

## 1276 INTERVENING THROUGH COURT ACTIONS

Chapter: **Child Protective Field Services**

Section: **Working with Families in Court**



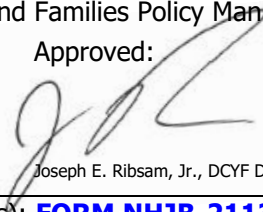
New Hampshire Division for Children, Youth and Families Policy Manual

Policy Directive: **18-22**

Effective Date: **July 2018**

Scheduled Review Date:

Approved:

  
Joseph E. Ribsam, Jr., DCYF Director

Related Statute(s): [RSA 169-C](#)

Related Admin Rule(s):

Related Federal Regulation(s):

Related Form(s): [FORM NHJB-2113](#), [FORM NHJB-2225](#), and [FORM NHJB-2259](#)

Bridges' Screen(s) and Attachment(s):

All children and youth deserve to be safe. The decision to seek court intervention and to bring a child under the courts' protection and jurisdiction represents a belief that this action is necessary. The Division engages in court cases for children and youth when the Division is unable to otherwise engage the family in a child protective case outside of court. In circumstances where continuation in the home is determined to be contrary to the child or youth's welfare the Division will pursue court-ordered placement.

### Definitions

**"CPSS"** or **"Child Protective Services Supervisor"** means the job classification of a person, employed to perform supervisory-level child protection functions under the supervision of a Child Protective Services Field Administrator. This term includes Child Protective Services' District Office Supervisors and Assistant Supervisors.

**"CPSW"** or **"Child Protective Service Worker"** means an employee of DCYF who is authorized by the Division to perform functions of the job classification Child Protective Service Worker.

**"DCYF"** or the **"Division"** means the Department of Health and Human Services' Division for Children, Youth and Families.

**"Placement"** means the removal of a child/youth from their normal place of residence to reside in a court-ordered substitute care setting under the placement and care responsibility of DCYF.

### Policy

I. [Requests for Emergency Interim Relief:](#)

- A. The CPSW or Child Protective Services Supervisor will present [evidence](#) to the court to request an Ex-Parte Order pursuant to RSA 169-C:6-a.
  1. To the extent possible, evidence shall be presented to the court by a signed and sworn written motion for ex-parte (affidavit), and may concurrently be presented in the petition(s) if time permits; or
  2. A CPSW or Child Protective Services Supervisor may make an oral request to the court (under oath) for the ex-parte removal of a child in consultation with their Supervisor when the CPSW is unable to prepare and file a written motion for ex-parte (affidavit) during the court's regular business hours.

- (a) If an ex-parte order is issued based on oral testimony, the CPSW or Child Protective Services Supervisor who made the oral testimony must submit a signed and sworn "Affidavit in Support of Ex Parte Telephonic Removal Pursuant to RSA 169-C:6-a" to the court on the next business day.
  3. Evidence in support of emergency interim relief provided in the written motion for ex parte or oral request shall include:
    - (a) A statement of the specific danger requiring either immediate placement of the child/youth or removal of the alleged perpetrator;
    - (b) Why there is not sufficient time to notify the parent, guardian, or custodian prior to the order, if applicable;
    - (c) The names and addresses of custodial parents, non-custodial parents, legal custodians, other legal guardians of the child/youth, and any other person responsible for the welfare of the child/youth at the time of removal;
    - (d) [Reasonable efforts](#) to prevent the placement of the child(ren)/youth. If no reasonable efforts were made or could be made, then these reasons must be stated; and
    - (e) Efforts to locate any non-custodial parent or other relatives with whom the child is familiar to take temporary care as an alternative to foster care.
- B. If the court grants the Ex-Parte, the Judge will issue an Ex-Parte Order (Form NHJB-2225):
  1. If the order was granted verbally, the CPSW or Child Protective Services Supervisor must request a copy of the signed Ex-Parte Order (Form NHJB-2225) be faxed, or scanned and emailed, to the District Office.
  2. Protective supervision or legal supervision will be ordered, giving DCYF placement and care responsibility and the child/youth shall be removed from the home.
  3. If the Division will pursue a court case, a petition meeting the requirements of RSA 169-C:7 and supporting affidavit must be filed within 72 hours of the order, Saturdays, Sundays, and holidays excluded.
  4. A hearing on the matter must be held within five (5) days of the date of the ex-parte order, Saturday, Sundays, and holidays excluded.
- C. When executing an ex-parte order and the potential exists that the CPSW may be in danger entering a home and/or removing a child/youth, he or she must be accompanied by a law enforcement official.

## II. [Protective Custody](#):

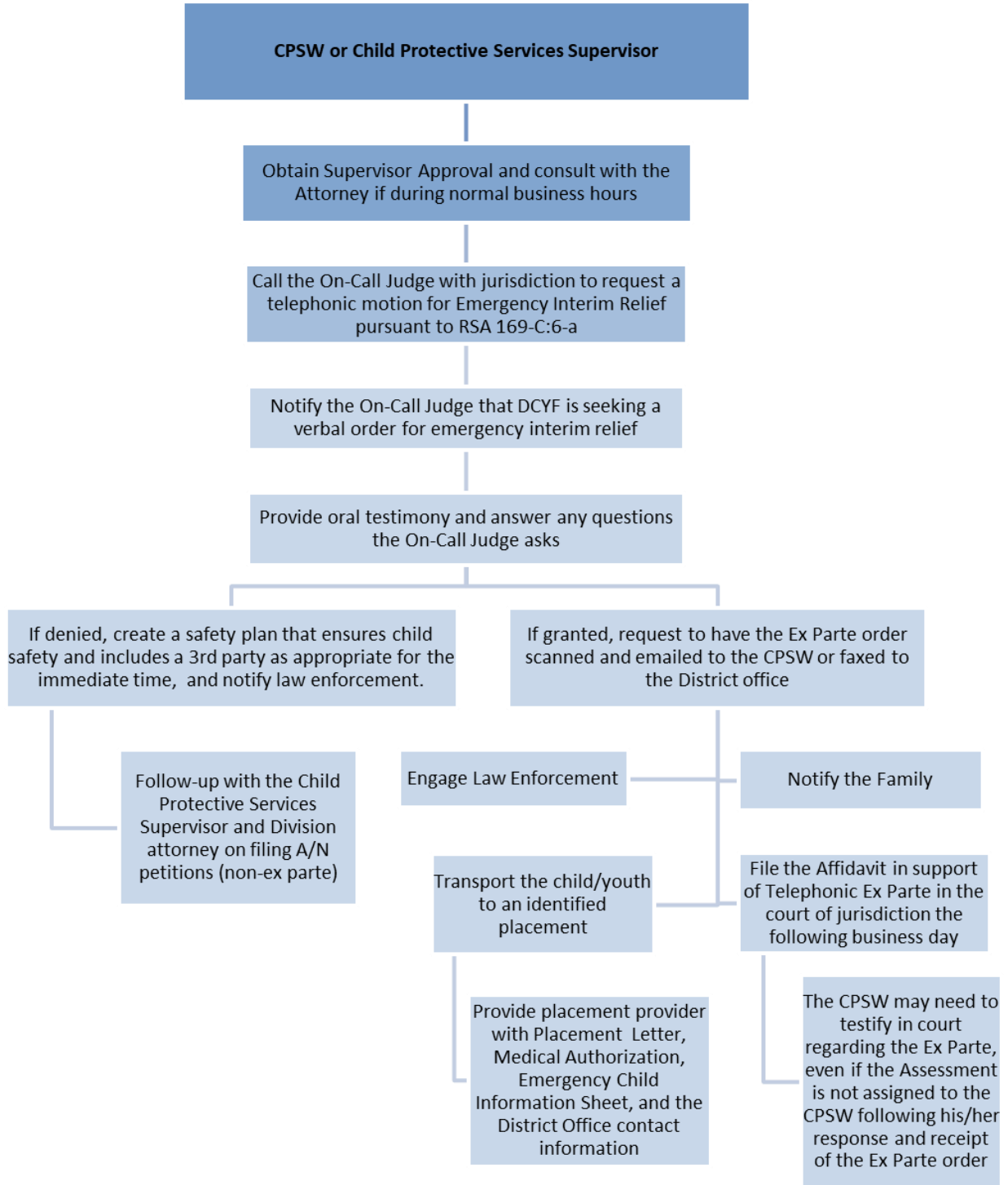
- A. If a child/youth is found to be in immediate danger, a law enforcement officer may take protective custody of a child/youth.
  1. There are specific [requirements of a law enforcement officer](#) that must be met if a child/youth is taken into protective custody.

2. If a child/youth is placed in a foster home, DCYF shall be notified of the incident and where the child/youth is placed within 24 hours.
  - B. The CPSW must request a copy of the signed court order for protective custody (Form NHJB-2259) be faxed, or scanned and emailed, to the District Office.
  - C. A [48-hour protective custody hearing](#) must be held following the removal of a child/youth, Saturdays, Sundays, and holidays excluded.
- III. [Abuse/Neglect Petitions](#) (Form NHJB-2113):
- A. A child abuse and/or neglect petition must be filed any time an Assessment has been determined founded and the Division determines court oversight is necessary.
    1. This includes cases that do not require placement.
    2. This does not include circumstances that are "founded, problem resolved" or that qualify for a [non-court case](#).
  - B. A child abuse and/or neglect petition and supporting affidavit signed under oath set forth the facts alleged to constitute abuse or neglect and the statutory grounds upon which the allegation is based.
  - C. The petition and affidavit must be approved by the Child Protective Services Supervisor, and must be reviewed by the District Office's Attorney during normal business hours.
  - D. An affidavit must accompany the petition, if considered necessary by the Circuit Court, and include the following:
    1. The manner and place of the action alleged to constitute abuse and/or neglect;
    2. The date and time of day on which the alleged action occurred, if this can be determined;
    3. A description of what happened or what facts establish a pattern; and
    4. What has been done to prevent placement.
  - E. Evidence of prior founded or unfounded reports of abuse or neglect shall be identified pursuant to RSA 169-C:12 if appropriate to establish a relevant pattern or course of conduct.
  - F. This petition shall be verified under oath by the petitioner (CPSW) and be [legally sufficient](#).
  - G. When a petition is filed, the court will issue a [summons](#) consistent with RSA 169-C:8.
  - H. When child neglect is all or in part due to parental opioid drug abuse or dependence, the parent may rebut the presumption of harm by offering evidence of their compliance with a treatment program pursuant to RSA 169-C:12-e.
  - I. The court shall appoint a [Court Appointed Special Advocate \(CASA\) or other approved program Guardian Ad Litem](#), or pursuant to RSA 169-C: 10, II(a), an [attorney](#) to represent

the best interests of the child/youth when the child's expressed interests conflict with the recommendation for dispositional orders of the Guardian Ad Litem.

**Practice Guidance**

**Is there a workflow of how to manage Telephonic Ex Parte requests?**



**Can I use the process to make an oral testimony if the court is open?**

- The Division's practice is to file a written sworn motion with the court and only execute an oral request after hours, however a CPSW may make an oral request to the court (under oath) for the ex-parte removal of a child/youth at any time during the day, pursuant to RSA 169-C:-a, II.
- If a court is closed, will be closing soon, there are time sensitive circumstances, or imminent concerns for the child/youth's safety, staff are encouraged to consult with their Child Protective Services Supervisor and office legal counsel regarding the use of the Division's authority to make an oral request to meet the safety needs of the child/youth.

**RSA 169-C:6-a specifies that a written affidavit must be filed to request ex parte or on the next business day following an oral request when the order is granted, I thought the affidavit is filed with the petitions?**

- The term affidavit by definition means a written statement of facts made voluntarily and sworn to under oath. A form does not need to be titled "affidavit" to meet the definition of an affidavit. The motion for ex parte filed by DCYF to request ex parte is an affidavit by definition, but it is a separate sworn statement with generally less information and based on the emergent circumstances in comparison to the full affidavit that is filed with the petitions.