

Child Protection Hearings in South Carolina

Following are checklists outlining the requirements of each proceeding in a family court child protection case

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Probable Cause Hearing
(Also known as the EPC Hearing)

S.C. Code Ann. § 63-7-620 et seq.

Similar to a preliminary hearing in a criminal case. Defendant can only submit affidavits and cross-examine witnesses.

Time Frame: To be held within 72 hours after the emergency removal of the child from the home.

1. The court must determine whether there was probable cause for emergency protective custody and assumption of legal custody by DSS.
 - a) The law authorizes removal if there is substantial and imminent danger to the child's life, safety, or health.
 - b) A rebuttable presumption favors removal of a newborn in certain circumstances involving drug or alcohol abuse by the mother. S.C. Code Ann. § 63-7-1660.
 - c) Only the injured child, in an excessive corporal punishment situation, may be removed from the home, unless there is a history of domestic violence, alcohol or drug abuse, or other circumstances that indicate danger to the other children.
2. The court must determine whether reasonable efforts were made to prevent removal and whether return of the child to the home at the time of the hearing would be contrary to the welfare of the child.
3. The court must appoint an attorney and guardian *ad litem* for the child. Indigent parents are entitled to appointed counsel. S.C. Code Ann. § 63-7-1620.
4. The written order must specify reasonable efforts made to prevent the removal of the child. S.C. Code Ann. § 63-7-720:
 - a) Services made available to the family before DSS assumed legal custody;
 - b) Efforts to provide services to the family prior to removal;
 - c) Why services did not eliminate need for removal;
 - d) Outcome of family meeting or reasons meeting was not held;
 - e) Whether efforts were reasonable, including availability, timeliness, adequacy of services, and reasonableness of efforts to place with relative or in other familiar environment;
 - f) What efforts were made to place a child in a family member's home or other familiar environment.

It is possible to find that nothing could have been done to allow the child to remain safely in the home or that removal without services or further services was reasonable.

5. The court may direct expedited relative placement.
 - a) The court shall require DSS to conduct records checks;
 - b) The court may hold the court record open for 24 hours to receive reports.
6. The court must set the time and date for the hearing on the merits.

Removal Hearing
(Also known as the Merits Hearing)

S.C. Code Ann. § 63-7-1610 et seq.

Child is removed from the home

Time Frame: Held within 35 days of receipt of removal complaint by family court.

1. The court must assure DSS has complied with due process requirements, including service of the summons, complaint, right to counsel, hearing notice and notice to noncustodial parent. No responsive pleading is required.
2. The court must determine by *a preponderance of the evidence*:
 - a) Whether the child has been subjected to, or is threatened with a substantial risk of harm as defined by S.C. Code Ann. § 63-7-20 of physical injury, mental injury, lack of supervision, neglect, abandonment, or a sexual offense.
Note: The court may authorize treatment, but not enter a finding of abuse by the parent, in cases where the caregiver failed to obtain medical care due to religious beliefs or an exercise of parental judgment concerning what treatment would be in the child's best interests. S.C. Code Ann. § 63-7-950.
 - b) Whether return of the child to the home would place the child at unreasonable risk of harm to his or her life, physical health or safety, or mental well-being, and
 - c) Whether the child can reasonably be protected from this harm through measures short of removal.
3. The court must make specific findings concerning whether the agency has made reasonable efforts to prevent the child's removal from the home, including findings regarding:
 - a) The types of services offered to the family before the removal and how these services related to the needs of the family;
 - b) The agency's efforts to provide services to the family before DSS removed the child from the home;
 - c) The reason the agency's efforts to provide the services to the family did not prevent the child's removal from the home;
 - d) The court must review the agency's efforts to provide services and determine whether the agency's efforts were timely, available, adequate and realistic under the circumstances;
 - e) Whether reasonable efforts to preserve or reunify the family are required pursuant to S.C. Code Ann. § 63-7-1640.
4. If the child is to be removed from the home, the court must advise the parents verbally on the record, and include in the written order, that failure to comply with the placement plan can result in termination of parental rights. S.C. Code Ann. § 63-7-1680.
5. The court must approve a placement plan, if the plan appropriately addresses all issues required by statute. S.C. Code Ann. § 63-7-1680. At a minimum, the placement plan is a written document, which must address the following:
 - a) Specific reasons for the removal and the specific changes that must be made before the child is returned home;
 - b) Other conditions in the home that warrant state intervention which would not alone justify removal, and the changes that must be made before intervention is terminated;
 - c) Specific time frames for the parents to accomplish the objectives of the plan, and the means for measuring when the objectives have been met;

- d) Goals of the plan must relate to the problems, which resulted in the removal;
 - e) Social and other services to be made available to the parents or other relevant adult;
 - f) Financial responsibility of the parents;
 - g) Visitations between the child and the child's parents, siblings and other close relatives;
 - h) Nature and location of child's placement unless disclosure would be contrary to the child's best interests;
 - i) Child's placement should be as close to the child's home as possible;
 - j) Preference for kinship placement or placement of the child with another responsible adult who has a constructive and caring relationship with the child;
 - k) Specify the number of contacts the caseworker or member of the casework team will have with the child, at a minimum of once per month. The court can order more frequent contacts;
 - l) Social and supportive services to benefit the child and the foster parents; and
 - m) The parent's participation or lack of participation in the development of the plan.
6. The placement plan must be submitted to the court at the removal hearing, or within 10 days after the hearing. If the plan is not submitted at the removal hearing, a hearing on the plan must be held if requested by a party.
7. If the conditions, which justified removal, include the parent's addiction or abuse of controlled substances, then the court may require that the plan address the substance abuse issues pursuant to S.C. Code Ann. § 63-7-1700.
8. Continuances
- a) Continuances are to be granted only in *exceptional circumstances*. If continued, the merits hearing must be completed within 65 days of the filing of the removal complaint.
 - b) If the hearing is to be held beyond 65 days and the child is not returned home, the court must issue a written order finding: (i) the child should remain in the custody of DSS because there is probable cause to believe return home would endanger the child; (ii) the hearing is set for a date and time certain not more than 30 days from the date hearing was to be held; and (iii) exceptional circumstances support a continuance or the parties and guardian *ad litem* agree to a continuance.
 - c) The case may be continued due to absence of a witness only if the testimony of the witness is necessary to the court's decision and the party exercised due diligence to secure attendance of witness and the court cannot start the hearing and have the witness testify at a later date or by deposition.
 - d) When a continuance is granted the court shall ensure that the hearing is rescheduled within the time frames and give the hearing priority over other matters except: probable cause hearings, detention hearings, and other custody cases if there are compelling reasons to do so. S.C. Code Ann. § 63-7-710.

Initial Permanency Planning Hearing

S.C. Code Ann. § 63-7-1700

Child has remained out of the home

Time Frame: To be held no later than one year after child enters foster care. The child may have entered foster care by emergency protective custody, a relinquishment for adoption or by a removal action.

DSS must initiate this hearing by filing a motion, with a supplemental report, and serving it on all parties at least ten days prior to the hearing. If the child entered foster care by way of a relinquishment for adoption, with no other case pending in the court, the case may be initiated by the filing of a summons and petition for review. No responsive pleading is required.

The court shall review the permanent plan for the child offered by DSS. If the plan is one other than that listed below, the court must find **compelling reasons** for approval of the plan and that the plan is in the **best interests** of the child.

The court must order one of the following:

1. *Return home.* If the court determines there would not be unreasonable risk of harm to the child's life, physical health or safety, or mental well being, the child must be returned home. In determining whether unreasonable risk exists, the court shall consider all evidence including whether the parent substantially complied with the placement plan. Following the child's return home, agency supervision and services may be ordered for a specified time up to one year.
2. *Extension for reunification.* If the child is likely to be returned home if additional services are provided to the parents, the court can extend the placement plan or order compliance with a modified plan. The plan can be extended for a reasonable time not to exceed **18 months** after the child came into foster care. The court must find, at the time of the hearing, that termination of parental rights is not in the best interests of the child and that the best interest of the child will be served by extending the plan.
3. *Termination of Parental Rights (TPR).* If the child cannot be returned to parents, the court must order DSS to file a TPR complaint within 60 days of receipt of the order. DSS shall exercise every reasonable effort to promote and expedite the adoptive placement and adoption of the child, including thorough adoption assessment and child-specific recruitment for all children including those with "special needs." An adoption may not be delayed or denied just because a child has special needs.
4. *Relative or non-relative custody/guardianship.* After assessing the viability of adoption, if DSS demonstrates that TPR is not in the child's best interests and the court finds that the best interests of the child would be served, the court may award legal guardianship or custody or both to a suitable, fit and willing relative or non-relative; a home study must be conducted prior to the award of custody or legal guardianship or both. The court may order a period of visitation or trial placement prior to receiving the home study and may order supervision and services for up to one year.

If the child is not returned home at the permanency planning hearing, the court must include the following specific findings in its order:

- a) Facts supporting the selection of a plan other than return home;
- b) What services were provided/offered to parents to facilitate reunification;
- c) The compliance or lack of compliance with placement plan by all parties;
- d) Extent to which parents have visited or supported the child and any reasons why visitation or support has not occurred or been infrequent;
- e) Whether previously ordered services should continue and whether additional services are needed. If any, specify the expected date of completion which must be no longer than 18 months from the date the child was placed in foster care;
- f) Whether return of the child is expected and identify changes parent must make in circumstances, conditions, or behavior;
- g) Whether foster care will continue and specify time;
- h) If child is 16 or older, services needed for transition to independent living;
- i) Whether child's current placement is safe and appropriate;
- j) Whether DSS has made reasonable efforts to assist parents in remedying causes of child's placement or retention in foster care, and
- k) The steps the department is taking to promote and expedite adoptive placement and to finalize the adoption of the child, including documentation of child specific recruitment efforts.

Additional Permanency Planning Hearings

S.C. Code Ann. § 63-7-1700

Child continues to be out of the home

1. If the child remains in foster care at the initial permanency planning hearing, future permanency planning hearings must be held.
2. The pendency of an appeal does not deprive the family court of jurisdiction to hear a case. The court retains jurisdiction to review the status of the child and can act on matters not on appeal.
3. A named party, child's guardian *ad litem*, or local foster care review board may file a motion for review at any time. Any other party in interest (individual or agency with custody or placement, foster parent, etc.) may move to intervene and, if granted, move for review. The notice of motion and motion for review must be served on the parties at least 10 days prior to the hearing.
4. Criteria for additional permanency planning hearings:
 - a) If termination of parental rights (TPR) case is initiated, the TPR hearing can serve as the next permanency planning hearing; but only if it is held no later than one year from the date of the previous permanency planning hearing.
 - b) If the court ordered extended foster care for the purpose of reunification at the first permanent planning hearing, an additional hearing must be held on or before the completion date specified in the plan, but no later than **six months** from the date of the last court order or **18 months** from the date the child entered foster care. A different permanent plan other than extension for reunification purposes must be selected at the subsequent permanency planning hearing.
 - c) Permanency planning hearings must be held annually after a termination of parental rights hearing. No further permanency planning hearing is required after the filing of a decree of adoption.
 - d) If the court grants custody or guardianship to a parent, relative, or suitable nonrelative with a period of supervision, the services and supervision automatically terminate on the date specified in the court order. During that period, DSS or the guardian *ad litem* can file a motion for a review hearing, which stays the termination of the case. If the court finds by clear and convincing evidence that the child will be threatened with harm if services or supervision do not continue, the court can extend the period of services or supervision for a specified time. The court order must specify the services and supervision necessary to reduce or eliminate the risk of harm to the child.
 - e) Future permanency planning hearings must be held at least annually for every child in foster care.

Termination Of Parental Rights Hearing

S.C. Code Ann. § 63-7-2510

1. DSS or any interested party may file for TPR.
2. A summons and complaint for termination of parental rights must be filed and served on the child, the parents, and the agency having placement.
3. The court must assure that counsel has been appointed as required. S.C. Code Ann. § 63-7-2560.
 - a) Counsel for the volunteer guardian *ad litem* must be appointed if the case is contested, otherwise if the volunteer guardian *ad litem* finds the appointment of counsel necessary one must be appointed.
 - b) If the guardian *ad litem* is an attorney, the appointment of another attorney is on a case-by-case basis.
 - c) Appointment of counsel for indigent parents is required unless the parents are in default.
4. To terminate parental rights, the court must find by *clear and convincing evidence* that TPR is in the best interest of the minor child and that one of the following grounds exists:
 - a) Severity or repetition of the abuse or neglect, and the home cannot be made safe within twelve months;
 - b) Parent has not remedied the conditions, which resulted in the child's removal and the child has been out of the home for six months following adoption of a placement plan by court order or by agreement between DSS and parent.
 - c) Willful failure to visit for six months;
 - d) Willful failure to support for six months;
 - e) Presumptive legal father is not the biological father of the child and the welfare of the child can be best served by terminating the legal father's rights;
 - f) Diagnosable condition of alcohol or drug addiction, mental deficiency or mental illness, which is unlikely to change in a reasonable time period and the condition makes the parent unlikely to provide minimally acceptable care of the child. There is a presumption that the diagnosable condition of alcohol or drug addiction is unlikely to change in a reasonable time if the parent as required by the department or family court has been required to participate in a treatment program, and the parent has failed two or more times to complete the program successfully or has refused in two or more separate meetings with the department to participate in a treatment program;
 - g) The child is abandoned. S.C. Code Ann. § 63-7-20;
 - h) The child has been in foster care for 15 of the most recent 22 months;
 - i.) The child or another child of the parent—as a result of the physical abuse—has died or is admitted to the hospital for in-patient care and the parent has been convicted, pled guilty or nolo contendere to an offense against a person S.C. Code Ann. § 16-3-10 (et seq.), criminal domestic violence S.C. Code Ann. §16-25-20, CDV of a high and aggravated nature S.C. Code Ann. § 16-25-65, or assault and battery of a high and aggravated nature.
 - j) The parent of the child pleads guilty or nolo contendere to or is convicted of the murder of the child's other parent.
 - k) Conception of a child as a result of criminal sexual conduct, unless the sentencing court makes a specific finding that the criminal sexual conduct conviction is based upon consensual sex where neither the victim nor the actor were younger than 14 years nor older than 18 years.

5. The court issues an order forever terminating parental rights to the child and granting custody to the plaintiff or child-placing agency for adoption. A permanent placement plan must be submitted to the court and the guardian *ad litem* within 30 days after close of the proceedings. S.C. Code Ann. § 63-7-2580.
6. The court can deny the TPR complaint, but must specify a new permanent plan or order a hearing on a new permanent plan. S.C. Code Ann. § 63-7-2580.
 - a) If a hearing is required, it must be held within 15 days of the denial of the TPR complaint and before the same judge if possible.
 - b) If the court determines that an additional permanency hearing is not needed, the court may: (a) grant custody to the parents, if they have counterclaimed for custody and there is not an unreasonable risk to the child, with supervision by the agency for up to one year; or (b) order another permanent plan pursuant to S.C. Code Ann. § 63-7-1700.

Intervention Hearing
(Child is not removed from the home)
S.C. Code Ann. § 63-7-1650

Time Frame: Held within 35 days of receipt of the complaint by family court.

DSS may file for the authority to intervene and provide protective services if it determines by a preponderance of the evidence that the child has been abused or neglected, and that the child cannot be adequately protected without intervention. Removal from the home is not required. An Intervention Hearing is to be held within 35 days of receipt of the complaint by the family court.

1. The court must assure that the agency has complied with due process requirements, which include service of a summons, complaint, and notification of right to counsel and hearing date. No responsive pleading is required.
2. The court must find by a *preponderance of the evidence* that (1) the child is abused or neglected as defined by S.C. Code Ann. § 63-7-20, and (2) the child cannot be protected from further harm without intervention.
3. The family court will review and approve a treatment plan, and include the terms of the plan in the court order. The plan must:
 - a) Detail changes in parental behavior or home conditions that must be made;
 - b) Detail services which will be provided to the family;
 - c) Be prepared with the participation of parents, the child, and other agencies or individuals that will provide services;
4. The plan must be submitted to the court at the hearing. If changes are ordered, a revised plan must be submitted to the court and parties within two weeks. S.C. Code Ann. § 63-7-1670.
5. The court shall set a specific date when the treatment goals must be achieved. The court by order may set a date for a review hearing.
6. If services are not to be terminated within 12 months the department must schedule a review hearing. S.C. Code Ann. § 63-7-1670.
7. The court shall set a specific date when the court's jurisdiction will end, which is not to exceed 18 months. Jurisdiction can be extended if, on motion of any party, the court finds there is clear and convincing evidence that the child is threatened with harm unless services continue. S.C. Code Ann. § 63-7-1670.

Child Abuse and Neglect Court Timelines (child has been removed from home)

Within 72 hours
of emergency removal

PROBABLE CAUSE HEARING

Within one business day of start of
abuse or neglect investigation

FILING OF COMPLAINT FOR REMOVAL

Within 35 days of filing of
removal petition

REMOVAL/MERITS HEARING

Within 12 months of the child's
placement in foster care

PERMANENCY PLAN HEARING

Within 60 days of receipt of court order
finding termination of parental rights
(TPR) is permanent plan

FILING OF COMPLAINT FOR TPR

Time set for hearing

TPR HEARING

Within 30 days of close of TPR
proceedings

**PLAN FOR PERMANENT PLACEMENT OF THE
CHILD TO COURT AND GUARDIAN AD LITEM**

Within 60 days of close
of the TPR proceedings

**PLAN FOR IMPLEMENTATION OF THE
PERMANENT PLAN FOR THE CHILD TO COURT
AND GUARDIAN AD LITEM**