appear to be incomplete or have conflicting court requirements. The language requirements specified in the Juvenile Court Code may or may not be included. However, the county department adheres to the Case Plan and periodic review requirements. The latter may require Panel Case Review as the method of review.

OTHER ISSUES CONCERNING PLACEMENT AUTHORITY

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DEPRIVED CHILDREN BORN DURING INCARCERATION OF MOTHER

1002.26

Requirement

Should it become necessary to file a deprivation petition on behalf of a child born during the incarceration of the mother, the petition shall be filed in the mother's prior county of residence and not the county of the Georgia correctional facility. EXCEPTION: Should the court refuse jurisdiction, then the county department will document attempts to file and refer the matter to the county in which the child was born.

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PETITIONS FOR LEGITIMATION IN JUVENILE COURT

1002.27

Requirement

The biological father of a child (who is not the legal father of the child) may file a petition for legitimization in the juvenile court of the county in which a deprivation proceeding regarding the child is pending.

1002.27 PRACTICE ISSUES

1. If a deprivation proceeding is NOT pending in juvenile court, then the father of a child born out of wedlock may file a petition for legitimization in superior court of:

- The county of his residence;
- The county of residence of the child; or
- The county in which a petition for the adoption of a child is pending.

2. Before considering the biological father who is not the legal father as a placement resource, the county department must determine if the court will require the father to first legitimate the child. (This provision also applies to placing with the extended family of a biological father.)

1002.27.1

Paternity Acknowledgement (PA) – State of Georgia

When the biological father is not married to the mother, he and the birth mother may complete and sign a Paternity Acknowledgement (PA) Affidavit to establish the father and child relationship. The PA creates certain legal rights and responsibilities for the mother, father and child.

The PA once completed and signed in the presence of a witness, will be forwarded to State Vital Records Service where it will be entered into the State Putative Father Registry. If both parents do not sign a PA before leaving the hospital or birthing facility, only the mother's name and child's name will be entered on the birth certificate. The PA may be signed at a later date at which time the certificate of birth will be amended to enter the name of the father. The PA may be completed and signed at a local Vital Records Office in the county where the child was born or at the State Vital Records Office in Atlanta.

The PA is acceptable for establishing paternity unless the juvenile court requires legitimization or paternity testing. This provision also applies to placing with the extended family of a biological father.

For additional information on establishing paternity link to:

<http://ocss.dhr.georgia.gov/portal/site/DHR-OCSE/menuitem.f3ca900e75789bd18e738510da1010a0/?vgnnextoid=d46a10ad92000010VgnVCM100000bf01010aRCRD>.

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TRANSFER OF PHYSICAL OR LEGAL CUSTODY TO THE PARENT/CARETAKER

1002.28

Requirement

The county department shall obtain the approval of the court **prior** to the retransfer of either physical or legal custody of a child to the parent/caretaker. This includes overnight, unsupervised visits the child may have with the parent/caretaker. An amended order or other form of court approval (e.g., a court-ordered Case Plan with a provision for overnight visits), shall document that prior approval has been obtained from the juvenile court judge.

TRANSFER OF JURISDICTION TO THE RESIDENT COUNTY OF THE PARENT

The court **may** transfer jurisdiction to the juvenile court of the **residence of the parent(s)** in-state, when there is an order of disposition incorporating a reunification plan. The transfer may occur because the parent is not in the county of the court of jurisdiction or the parent moves to another county. The judge considers whether such transfer accomplishes the intended outcome of reunification. It is clearly not the intent of the statute to transfer legal jurisdiction and DFCS case management responsibility every time a parent moves. Additionally, it is not the intent to uproot children from stable settings to “follow” parents wherever temporary residence is established, unless, **reunification is imminent**.

Within 30 days of the filing of the transfer order, the “transferring” court must provide the “receiving” court the following: certified copies of the adjudication order, the order of disposition, the order of transfer, the case plan and any other court documents considered necessary for the “receiving” court to assume jurisdiction.

Compliance with this Code section terminates jurisdiction in the “transferring” court and initiates jurisdiction in the “receiving” court. The “receiving” court may not decline the transfer of jurisdiction as long as the provisions of the statute are followed. County departments must ensure that responsibilities for case management and case planning are transferred in a timely manner and assumed as soon as possible by the “new” county of jurisdiction. **Where DFCS initiates with the court a transfer of jurisdiction, a staffing must be held prior to the court action.**

1002.29

Requirement

Whenever the court transfers jurisdiction to the juvenile court of the residence of the parent to whom reunification is directed, the “former” legal county department shall transfer case management and case planning responsibilities, including a copy of the case record, to the “new” county of legal jurisdiction within 30 days of the filing of the order of transfer. Where a county department initiates the request of the court to transfer jurisdiction, a staffing must be held prior to the transfer of jurisdiction to determine if the transfer supports the reunification outcome and to discuss case-specific issues.

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1002.29 PROCEDURES

1. Establish immediate contact (verbally and confirm later in writing) with the “new” county of legal jurisdiction whenever the “former” legal county receives notice that an order of transfer has been entered by the court. Discuss the transfer of the record and other case management responsibilities with the “new” legal county. Negotiate and develop a plan to handle any immediate or upcoming case actions such as scheduled reviews, extensions of custody, visits, etc.

Example: County A (“former” legal) informs County B (“new” legal) that custody will expire in two months with the present temporary order of the County A Juvenile Court. Plans to file a motion to extend custody must be initiated immediately in County B for a hearing to be scheduled and held before expiration of the current order; therefore, County A agrees to send County B the most pertinent case documents needed for filing the motion to extend, with arrangements to forward a copy of the remaining case record within 30 days.

2. As the “former” legal county, assume the following responsibilities:

- Update the case record for transfer, preparing a transfer summary, as needed. Copy all case materials to be transferred to the “new” county and maintain the original record in the “former” legal county.
- Notify verbally and in writing any service providers of the transfer of case management and any instructions for submitting invoices, reports, etc., to the “new” legal county.
- Notify the child’s CASA, guardian ad litem, Judicial Citizen Panel Review Program Coordinator, etc.
- Notify Family Independence Services to transfer the eligibility case to the “new” legal county.
- Notify Accounting with instructions for transferring any funds in the child’s restricted funds account to the “new” legal county for management. Prepare Form 529, Authorization of Foster Care Status Change/Termination, to reflect needed changes.
- Transfer AFCARS reporting responsibilities to the “new” legal county. If the child remains in placement in the “former” legal county, change the placement type to “boarding county.” Enter case action changes in IDS/AFCARS within five work days of the effective date of transfer.
- Notify substitute caregivers (foster parents, relatives, residential care staff) of the transfer and the implications for attending reviews, hearings, etc. which will be held in the “new” legal county.
- Assume the role and responsibilities of the boarding county (if child continues to be boarded in the “former” legal county) which include supervising the child in placement, coordinating visits, reviewing the monthly Foster Care Invoice for correctness and submitting it to the “new” legal county, providing updates regarding the child and input for periodic reviews, etc.
- Be available to provide testimony in juvenile court upon request of the “new” legal county.

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3. As the “new” legal county, assume the following responsibilities:

- Open a new IDS/AFCARS case (may need the assistance of the “former” legal county to complete).
Use the **original dates of placement** and placement data.
- Consult with the SAAG to determine if, and when, an order is needed as a result of the transfer of jurisdiction. Note: the order needs to **link back to the previous order(s) issued by the transferring court to maintain the original duration dates, periodicity of reviews, etc.**
- Assume the role and responsibilities of the legal county following the TIMETABLE FOR CRITICAL CASE ACTIONS with respect to:
 - Initial Case Plan (and any subsequent court-ordered plan and modifications)
 - Periodic reviews (Judicial, Citizen-Panel, Panel Case Review)
 - Notification of substitute caregivers (foster parents, relatives, etc.) of all reviews and hearings
 - Motions for Extension
 - Permanency Hearings
 - Review Hearings
 - Any other related court activity normally assumed by the legal county
- Provide services to parents in support of the Case Plan and permanency goal of reunification.
- Arrange for visitation with the county boarding the child; coordinate working relationship.
- Complete Form 527 (*Initial Authorization for Foster Care*) and send to Accounting. (Annotate the 527 to explain that legal jurisdiction of the child has been transferred from the “former” legal county.)
- Notify Family Independence via 713 of child’s transfer; request that an eligibility case be established.

CHILD TAKEN INTO CUSTODY BY PHYSICIAN

1002.30

Requirement

When (1) a physician has taken physical custody of a child, (2) the child is ready for release, **and** (3) the court has transferred custody of the child to the Department of Human Resources, DFCS must:

- Take physical possession of a child who remains in the physical care of the physician within **six hours of notification** that the child is ready for release.
- Take **immediate possession** of a child who has been brought before the juvenile court by a law enforcement officer.

1002.30 PRACTICE ISSUES

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1. A physician who is treating a child may take or retain temporary custody of a child without a court order and without the consent of a parent, guardian or custodian when:
 - The physician believes a child's circumstances or condition presents an imminent danger to the child's life or health as a result of suspected abuse or neglect; or
 - There is not sufficient time for a court order for temporary custody to be obtained before the child may be removed from the presence of the physician.

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2. A physician retaining a child in temporary custody:
 - Makes reasonable and diligent efforts to inform the parents, guardian or custodian of the child's whereabouts;
 - Reports as soon as possible the suspected abuse or neglect to the department;
 - Contacts within 24 hours: (1) the juvenile court intake officer and informs the officer that the child's life or health is in imminent danger as a result of suspected abuse or neglect; **or** (2) a law enforcement officer who shall take the child into custody and promptly bring the child before a juvenile court intake officer; **and**
 - Files the petition (following the 72 hour hearing) if the child has not been released and the physician continues to believe that the child's health or life is in danger as a result of suspected abuse or neglect.
3. When a juvenile court intake officer determines that a child should not be detained, the physician or law enforcement officer releases the child to the parents, guardian or custodian.
4. When a juvenile court intake officer determines that a child should be detained, and the court orders the child detained in the legal custody of the department, then DFCS:
 - Takes physical possession of the child **within six hours**, unless the child meets the criteria for admission to a hospital or other medical institution or facility where detained in the temporary custody by the physician; or
 - If the child is admitted to the medical facility, takes physical possession of the child **within six hours** of being notified that the child is ready for discharge; or
 - Takes prompt physical possession of a child brought before the court by law enforcement.
5. The court notifies the parents, guardian or other custodian of the 72-hour hearing.

"SAFE PLACE FOR NEWBORNS"

1002.31

Requirement

In accordance with the "Safe Place for Newborns Act," should a mother leave her newborn at a medical facility with the intent to abandon, the county department takes the following steps:

- ◆ File for immediate transfer of custody of the infant to the department;
- ◆ Take physical possession of the infant within six hours of notification that the infant is medically ready for discharge;
- ◆ Make a referral for Medicaid to be determined;
- ◆ Process the request from the medical facility as a CPS referral and assign it for an investigation with an immediate response time; and
- ◆ For legislative reporting reasons, notify the State Protective Services Unit of a newborn brought into DFCS care under this law.

Foster Care Services: Placement Authority

1002.31 PRACTICE ISSUES

1. The intent of the "Safe Place for Newborns Act" is to prevent injuries to and deaths of newborn children as a result of the mother's abandonment. The Act encourages her to make a safer plan for her newborn and protects her from being prosecuted for the crimes of cruelty to a child, contributing to the delinquency, unruliness or deprivation of a child or abandonment of a dependent child.
2. To meet the requirements of the Act, the following circumstances must take place:
 - The newborn must be left in the physical custody of an on-duty employee, agent or member of the staff of a medical facility who is either a paid staff person or a volunteer.
 - A "medical facility" is defined as a "licensed general or specialized hospital, institutional infirmary, health center operated by a county board of health or a facility where human births occur on a regular and ongoing basis (classified by DHR as a birthing center)". A medical facility does not include the private office of a physician or a dentist.
 - The newborn may be no more than one week old.
 - The mother is asked to provide proof of identity, if available, to the person receiving the child, and provide her name and address.
 - The department is responsible for reimbursing the medical facility for all reasonable medical and other reasonable costs associated with the child prior to the child's placement in care of the department.
 - The department is responsible for maintaining a count of all children whose relinquishment falls under this Act.
3. If the infant is left by the mother, and the circumstances make it questionable whether this Act applies; e.g., the age of the infant, location of child when abandoned, refusal of the mother to give her name and address, etc., consult the agency SAAG. (See 1013.9, Legal, regarding "Abandonment.")

1002.31 PROCEDURES

1. Follow CPS procedures outlined in Section 2104.4b for obtaining legal authority and processing the request from the medical facility as a CPS referral.
2. Request copies of all information the medical facility obtained from the newborn's mother that will assist DFCS in locating her. Hopefully, the mother would be willing to provide additional information on herself as well as the father and extended family.
3. If possible, discuss placement planning with the mother and give her the option of signing Voluntary Surrender of parental rights. (See 1002.23 and Section 103.2, Adoption Services Manual.)
4. Since the department is responsible for the medical costs of the infant, make an immediate referral for the determination of Medicaid to cover the expenses of the child, even before DFCS obtained custody.

Foster Care Services: Placement Authority

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INDIAN CHILD WELFARE ACT

1002.32

The Indian Child Welfare Act of 1978 was enacted to address the alarming rate of removals of American Indian children from their homes for foster care and adoptive placements. The Act establishes standards as well as a protocol for providing child welfare services.

Requirement

Whenever the county department has reason to believe that a child may have some degree of American Indian heritage and the child is subject to removal, placement and/or any other legal action, the provisions of the Indian Child Welfare Act (See Appendix L) shall be carefully followed.

1002.32 **PROCEDURE**

If the family declares Indian blood, the case manger shall:

1. Identify the Tribe the child/youth may have lineal descendency or a minimum amount of tribal blood. 2. Send a request to the United States Department of Interior (Easter Regional Office -) to the identified tribe with the child's name family or relatives who may be Indian with names, birth dates, place of birth and Tribal affiliation to:

United States Department of Interior
Bureau of Indian Affairs
Easter Regional Office
545 Marriott Drive, Suite 700
Nashville, TN 37214

1002.32 **PRACTICE ISSUES**

Highlights of the Act include:

- An Indian tribe has exclusive jurisdiction over any custody proceeding involving an Indian child who resides within the reservation of such tribe.
- Any state court proceeding involving the removal or termination of parental rights to an Indian child **not** residing within a reservation is transferred to the jurisdiction of the tribe under certain circumstances. (Note: The tribal court of the tribe may decline jurisdiction.)
- The parent or Indian custodian and the Indian child's tribe have the right to be notified by registered mail (return receipt requested) of the pending proceedings in juvenile court and their right to intervene;
- If the parent or tribe's location cannot be determined, notice is given to the Secretary of the Interior who shall have 15 days after receipt to provide the notice to the parent or Indian custodian or tribe;
- No foster care placement or termination proceeding is held until at least 10 days after the receipt or notice by the parent or Indian custodian or the tribe or the

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Secretary of the Interior;

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- Any party to the foster care placement or termination proceeding has the right to examine all reports or documents filed with the court;
- Any party must satisfy the court that “*active efforts have been made to provide remedial services and rehabilitative programs to the family, and that these efforts have been unsuccessful.*”
- A foster care placement is only made if there is a determination, supported by clear and convincing evidence, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.