

Juvenile Court Department

Standing Order 5-21

Return of Custody in Care and Protection Proceedings

I. Purpose

The purpose of this standing order is to provide a uniform practice on the issuance and oversight of temporary custody orders granted by the Juvenile Court returning custody of a child to a parent, custodian, or guardian in a care and protection proceeding.

II. Applicability

This standing order is applicable to temporary orders returning custody of a child to a parent, custodian, or guardian in a care and protection proceeding.

Commentary

Temporary custody orders returning custody of a child to a parent, custodian, or guardian may be issued as the result of a hearing held pursuant to G.L. c. 119, §§ 24 or 25. *See Care and Protection of Manuel*, 428 Mass. 527 (1998). The Juvenile Court may also issue a temporary custody order as the result of a hearing on the merits or a review and redetermination hearing pursuant to G.L. c. 119, § 26.

III. Definitions

For this standing order the terms below shall have the following definitions:

“Danger” means imminent threat of serious harm.

“GAL Evaluator” means a category of guardian ad litem (GAL) that the court may appoint, pursuant to the *Juvenile Court Uniform Practice and Procedure Regarding the Appointment of Guardians Ad Litem*, to report on a narrowly defined issue where the judge deems an updated court investigation is not appropriate and where the appointment does not fall into one of the other categories of GAL appointments.

“Hearing on the Merits” means the trial held pursuant to G.L. c. 119, § 26, where the court determines whether the Department of Children and Families (the Department) has met its burden in proving that the child is in need of care and protection. The hearing may result in, but is not limited to, granting temporary or permanent custody to a non-custodial parent, returning temporary custody to a parent, custodian, or guardian, returning permanent custody to a parent, custodian, or guardian, granting permanent custody to the Department or the issuance of a decree terminating parental rights.

“Non-custodial parent” means the biological or legal parent of the child who did not have physical or legal custody of the child prior to the child’s removal by the Department.

“Non-party” means a person who is not a party to the care and protection proceeding but may be granted temporary or permanent custody of the child, also known as a “third party custodian.” See Note to Rule 9 of the *Juvenile Court Rules for the Care and Protection of Children*.

“Parent, custodian, or guardian” means the party or parties in the care and protection proceeding who had custody of the child immediately prior to the filing of the care and protection petition.

“Review and redetermination hearing” means the hearing held pursuant to G.L. c. 119, § 26(c) where a party may petition the court not more than once every 6 months for a review and redetermination of the current needs of the child whose case has come before the court, with the exception of a parent whose parental rights have been terminated by the court.

“Risk” means warning sign of a possible danger.

“Safety” means actions of protection taken by a caregiver that address danger to the child and are demonstrated over time.

“72 Hour Hearing” means the hearing held pursuant to G.L. c. 119, § 24 after the court grants temporary custody to the Department following an emergency or ex parte hearing.

IV. Return of Custody Following a Temporary Custody Hearing (G.L. c. 119, § 24, “72 Hour Hearing”)

Any temporary custody order issued at the conclusion of the 72 Hour Hearing that returns custody of the child to the parent, custodian, or guardian shall be in writing with conditions, unless the judge determines that conditions are not necessary in a specific case. The judge shall set forth, in writing, the reasons why conditions are not needed in the case. The order shall be issued on a form approved and promulgated by the Chief Justice of the Juvenile Court. The temporary custody order shall remain in effect until the status hearing held pursuant to Rule 14 of the *Juvenile Court Rules on Care and Protection Proceedings*. At the status hearing, the court shall review with the parties the factors set forth in Section V. of this standing order. Probation shall be present at the status hearing unless otherwise directed by the court.

The court may in its discretion set a date for review of the order prior to the scheduled status hearing date.

V. Return of Custody Assessment

A. Assessment Factors. The court shall consider the following factors when determining whether to issue a temporary custody order to a parent, custodian, or guardian:

1. Dangers and risks, if any, to the child:

a. Identification of the original danger(s) that led to the removal of the child; identification of any additional danger(s); existence of any current danger(s).

b. Identification of any current risk(s).

2. Reasons court is being asked to issue the return of custody order:

a. The actions or services the parent, custodian, or guardian participated in, completed, or anticipate completing that demonstrate or create safety for the child. This may include a review of the action plan developed by the Department for the parent, custodian, or legal guardian that provides for services tailored to meet the underlying needs of the parent, custodian, or guardian and their compliance with such plan.

b. The opportunities the parent, custodian, or guardian has taken to demonstrate that they currently have the skills to address the dangers and risks that led to the child's removal.

3. Assessment of child's educational needs.

4. Assessment of the child's mental health care and needs, if applicable.

5. Assessment of child's physical health care and needs, if applicable.

6. Assessment of the status of child's siblings if not part of the motion requesting return of custody:

a. Plan for facilitation of sibling visits, if applicable and appropriate.

b. Siblings' current placements if not with the child who is the subject of the motion requesting a return of custody.

7. Plan for facilitation of non-custodial parent visits if applicable and appropriate.

B. Updated Court Investigation/GAL Evaluator Report. Prior to the issuance of a temporary custody order to the parent, custodian, or guardian, the court may order an updated court investigation or appoint a GAL Evaluator to report back to the court on specified issues regarding the child. The updated court investigator report or GAL Evaluator report shall be filed with the court no later than 60 days from the date of appointment. The GAL Evaluator appointment letter shall outline the GAL Evaluator's authority and scope of appointment.

Commentary

General Law c. 119, § 24 requires the appointment of a court investigator in all care and protection matters upon the issuance of the precept and notice to the parents regarding the care and protection petition. Rule 11 of the *Juvenile Court Rules for the Care and Protection of*

Children requires that the court investigator report be filed within 60 days of the initial appointment unless otherwise ordered by the court. This section of the standing order follows the same timeframe for any updated court investigator report ordered by the court.

VI. Issuance of the Return of Custody Order

A. Return of Custody Order. All temporary or permanent custody orders returning custody to the parent, custodian, or guardian, shall be in writing and on a form approved and promulgated by the Chief Justice of the Juvenile Court.

1. Temporary Return of Custody Order. Any temporary custody order issued to a parent, custodian, or guardian shall remain in effect until a date as determined by the judge that is consistent with the needs of the child and family, the circumstances of the case and that is within time standards as set forth in Juvenile Court Standing Order 2-18.

B. Conditions. The court shall set conditions in writing addressing the child's care and safety when issuing any temporary custody order pursuant to this standing order, unless the judge determines that conditions are not necessary in a specific case. The judge shall set forth, in writing, the reasons for why conditions are not needed in the case.

The court may consider setting, but is not limited to, the following conditions when applicable:

1. The Department and Probation to have access to the child at home.
2. Parent, custodian, or guardian to cooperate with the reunification portion of the Department's Family Assessment and Action Plan, if applicable.
3. Parent, custodian, or guardian to maintain all of the child's medical, dental, psychological/psychiatric and educational services and appointments. If the child has a physical disability, the parent, custodian, or guardian to maintain all services and accommodations necessary for the child. The Department shall provide the parent, custodian, or guardian the information they need to maintain the child's appointments, services, and accommodations, as well as any other necessary supports.
4. Parent, custodian, or guardian to maintain a safe home environment.
5. Parent, custodian, or guardian to remain drug and alcohol free if there is a substance use issue as determined by the Department.
6. Parent, custodian, or guardian and child to meet with the Department social worker and/or Probation.
7. Parent, custodian, or guardian and child to meet with the GAL Evaluator as ordered if one is appointed by the court.

8. Parent, custodian, or guardian and child to meet with the Court Investigator as ordered if one is appointed by the court.

Commentary

Supervision and visits by probation shall be conducted in accordance with Probation Standards unless otherwise ordered by the court.

C. GAL Evaluator and CASA. Upon the issuance of a temporary custody order to the parent, custodian, or guardian, the court may appoint a GAL Evaluator for the purpose of oversight regarding one or more specific conditions set by the court in the custody order. The GAL Evaluator shall be authorized by the court to contact the child's school, the child's medical providers and any other service providers to request information regarding the child to assist with the oversight of the specific conditions. The GAL Evaluator appointment letter shall outline the GAL Evaluator's authority and scope of appointment.

The court may appoint a court appointed special advocate (CASA) if the program is available in that court division. The CASA shall be authorized by the court to contact the child's school, the child's medical providers and any other service providers to request information regarding the child to assist with the oversight of the specific conditions. The court shall provide the CASA with an appointment letter outlining the scope of the appointment or may modify an existing appointment letter if the CASA was previously appointed on the case.

Commentary

Though the court may appoint a GAL Evaluator or CASA for the purpose of oversight of one or more conditions, probation is expected to oversee the conditions as required under the Probation Standards or as otherwise ordered by the judge.

D. Notification to the Court Regarding the Condition of the Child. During the pendency of the care and protection matter, if Probation or the Department believes that the child's safety may be in danger or at risk and/or the parent, custodian, or legal guardian is not complying with the conditions of the temporary custody order, Probation or the Department shall file a notice to advance the case before the court with a copy to all parties on the case.

A court investigator, CASA, or GAL who has been appointed to the care and protection matters shall notify Probation in writing if they believe that the child's safety may be in danger or at risk and/or the parent, custodian, or legal guardian is not complying with the conditions of the temporary custody order. The court investigator, CASA or GAL shall detail their concerns in the written notification to Probation. The notification shall be emailed or submitted to the Chief Probation Officer of the appropriate Juvenile Court division. Probation shall then file a notice to advance the case before the court, providing a copy to all parties on the case of the notice which would include the concerns regarding the child.

Upon receipt of the notice to advance, a hearing for all parties may be scheduled at the discretion of the presiding judge. If the judge determines that a hearing shall be held, the clerk's office shall notify the parties of the scheduled date.

This section does not preclude probation from communicating with the Department pursuant to G.L. c. 119, § 51A. The Department retains its authority under G.L. c. 119, § 51B, to take the child into immediate temporary custody if the Department has reasonable cause to believe that removal is necessary to protect the child from abuse or neglect.

Commentary

Though Probation may advance the case on behalf of a court investigator, CASA, or GAL, probation is not responsible for presenting information on their behalf at the hearing if one is held by the court.

VII. Review of Temporary Return of Custody Order

For temporary custody orders, it is recommended that the court review the order as it relates to the child's health, safety, and well-being with the parties at each hearing following the issuance of the order. Part of the review may include one or more of the following depending upon the circumstances of the case: (1) a report from the GAL Evaluator or CASA, if appointed at the time of the issuance of the return of custody order; (2) a report from Probation and the Department regarding any home visits conducted in-person or virtually with the child, if applicable; (3) updated criminal activity record information (CARI), including but not limited to any information regarding G.L. c. 208, G.L. c. 209A or G.L. c. 258E orders and G.L. c. 123, § 35 orders, for the parent, custodian, or guardian provided to the court by Probation, if applicable. The court shall order from Probation the CARI of any person living in the home over the age of 14; and/or (4) a review of any G.L. c. 119, § 51A reports the Department has received regarding the parent, custodian, or guardian while the return of custody order has been in place regardless of whether the G.L. c. 119, § 51A reports were screened in or out by the Department.

VIII. Temporary Custody Orders Issued to Non-Parties

All temporary custody orders issued to a non-party in a care and protection case shall be in writing with conditions, unless the judge determines that conditions are not necessary in a specific case. The judge shall set forth, in writing, the reasons for why conditions are not needed. The court shall review the assessment factors outlined in Section V. with the non-party with a focus on the non-party's ability to address the clinical, medical, and educational needs of the child while the child is in their custody as well as review any issues regarding safety, risk, and danger specific to the non-party and their care of the child. In addition, the court shall order from Probation a CARI on all individuals over the age of 14 living in the home. The court shall not issue a temporary custody order to a non-party prior to the completion of a home study conducted by probation or other person, or agency designated by the court, as required by G.L. c. 119, § 26(b)(2)(i).

Commentary

The court should be mindful and vigilant of the duration for a child awaiting permanency in all cases and in particular when a child remains in the temporary custody of a non-party and shall set dates for trial accordingly.

General Law c. 119, § 26 sets forth the following: “The department shall file a petition or a motion to amend a petition to dispense with parental consent to adoption, custody, guardianship or other disposition of the child if: ... (iii) the child has been in foster care in the custody of the state for 15 of the immediately preceding 22 months. Under this paragraph, a child shall be considered to have entered foster care on the earlier of: (a) the date of the first judicial finding, under section 24 or this section, that the child has been subjected to abuse or neglect; or (b) the date that is 60 days after the date on which the child is removed from the home... The department need not file such a motion or petition to dispense with parental consent to the adoption, custody, guardianship or other disposition of the child if the child is being cared for by a relative or the department has documented in the case plan a compelling reason for determining that such a petition would not be in the best interests of the child or that the family of the child has not been provided, consistent with the time period in the case plan, such services as the department deems necessary... Unless the court enters written findings setting forth specific extraordinary circumstances that require continued intervention by the court, the court shall enter a final order of adjudication and permanent disposition, not later than 15 months after the date the case was first filed in court. The date by which a final order of adjudication and permanent disposition shall be entered may be extended once for a period not to exceed 3 months and only if the court makes a written finding that the parent has made consistent and goal-oriented progress likely to lead to the child's return to the parent's care and custody.”

IX. Placement of Child with Parent, Custodian, or Guardian by the Department

Under G.L. c. 119, §§ 21, 24 and 26, the Department may place a child with the parent, custodian, or guardian from whom the child had been removed while maintaining temporary or permanent custody of the child in anticipation of a return of custody. The Department shall notify the court, all parties and Probation in writing at least 48 hours prior to placing the child with the parent, custodian, or guardian, or, unless emergency circumstances preclude notification, the court and all parties shall be notified on the next business day. The Department shall provide an update to the court and all parties on the child's status and condition as well as the Department's progress toward a permanent transition for the child at every scheduled hearing or earlier as determined by the judge.

X. Pathways Essential Questions

At all stages of a care and protection matter and in accordance with the purpose of this standing order, *Pathways* Essential Questions, including those to Promote Permanency and those to Promote Educational Stability, shall be reviewed by all parties and content of the Juvenile Court's *Assessing Danger, Risk, and Safety* Benchcard shall be addressed by the judge. Such *Pathways* resources support fair, just, and prompt resolution of cases through individualized

assessment of each case, each child, and each family in furtherance of the initiative’s goal of improving legal permanency, addressing barriers to permanency, safety, and stability for children, and developing dynamic and responsive systems for children and families.

Commentary

Pathways materials, including the Essential Questions, are available through the First Justice of each Juvenile Court division.

Date: December 10, 2021

/s/ Amy L. Nechtem

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Amy L. Nechtem

Chief Justice of the Juvenile Court