

AAL PROBABLE CAUSE HEARING CHECKLIST

Statutory Authority: A.C.A. '9-27-315

Purpose:

This hearing shall be limited to determining whether probable cause existed to protect the juvenile and to determining if probable cause to protect the juvenile continues to exist; however issues of custody and services may be considered by the court ('9-27-315(a)(1)(B)).

Time constraints:

≡ The probable cause hearing shall be held within 5 business days of the issuance of the ex parte order ('9-27-315(a)(1)(A)).

⌚ By agreement of the parties and with the court's approval the Adjudication Hearing can be held anytime after the Probable Cause hearing. However the Adjudication Hearing shall be held within 30 days of the Probable Cause Hearing and may be continued for no more than 30 days upon motion of the court or parties for good cause shown ('9-27-315(a)(2)(B) and '9-27-327(a)(1)(A)).

≡ A written order shall be filed by the court or by a party or party's attorney as designated by the court within 30 days of the date of the emergency hearing, or prior to the next hearing, whichever is sooner ('9-27-327(c)(3)).

Pre-trial Preparations:

- Interview investigators, client, and all parties.
- Review all evidence and prepare for introduction any evidence needed that will not be admitted by another party.
- Investigate issues of health and safety and whether the child can safely return home and be prepared to elicit testimony to these issues.

Burden of Proof:

Petitioner has the burden of proof by preponderance of the evidence that probable cause exist for continuation of emergency order ('9-27-315(b)).

Issues:

- Have all parties, including putative fathers, been identified?
- Do all parties entitled to counsel have counsel? (Custodial parents and guardians must request counsel and be indigent.)

Best Practice: AAL should request appointment of parent counsel on behalf of the child.

- What is the legal status of the parties to the children
- Identify other family members or family resources and possible relative placements warranting initiation of a home study
- Whether the child is of Native American heritage
- Special needs of the children or parents and services that need to be addressed prior to adjudication
- Custody and visitation (including sibling visitation when appropriate)
- Date and time of staffing. (*Law requires initial case plan w/in 30 days of removal.*)

Best Practice: Assure that the Affidavit Regarding Background Information is introduced. Keep copy for AAL legal file. Assure that affidavit of indigence is introduced for parties requesting a court appointed attorney.

Best Practice: Request the appointment of a CASA volunteer when appropriate.

Exhibits:

- Affidavit of Background Information;
- Affidavit of Indigence; and
- Photos, reports, home studies.

Present At Hearing:

- Judge;
- All parties including children, unless excused for good cause by court;
- Attorneys for all parties;
- Foster parents and relative caregivers;
- Assigned investigator and/or caseworker; and
- Court Reporter.

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Court Findings:

- That probable cause existed;
- That probable cause continues to exist and the juvenile cannot be returned home OR
- The court shall return home the juvenile home if it finds it is in the juvenile's best interest and the juvenile can be returned home safely pending adjudication ('9-27-315(a)(1)(B) and '9-27-315(c)).
- Court shall set date and time for adjudication hearing ('9-27-315(d)(1)).

Post-Trial Activities:

- Review court order for accuracy and completeness.
- AAL must monitor compliance with court orders.
- AAL must explain to age-appropriate clients the hearing outcome and its meaning.

Best Practice: AAL should assure that the 30 day staffing is held with all parties to develop the case plan and that the plan is filed with the court and provided to parties by a specific date prior to the adjudication hearing.

Note: If juvenile has already been adjudicated d-n in the same case and a motion for custody is filed in same case, a subsequent adjudication is not necessary as long as the ground for removal is the same type of ground already adjudicated (§9-27-315(d)(2)). Rules of evidence to not apply at the Probable Cause Hearing (§9-27-315(e)).

Best Practice: AAL should request orders

- *to keep the child in the same school when possible;*
- *for visitation with parents and siblings;*
- *for all needed assessments and evaluations for the family;*
- *for the child's belongings to be provided to the child;*
- *for ILP assessments for age appropriate children;*
- *and that a case staffing be set.*