



# Children's Commission

## For Judges Handling Child Protective Services Cases

March 17, 2017

### Definition of Home for Purposes of Removal to Foster Care

In order for a child to be removed to foster care, and to secure federal financial participation under Title IV-E of the Social Security Act, federal and state law requires a court to make two critical findings: (1) that reasonable efforts have been made to prevent or eliminate the need to remove the child from the child's home; and (2) allowing the child to remain in the home would be contrary to the child's welfare.<sup>1</sup>

The federal Administration of Children and Families defines "home" as the adult from whom the child is legally removed. In other words, home means parental custody, not physical location. The definition of "home" does not change regardless of where the child is living.

When a child is physically placed in a Parental Child Safety Placement (PCSP), and the department files a petition to remove that child from the PCSP's care into foster care, removal in this circumstance is considered a "constructive" or paper removal from the parent. In other words, the child is physically placed in the PCSP, but the "home" from which the child is being removed is the parent's legal custody. Thus, when the department files a petition under Section 262.113, Filing Suit Without Taking Possession of a Child, the court must make the findings regarding reasonable efforts and contrary to the welfare as they relate to the parent or adult who is entitled to legal custody of the child, not the person who has physical custody.<sup>2</sup>

Reasonable efforts to prevent removal from the parent's custody are not required if the parent has subjected the child to aggravated circumstances as defined by Texas Family Code Section 262.2015.<sup>3</sup>

A handwritten signature in black ink that reads "Dean Rucker".

**Hon. Dean Rucker**  
Jurist In Residence



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<sup>1</sup> Tex. Fam. Code Sections 262.102, 262.107, 262.113

<sup>2</sup> 45 C.F.R. §1356.21(k), Administration of Children and Families Child Welfare Policy Manual, Section 8, Title IV-E Eligibility, Part 8.3A.11, Questions 1 and 3  
[https://www.acf.hhs.gov/cwpm/programs/cb/laws\\_policies/laws/cwpm/policy.jsp?idFlag=8](https://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy.jsp?idFlag=8)

<sup>3</sup> Tex. Fam. Code Section 262.2015

