



Arizona Department of Child Safety

Douglas A. Ducey
Governor

Gregory McKay
Director

October 23, 2017

David K. Byers
Administrative Director
Administrative Office of the Courts
1501 W. Washington, Suite 411
Phoenix, AZ 85007-3327
Phone: (602) 452-3301
Projects2@courts.az.gov

Re: Proposed Rule 47.3 to the Rules of Procedure for the Juvenile Court, implementing an amendment to A.R.S. § 8-821(A), which permits a juvenile court in a dependency petition to issue a pre-petition order that authorizes the Department of Child Safety to take temporary custody of a child.

Mr. Byers-

Please find attached the Department of Child Safety's comments to the above captioned rule change petition.

Department of Child Safety Comments

Rule 47.3 Court Authorized Removal

A. Purpose. On application under oath by a child safety worker, a child welfare investigator, or a peace officer, the court will determine ex parte whether to authorize the applicant to ~~enter premises to locate a child and to~~ take emergency temporary custody of the child.

DCS Comment: The order should give the Department the authority to take custody of a child. The Department will seek law enforcement assistance to enter premises when required.

B. Burden of Proof.

The applicant shall have the burden of stating explicit facts that provide probable cause to believe:

1. emergency temporary custody of the child is clearly necessary to protect the child from suffering abuse or neglect;
2. no alternative means to effectively protect the child is available; and
3. remaining in the child's current home is contrary to the welfare of the child.

Additionally, for an Indian child, under 25 C.F.R. § 23.113(b)(1) the facts stated must provide probable cause that emergency temporary custody is necessary to prevent imminent physical damage or harm to the child.

C. Procedure.

1. **Application.** A child safety worker, a child welfare investigator, or a peace officer may apply for authorization to ~~enter premises to locate a child and~~ take emergency temporary custody of the child and by submitting an application in writing or by ~~recorded~~ oral statement under oath to one of the judicial officers designated by the presiding judge of the superior court in Maricopa County to receive and respond to applications under this rule. The application or ~~recorded~~ oral statement must state:

- (a) the professional qualifications of the applicant,
- (b) the particular reasons each child is presently or imminently in danger of abuse or neglect,
- (c) a detailed account of circumstances that require emergency temporary custody including the facts that support the reasons given,
- (d) the availability of ~~remedial services or other~~ voluntary options that would remove or control the danger,

DCS Comment: It is likely too early in the process to identify services needed as a family functioning assessment has not been done.

- (e) the identity and description of each child to be placed in emergency temporary custody,
- ~~(f) the place or places to be searched,~~

DCS Comment: Same as A.

- ~~(g) any time by which custody must be taken,~~
- (h) reason for any authorization needed to execute the order between ten p.m. and six-thirty a.m., and
- ~~(i) whether law enforcement assistance is requested.~~

DCS Comment: Every order should authorize and require law enforcement assistance in effectuating the judge's order.

Additionally, under 25 C.F.R. § 23.113(d), if there is reason to know the child is an Indian child, the applicant should provide any available information regarding the child's tribal affiliation, whether the child resides on a reservation and any efforts to contact a tribe. The other information that should be provided under 25 C.F.R. § 23.113(d) may be provided in the dependency petition.

2. **Form.** The application must be submitted in a format approved by the Administrative Director of the Supreme Court.

3. **Evidence.** Evidence presented in support of an application for emergency

temporary custody may include evidence which is reliable hearsay, in whole or in part.

4. **Consideration.** As soon as possible after receipt of an oral statement or a written application, a designated judicial officer will consider the application ex parte. The judicial officer may question the applicant and any witnesses orally or in writing. Any oral questioning must be recorded.

D. Findings and Order.

1. **Content.** The order will state whether there is probable cause to believe that emergency temporary custody of the child is clearly necessary to prevent abuse or neglect because no alternative means to effectively protect the child is available and whether remaining in the child's current home is contrary to the welfare of the child. Additionally, an order granting an application must include:

(a) a factual basis for the determination for each child,

(b) the identity and description with reasonable particularity of each child to be placed in emergency temporary custody,

~~(c) the description of one location to be searched for each order,~~

DCS Comment: Same as A.

(d) ~~whether~~ **an order authorizing and requiring law enforcement to take or to assist in the taking of temporary custody at the request of the Department of Child Safety assistance and**

(e) whether for good cause shown the authorization includes searching for the child and taking custody at any hour.

Additionally, for an Indian child, under 25 C.F.R. § 23.113(b)(1) the court must find probable cause that emergency temporary custody is necessary to prevent imminent physical damage or harm to the child. A separate order must be issued for each location to be searched.

DCS Comment: The order should give law enforcement the authority and requirement to facilitate taking emergency custody of the child.

2. Form. If the applicant and judicial officer are not in each other's physical presence, the judge may sign the order authorizing emergency temporary custody using an electronic signature to serve as the original order, orally authorize the applicant to sign the judge's name on the order, or sign an electronically transmitted version of the original order which is then deemed to be the original. The judicial officer will record the time and date of issuance of an orally authorized order on the original order and the applicant will send the duplicate original order to the judicial officer who issued the order who will then file these orders in the court that would have dependency jurisdiction of the child.

3. Notice. The applicant must provide the parent or other custodian a copy of the emergency temporary custody application and order authorizing emergency temporary custody with the Temporary Custody Notice (TCN) upon taking custody of the child or, when a parent is not present, ~~as soon thereafter as possible~~ **as required by law.**

DCS Comment: ARS 8-823 gives the Department six hours to serve the TCN.

4. Execution and Duration. The applicant may execute the order until there is a material change in the factual basis for the probable cause determination and within ten calendar days of issuance of the order. ~~The applicant must provide notice of the execution of the order to the court that issued the order.~~ The temporary custody authorized by the order will expire after 72 hours excluding Saturdays, Sundays and holidays unless a dependency petition is filed. The court with dependency jurisdiction over the child will review continuation of temporary custody as provided in rules 50 and 51.

5. Filing: The applicant must file the application and order when the ~~TCN and the dependency petition~~ **are is** filed. Prior to filing the application and order the applicant must indicate on the order whether the child was removed as authorized by the order. ~~If no petition is filed following an order authorizing emergency temporary custody under this rule the applicant must file the application and order within 72 hours excluding Saturdays, Sundays and holidays in the court that would have dependency jurisdiction of the child.~~

DCS Comment: Currently, although the Department generally files the TCN with the dependency petition, there is no legal requirement to do so. Additionally, if no removal occurs, no return should be required.