



Court-Ordered Family Services

Testimony before the House Human Services Committee

by Brandon Logan, J.D., CWLS

My name is Brandon Logan and I am the director of the [Center for Families and Children at the Texas Public Policy Foundation](#), a non-profit, non-partisan think tank based here in Austin. Prior to my current position, I was an attorney ad litem for children under the care of the Texas Department of Family and Protective Services (DFPS) for over a dozen years. I have represented hundreds of children throughout Texas. I am certified as a Child Welfare Law Specialist by the [National Association of Counsel for Children](#).

I am here to testify in support of HB 205, which is a step in the right direction in protecting families from unwarranted and intrusive government intervention.

Current Law

On request of the Department of Family and Protective Services (DFPS), a court may order a parent, managing conservator, guardian, or other member of a child's household to participate in services to alleviate the effects of neglect or abuse or to reduce the likelihood of neglect or abuse in the immediate or foreseeable future. A court may order a person to participate in services whether or not the child resides in the home.

DFPS Practice

The [Child Protective Services \(CPS\) Handbook](#) advises caseworkers that court-ordered services may be an effective solution when a family refuses to submit to services; when a family fails to cooperate with services; or when the coercive authority of the court is needed to obtain the family's participation.

The caseworker drafts an affidavit with facts sufficient to satisfy the court to order the family member to participate in services. The affidavit must demonstrate why participation in services by the parent is needed in the case. If the court denies a request to order participation in services, the court must specify its reasons in writing.

Consequences of Suit for Court-Ordered Services

If the parent, managing conservator, guardian, or other member of the child's household fails to follow a court's order to participate in services, the court may impose sanctions including the removal of the child from the home. A person's failure to comply with court-ordered services is relevant evidence at trial.

In 2015, DFPS opened [27,261 cases](#) for services following a completed investigation. DFPS does not report court-ordered services cases separately from voluntary family preservation services. Although the fiscal note assumes 10 percent of such cases require court intervention, it is unclear how many cases DFPS opened as a result of an order to participate. Nevertheless, DFPS removed 4,406 children from families who were engaged in services.

Procedural Deficiencies

[Current law](#) does not require an evidentiary hearing before a court may grant an order forcing a person to participate in family services. Rather, it states a court may order participation based only on a request from DFPS. Even if a hearing is held, the Family Code does not indicate the amount of evidence DFPS must present or the burden of proof required for a court to enter an order compelling participation.

The parties in [other types of CPS cases](#) are entitled to court-appointed counsel and have a right to appeal adverse decisions that affect their fundamental rights. However, suits for court-ordered services provide none of the usual procedural protections afforded parents and other family members subjected to involuntary intervention of the state.

Recommendations

In cases where evidence is insufficient to remove children from their homes, CPS uses orders to participate to compel family and household members to engage in government services. The failure of such persons to comply with a court order to participate and to successfully complete ordered services is independent grounds for removal and may be used against them in subsequent hearings, including as evidence in support of termination of parental rights.

Actions by government to compel participation of parents in government services impinges on a long-recognized and fundamental liberty interest:

“The law’s concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life’s difficult decisions. More important, historically it has recognized that natural bonds of affection lead parents to act in the best interests of their children. The statist notion that governmental power should supersede parental authority in all cases because some parents abuse and neglect children is repugnant to American tradition. Simply because the decision of a parent is not agreeable to a child or because it involves risks does not automatically transfer the power to make that decision from the parents to some agency or officer of the state” ([Parham v. J. R., 442 U.S. 584 \(1979\)](#)).

Because it infringes on a fundamental right of parental autonomy without demonstrating a compelling state interest, [Section 264.203, Family Code](#) should be repealed. “The Due Process Clause does not permit a State to infringe on the fundamental right of parents to make childrearing decisions simply because a state judge believes a ‘better’ decision could be made” ([Troxel v. Granville, 530 U.S. 57 \(2000\)](#)).

Short of repeal, [Section 264.203, Family Code](#), should be amended to provide procedural protections against arbitrary and unreasonable state action. The state should prove by clear and convincing evidence at trial that the person sought to be compelled perpetrated neglect or abuse. The person should be afforded the right to appear and respond, including the right to court-appointed counsel. The services ordered, if any, should be narrowly tailored to accomplish the state’s interest. Finally, the refusal or inability of family members to complete court-ordered services should not serve as an independent basis for removal. Rather, a child should only be removed from his or her home where there is evidence of an immediate risk to the physical health or safety of the child.

Thank you for your consideration. I look forward to your comments and questions. ★

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