

OCC

EMERGENCY ORDER OF LESS THAN CUSTODY CHECKLIST

It is appropriate to seek an Emergency Order of Less than Custody when you have an allegation of severe maltreatment on a child who needs protection from someone who has a legal right to custody or access to the child. Examples are sexual abuse by a non-custodial parent who has visitation rights or sexual abuse by a step-father or sibling.

Statutory Authority:

In any case in which there is probable cause to believe that an emergency order is necessary to protect the juvenile from severe maltreatment, as defined in 12-12-503(16), the court shall issue an ex parte order to provide specific appropriate safeguards for the protection of the juvenile if the alleged offender has a legal right to custody or visitation with the juvenile or a property right allowing access to the home where the juvenile resides. 9-27-314(a)(2)

Severe maltreatment means sexual abuse, sexual exploitation, acts or omissions which may or do result in death, abuse involving the use of a deadly weapon as defined by 5-1-102, bone fracture, internal injuries, burns, immersions, suffocation, abandonment, medical diagnosis or failure to thrive, or causing a substantial and observable change in the behavior or demeanor of the child. 12-12-503(16).

Best Practice: OCC should be consulted on all child maltreatment investigations that result in a true finding of sexual abuse and whenever a safety plan is put in place in lieu of removing a child from the custody of his parent or guardian

Notice:

Immediate notice of the emergency order shall be given by the petitioner or by the court to the parents, guardians, or custodian and the juvenile. All defendants shall be served according to the Arkansas Rules of Civil Procedure or as otherwise provided by the court. 9-27-314(c).

All juvenile defendants age ten (10) years and above, any persons having care and control of the juveniles and all adult defendants shall be served with a copy of the petition and either a notice of hearing or order

to appear in the manner provided by the Arkansas Rules of Civil Procedure. 9-27-312.

Commencement of Proceedings:

- Proceedings shall be commenced by filing a petition in circuit court. 9-27-310(a).
- Venue is in the county in which the juvenile resides or where the alleged act or omission occurred. 9-27-307.
- Only law enforcement, the PA or DHHS may file a dependency-neglect petition seeking ex parte emergency relief. 9-27-310(b)(2).
- No fees shall be charged or collected by the clerk or the sheriff in juvenile cases filed by DHHS. 9-27-310(e).

Petition:

- Name, address, gender, social security number 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 the petition and the petition shall not be dismissed for insufficiency but the 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. **9-27-311.**

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Best Practice: Ask worker about efforts to locate name and address of parents. Thoroughly review affidavit and edit to ensure it is legible with specific detailed facts and not legal conclusions. Inquire about applicability of ICWA. Direct CFS to notify OCC immediately whenever a child needs a safety plan to remain in the home or whenever sexual abuse is found true.

Emergency Order:

The Emergency Order shall include:

- Notice to the juvenile's parents, custodian, or guardian of the right to a hearing and that a hearing shall be held within five (5) business days of the issuance of the ex parte order.
- Their right to be represented by counsel;
- Their right to obtain appointed counsel, if indigent, and the procedure for obtaining appointed counsel; and
- The location and telephone number of the court and the procedure for obtaining a hearing.
- Request appointment of Attorney Ad Litem.

If Court Signs the Emergency Order:

- Include a HIPAA order with the Emergency Order.
- Distribute a copy of the Emergency Petition, Affidavit, Emergency Order and HIPAA Order to CFS, the Attorney Ad Litem.
- Provide written notice of the Probable Cause Hearing to the investigator and caseworker, if known. Pulaski staff add PC Hearing Date to Outlook Court Docket.
- Key data in legal screens in CHRIS.
- Identify witnesses for Probable Cause Hearing and issue subpoenas. Obtain witness fee check.
- Identify, copy and mark each exhibit.
- Check Putative Father Registry if name of father is unknown.
- If CASA appointment requested, provide notice of hearing to CASA.