

The recent movement towards **Permanent Custody and Guardianship (PC&G)** to avoid termination of parental rights is part of a national movement but is also a response to the current legal landscape in Utah. Utah Code requires the Court make a finding that termination of parental rights be “strictly necessary” before terminating a person’s parental rights. Recent opinions by Utah appellate courts interpreting the “strictly necessary” requirement have led judges, attorneys, and DCFS to consider other permanency options that may serve the child’s best interest other than terminating the child’s relationship with the parents.

Prior to terminating a person’s parental rights, judges must consider whether PC&G is a better option and in the child’s best interest, from the child’s perspective. There may be situations in which TPR is not “strictly necessary” despite the parent(s) not meeting the requirements for reunification. If the judge makes this determination, another form of permanency must be available besides adoption (which requires TPR or relinquishment). The most likely, and in most cases, only option is PC&G as it gives the child a permanent guardian but does not legally sever the child’s relationship with their parents and family of origin. PC&G often means there is a relationship or connection between the child(ren) and parents and family origin which is valuable and the preserving of such is in the best interest of the child.

At the beginning of a case (usually at adjudication or disposition) the judge will set a primary and concurrent permanency goal for the child(ren), based on recommendations from the parties. The concurrent goal is a goal that will be considered if the primary goal is not achieved in the amount of time allotted by the judge or by law. DCFS does not recommend a specific concurrent goal by default (i.e., adoption or PC&G). Instead, DCFS makes a recommendation after carefully considering many factors and consulting with the AAG. Placement of the child(ren) is an important factor DCFS will consider in determining what goals to recommend to the judge.

In most circumstances the judge will proceed with the original concurrent goal set at the beginning of the case if the primary goal is not obtained, however, it is important to understand that the judge is not required to do so. If circumstances or factors have changed from the beginning of the case, the judge may find a different goal from the original concurrent goal is more appropriate and, in the child’s, best interest.

Because “strictly necessary” and best interest of a child is dependent on case specific factors and at the discretion and interpretation of the judge, attorneys, and parties, there is no uniform standard for termination vs. PC&G across the State, which is one reason why we are hearing mixed messages.

The trickiest piece is there is no guarantee what the final permanency option in any given case will end in. We already tell families that foster care is probably the most uncertain ride they’ll ever take...this adds complexity to that uncertainty. The message we can still stress is that the best interest of the child(ren) is still the guiding force. While we may not always agree on what “best” means, we can honor the positive intentions of all parties as we seek to provide a child with permanency that results in the fewest broken connections possible. The best advice we can offer FPs to help with this uncertainty is to cultivate open communication with DCFS, the GALs, and other parties as appropriate. Attending Court and CFTMs will also be important and vital, both as a source of information and a place of advocacy.