

OCC

72 HOUR HOLD & EMERGENCY CUSTODY CHECKLIST

Statutory Authority:

DHHS may take a child into protective custody without the consent of the parent or guardian if the child is dependent, or if circumstances or conditions of the child are such that continuing in his or her place of residence or in the care and custody of the parent or guardian presents an immediate danger of severe maltreatment. **12-12-516.**

In any case in which there is probable cause to believe that immediate emergency custody is necessary to protect the health or physical well-being of the juvenile from immediate danger or to prevent removal from the state, the circuit court shall issue an ex parte order for emergency custody to remove the juvenile from the custody of the parent, guardian or custodian and shall determine the appropriate plan for placement of the juvenile. **9-27-314(a)(1).**

In any case in which there is probable cause to believe that a juvenile is a dependent juvenile as defined in this subchapter, the court shall issue an ex parte order for emergency custody placing custody of the dependent juvenile with DHHS. **9-27-314(a)(3).**

Time constraints:

🕒 **Such custody** shall not exceed 72 hours except in the event that the expiration of 72 hours falls on a weekend or holiday, in which case protective custody may be extended through the next business day following the weekend or holiday. **12-12-516(a)(2)**

Notice:

- When DHHS takes a juvenile into custody pursuant to the Arkansas Child Maltreatment Act, DHHS shall make every possible effort to notify the custodial parent, guardian or custodian of the juvenile's location. 9-27-313(c).
- The notice shall be in writing and shall include a notice that the juvenile has been taken into foster care; of the name, location and phone number of the person at DHHS whom they can contact about the juvenile; of the juvenile's and parent's rights to receive a copy of any petition filed; of the

location and telephone number of the court; and the procedure for obtaining a hearing. 9-27-313(c)(1).

Best Practice: OCC should ask the caseworker whether reasonable efforts were made to prevent removal if DHHS was previously involved with the family and include this information in the affidavit.

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 should include:

- 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 notarized affidavit.

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- 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. **9-27-311.**
 - could safely remain at home while family services were provided;
 - Why efforts made to provide the family services described did not prevent the removal of the juvenile; and
 - Whether efforts made to prevent the removal of the juvenile were reasonable, based upon the needs of the family and the juvenile.

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 contain legal conclusions. Inquire about applicability of ICWA. Direct CFS to notify OCC immediately when 72 hour hold exercised and obtain affidavit no later than 48 hours after hold exercised. You can have more than 1 affidavit.

Removal of juvenile ACA 9-27-328

Before a judge may order any dep-neg juvenile removed from the custody of his parents and placed with DHHS or a relative or other person, the court shall order family services appropriate to prevent removal unless the health and safety of the juvenile warrant immediate removal for the protection of the juvenile.

When the court orders removal of a juvenile from the custody of his parents, the court shall make these specific findings:

- Whether it is contrary to the welfare of the juvenile to remain at home;
- Whether the removal and reasons for the removal of the juvenile is necessary to protect the health and safety of the juvenile;
- Whether the removal is in the best interest of the juvenile; and
- Within 60 days of removal, the court must find:
 - Which family services were made available to the family before the removal of the juvenile;
 - What efforts were made to provide those family services relevant to the needs of the family before removal, taking into consideration whether or not the juvenile

- Where the state agency's first contact with the family occurred during an emergency in which the juvenile could not safely remain at home, even with reasonable services being provided, the responsible state agency shall be deemed to have made reasonable efforts to prevent or eliminate the need for removal.
- Where the court finds DHHS' preventive or reunification efforts have not been reasonable, but further preventive or reunification efforts could not permit the juvenile to remain safely at home, the court may authorize or continue the removal of the juvenile but shall note the failure by DHHS in the record of the case.

Educational Issues

If the court transfers custody of the juvenile to DHHS, ask the court to address:

- Whether the parent or guardian shall have access to school records of the juvenile;
- Whether the parent or guardian who has access to school records of the juvenile is entitled to obtain information on the current placement of the juvenile, that is, the name and address of the foster parent or provider; and
- Whether the parent or guardian may participate in school conferences or similar activities at school.
- Whether the parent can serve or continue to serve as the parent for purposes of IDEA (20 U.S.C. 1400 et seq.) and if not, who will serve as a surrogate parent.

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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.

Include a HIPAA order with the Emergency Order of Custody

Request appointment of AAL in the Emergency Order.

Best Practice: Request appointment of parent counsel in emergency order.

Post-order Activities:

- Distribute a copy of the Emergency Petition, Affidavit, Emergency Order and HIPAA Order to CFS, the Attorney Ad Litem and, if appointed, Parent Counsel.
- Serve parents with a copy of the Emergency Petition, Affidavit, Emergency Order and HIPAA Order
- 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 exhibits.
- Check Putative Father Registry if name of father is unknown.
- Send copies of pleadings to IV-E Eligibility Unit.
- If CASA appointment requested, provide notice of hearing to CASA.

Best Practice: Serve affidavit of financial means and affidavit of Background Information on parents when you are serving the parents with summons and a copy of the emergency legal pleadings.