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| LOCAL COMMISSIONERS MEMORANDUM |
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DSS-4037EL (Rev. 9/89)

Transmittal No: 93 LCM-94

Date: July 28, 1993

Division: Services and
Community
Development

TO: Local District Commissioners

SUBJECT: Permissible Custody Transfers in Article 10 Proceedings
(Child Abuse and Neglect)

ATTACHMENTS: There are no attachments to this release.

In recent months questions have arisen pertaining to Article 10 of the Family Court Act (FCA) orders where legal custody is transferred to the commissioner of social services but the child remains in the physical custody of the parent(s). The purpose of this LCM is to clarify the Department's position on this issue. From a legal perspective, we believe that this practice is inconsistent with the dispositional options available under Article 10:

If the placement is a temporary placement pursuant to Section 1027 of the FCA (Preliminary orders after filing of petition), the court "shall remove or continue the renewal of the child and remand him or her to a place approved for such purpose by the (LDSS) or place him or her in the custody of a suitable person other than the respondent."

If the placement is part of a dispositional order pursuant to Section 1052 of the FCA the court shall enter an order "releasing the child to the custody of his parents or other person legally responsible" or "placing the child in accord with section 1055". Section 1055 of the FCA then allows the court to place the child "in the custody of a relative or other suitable person, or of the commissioner of social services".

The clear intent of the placement provisions of Article 10 is that once the court has decided that a child must be removed from a parent and placed in the legal custody of the local commissioner, physical placement with the parent is inconsistent with Sections 1052 and 1055 of the FCA. The court possesses a non-placement option of having the custody remain with the parent(s) and ordering the district to exercise supervision, pursuant to Section 1057 of the FCA. An additional concern with this practice of placing the child in the commissioner's custody and leaving the child at home has to do with liability if a child is injured while living with the parents. We therefore believe that social services districts should not be requesting or stipulating to orders which create such a relationship. We also recommend that serious consideration be given to appealing orders of legal custody transfers where physical custody remains with the parent.

Finally, there is the issue of the subtle and not so subtle messages we convey to families as a result of the actions that are taken, both legal and casework, after a CPS report is received. We always try to strike the appropriate balance between use of authority and helper role. This task is made even more difficult in that different case circumstances call for a different balance. Only our most skilled and experienced staff consistently are able to strike the correct balance. They recognize that the active involvement of the parent(s) is necessary in order to work toward having an abused/maltreated child be safe in the home and at low risk of future harm.

We ask you to consider that a court decision to remove custody from them but leave the child with them may at least initially discourage real involvement of the parent(s). It may frustrate them by (in reality or in their perception) removing their sense of control over what happens to them and their family. Of course, if the only way to ensure that children will be safe is to take away that control through placement, such an intervention becomes a necessity. However, if it is assessed that a child can remain home safely, it is better not to discourage a parent's active involvement by unnecessarily polarizing his or her relationship with you. Removing the parent's legal custody of the child, without necessity, would not seem to be a progressive step toward building a constructive relationship with the parent.

I welcome any comments you might have about this memorandum. Feel free to write or call me or your appropriate Family and Children's Services Regional Office Director/liaison.

Frank Puig
Deputy Commissioner
Division of Services & Community
Development