

AAL EMERGENCY EX PARTE ORDER CHECKLIST

Statutory Authority: A.C.A. '9-27-314

Purpose:

Probable cause to believe that emergency custody is necessary to:

- ↪ Protect the health or physical well-being of the juvenile from immediate danger (A.C.A. '9-27-314 (a)(1));
- ^ Prevent the juvenile=s removal from state (A.C.A. '9-27-314 (a)(1));
- ∨ Protect the juvenile from severe maltreatment as defined at A.C.A. ' 12-12-503(16) as the following:
 - § sexual abuse,
 - § sexual exploitation,
 - § acts or omissions which may result in death
 - § abuse involving the use of a deadly weapon,
 - § bone fracture,
 - § internal injuries,
 - § burns,
 - § immersions,
 - § suffocation,
 - § abandonment,
 - § medical diagnosis of failure to thrive, or
 - § causing a substantial and observable change in behavior or demeanor of the child (A.C.A. '9-27-314 (a)(2)); or
- ↔ To protect a juvenile who is dependent, defined at A.C.A. ' 12-12-503(16):
 - § A child of a parent under 18 and in DHHS custody;
 - § A child whose parent or guardian is incarcerated and has no appropriate relative or friend willing or able to provide care for the child;
 - § A child whose parent or guardian is incapacitated so they cannot care for the juvenile and they have no appropriate relative or friend to care for the child;

- § A child whose custodial parent dies and no stand-by guardian exists;
- § A child who is an infant relinquished to the custody of DHHS for the sole purpose of adoption;
- § A safe-haven baby; or
- § A child who has disrupted his/her adoption and the adoptive parents have exhausted resources available to them (A.C.A. ' 9-27-314(a)(3)).

Time Constraints:

- ≡ The Probable Cause Hearing shall be held within 5 business days of the issuance of the ex parte order (A.C.A. ' 9-27-314(a)(1)(A)).

Filing:

Only a law enforcement officer, prosecuting attorney or DHHS or its designee can file a dependency-neglect petition seeking ex parte relief (A.C.A. 9-27-310(b)(2)).

Notice:

Immediate notice of the order shall be given by the petitioner or court to parents, guardians or custodians and service shall be in accordance with Arkansas Rules of Procedure (A.C.A. ' 9-27-314(c)(1)).

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Emergency Order Shall Include:

surrogate parent pursuant to IDEA (20 U.S.C. 1400 et seq.).

→ Notice to juvenile=s parents, custodian, or guardian of the right to a hearing and that a hearing will be held within 5 business days of issuance of ex parte order;

^ Right of parent, guardian or custodian:
 \$ to be represented by counsel;
 \$ to appointed counsel if indigent; and
 \$ to be informed as to how to obtain counsel;

Court may appoint counsel for parent or guardian from whom custody was removed in the ex parte emergency order. **A.C.A. '9-27-316 (h)(1)(B)**

∨ Appointment of attorney ad litem for child; and
A.C.A. '9-27-316(f)(1)

↔ Information regarding hearing including location and telephone number of the court and procedure for obtaining a hearing. **A.C.A. '9-27-314 (b)(4)**

⇐ **REQUIRED IV-E FINDING**

In the initial order placing a child in DHHS, the Court must make a finding on whether:

- ψ *“it is contrary to the juvenile=s welfare to remain with the parent/guardian/custodian”*
- ψ immediate removal and the reasons for removal are *“necessary to protect the health and safety of juvenile;@ and*
- ψ That removal is in the juvenile’s best interest.
A.C.A. '9-27-328(b)(1)

Where the state’s first contact with the family has occurred during an emergency in which the juvenile could not remain safely in the home even with reasonable efforts being provided, reasonable efforts shall be deemed. **A.C.A. '9-27-328(c)**

If the court transfers custody of the juvenile to DHHS, the court may appoint an individual to consent to an initial evaluation and serve as a

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Petition Shall Include (A.C.A. '9-27-311):

- Name, address, gender, SSN, and date of birth of each juvenile subject of the petition.
- Name and address of each of the parents or the surviving parent of the juveniles.
- Name and address of the person, agency, or institution having custody of the juveniles.
- Name and address of any other person, agency or institution having a claim to custody or guardianship of the juveniles.
- Name and address of a putative parent, if any.
- Petition shall set forth, in plain and concise words, facts which, if proven, would bring the family or juvenile within court's jurisdiction; section of the subchapter upon which jurisdiction is based; and relief requested.
- Petition shall be supported by an affidavit.
- If name or address is unknown or cannot be ascertained with reasonable diligence, allege such in petition and petition shall not be dismissed for insufficiency but court shall direct appropriate measures to find and give notice to the persons.
- Single petition shall be filed which includes all siblings who are subjects of the petition.

Post Order Activities:

- AAL should review the affidavit, meet with and interview the child, and interview the investigator prior to the PC hearing.
- AAL should contact the OCC attorney if the affidavit accompanying the petition is insufficient.
- The AAL should request an order of no contact between the child and any person if he/she deems it to be in the child's best interest. If deemed necessary, the AAL should also request an order that all school records disseminated to parents and/or guardians exclude the name and contact information of the child's foster parents.
- If the AAL anticipates requesting that a CASA volunteer be appointed to the case, he/she should arrange to have a CASA representative present at the upcoming probable cause hearing. AAL should share with opposing counsel the concerns that have prompted the request.