TN Department of Children's Services

POLICY

14.14 Removal: Safety and Permanency Considerations	
Application: All Department of Children's Services Case Managers, supervisors of caseworkers, and the Office of General Counsel	
Authority: TCA 37-1-166; 37-1-401 et seq; 37-1-601et seq; 37-1-607; 37-5-105 (3); 37-5-106; 37-5-107	**Standards: COA:** PA-CFS 1; PA-CFS 2; PA-CFS 4; PA-CFS 5; PA-CFS 6; PA-CFS 9
Commissioner:	**Date:**
Original Effective Date: 12/01/23 Current Effective Date: 12/01/23	Supersedes: 14.12 07/18/22 Last Review Date: 12/01/23

Glossary:

- Removal
  - Placement of a child into the Department's custody after legal custody is divested from a parent or caregiver by either verbal or written order by the court or approval by DCS Legal.
- Constructive Removal
  - This occurs at the time of a judicial order removing custody even temporarily from a custodian or on the date that a Voluntary Placement Agreement is signed and dated by all relevant parties. Refer to DCS Policy 16.36, Title IV-E Foster Care Funds.

Policy Statement:

The Department of Children's Services (DCS) explores all home-based services and options in the effort to alleviate immediate safety issues and address the underlying needs of a child/youth before a removal. If children cannot remain safely in their home, DCS seeks the least drastic alternative placement to reduce trauma and explore relatives or kinship placements.

Purpose:

Provides guidelines and procedures for placing children into the State's custody or in relative or kinship placements.

Procedures:

A. Reasonable Efforts to Prevent Removal

The DCS Case Manager documents thorough reasonable efforts to secure culturally sensitive, appropriate and available services to meet the needs of the family and child/youth in order to prevent removal. Reasonable efforts never take precedence above the immediate safety of the child/youth. The DCS Case Manager assesses the immediate safety of the child/youth, using the Family Advocacy and Support Tool (FAST) safety outcomes.

1. The parent/caregiver is involved, to the greatest extent possible, in the decisions regarding reasonable efforts. These efforts include but are not limited to:
   - **a)** Intervention or direct services by DCS Case Manager as part of an Immediate Protection Agreement (IPA);
   - **b)** Use of family, neighbors, or other individuals in the community as a safety placement or resource;
   - **c)** Holding a Child and Family Team Meeting (CFTM); or
   - **d)** Arranging for services to increase safety/reduce risk.
2. Efforts to reduce risk and avoid removal are documented on the appropriate screens in ***TFACTS*** and DCS form ***CS-0797, Affidavit of Reasonable Efforts***, if applicable.

B. Legal Procedures for Removal and Placement into DCS Custody

1. The DCS Case Manager:
   - ♦ Consults with the supervisor and Regional General Counsel (RGC), or designee, regarding authorization to file a petition and to physically remove the child/youth from the home of the present caregiver;
   - ♦ Consults with the RGC, or designee, whether or not the petition alleges severe abuse;
   - ♦ Consults with a Master of Social Work (MSW) or an individual with an advanced clinical degree to discuss aspects of the transition as it relates to minimizing trauma as a result of removing the child from the home; and
   - ♦ Prepares for and testifies in all court proceedings pertaining to the removal.
2. The RGC, or designee, drafts and files the petition according to local procedures established by the Juvenile Court.
3. Native American children/youth are placed according to the placement preferences specified in the Indian Child Welfare Act of 1978 (ICWA). If a child/youth is being removed and it is confirmed that the child/youth is of Native American heritage and protected under the jurisdiction of the ICWA, the Tribe/Nation is notified as outlined in DCS Policy ***16.24, Children of Native American Heritage.***
4. The decision to file an emergency petition is made after conferring with the Supervisor, Director and the RGC, or designee.

5. If a child/youth is removed without a court order, the DCS Case Manager files a petition and requests an order as soon as possible but no later than forty-eight (48) hours of DCS taking physical custody.
6. When petitions for emergency removals are filed, a court hearing is held within seventy-two (72) hours of removal to determine if there was probable cause to conduct the emergency removal.
7. If the court upholds the emergency removal, a future court date is set to consider the Department's petition and to make decisions on the adjudication and disposition of the case.

C. Emergency Removals and Emergency Ex-Parte Orders

1. **Exigent circumstances** exist for an emergency custodial removal to take place. The following circumstances may lead to an emergency custodial removal:
   a) **Exigent circumstances** exist when, based on the totality of the circumstances, there is reasonable cause to believe that the child/youth is in **imminent danger** of serious bodily injury and that custodial removal is reasonably necessary to avert that specific injury. A DCS Case Manager may remove a child/youth that has been abandoned without a court order even if there are not exigent circumstances.
   b) **Imminent danger** means there is an **immediate threat** to the child/youth's health or safety and there is reasonable cause to believe that the child/youth is likely to experience **specific**, serious, or irreparable physical harm in the time that would be required to obtain and enforce a court order.
   c) **Specific threat of harm** there is a particular injury or condition endangering the child/youth. The DCS Case Manager is able to articulate the specific danger and general concerns about the child/youth's welfare do not constitute a specific threat of harm.
   d) The **threat of harm** is serious in situations including, but not limited to, conditions constituting severe child abuse as defined at Tenn. Code Ann. § 37-1-102(b)(23). This includes:
      - Abuse or neglect that is likely to cause serious bodily injury or death;
      - Abuse or neglect resulting in serious bodily injury, including but not limited to, second or third-degree burns, a fracture of any bone, a concussion, subdural or subarachnoid bleeding, retinal hemorrhage, cerebral edema, brain contusion, injuries to the skin that involve severe bruising or the likelihood of permanent or protracted disfigurement, including those sustained by whipping a child/youth with objects;
      - Rape or sexual battery of a child/youth; or

- ♦ Knowingly allowing a child/youth to be present within a structure where the act of creating methamphetamine is occurring.

e) **<u>Immediate threat</u>** of harm exists when there is not enough time to get a court order before (further) injury to the child/youth is likely to occur. The DCS Case Manager should take into account whether the alleged perpetrator (AP) has access to the child/youth during the time required to get a court order. The DCS Case Manager should also explore whether there are possible measures to ensure the child/youth's safety during the time required to get a court order.

2. Other considerations:

a) The DCS Case Manager considers whether there are objective indications that the parent will flee with the child/youth, such as; a threat made by the parent to that effect; prior Child Protection Services (CPS) history of the parent fleeing; or a parent who is visiting the state but does not live in Tennessee.

b) When there is more than one child/youth residing in the home, a separate assessment is completed for <u>each</u> child/youth to determine the need for removal.

Note: A delay in responding to the referral regarding a child/youth believed to be in imminent danger may negate a finding that exigent circumstances existed unless additional information discovered at the scene independently establishes exigent circumstances. This does not prevent the filing of a petition for the non-exigent removal of a child.

3. If exigent circumstances **<u>do not</u>** exist, court order is required before removing the child/youth from the home. If there is reasonable cause to believe that delay for a hearing would result in severe or irreparable harm, an emergency ex parte order may be requested before physical removal of the child/youth from the home.

4. A CFTM is held prior to an emergency removal, when possible, but it must be held prior to the seventy-two (72) hour court hearing to consider placement options for the child/youth with input from the family.

Note: If an infant child under the age of twelve (12) months is subject to removal from the home, safe sleep furniture (e.g., crib, bassinette, pack-n-play) accompanies the child to their next placement. Refer to ***<u>Protocol for Safe Sleep Education and Delivery of Safe Sleep Furniture</u>*** for further information.

5. The DCS Case Manager notifies the CFTM facilitator and arranges for attendance of all appropriate parties for attendance.

D. Non-Emergency Removals

A non-emergency removal is a legal proceeding in which DCS petitions to remove a child/youth from the home but does not ask for the child/youth to be removed immediately. This type of action is appropriate when the immediate safety of the child/youth is preserved due to Immediate Harm Factors being addressed through an IPA, form CS-0701 (refer to DCS Policy ***14.13, Child Protective Services Immediate Protection Agreements***) or other measures.

1. The decision to file a non-emergency petition is made after conferring with the supervisor, the RGC or designee.
2. The voluntary time limited plan makes it possible for the child/youth to safely remain in the current setting until all parties can appear in court.
3. Prior to filing a non-emergency petition, a CFTM occurs with the decision from the team recommending the procedure. The DCS Case Manager consults with a Master of Social Work (MSW) or an individual with an advanced clinical degree to discuss aspects of the transition as it relates to minimizing trauma as a result of removal of the child from the home.

E. Petitioning for an Adjudication and Disposition with Relatives

1. If the child/youth cannot safely remain in the home, the DCS Case Manager seeks family members or other possible caregivers that are known to the child/youth.
2. If such parties are located the DCS Case Manager determines if the person(s) can provide care and protection for the child/youth. If an appropriate caregiver is located, the DCS Case Manager confers with the supervisor and the RGC, or designee regarding the filing of a petition for adjudication and a disposition for legal and physical custody with relatives to obtain custody of the child/youth (refer to form ***CS-1005, Non-Custodial Expedited Placement Assessment Summary***).
3. DCS will not advise potential caregivers to file their own petitions if the change of custody is due to safety concerns, unless advised by the RGC, or designee, to do so, and approval must be given by the Team Coordinator or above.

F. Petitioning Solely for Adjudication

In some cases, it may be desirable to petition the Juvenile Court for adjudication even though placement into state custody is not necessary. The DCS Case Manager and supervisor consider this option solely for the purpose of seeking an adjudication of a child/youth as a victim of abuse or neglect and the naming of the responsible party. Obtaining an adjudication can provide legal protection for the child/youth and may be beneficial in future efforts to achieve safety and permanency.

G. Voluntary Placement Agreements

A parent/custodian may agree to a temporary situation in which he or she voluntarily agrees to give up custody of his or her child/youth for a short period of time and DCS agrees to accept responsibility for the child/youth. This type of voluntary placement agreement (VPA) should be clearly documented on DCS form ***CS-0428, Voluntary Placement Agreement***. This arrangement is completely voluntary, can be revoked at will by the parent and/or DCS. This agreement is reserved almost exclusively for circumstances in which a teenage mother wishes to bring her child into foster care with her or when a child/youth's behavior jeopardized the safety of a parent, sibling, or other family member. A VPA should never be considered in any CPS case where abuse or neglect exists.

1. The Case Manager must evaluate if there is any evidence of abuse or neglect.
2. If there is no abuse or neglect present, a CFTM must be held prior to the agreement, when possible, to determine if there are any less restrictive alternatives to DCS custody.
3. The DCS Case Manager must consult with a supervisor, CPS Director and with the RGC.
4. The DCS Case Manager completes the Custodial Intake Packet. 5. The DCS Case Manager completes form ***CS-0428, Voluntary Placement Agreement***.

H. Physical Removal of a Child/Youth

1. The DCS Case Manager ensures that children/youth are separated from their families and removed from their homes in a manner to reduce trauma to the children/youth and their families. The DCS Case Manager:
    - Obtains proper legal authority from the RGC, or designee and/or the court to enact the removal and adheres to local protocols established;
    - Involves law enforcement, when necessary, to ensure the safety of the child/youth, the DCS Case Manager and any other individuals involved;
    - Notifies the parent/caregiver when the child has been placed into the state's custody; and
    - Acquires or makes plans to acquire items necessary for the child's wellbeing that includes, but is not limited to; medication, clothing and toys;

    Note: Any items (clothes, toys etc.) contaminated from methamphetamine exposure may pose further risk. If possible, the child/youth is decontaminated (defined as, at a minimum, bathing the child/youth and changing their clothes) before being transported in the DCS Case Manager's car. If a child/youth is to be transported before decontamination, police assistance is to be obtained. See ***Child Protective Services Tasks Manual*** for additional information.

a) The DCS Case Manager asks the parents about any medical conditions or behaviors of the child/youth and shares all known information with the new caregivers and the worker.

b) The designated Case Manager ensures that the child/youth arrives at the placement. The Case Manager shares all known medical and behavioral history with the new caregivers.

2. Before the removal or as soon as possible thereafter, the Case Manager discusses service planning with the child and family. Children/youth age six (6) or older are included in service planning unless there is a clinical justification (such as an intellectual or developmental disability) for not doing so.

3. The discussion should include, if appropriate:

- Why the child/youth is leaving the home (This is done in language that is not accusatory or degrading of the parents);
- Communicating to the child/youth that the removal is not their fault, but is due to the lack of safety in their current home environment;
- Where the child/youth is going and what to expect in that setting;
- Under what conditions he/she may visit/contact the parent(s) or guardian(s);
- The court process including court hearings and permanency planning;
- Ensuring that any additional clothing, toys, special items or special equipment for the medically fragile child/youth, or medications are retrieved from the home for the child/youth;
- The child/youth's feelings about the removal and any other issues he/she wishes to discuss; and
- The names of other relatives the child/youth would want to contact or who might be resources for the child/youth.

Note: When a removal is taking place, the removing Team Leader/Designee initiates the ***Kinship Exception Request (CS-1013).*** The Kinship Exception Request is then approved by the removing Team Coordinator/Designee to begin the placement process.

4. Refer to DCS policy that outlines the time frames, documentation and pertinent information required to be met by the Case Manager or applicable staff serving the family.

a) The DCS Case Manager or assisting staff immediately completes the following forms to initiate the placement process:

- CS-0727, Initial Intake, Placement, Wellbeing Information and History
- CS-1013, Kinship Exception Request/CS-0774,Genogram

b) The DCS CPS/FSS Case Manager completes the following forms for the case transfer to Foster Care:

- CS-0627, Consent for Psychotropic Medications

- CS-0813, Medication Transfer Form
- CS-0206, Authorization of Routine Health Services for Minors
- TennCare Immediate Eligibility
- CS-0475, Child Welfare Benefits Application
  - The Child Protective or Family Support Services Case Manager will initiate the application. The Family Service Worker will complete and forward the completed Child Welfare Benefits Application Information in TFACTS and all available eligibility verifications to the regional Maximization Specialists within five (5) working days of the child entering DCS custody and removal from the home. Note: If the CPS Case Manager completes the initial application at the time of removal they will send the initial removal packet.
- ***CS-0559, Authorization for Release of Information and HIPAA Protected Health Information TO and FROM the Department of Children's Services and Notification of Release***
- ***CS-0789, Authorization For Release of TennCare Eligibility Information FROM TENNCARE TO The Department of Children's Services and Authorization for the Release of Information TO TENNCARE FROM The Department of Children's Services***
- ***CS-4246, Consent for Vaccination***

Note: All initial paperwork is to be completed by the removal Case Manager within 24 hours or by COB the next business day from the date of the removal.

5. Each region will establish a standard operating procedure for all forms and documentation related to the removal to be shared and stored in the SACWIS/CWIS system.

Note: It is the Custodial FSW/designee's responsibility for entering the custodial episode in TFACTS.

Note: It is best practice for the removal Case Manager to transport the child to his/her initial/temporary placement to reduce trauma. Collaboration between program areas should be sought in the event the removal Case Manager cannot transport/remain with the child. If there is not a consensus, the program staff will escalate the issue to higher supervision for decision making.

Forms:

CS-0206, Authorization for Routine Health Services for Minors

CS-4246, Consent for Vaccination

CS-0428, Voluntary Placement Agreement

CS-0475, Child Welfare Benefits Application

CS-0727, Initial Intake, Placement and Well-Being Information and History

CS-0559, Authorization for Release of Information of HIPAA Protected Health Information TO and FROM the Department of Children's Services and Notification of Release

CS-0627, Informed Consent for Psychotropic Medications

CS-0657, Education Passport

CS-0660, Full Disclosure Statement: Permanency Options for Relative or Kin Caregivers

CS-0682, Custodial Expedited Placement Assessment Summary

CS-0691, Fingerprint Card Information

CS-0701, Immediate Protection Agreement

CS-0708, EPSD&T Physical Examination

CS-0745, Criteria and Procedures for Termination of Parental Rights

CS-0747, Child and Family Team Meeting Summary

CS-0774, Contact Sheets for Genogram

CS-0789, Authorization For Release of TennCare Eligibility Information FROM TENNCARE TO The Department of Children's Services and Authorization for the Release of Information TO TENNCARE FROM The Department of Children's Services

CS-0797, Affidavit of Reasonable Efforts

CS-0813, Medication Transfer

CS-0921, Waiver of Criminal Convictions, Pre and In-Service Training Requirements, Non-Safety Issues, CPS Substantiations and Educational Requirements

CS-1005, Non-Custodial Expedited Placement Assessment Summary

CS-1013, Kinship Exception Request

TennCare Immediate Eligibility Form

Collateral Documents:

Becoming A Relative Caregiver For A Child in Your Family Brochure

Protocol for Safe Sleep Education and Delivery of Safe Sleep Furniture

Waiver Tip Sheet for Employment, Volunteering, and Custodial Placements

Child Protective Services Tasks Manual

14.13, Child Protective Services Immediate Protection Agreements

16.24, Children of Native American Heritage