

CHILD WELFARE REMOVALS, ACCESS ORDERS AND LEGAL MANDATES

TYPE OF REMOVAL AND LEGAL PRIORITY and ACCESS ORDERS	NOTICES	TIME BY WHICH ARTICLE TEN PETITION SHOULD BE FILED AND SOME COMMENTS
<p>Priority 1: CONSENT REMOVAL - FCA 1021. Must be in writing ((this is NOT a voluntary placement agreement) Child suspected to be abused or neglected but to sustain removal in court need imminent danger, reasonable efforts, etc. as below.</p>	<p>FCA 1021/1023/1028 rights</p>	<p>If child not returned, file petition within 3 court days of consent removal (attach the written consent to the Article Ten petition). Hearing on the FCA 1027 application held no later than next court day. The notice will advise parent of right to be present at 1027 hearing and right to demand a hearing on the return of the child under FCA 1028.</p>
<p>Priority 2: COURT ORDERED REMOVAL AFTER FILING PETITION -FCA 1027. Court finds imminent danger, reasonable efforts, return contrary to well-being, and Order of Protection will not protect child in the home. Parent will not or could not consent to the removal</p>	<p><u>pre court</u> FCA 1023 <u>after court</u> Summons and Petition ** if the child not previously removed)</p>	<p>Petition filed. CPS should give the parents notice under 1023 if they did not previously remove the child and will be asking for a court remand upon the filing of the petition. Summons would be returnable in 3 court days **If the respondent appears at the filing of the petition, they would get the petition at such “initial appearance” If child endangered, can seek “ex parte” order which means only CPS appears. (<i>Nicholson v Scopetta</i>, 2004, Ct of Apps)</p>
<p>Priority 3: COURT ORDERED REMOVAL BEFORE FILING PETITION - FCA 1022. Court finds imminent danger, reasonable efforts, return contrary to well-being and order of protection will not protect child in the home. No consent, and no time to file petition and seek a removal order</p>	<p><u>pre court</u> FCA 1023 notification <u>after court</u> FCA 1022 (d) (1023/1028 right to challenge removal in court)</p>	<p>Court must hear FCA 1022 application on date it is filed File petition within 3 court days of the removal order File affidavit of service of the removal notice with the family court within 24 hours (FCA 1024 (b)(iii)) If child endangered, can seek “ex parte” order if necessary to protect the safety of a child. The law requires you to make “every reasonable effort, with due regard for any necessity for immediate protective action, to inform the parent of the intent to apply for the order...”</p>
<p>Priority 4. EMERGENCY REMOVAL -FCA 1024, SSL 417.1(a) .Imminent Danger assessed by CPS, reasonable efforts will not prevent foster care, parent will not consent and no consent, and no time to file for court ordered removal post-petition or pre-petition</p>	<p>FCA 1024(b)(ii)(iii) (1023/1028 Rights to challenge removal in court)</p>	<p>Unless child returned on date of removal, file petition no later than next court day (Unless 3 court day FCA 1026(c) extension granted by the court): Hold a FCA 1027 hearing no later than next court day. The “1028” notice informs the parent of their right to demand a hearing challenging the removal of the child. This hearing must be held within 3 court days. The notices are specifically referred to in FCA 1022 (d) (pre petition applications) and FCA 1024 (b)(iii)(emergency removals)</p>
<p>ORDER TO PRODUCE CHILD-FCA 1034 2.(a)(i). Caseworker unable to locate or denied access to the child and has cause to believe child’s life or health may be in danger. Court finds reasonable cause to suspect child’s life or health may be in danger after considering relevant FCA 1034 2 (d) information</p>	<p>SSL 424-6-A Notice that if denied access to child, may notify law enforcement and seek court order to produce child</p>	<p>Before petition is filed. No requirement to ever file petition, only to report on results and actions taken Application to court can be made orally or in writing on a 24/7 basis in person when court is open, or by telephone or in person to a Family Court Judge when court not open. Prepare a report to the court within three business days detailing findings and any other actions taken</p>
<p>ORDER TO ENTER A PREMISES -FCA 1034 (2) (b) Caseworker denied access to the home of the child in order to evaluate home environment Court finds “Probable cause to believe that an abused or neglect child may be found on the premises” after considering relevant FCA 1034 2 (d) information</p>	<p>SSL 424-6-A Notice that if denied access to home, may notify law enforcement and seek court order to enter.</p>	<p>Before a petition has been filed, the court may upon a finding of “probable cause that an abused or neglected child may be found on the premises” authorize the person conducting the child protective investigation to enter the home to determine whether child present and/or conduct home visit and evaluate environment of the child. Police stay outside premises when ct. application is made. Police may not enter without search warrant or other constitutional basis. (Can police enter with caseworker for protection and to keep peace?? Old law allowed cops to enter with caseworker.) Prepare 3 day report</p>

