

Emergency Screenings Guidelines

Family Court Services

(12-04-08)

GUIDELINES FOR RESOLVING DISPUTES OVER CUSTODY/VISITATION, ON AN INTERIM BASIS

Emergency Screenings are a limited resource which should be reserved for cases involving true emergencies pertaining a child's immediate health, safety or welfare. They are an expensive process for clients, often contribute to the parental conflict and emotional hardship for families and interfere with the parent's rights and responsibilities to care for their children because of the emphasis on investigation and recommendations. Hearings often occur which creates a "win-lose" perspective that may further complicate the parent's experience and lead to further litigation. It is essential that attorneys and parents expedite the screening process by meeting and conferring before the court hearing to discuss the urgent issues and resolve as much of the dispute as possible. While Family Court Services staff remains available to assess those truly urgent and irresolvable matters regarding the safety and well-being of children, it is our belief that with some basic guidelines many cases can be satisfactorily resolved on a temporary basis, by the parents, attorneys and the Court. A satisfactory resolution is always one which reflects the best interests of the children and prioritizes everyone's safety.

The guidelines which follow are by no means meant to be hard and fast rules. Each family's case is unique and may require small or major modifications to these guidelines. However, these guidelines can provide a meaningful basis from which to initiate negotiations and they reflect a sound, initial approach to many dilemmas presented to the Court.

1. The child should have a continuing relationship with both parents similar to the recent past, unless there are concerns for the child's safety and well-being. If the status quo can be identified and it is developmentally appropriate, and provides for a reasonable and appropriate amount of contact with each parent, it should be maintained. Days and times of exchange, location of exchange, and responsibility for transportation should be clearly specified. (Requests for additional time, reduction in the other parent's time, holiday schedules and other changes in the schedule are appropriately reserved for discussion in mediation and if necessary, further assessment.)
2. The child should remain in the same school or shall proceed on to the normal feeder school from the lower level school previously attended, if possible. Generally speaking the school status quo shall be maintained pending the outcome of mediation and, if necessary, assessment.
3. The child should be protected from volatile interactions between the parents and any form of domestic violence. The safety of family members should always be a paramount concern.

This may often involve exchanges at a neutral location, exchanges through a third party or a supervised visitation agency, curbside exchanges or supervised visitation. Protective orders on inflammatory, coercive, or abusive behavior, in the presence of the child should also be considered.

4. The child should be protected from domestic violence. If there has been a finding of domestic violence and the child is in the care of the perpetrator, change legal and physical custody to the non-offending parent unless there is a preponderance of evidence to rebut the presumption per § 3044, the non-offending parent is not safe, or the child's best interests indicate otherwise.
5. The child should be protected from abusive behavior of any type, including exposure to illicit drug use or excessive alcohol use and risk of abduction. All suspected abuse must be reported to Child Protective Services. Where excessive discipline is an issue, mutual restraints on physical discipline are often appropriate. Supervised contact may be indicated on a temporary basis when there are allegations of abuse. A recommendation for supervised visitation may be in the service of protection and not necessarily based on a finding.
6. The child should have the right to enjoy holidays, in a manner that is consistent with prior holiday sharing or that reflects an equitable sharing of time. However, holiday disputes do not constitute a basis for a Screening.
7. Move-away issues should generally be deferred to mediation and assessment/evaluation.
8. Parenting classes, individual counseling, family counseling, anger management classes, alcohol and drug assessments/treatment, child therapy, psychological testing, self-help groups, counseling for children, and drug testing, may all be seen as opportunities for improving parenting abilities and the child's quality of life. One or more referrals to community resources may be appropriate in any given case and may assist in resolving the case and protecting the child. [Review the FIRST 5 Resource Guide.]

Here are some additional decision-making guidelines.

A. Status Quo is Temporarily Safe & Appropriate:

NOT an Emergency Screening:

- There is a Legal Custody and time sharing court order in effect, or the judge can determine the status quo or appropriate temporary time sharing, and the child is NOT in jeopardy of abuse, neglect, endangerment or abduction. When a conflict/emergency has occurred as the result of a lack an order, the judge can make an order which approximates the status quo or otherwise assigns an appropriate temporary time-share.

B. Allegations of Child Abuse, Neglect or Endangerment:

NOT an Emergency Screening: The allegations have been reported to DFCS (CPS), an investigation has been completed and:

- The allegations have been substantiated, and DFCS has taken appropriate protective action.

POSSIBLE Emergency Screening: There is evidence that the child may have been abused, neglected or endangered and

- There has been a finding of domestic violence per § 3044 , the child is in the care of the perpetrator and there appears to be a preponderance of evidence that the child not be in the care of the non-offending parent.
- DFCS has referred the parties back to Family Court with recommendations regarding temporary parent-child contact.
- An allegation has been determined to have been “unfounded,” “substantiated” or “inconclusive” and DFCS has failed to take protective action.
- The evidence indicates that Family Court may need to take immediate protective action and the Judge, after a brief review of the facts, is unable to determine temporary safe and appropriate child custody/visitation arrangements.

C. Child Abduction:

NOT an Emergency Screening: The Judge is able to determine an appropriate temporary custody and visitation order from the Bench.

POSSIBLE Emergency Screening: There is evidence of child abduction, or evidence supporting legitimate concern related to potential child abduction, and the Judge is unable to determine an appropriate temporary custody and visitation order from the Bench.

D. Denial of Contact:

NOT an Emergency Screening:

- A child is suddenly denied access to a parent. The evidence does NOT support that the child is in jeopardy. There is a time sharing order in effect or the judge can determine the pre-existing or other appropriate time sharing. This is an enforcement/contempt issue rather than a screening referral.
- A parent has not had contact with the children for a long period of time, i.e. one year, and the lack of contact has NOT been primarily due to the behavior of the parent having the child. The judge may refer the matter to Orientation and Mediation and/or assign temporary appropriate time sharing.

POSSIBLE Emergency Screening:

- A child continues to be denied access to a parent after this same issue has been brought to the attention of the Court, the denying parent has not complied with Court directives/sanctions, it may be appropriate to modify custody or time sharing, and the Court is unable to determine the best plan from the Bench.
- A child is being denied access and there is no visitation order.

E. School Issues:

NOT an Emergency Screening:

- Disputes over school.
- When it is possible for the child to continue attending the same school.
- When the child is changing from elementary to junior high, or from junior high to high school, and the child can attend the higher level school to which students normally proceed.
- When the dispute involves entrance to kindergarten, or when both parents have moved and the child cannot attend the higher level school to which students normally proceed, but it is possible to determine the child's primary caretaker.

POSSIBLE Emergency Screening:

- When school issues arise in the context of a screening already taking place.

F. Holiday Time Sharing:

NOT an Emergency Screening: The judge normally briefly gathers information regarding previous holiday time sharing and makes an order whether or not there were previous holiday time-sharing arrangements.

G. Move Away Requests:

NOT typically an Emergency Screening: The Court does NOT normally refer this issue for emergency screening. Generally, a move away is not an emergency arising on short notice unless the moving parent has failed to act promptly in notifying the other parent. Furthermore, the issues involved in a proposed move away are generally too complex to be addressed in the limited time available for a screening.

- **POSSIBLE Emergency Screening:** When the Judge in consultation with FCS concludes that the expedited but limited investigation of an emergency screening would be useful and appropriate.

H. Distressed Child:

NOT an Emergency Screening: There is NOT significant evidence that the distress is severe and ongoing under existing time sharing arrangements.

POSSIBLE Emergency Screening: There is significant evidence that the child is suffering severe ongoing distress related to the existing time sharing arrangements and the Judge is unable to determine an appropriate remedy from the Bench.

I. Severely Developmentally or Psychiatrically Disabled Parent :

NOT typically an Emergency Screening: When there is significant evidence that the parent meets this description and the Judge is able to determine appropriate temporary time sharing arrangements.

POSSIBLE Emergency Screening: When the Bench Officer is unsure whether a parent falls within this category and therefore unable to determine an appropriate temporary time sharing arrangement.

J. Medical Neglect:

POSSIBLE Emergency Screening: When medical neglect or disputes endanger a child.

SPECIAL ITEM - EX PARTE REQUESTS FOR CHANGE OF CUSTODY

An ex parte order to screening, 2 days after service, may be appropriate where there is a likelihood of parental abduction or other serious, irreversible harm to the children. Other ex parte requests should be referred to OSC, and at that time there should be a judicial review regarding the need for screening.

OTHER SUGGESTIONS:

1. When both parties are represented by attorneys:
 - The Judge usually instructs the attorneys to consult directly with one another and their clients and make every reasonable effort to reach a temporary resolution which is safe and appropriate pending completion of mediation and, if necessary, the JCC process, and report back within the hour. The Judge should review any proposed stipulation to determine that it appears to be safe and confirm same with the clients and attorneys prior to ordering.

2. When the attorneys have been unsuccessful in resolving the matter after a good faith effort to do so, or when one of the parties is self represented.
 - The Judge attempts to briefly elicit the facts surrounding the emergency issues, and if a safe and reasonably appropriate temporary time sharing arrangement can be determined, the judge orders it.
 - The Judge may wish to independently consult with FCS staff, without referring the matter to screening, for further information regarding the general guidelines on time sharing disputes, or for the purpose of obtaining information regarding the history of the case with FCS (excluding the content of confidential mediation) which may assist the Judge in determining an appropriate temporary order.
3. If the above action is unsuccessful in resolving emergency, the Judge sends the case to Orientation/Mediation or Assessment. The Judge only sends the case to an Emergency Screening if absolutely necessary.

NOTE: All parties and attorneys must be present at FCS before the case will be assigned. The Screener and or Judge will have limited time to read supporting documents. Limit documentation to 10 pages or less. If you have a list of witnesses, provide the name of the witness with a phone number as well as the subject matter about which they have information. (Prepare the witness to be available at the time of the Screening.) The Screener will contact only those considered to be the most significant to the emergency issue.