

COMPLAINT

- Ensure that a complaint has been filed. [R.C. 2151.31(E)(1)]; [R.C. 2151.31(D)] and [R.C. 2151.314(A)]; [Juv.R. 10]
- Filings shall comply with *Sup.R. 44* through *47* regarding personal identifiers.

NOTICE

Determine whether:

- Reasonable oral or written notice of the time, place, and purpose of this hearing has been given to the parents, guardian, or custodian, unless they cannot be found;

AND

- Notice was provided informing the parents, custodian, or guardian that a case plan may be prepared, general requirements of case plans, and the possible consequences of non-compliance with a case plan. [R.C. 2151.314(A)]; [Juv.R. 7(F)(1)]



Determine if agency provided notice to grandparents and other relatives within 30 days of removal. [R.C. 2151.33(F)]



The American Bar Association recommends that the child attend hearings in order to facilitate the child's meaningful participation in the hearings, which has been shown to improve case outcomes. (See Standard D-5 and accompanying commentary, Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases.)



Consider Indian Child Welfare Act issues, if present. Refer to Ex Parte Orders Bench Card.



Depending on how Ohio will adopt and implement Foster Connections, it requires grandparents to be notified.



If the parents, guardian, or custodian did not receive reasonable notice or waive their appearance at initial hearing, upon motion, the court shall promptly hold a rehearing. [Juv.R. 7(G)]

SERVICE

Serve the parties present with the complaint and summons. [R.C. 2151.28(C)]

APPOINTMENTS

- Advise any unrepresented party of their right to counsel, including court-appointed counsel. [R.C. 2151.314(A)]; [Juv.R. 7(F)(2)]



Failure to pay \$25 fee for appointment of counsel is NOT grounds for denial of appointment. [R.C. 120.36(B)]
However, the court shall direct the person to pay the application fee at the time the person files an affidavit of indigency or a financial disclosure form with the court or within 7 days of that date. If the person does not pay the application fee within that 7-day period, the court shall assess the application fee at sentencing or at the final disposition of the case. [R.C. 120.36(A)]

- Appoint counsel for the child when abuse is alleged. [Juv.R. 4(A)]
- Appoint counsel for the child, if appropriate, when dependency and/or neglect are alleged. [R.C. 2151.281]; [Juv.R. 4]
- Appoint a guardian ad litem for the child; a guardian ad litem shall comply with *Sup.R. 48*. [R.C. 2151.281(B)]; [Juv.R. 4(B)]; [Sup.R. 48]
- Appoint a guardian ad litem for a minor parent or a parent who appears mentally incompetent. [R.C. 2151.281(C)]; [Juv.R. 4(B)(3)]
- The guardian ad litem may also serve as counsel for the child providing no conflict exists between those roles. [R.C. 2151.281(H)]; [Juv.R. 4]; [Sup.R. 48]



If a conflict exists between the roles and responsibilities of attorney and guardian ad litem, then the court shall appoint another person to serve as guardian ad litem for the ward and the attorney shall remain on the case as attorney. [Juv.R. 4(C)(1) and (2)]



A guardian ad litem and counsel should be present at the shelter care hearing.

HEARING PROCEDURE

- Rules of Evidence: Relaxed. [Juv.R. 7(F)(3)]; [Juv.R. 27(A)]
- Standard of proof: Probable cause. [Juv.R. 6]; [R.C. 2151.31(E)]
- Record all proceedings. [Juv.R. 37(A) and 40(D)(2)]
- The shelter care hearing should be held promptly and not later than 72 hours after the child is placed in shelter care to determine whether shelter care is required. [R.C. 2151.314(A)]



If a party requests an interpreter, has limited English proficiency, or is deaf/hard of hearing, the court shall appoint a qualified interpreter to assist such person. [R.C. 2311.14]; [42 U.S.C. 12181 through 12183]; [Title VI of Civil Rights Act of 1964]

FINDINGS

1. JURISDICTION

Determine whether there is probable cause basis that the child is abused, neglected, or dependent. [R.C. 2151.31(E)]

2. SHELTER CARE DETERMINATION

Determine whether any of the following apply [Juv.R. 7(A)]:

- Protection for the child from immediate or threatened physical or emotional harm
- Protection for the person or property of others from immediate or threatened physical or emotional harm
- The child may abscond or be removed from the jurisdiction of the court
- The child has no parent, guardian, custodian, or other person able to provide supervision and care.

3. RELATIVE AND/OR KINSHIP PLACEMENT

If a shelter care determination is made, determine whether there is an appropriate relative willing to take temporary custody of the child, and, if so, appoint that relative. [Juv.R. 7(F)(3)]; [R.C. 2151.314(B)(2)]

If the court finds that a relative placement is NOT appropriate, set forth the reasons for the determination in writing. [R.C. 2151.314(B)(2)]

NOTE

The court's consideration of a relative or non-relative for appointment as temporary custodian does not make that relative a party to the proceedings. [R.C. 2151.314(B)(2)]

4A. REASONABLE EFFORTS FINDING

Determine whether:

- the agency made or failed to make reasonable efforts to prevent the removal, to eliminate the continued removal of the child from the home, or to make it possible for the child to return home safely, with a brief description of the services and why those services did not prevent removal or enable the child to return home. If removal occurred under emergency circumstances and the agency had no prior contact, the court is not prohibited from finding the agency made reasonable efforts. [R.C. 2151.31(E)(2)]; [R.C. 2151.419(A)(1)]; [Juv.R. 27(B)(1)]; [42 U.S.C. 672]

OR

- the agency is not required to make reasonable efforts to prevent the removal, to eliminate the continued removal of the child from the home, or to make it possible for the child to return home safely as the facts fall within one of the factors contained in R.C. 2151.419(A)(2). [R.C. 2151.31(E)(2)]; [Juv.R. 27(B)(1)]; [42 U.S.C. 672]

4B. BEST INTEREST FINDING

To issue an order granting temporary custody of a child to the public children services agency, the court must find that it would be contrary to the welfare and best interest of the child to continue in the home. [R.C. 2151.33(E)]; [42 U.S.C. 672]

- The previous findings **MUST** be stated in the order if temporary custody is granted to the agency. [R.C. 2151.33(E)]; [42 U.S.C. 672]

5. OTHER TEMPORARY ORDERS

- Determine what school district shall bear the costs of education for the child. [R.C. 3313.64]
- The court may order the board of education of the school district in which the child was enrolled immediately prior to the filing of the complaint to release the child's grades, credits, official transcripts, IEPs, and 504 plans to any district or school in which the child enrolls after the complaint is filed. [R.C. 2151.272(B)]



Immediate Enrollment: The child is entitled to immediate enrollment in school as defined by R.C. 3313.64, and the child's enrollment shall not be delayed due to a delay in the school district's receipt of any records required under R.C. 3313.672 or any other records required for enrollment. [42 U.S.C. 11431] No board of education shall withhold the grades, credits, official transcripts, diploma, IEPs, or 504 plans of a pupil for nonpayment of fees for materials used in a course of instruction if a complaint has been filed at any time in a juvenile court alleging that the pupil is an abused, neglected, or dependent child or if the pupil has been adjudicated an abused, neglected, or dependent child. A school board shall require that the grades, credits, official transcripts, IEPs, or 504 plan of a pupil described in this division be transferred immediately upon the receipt of either another district's or school's request for those records under R.C. 3313.672 or a juvenile judge's order under R.C. 2151.272. A board that is required to transfer records may request a copy of any order regarding the child's custody or placement issued pursuant to a complaint filed under R.C. 2151.27. However, a board shall not withhold records required to be transferred under that division pending receipt of a copy of the order. [R.C. 3313.642(D)]

- Ensure that the parents and custodian sign a release of school records, if the child does not return to the original school district.



Issuing school district determination as a separate order will protect the confidentiality of the information regarding the child.

Consider any other temporary orders under **Juv.R. 13**, such as those addressing child support, visitation and restraining orders, orders for forensic mental evaluations, or orders for services necessary to protect the child's best interest and welfare. [R.C. 2151.33]; [Juv.R. 13(B) and Juv.R. 32]

- Where an emergency order is sought regarding medical or surgical care, determine whether the motion is supported by the certification of one or more reputable practicing physicians and find that the treatment appears to be immediately necessary for the child. [Juv.R. 13(C)]
- Order paternity testing, if appropriate. [R.C. 2317.47]



Paternity testing, when appropriate, should be performed as early as possible in the life of the case.

CASEFLOW TIME FRAMES

- Set the adjudication and disposition dates **AND** have notice for those hearings issued to the parties while they are present. [R.C. 2151.28]; [Juv.R. 29]



The adjudication and disposition must be separate hearings. [Juv.R. 34(A)] If the dispositional hearing is held immediately after the adjudicatory hearing, determine whether: 1) All parties have been served with all of the documents required for the dispositional hearing prior to adjudication, including the case plan and the guardian ad litem's written report; [R.C. 2151.35(B)(1)]; [Juv.R. 34]; [Sup.R. 48] **AND** 2) All parties consent to the dispositional hearing being held immediately after the adjudication hearing. [Juv.R. 34(A)]

- The adjudication date **MUST** occur within 30 days of the filing of the complaint, but may be extended for 10 days to allow any party to obtain counsel, or for no more than 30 days in order to obtain service on all parties or any necessary evaluation. [R.C. 2151.28(A)(2)]; [Juv.R. 29(A)]

NOTE

Failure of the court to hold the adjudicatory hearing within these time frames does not undermine the jurisdiction of the court. [Juv.R. 29(A)]

- Disposition **MUST** occur within 90 days of the filing of the complaint or the complaint shall be dismissed without prejudice. [R.C. 2151.35(B)(1)]; [Juv.R. 34(A)]

R

The order should be distributed to all parties prior to the adjournment of the shelter care hearing.

R

All parties should be advised that if the child is in care 12 months, the agency shall seek termination of parental rights, absent compelling circumstances, unless the complaint contains a prayer for termination of parental rights.

- Journalize the entry. [Civ.R. 58(A)]; [Sup.R. 71]