



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**

ROY COOPER • Governor

MANDY COHEN, MD, MPH • Secretary

SUSAN OSBORNE • Assistant Secretary for County Operations for
Human Services

October 15, 2019

DEAR COUNTY DIRECTORS OF SOCIAL SERVICES

ATTENTION: DIRECTORS, PROGRAM MANAGERS, AND CHILD WELFARE PROFESSIONALS

SUBJECT: URGENT- POLICY AND PRACTICE ALERT

REQUIRED ACTION: REQUIRED ACTION: _Information Only _Time Sensitive X Immediate

It has come to our attention that some County Departments of Social Services and their attorneys may be facilitating or directly filing civil custody actions under Chapter 50 of the General Statutes on behalf of a third-party against the parent(s) of children involved in a Child Protective Services (CPS) case. Any county engaging in such practice must immediately cease such activities. This letter is a reminder of the ways in which law, rule and policy allow for the closure of a CPS case.

NCGS 108A-14(a)(11) provides that a director of social services has the duty and responsibility to “assess reports of child abuse and neglect and to take appropriate action to protect such children pursuant to the Child Abuse Reporting Law, Article 3 of Chapter 7B of the General Statutes.” During the assessment of a substantiated report of maltreatment, the county DSS shall determine whether a juvenile petition should be filed. CPS In-Home Services are legally mandated under Chapter 7B in a situation where a report of maltreatment has been substantiated, but with appropriate interventions and services to the family, the child can remain in the home and filing a juvenile petition may not be necessary. CPS In-Home Services engages families in the planning process while producing better outcomes of safety, permanence, and well-being for children, and encourages families to develop a support network that can assist them in planning for coping with future challenges. Temporary Safety Providers can be used as a voluntary, temporary intervention when there is an immediate safety threat to a child.

A CPS case may only be terminated under the following circumstances:

1. The parents are willing to provide a safe home and demonstrate an ability to do so.
2. The county DSS agency files a juvenile petition pursuant to Chapter 7B.

NC DEPARTMENT OF HEALTH AND HUMAN SERVICES • DIVISION OF SOCIAL SERVICES

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AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER

If a family independently seeks a civil custody order under Chapter 50 to transfer custody of a child to a third-party, this may also allow for the closure of the CPS case. However, the county department of social services, or attorneys that represent a county department of social services, should not engage in the drafting, filing or representation of any of the parties in that independent Chapter 50 action, even if the parents of the child and the third party are in agreement at the time. If a county DSS attorney performs work for, or appears on behalf of, the parents and/or the third-party custodians, that attorney may find themselves facing a conflict of interest that cannot be waived. Further, there is concern that closing a CPS case in this manner without filing a juvenile petition under Chapter 7B may fail to ensure that the safety and risk factors that led to the report of maltreatment are adequately addressed.

If a county department of social services determines that it cannot close the CPS case because the child cannot safely reside in his or her own home, the agency must file a petition alleging abuse, neglect or dependency. Filing a petition under Chapter 7B ensures that when a county DSS, or an attorney that represents a county DSS, is going to be involved in any court proceeding that may impact a parent's rights, that those parents have right to be represented by counsel. Without the opportunity to be independently advised of their rights and the legal consequences of their actions, a parents' rights may be violated.

While this came to our attention in relation to CPS In-Home cases, this directive applies to all CPS cases. Further, we understand there are some counties that have established programs to refer families to legal counsel for obtaining a civil custody order under Chapter 50. At a minimum, these programs should offer or provide access to independent legal representation to all parties, including the parents, to ensure all due process considerations of the parties are accounted for.

NC DHHS will begin a process of following up with all counties and conducting onsite visits to determine the particular practices of each county.

If you have any questions, please send an email Teresa Strom at

Teresa.strom@dhhs.nc.gov.

Sincerely,

Lisa Cauley,

A handwritten signature in cursive script that reads "Lisa Cauley".

Deputy Director of Child Welfare