

Rhode Island Department of Children, Youth and Families Department Operating Procedure

	DOP Number: 500.0075	Effective Date: January 10, 2018	Page 1 of 6
	Version #:6	Revision History: July 7, 1984 V.1 December 9, 2011 V.5	Director:
Section: Child Abuse/Neglect Investigations		Title: Removal of Child from Home	
Legal Authority:			
<ul style="list-style-type: none"> • Rhode Island General Law §40-11-2 • Rhode Island General Law §40-11-7 			
Related DOPs:			
<ul style="list-style-type: none"> • Voluntary Placement, DOP: 700.0015 • Obtaining Custody of Child Through the Dependent/Neglected/Abused Petition, DOP: 1100.0000 • Kinship Care, DOP: 900.0025 • Documenting Results of CPS Investigations in RICHIST, DOP: 500.0095 • Criminal Records Checks, DOP: 900.0040 • Clearance of Agency Activity, DOP: 700.0105 • Comprehensive Assessment and Service Planning, DOP: 700.0075 • Termination of Parental Rights, DOP: 1100.0020 			
Related Forms:			
<ul style="list-style-type: none"> • Report of Examination (#064) • Bureau of Criminal Identification (#034) • DCYF clearances (#035) • Preliminary Assessment of the Family and Home (#036A) • Documentation of Temporary Protective Custody form (CPS #53) 			

I. PURPOSE

The federal Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272) and Adoption and Safe Families Act of 1997 (P.L. 105-89) and Rhode Island General Law (RIGL 40-11-12.2 and 42-72-11) require the Department to make reasonable efforts to prevent or eliminate the need for placement of a child outside the home. Reasonable efforts include an assessment of the individual child and family situation to evaluate the appropriateness, availability and accessibility of preventive services and assisting the family in accessing such services. A parent's willingness to participate in a plan intended to prevent out of home placement is considered in determining the degree of risk to a child if left in his/her home. Every child has the right to feel physically and emotionally secure in his or her home environment. This focus on child safety and well-being is the paramount concern when making decisions regarding services, placement and permanency.

Although the Department maintains children in their own homes whenever possible, certain events in a child's life may require consideration of a temporary or long-term placement outside the home. In the event that any child is removed from home, the Department is obligated under federal and state law (RIGL 40-11-12.2, 14-1-27) to investigate the possibility of placing the child or children with a fit and willing relative who

does not reside with the child's parents. (Under certain circumstances, a Termination of Parental Rights petition may be filed subsequent to the removal from home without making reasonable efforts; refer to [DCYF Policy 1100.0020, Termination of Parental Rights](#)).

State law (RIGL 40-11-5) provides that physicians/nurse practitioners, law enforcement officers and authorized Child Protective Investigators/ Social Caseworkers II have the right to take temporary protective custody of a child without the consent of a parent or legal guardian as described in procedure; refer to [Removal of Child from Home - Protective Custody](#).

State law requires Family Court to immediately take any action it deems necessary or appropriate for the protection of the child, including the removal of the child from the custody of the caretaker, pending a trial on the merits. These findings by a Family Court Judge must set forth in the initial order authorizing the removal of the child from the home in order to claim federal reimbursement of the state's cost for foster care:

The continuation of the child in the home of the parent is contrary to the best interest of the child; The child requires the protection and assistance of the State; and the State has made reasonable efforts to prevent or eliminate the need for removal; (or in the alternative) That reasonable efforts to prevent or eliminate the need for removal are unnecessary due to the substantial or immediate danger to the child.

Rhode Island General Law 42-72-14 allows the Department to remove a child from the home in some situations on a voluntary basis; refer to [DCYF Policy 700.0015 Voluntary Placement](#). The Department must file a Miscellaneous Petition in Family Court within sixty days of voluntary placement to be eligible for federal reimbursement.

II. TERMS DEFINED

n/a

III. PROCEDURE

I. Removal of Child from Home-Protective Custody

- A. Physicians/nurse practitioners, law enforcement officers and authorized Child Protective Investigators and Social Caseworkers II are authorized to take temporary protective custody of a child without the consent of a parent or legal guardian.
 - 1. A physician/nurse practitioner can place a 72-hour hold on a child who has suffered physical injury that appears to have been caused by other than accidental means or a child suffering from the effects of sexual molestation or malnutrition or other serious medical neglect:
 - a. Physician/nurse practitioner files a Report of Examination (#064) and authorizes the 72-hour hold.
 - b. Physician/nurse practitioner contacts the Child Protective Services Hotline to advise Child Protective Services (CPS) of the hold. The matter is assigned for investigation. If the child is active with the Department, the Child Protective supervisor handling the assignment notifies the primary Worker and/or supervisor immediately of the investigation and the name of the assigned investigator and his/her supervisor.
 - c. If the child requires medical treatment, the child may remain in the hospital during the course of the protective hold.

- d. Any investigation will be raised to Level 1 if a 72-hour hold is invoked. When the Standard for Investigation is raised from Level 2 or 3 to Level 1, the investigator notifies the Office of Legal Counsel to discuss the need for legal action if the initial findings suggest substantiation.
2. A law enforcement officer can invoke a 48 hour hold if he/she has reasonable cause to believe that imminent danger to the child's life or health exists. If a law enforcement officer places a child on a hold, he or she notifies the Child Protective Services Hotline to determine if an investigation is warranted. If the child is active with the Department, the primary worker and/or supervisor is immediately advised of the report and the name of the assigned investigator and supervisor by the Child Protective supervisor determining if an investigation is warranted.
 3. A Child Protective Investigator or Social Caseworker II may take temporary protective custody of a child for 48 hours without the consent of the parent or guardian if a parent or caretaker is unwilling, unable or unavailable to cooperate in the protection of the child and/or the child would be at imminent risk of harm if left in the home.
 - a. Prior to the removal of a child from the home, the primary worker assesses the safety factors outlined in the Safety Assessment in conformance with [DCYF Policy 700.0075, Comprehensive Assessment and Service Planning](#).
 - i. If a determination is made that a 48-hour hold is not appropriate although legal action may be indicated, the primary worker discusses situation with supervisor and seeks a legal consult. (Please see procedures [Removal of Child from the Home - Ex Parte](#) and [Removal of Child from Home - Children Having Legal Status with the Department](#) and [DCYF Policy 1100.000 Obtaining Custody of Child Through the Dependent/ Neglected/ Abused Petition](#).)
 - ii. If a determination is made that a 48-hour child protective hold is necessary, the primary worker makes every attempt, if practical, to seek supervisory approval beforehand when an emergency situation exists requiring the removal of a child. If unable to obtain prior approval, the primary worker notifies the supervisor or appropriate administrator of the child's removal from the home as soon as possible after the action is taken.
 - b. If a 48-hour protective custody hold is invoked by the primary worker he/she must:
 - i. Contact law enforcement for assistance in removing the child when possible and considered necessary.
 - ii. Transport the child to the nearest medical facility if medical care is needed.
 - iii. Make every reasonable effort to notify the parent/caretaker of the action taken.
 - c. If a social caseworker initiates the protective hold, he/she must notify the Child Protective Services Hotline immediately and a determination will be made if an investigation of the allegations that prompted the caseworker to remove the child from home is warranted.
 - d. The primary worker who removed the child is has the child examined by a physician or nurse practitioner within 24 hours. If there is no evidence of abuse or neglect or illness or physical needs, and the supervisor approves, the examination by a

physician or nurse practitioner may occur within three working days of the protective hold.

- B. Whether a child is removed from the home by a 72-hour hold or a 48-hour hold, the following additional steps must be followed:
1. If the child does not require hospitalization on a 72-hour hold and when a child is removed on a 48-hour hold, the primary worker must investigate the possibility of placement for the child with a fit and willing relative who does not live with the parent/caretaker.
 - a. Immediately upon removal, the primary worker makes reasonable efforts to locate a kinship placement in conformance with [DCYF Policy 900.0025, Kinship Care](#). Documentation is included in RICHIST.
 - b. The primary worker completes and approves the Bureau of Criminal Identification (#034) and DCYF (#035) clearances and the Preliminary Assessment of the Family and Home (#036A) prior to placement in conformance with [DCYF Policy 900.0040, Criminal Records Checks](#) and [DCYF Policy 700.0105, Clearance of Agency Activity](#).
 2. If child does not require hospitalization (72-hour hold) or there is no fit and willing relative who can provide immediate care, the primary worker completes the Placement Unit Request form and forwarding it electronically to the Placement Unit. If placement is needed after regular working hours, the primary worker contacts the Child Protective Services Hotline.
 3. The Documentation of Temporary Protective Custody form (CPS #53) is completed and a copy is forwarded to the Child Protective Services Hotline as well as the Regional Director, if case is active in Family Services or the Juvenile Probation Administrator, if case is active in Probation.
 4. If a child, placed on a 72-hour or 48-hour hold, is placed in substitute care by the primary worker, he/she enters the appropriate information into RICHIST. If the placement is a licensed foster home, it is entered in the Out of Home Placement Window. If the placement is with a relative who is not yet certified or licensed, the information is entered in Living Arrangements Window. The Child Welfare Status is entered in the Court Activity Window and other pertinent information in Case Activity Notes.
 5. The circumstances surrounding a 72-hour or 48-hour hold are reviewed with supervisory staff. Each situation wherein a protective hold has been authorized should be reviewed with Legal Counsel.
 6. If a decision is made to seek custody and/or placement beyond the 48 or 72 hours, an Ex Parte Order of Detention or an Emergency Motion for a Change in Placement must be filed in Family Court prior to the expiration of the hold (depending on whether a petition has already been filed in Family Court).
 7. In the event that the 48-hour or 72 protective hold will expire on a weekend or holiday, the primary worker must obtain a verbal Ex Parte Order of Detention from a Family Court Judge through the Department's Office of Legal Counsel prior to the expiration of the hold. The verbal Ex Parte must be documented in a Case Activity Note by the primary worker and a written Ex Parte petition must be filed by the primary worker the next working day.
- C. In certain circumstances and when an appropriate safety plan is in place, an Administrator may release the protective hold, downgrade the report and refer the case to CPS Intake or to the primary worker.

- D. When a child who is not otherwise open to the Department is removed from home by a Child Protective Investigator, he/she sends a partial packet to the intake unit by the beginning of the next work day. The packet includes a copy of any material which may assist in providing services to the child or family. The case will be assigned online to the intake office supervisor by the Child Protective supervisor. The Child Protective Investigator completes the investigation in accordance with [DCYF Policy 500.0095, Documenting Results of CPS Investigations in RICHIST](#).

II. **Removal of Child from Home-Ex Parte**

- A. The primary worker can seek an Ex Parte, Order of Detention to remove a child from the home or to continue the placement of a child who was removed from home by a 48 or 72-hour temporary protective hold.
- B. To determine whether an Ex Parte petition should be filed, the primary worker considers the following facts and evidence:
1. The child will be in imminent danger of further harm if not removed from home.
 2. Reasonable efforts to provide supportive services to family unit would not alleviate risk of harm to the child.
 3. A Report of Examination (#064) stating that a child has been abused or neglected is considered prima facie evidence to support approval of the request for an Ex Parte.
- C. The primary worker consults with his/her supervisor and, if appropriate, Department Legal Counsel, regarding the advisability of filing an Ex Parte Petition. If an Ex Parte will be filed:
1. A separate petition is prepared by Legal Counsel for each involved child.
 2. A "Summary of Facts to Substantiate Allegations of Abuse, Neglect, and/or Dependency" is prepared by the primary worker documenting the evidence supporting the allegations made in the petition and including any efforts made by the Department to alleviate the risk to the child. This Summary of Facts, including the RICHIST identification number is presented to Legal Counsel along with a List of Witnesses.
 3. Legal Counsel prepares the Detention Order, the Affidavit in Support of the Order of Detention, Ex Parte and the petition.
 4. The primary worker signs the affidavit in the presence of a notary and brings the affidavit along with the petition to Family Court.
 5. The primary worker, along with Legal Counsel, presents the affidavit and petition to a Family Court Judge.
 6. If a Family Court Judge grants the Ex Parte Order, temporary custody of the child is awarded to the Department.
 7. If the Judge does not grant the Ex Parte, the primary worker consults with his/her supervisor and Legal Counsel to consider available options, including motioning the Court for an evidentiary hearing, pursuing a voluntary placement or delaying further legal action until more evidence is gathered.
 8. If the Judge grants the Ex Parte, the primary worker brings the signed Detention Order to the Juvenile Clerk's Office where an arraignment date will be assigned. Copies are processed and provided to the primary worker.
 9. The primary worker forwards the Detention Orders via interoffice mail to the Associate Director for signature. A copy of the Detention Order is provided to the hospital if a child remains hospitalized.

10. The parent/guardian receives a summons to appear at the arraignment which will occur within seven days of the filing of the Ex Parte Order of Detention.
11. The primary worker updates the Court Activity Window in RICHIST.
12. At the arraignment, parents or legal guardians have the right to request a Probable Cause Hearing within ten days of the request. The primary worker who obtained the Ex Parte must be present and prepared to testify at the Probable Cause Hearing.
13. The Family Court Judge will set Pretrial, Trial, and Permanency Hearing dates.

III. **Removal of Child from Home- Children in Department Custody or Supervision**

- A. One of the following actions must be taken by the primary worker to remove a child from home when there is an outstanding custody petition and the Department has been granted legal supervision, temporary custody or commitment:
 1. Invoke a 48-hour temporary protective hold regardless of whether or not the Department has discretion to place in conformance with procedure, [Removal of Child from Home - Protective Custody.](#))
 - a. The primary worker meets with Legal Counsel prior to the expiration of the hold to determine if continued placement outside the home is indicated.
 - b. If the facts and evidence support the need for continued placement, an Emergency Motion for a Change of Placement/Custody must be prepared and filed with the Family Court.
 - c. The Department has the option to await the approval of the Family Court before removing the child.
 2. File an Emergency Motion for a Change of Placement/Custody. This must be presented to and approved by a Family Court Judge prior to the removal of the child(ren) from the home.
- B. To file an Emergency Motion for a Change of Placement/Custody:
 1. The primary worker meets with Legal Counsel and presents a Summary of Facts to support the decision to remove the child. The Summary includes the RICHIST Identification Number and a List of Witnesses.
 2. Legal Counsel prepares an affidavit with a request for Ex Parte relief and the Emergency Motion for a Change of Placement/Custody.
 3. Legal Counsel notifies parents' attorneys and CASA of the action to be taken so that they may be present in Court when the motion is presented.
 4. The primary worker, along with Legal Counsel, presents the Emergency Motion for a Change in Placement/Custody to a Judge at Family Court for approval.
 5. If the Judge approves the Emergency Motion, the matter is set down for a hearing date.
 6. The primary worker files the signed motion with the Juvenile Clerk and distributes copies of the motion to the Office of the Public Defender, CASA and private attorneys for the parents and child.
 7. The primary worker updates the Court Activity Window in RICHIST.
 8. The Legal Office enters into RICHIST the type of petition filed.
 9. The primary worker must be present at the Court Hearing.
 10. If not already scheduled, a court date for a Permanency Hearing is requested.