


Pre-Adjudication



Fundamentals of Social Services Law
May 1, 2008
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How is our state set up?
State Regulated
County Operated

Petitions and Nonsecure Custody
Orders

What forms do I need to use?

Summons AOC-J-142
Juvenile Petition AOC-J-130
Affidavit as the Status of the Minor Child AOC-
CV-609
Order for Nonsecure Custody AOC-J-150

Petitions and Nonsecure Custody Orders

Who do you name as a party?

- Does the person fit the definition of a parent guardian, custodian or caretaker?
- Would it benefit my case to name the person as a party?
- Do I need the court to have jurisdiction of the person?

Petitions and Nonsecure Custody Orders

Do I need a copy of the birth certificate when filing a petition?

- Birth Certificate will let you know if the father is named
- It will tell you what the child's name actually is
 - It is a good piece of evidence to help in establishing jurisdiction

Petitions and Nonsecure Custody Orders

Who should sign the petition?

- 7B-403 requires the director to "draw" the petition
- 7B-101(10) defines director to include authorized representative as defined by 108A-14

Petitions and Nonsecure Custody Orders

**Check the authorized representative box
Verification**

**Check the authorized representative box
Verification**

**Check the authorized representative box
Verification**



Petitions and Nonsecure Custody Orders

What should I allege in the petition?

- If there is a CPS history, mention the history
- If there is a long history of conduct of a similar nature, outline the history
- Outline when report received and allegations contained in the report
- Outline facts which support the reasons for grounds for nonsecure
 - Try to stay in chronological order

Petitions and Nonsecure Custody Orders

This case is stale, what do I do?

“Compliance Petitions”

- Do not wait too long
- Outline the facts which resulted in a finding of services needed or substantiation
- Outline what the parents have not done since the finding and the need for the child to have “legal security”
(don't call it legal security)

Petitions and Nonsecure Custody Orders

Can I amend the petition?

7B-800 says the court may permit a petition to be amended when it does not change the nature of the conditions upon which the petition is based.

In re D.C., 644 S.E.2d 640 (2007)

In re M.G., 653 S.E.2d 581 (2007)

Petitions and Nonsecure Custody Orders

Should I attach items to the petition?

- ✓ Pictures
- ✓ Safety Assessments/Responses
- ✓ Medical Reports
- ✓ Police Reports



How do I get nonsecure custody?

- How do you file after hours?
- Who issues the petition?
- Who calls the judge?
- Has the Court of Appeals addressed this issue?
- Can different counties do this process differently?

Nonsecure Custody Hearings

Criteria for nonsecure custody
7B-503

- Abandonment
- Physical injury or sexual abuse
- Substantial risk of physical injury or sexual abuse
- Needs of medical treatment to cure, alleviate or prevent suffering serious physical harm which may result in death
 - Consent
- Runaway and consents

Nonsecure Custody Hearings

Placed in nonsecure custody when there is a reasonable factual basis to believe that there is no other reasonable means available to protect the juvenile.



Nonsecure Custody Hearings

Where can a child be placed when under nonsecure custody?

1. Licensed foster home or other licensed facility
2. Facility operated by DSS
3. Any other home or facility, including a relative's home approved by the court and designated in the order.

Nonsecure Custody Hearings

Who bears the burden?

7B-506

The state shall bear the burden at every stage of the proceedings to provide clear and convincing evidence that the juvenile's placement in custody is necessary.

Nonsecure Custody Hearings

Do the rules of evidence apply?

No, the court is not bound by the rules of evidence but you should use evidence that is reliable such as a written statement from the doctor or police reports . . .



Nonsecure Custody Hearings

What things does the court have to think about at nonsecure custody hearings?

Identity and location of any missing parent
Paternity

Relative placement

Are there other children remaining in the home

Reasonable Efforts

Indian Child Welfare Act

Multiethnic Placement Act

Nonsecure Custody Hearings

Relative Placements

- ☐ Ask before hearing if there are relatives
- ☐ Have a plan for evaluating relatives to present to court or have assessments completed
- ☐ Have social worker write short report about why relative is or is not appropriate
- ☐ Have a proposed visitation plan ready

Continued Nonsecure Custody Hearings

- Timeframes (Seven Days and Thirty Days)
 - Issues to be addressed
- How many contested hearings can you have?
 - Can hearing be waived?

Interstate Child Placement Compact

What about placement out of state?
