
2. ADULT PROTECTIVE SERVICES BENCH CARD

- ➔ This bench card outlines the judicial procedures and remedies available for adults who are in need of protective services.

FILINGS

1. SPF 23.0 Petition for Protective Services
2. SPF 23.1 Notice of Petition for Court Ordered Protective Services
3. SPF 23.2 Petition for Emergency Protective Services
4. SPF 23.3 Notice of Petition for Court Ordered Protective Services on an Emergency Basis
5. SPF 23.4 Petition for Temporary Restraining Order to Prevent Interference with Investigation of Reported Abuse of an Adult
6. SPF 23.6 Petition for Temporary Restraining Order to Prevent Interference with the Provision of Protective Services to an Adult
7. SPF 23.7 Notice of Hearing on Petition for Temporary Restraining Order to Prevent Interference With the Provision of Services

DEFINITIONS [R.C. 5101.60]

Adult – Person age 60 or older within this state handicapped by infirmities of aging or has physical or mental impairment that prevents person from providing for their own care or protection and who resides in an independent living arrangement, including residential facility licensed under [R.C. 5119.22](#)

Court – Probate court in county where adult resides

Emergency – Adult is living in conditions that present substantial risk of immediate and irreparable physical harm or death to self or another person

Incapacitated person – Person who is impaired to the extent that person lacks sufficient understanding or capacity to make and carry out reasonable decisions concerning person's self or resources, with or without the assistance of a caretaker. Refusal to consent to provision of services shall not be the sole determinative that person is incapacitated

In need of protective services – An adult known or suspected to be suffering from abuse, neglect, or exploitation to an extent that either life is endangered or physical harm, mental anguish, or mental illness results or is likely to result

Abuse – Infliction upon adult by self or others of injury, unreasonable confinement, intimidating or cruel punishment with resulting physical harm, pain, or mental anguish

Neglect – Failure of an adult to provide for self the goods or services necessary to avoid physical harm, mental anguish, or mental illness, failure of caretaker to provide such goods or services, or abandonment

Exploitation – Unlawful or improper act of a person using, in one or more transactions, an adult or adult's resources for monetary or personal benefit, profit or gain when the person obtained or exerted control over adult or the adult's resources in any of the following ways:

- Without adult's consent or consent of the person authorized to give consent
- Beyond scope of express or implied consent of adult or person authorized to give consent
- By deception
- By threat
- By intimidation

2. ADULT PROTECTIVE SERVICES BENCH CARD - *cont.*

**NOTE**

These provisions apply to involuntary protective service proceedings. For voluntary proceedings, refer to R.C. 5101.66.

TEMPORARY RESTRAINING ORDER

[R.C. 5101.651]; [R.C. 5101.69]

Investigation/Access to Residence [R.C. 5101.651]

- County Dept. of Job & Family Services (Co. DJFS) may petition the court for temporary restraining order to prevent interference or obstruction by any person, including the adult, who denies or obstructs access to residence of adult during course of investigation under R.C. 5101.65
- **Temporary Restraining Order** – Court shall issue temporary restraining order if it finds reasonable cause to believe:
 - Adult is being or has been abused, neglected, or exploited, **AND**
 - Access to adult’s residence has been denied or obstructed
 - Such finding is prima-facie evidence that immediate and irreparable injury, loss, or damage will result, so notice is not required

Provision of Services [R.C. 5101.69]

- Co. DJFS may petition court for temporary restraining order to restrain any person from interfering with provision of protective services for the adult, when the adult has consented to the provision
 - **Petition** – Petition shall state specific facts sufficient to demonstrate need for protective services, the consent of adult, and refusal of some person to allow provision of services
 - **Notice** – Notice of petition shall be given to person alleged to be interfering

- **Hearing** – Court shall hold hearing on petition within **14 days** after its filing
- **Temporary Restraining Order** – Court shall issue temporary restraining order if it finds:
 - Protective services are necessary
 - Adult has consented to provision of services
 - The person who is subject of petition has prevented such provision

COURT ORDERED PROTECTIVE SERVICES

[R.C. 5101.68]; [R.C. 5101.681 - .682]

Petition [R.C. 5101.68]

- Co. DJFS may petition court for an order authorizing provision of protective services if it determines the adult is in need of protective services and is an incapacitated person (adult did not voluntarily accept services)

Notice of Petition [R.C. 5101.681]

- Notice to be personally served on adult at least 5 working days prior to hearing date
- Notice to adult shall be given orally or in writing
- Notice shall include all petitioners’ names, basis of belief that protective services are needed, rights of adult in court proceedings, consequences of court order, adult’s right to counsel, adult’s right to appointed counsel if indigent and requests appointed counsel
- Written notice by certified mail shall be given to adult’s guardian, legal counsel, caretaker, and spouse, if any, or, if none of these, to adult children or next of kin if any, or to any other person court may require
- Adult may not waive notice

Hearing & Order [R.C. 5101.682]

- **Hearing** held within **14 days** after filing of petition
- Rights of adult:
 - Be present at hearing
 - Present evidence
 - Examine and cross-examine witnesses
 - Be represented by counsel unless knowingly waived
 - Court appointed counsel if indigent
 - Court appointed counsel if court determines adult lacks capacity to waive right to counsel

Order

- Court shall issue order requiring provision of protective services **IF**:
 - Court finds by clear and convincing evidence that:
 - Adult has been abused, neglected, or exploited;
 - Is in need of protective services;
 - Is incapacitated; **AND**
 - No person authorized by law or court order is available to give consent.
 - If above findings are made, protective services are ordered to be provided only if services are available locally

Placement

- If placement is ordered, consideration shall be given to choice of residence of the adult
- May be in settings approved by the DJFS that meet minimum community standards for safety, security, and requirements of daily living
- Institutional placement shall not be ordered unless specific finding was entered in the record that no less restrictive alternative can be found to meet the adult's needs

- Cannot order commitment to a hospital or public hospital as defined in **R.C. 5122.01**
- Change of placement ordered only upon court's finding of compelling reasons to justify transfer
- Court shall notify adult of transfer at least 30 days prior, unless emergency exists
- Order provided for in this section shall remain in effect for no longer than 6 months
- If Co. DJFS determines continued need for services after review of adult's needs, it shall apply for renewal of order for additional periods of no longer than one year each
- Adult may petition for modification of order at any time

COURT ORDERED PROTECTIVE SERVICES – EMERGENCY BASIS [R.C. 5101.70]

Petition (Emergency Basis) [R.C. 5101.70]

- Filed by Co. DJFS or its designee and shall include:
 - Adult's name, age, address
 - Nature of emergency
 - Proposed protective services
 - Petitioner's reasonable belief and supportive facts that:
 - Adult is incapacitated
 - An emergency exists
 - No person is available or willing to consent for the adult
 - Facts showing attempts to obtain adult's consent

Notice of filing and petition contents

- To adult, shall include both:
 - Right to be present at hearing, present evidence, examine and cross-examine witnesses
 - Possible consequences of order

2. ADULT PROTECTIVE SERVICES BENCH CARD - *cont.*

- To spouse, if any, or to adult child or next of kin, and guardian, if any, if whereabouts known
- Given 24 hours prior to hearing, unless waived by court if:
 - Immediate and irreparable physical or financial harm to adult or other will result from 24-hour delay; and
 - Reasonable attempts were made to notify adult, spouse, if any, adult children or next of kin, if any, and guardian, if any, if whereabouts are known
 - If 24-hour notice is waived, notice of this determination shall be given to persons receiving notice
- If services are necessary beyond emergency period, petition can be filed under **R.C. 5101.68**; Co. DJFS or its designee, after filing petition, permitted under **R.C. 5101.70(F)** to continue to provide services pending hearing by court
 - Authorize Co. DJFS director, designee, or rep. of designee to give consent for adult until order expires
 - Cannot order commitment to a hospital or public hospital, as defined in **R.C. 5122.01**

Hearing

- Shall be held no sooner than 24 and no later than 72 hours after notice is given, unless court waived notice

Order (Emergency Basis)

- Court shall issue order if it finds by clear and convincing evidence that:
 - Adult is incapacitated;
 - Emergency exists; and
 - No person authorized by law or court order is available to consent.

Limitations to Order

- Specifically designate only necessary and locally available services to remove the emergency
- No change of residence unless finding necessary
- Services for **14 days**, unless Co. DJFS or its designee petitions court for renewal of 14-day order upon showing is necessary to remove emergency

COURT ORDERED PROTECTIVE SERVICES – EX PARTE EMERGENCY BASIS [R.C. 5101.701]

Ex Parte Emergency Order [R.C. 5101.701]

- Court (judge or magistrate under direction of judge) may issue by **telephone** an ex parte emergency order if ALL of the following are applicable:
 - Co. DJFS/authorized employee of Co. DJFS/Co. DJFS designee/authorized employee of designee notifies court that they believe emergency order is needed as described herein;
 - Reasonable cause to be believe adult is incapacitated; and
 - Reasonable cause to believe there is substantial risk to adult of immediate and irreparable physical or financial harm, or death.
- Order shall be journalized
- Order effective for not longer than **24 hours** (except if day following day on which order is issued is not a working day, then order shall remain in effect until next working day)

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- Not later than **24 hours** after order is issued, petition under **R.C. 5101.70(A)** shall be filed with court (unless day following day on which order was issued is not a working day, then petition shall be filed on next working day)
 - Proceedings shall be conducted in accordance with **R.C. 5101.70**, except as provided in **R.C. 5101.702**

Hearing [R.C. 5101.702]

- Shall be held not later than **24 hours** after issuance of order to determine if there is probable cause for the order (except if day following day on which order is issued is not a working day, then order shall remain in effect until next working day)
- Court shall determine whether protective services are least restrictive alternative available
- Court may issue temporary orders, including, but not limited to, temporary protection orders, evaluations, and orders requiring a party to vacate adult's place of residence or legal settlement
 - Temporary order(s) are effective for 30 days

- Court may renew order for additional 30-day period
- Information in order may be entered into law-enforcement automated-data system
- Court may order emergency services
- Court may freeze financial assets of adult

PAYMENT OF SERVICES [R.C. 5101.71]

Payment of Services [R.C. 5101.71]

- Adult shall not be required to pay for court-ordered services unless court determines upon a showing by Co. DJFS that adult is financially able to pay and court orders the same

NOTE

If adult is indigent, court shall appoint legal counsel whenever Co. DJFS has petitioned court to authorize provision of protective services.

