



OREGON JUDICIAL DEPARTMENT  
Office of the State Court Administrator

**(SENT BY EMAIL)**

December 13, 2021

MEMORANDUM

TO: JCIP Advisory Committee

FROM: Heidi Olsen Strauch, Juvenile Court Programs Manager,  
Juvenile and Family Court Programs Division

RE: Juvenile Dependency Protective Custody Orders  
Process for “closing the loop”

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JCIP is seeking feedback from the JCIP Advisory Committee about developing a uniform process for dealing with open Protective Custody Orders (PCOs), based on inquiries we’ve received from local courts.

A PCO in this context is governed by ORS 419B.150, which authorizes ODHS to apply for an order to gain access to or remove a child from a parent’s custody. In the current court process, a PCO and its supporting documents are filed under a new case number. If ODHS decides to file a dependency petition and request temporary custody, that petition is filed with its corresponding PCO. In this situation, the court record reflects that the PCO has been acted on and no longer needs to be executed. However, if a petition is not filed based on the circumstances described in the PCO (i.e. if ODHS determines that there is no safety risk to the child, if the risk can be ameliorated without court intervention, or if ODHS is

unable to locate the family), then there is nothing in the court record to reflect whether or not the order was executed and this leaves an “open” PCO in the court record. There is nothing in the PCO statute that places a time limit on the PCO’s effectiveness or otherwise closes out the order.

Here is Joanne Southey’s recollection of the legislative workgroup that led to the most recent PCO legislation:

The original legislative workgroup [for HB 2839, 2019] was headed by Rep Sanchez and besides legislative aides and counsel, also included a large number of participants such as several judges (Judges Jacquot and Waller), JCIP (Leola McKenzie & Megan Hassen), ODHS, DOJ, OPDS, YRJ, DAs, Tribes, CASA, child assessment centers, law enforcement agencies, ACLU, DRO and probably some others.

Rahela does not recall any workgroup discussion about including time limitations on the Protective Custody (PC) order or about the requirement for additional pleadings to withdraw the order – and we don’t believe the workgroup contemplated this specific administrative aspect. We (at DOJ) have recently been involved in conversations in a few counties about what to do with signed orders that don’t result in a removal and petition. In Marion County I believe the plan originally was for the court to track signed orders that didn’t result in a petition but that process didn’t work well and ODHS now has agreed to provide notice to the court.

Rather than create additional work for the courts, ODHS and DOJ, by requiring additional pleadings to draft, file, sign and process, it would seem to be much more efficient if the PC Order included language that if protective custody is not taken (either by law enforcement or ODHS) within 30 days (or some specified time frame such as 30 days but could be extended to no more than X number of days) then the PC order is void – similar to a search warrant. As the current statute is silent as to timeframe the order is valid, we might need to conduct research as to whether a court could include such language, or if the

order could include a box to check on the form order. Another option could be for ODHS to notify the court in writing within 30 days of the issuance of the order if the order was not executed or if ODHS/Law Enforcement made contact with the child but did not remove. This notice could then trigger the court to close the administrative case.

Perhaps if you check with Megan and her recollection is similar, we could look at some of the options above and discuss at a future JCIP meeting? DOJ is happy to participate in research if you'd find it helpful.

Marion County's current process, as reported by its recent juvenile court supervisor Mandi Montgomery is:

When ODHS determines a PCO is no longer needed but it has not been successfully acted on/the child has not been picked up, they will request that the Oregon DOJ file a motion and order to vacate the PCO. The court would add the closed event/status at this point unless it was an open dependency case that should remain open due to other proceedings.

ODHS told us they periodically run a report on their end to review active protective custody warrants and determine if any are still active that should not be. If they find any that shouldn't be active during their review process, they follow this same process listed above.

At this point we seek feedback from the JCIP Advisory Committee about developing a uniform process for dealing with open PCOs. Various options include:

1. ODHS tracking all approved PCOs and periodically engaging DOJ to file motions to vacate those that remain open;
2. Including an expiration/termination date in each order (as suggested by Joanne, above, if permitted by statute); or
3. Legislative fix.