

**NORTH DAKOTA DEPARTMENT OF HUMAN SERVICES
BISMARCK, NORTH DAKOTA
DECEMBER 31, 2014**

PI 14-11

TO: Directors, County Social Services
Regional Supervisors of County Social Services
Division of Juvenile Services

FROM: Dean Sturn, Administrator, Foster Care Program
Deb Lachenmeier, IV-E Foster Care Eligibility Specialist

SUBJECT: Juvenile Temporary Custody Order
Legal Status 447-10-25-05

PROGRAMS: Foster Care

EFFECTIVE: **Immediately**

RETENTION: Until Manualized

The NDDHS – Children and Family Services has been notified by the North Dakota Court System that effective immediately, there will be a change in the format of the 96 hour Temporary Custody Order (TCO) signed by a Director of Juvenile Court or Juvenile Court Officer Designees. An example is attached.

A Director of Juvenile Court and Juvenile Court Officer Designees have the authority to remove a child and give temporary custody, care and placement responsibility to a designated agency as it deems necessary, subject to further order of the court. Supreme Court rules and policy sanction Juvenile Directors and their designees in matters related to child welfare. However, their role is not of a judicial capacity. Therefore, they are not authorized to make judicial determinations or issue a court finding; hence the verbiage “subject to further order of the court”.

The attached TCO does not, nor should it contain a judicial determination of contrary to the welfare, reasonable efforts to prevent removal, or reasonable efforts to place siblings together if signed by a Director of Juvenile Court or a Juvenile Court Officer Designee. The order does not meet the definition of a court order as defined in Policy Manual 447-10, Legal Status 447-10-20-10.

Judicial determinations must be made by a District Court Judge, Tribal Judge, or judicial referee, which has the authority to make such a determination.

HOW DOES THIS AFFECT FOSTER CARE ELIGIBILITY?

The TCO temporarily removes custody of the child from the parent/guardian, but it does not contain the judicial determinations as set forth in federal and state policy. Therefore, eligibility should not be based on this order.

A court order must be obtained through a Shelter Care Hearing from a court of competent jurisdiction. The order must reflect back on the date the child was removed from the home, authorize the removal from the home, give the public agency care, custody and placement responsibility of the child, and contain the judicial determination requirements as set forth in Titles IV-B and IV-E of the Social Security Act SEC. 472. [42 U.S.C. 672]. This order should be considered the initial order and used in the eligibility determination.

If no further court hearing is held in which “contrary to the welfare” and “reasonable efforts” judicial determinations are made and custody is continued, any placement with a licensed foster care provider cannot be reimbursed using foster care funds.