

F.C.A §§ 1017, 1028;
S.S.L. §§393, 409-h

Form 10-5
(Child Protective-Order
on Application for Return of Child
Temporarily Removed from Home)
9/2021

At a term of the Family Court of the
State of New York, held in and for
the County of
, at
New York on

P R E S E N T:

Hon. _____ Judge

In the Matter of _____

FAMILY FILE #:

CIN#

(A) Child(ren) under the Age of
Eighteen Years Alleged to be

Abused Neglected

Respondent(s)

Docket No.
ORDER ON
APPLICATION FOR
RETURN OF CHILD
TEMPORARILY
REMOVED FROM HOME

NOTICE:

IF YOUR CHILD STAYS IN FOSTER CARE FOR 15 OF THE MOST RECENT 22 MONTHS, THE AGENCY MAY BE REQUIRED BY LAW TO FILE A PETITION TO TERMINATE YOUR PARENTAL RIGHTS AND MAY FILE BEFORE THE END OF THE 15-MONTH PERIOD. IF SEVERE OR REPEATED ABUSE IS PROVEN BY CLEAR AND CONVINCING EVIDENCE, THIS FINDING MAY CONSTITUTE THE BASIS TO TERMINATE YOUR PARENTAL RIGHTS. IF THE PETITION IS GRANTED, YOU MAY LOSE YOUR RIGHTS TO YOUR CHILD AND YOUR CHILD MAY BE ADOPTED WITHOUT YOUR CONSENT.

THE NEXT COURT DATE IS [specify date/time]:

THE PERMANENCY HEARING SHALL BE HELD ON [specify date/time]:¹

An application having been made pursuant to Family Court Act §1028 for an order returning the child(ren) to the place of residence of such child(ren) by [specify]:

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Specify a date certain not more than eight months from the date of removal. If the child has a sibling or half-sibling removed from the home, whose permanency hearing is scheduled before this Court, the date certain shall be the same as the date certain for the sibling's or half-sibling's permanency hearing, unless the sibling or half-sibling was removed on a juvenile delinquency or PINS petition or unless he or she has been freed for adoption. If the child is finally discharged from care on the scheduled date, the permanency hearing shall be cancelled.

, who (is)(are) the [specify]: parent(s); person(s) legally responsible for the child(ren); attorney for the subject child(ren);

And the child(ren) having been removed prior to this hearing pursuant to Family Court Act [check applicable box(es)]: §1021 §1022 § 1024 §1027;

And a hearing having been held by this Court pursuant to Family Court Act § 1028; and the following person(s) having appeared to determine whether the child(ren) should be returned pending a final order of disposition [specify; check applicable boxes]:

- Respondent [specify]: with counsel without counsel
 waived representation by counsel
- Respondent [specify]: with counsel without counsel
 waived representation by counsel
- Non-respondent parent [specify]: with counsel without counsel.
- Attorney for the child(ren)
- Petitioner
- Other [specify]:

[Required in cases involving Native-American children; check if applicable]:

- And the following having been duly notified [check applicable box(es)]:
 - parent/custodian tribe/nation United States Secretary of the Interior; And the tribe/nation having: appeared and participated as a party;
 - appeared and declined to assume jurisdiction;
 - appeared and requested transfer of jurisdiction;
 - not appeared;

The Court finds and determines that [Note: judicial findings must be made under I, and, if application for return of child temporarily removed is DENIED, also under II and III]:

I. Criteria for Return or Continued Temporary Removal of Child(ren) [check applicable box]:

The child(ren) should be returned home because no imminent risk to the child(ren)'s life or health has been demonstrated.

OR

Continued temporary removal of the child(ren) is necessary to avoid imminent risk to the child(ren)'s life or health.

II. Required "Best Interests" and "Reasonable Efforts" Findings [check applicable boxes and provide case-specific reasons in both A and B, below]:

A. Continuation of the child(ren) in, or return of the child(ren) to, the child(ren)'s home

would would not be contrary to the best interests of the child(ren) because [specify facts and reasons]:

This determination is based upon the following information [check applicable box(es)]:

- Petition
- Report of Suspected Child Abuse or Neglect
- Case Record, dated [specify]:
- Service Plan, dated [specify]:
- The report of [specify]: , dated [specify]:
- Testimony of [specify]:
- Other [specify]:

B. Reasonable efforts, where appropriate, to prevent or eliminate the need for removal of the child(ren) from the home, and, if the child(ren) were removed prior to the date of this hearing, to return them home safely [check applicable box and state reasons as indicated]:

- were made as follows [specify]:
- were not made but the lack of efforts was appropriate [check all applicable boxes]:
 - because of a prior judicial finding pursuant to F.C.A. §1039-b that the Petitioner was not required to make reasonable efforts to reunify the child(ren) with the Respondent(s) [specify date of finding]:
 - because of other reasons [specify]:
- were not made.

This determination is based upon the following information [check applicable box(es)]:

- Petition
- Report of Suspected Child Abuse or Neglect
- Case Record, dated [specify]:
- Service Plan, dated [specify]:
- The report of [specify]: , dated [specify]:
- Testimony of [specify]:
- Other [specify]:

III. Findings Regarding Alternatives to Removal to Foster Care:

A. Based upon the investigation conducted by the Commissioner of Social Services, including a review of records in accordance with section 1017 of the Family Court Act, [Check applicable box(es)]:

- The following person [specify]: _____ is a
 non-respondent parent legal custodian or guardian² relative suitable person with whom the child(ren) may appropriately reside.

[Applicable to non-respondent parent]: Such non-respondent parent:

- wishes the child(ren) to be released to him/her during the pendency of this proceeding.
 wishes to be granted a temporary order of custody, pursuant to a proceeding under Article 6 of the Family Court Act and has filed a petition, Docket # _____, which [check applicable box]: is being heard jointly with this proceeding; is scheduled to be heard on [specify date]:

[Applicable to legal custodian or guardian]: Such legal custodian or guardian:

- wishes the child(ren) to be released to him/her during the pendency of this proceeding.

[Applicable to relatives and other suitable persons]: Such person:

- seeks approval as a foster parent in order to provide care for the child(ren);
 wishes to provide care and custody for the child(ren) without foster care subsidy during the pendency of an order pursuant to section 1055 of the Family Court Act.
 wishes to be granted an order of temporary custody, pursuant to a proceeding under Article 6 of the Family Court Act and has filed a petition, Docket # _____, which [check applicable box]:
 is being heard jointly with this proceeding; is scheduled to be heard on [specify date]:

wishes to be appointed guardian pursuant to a proceeding under Article 6 of the Family Court Act and has filed a petition, Docket # _____, which [check applicable box]:

is being heard jointly with this proceeding; is scheduled to be heard on [specify date]:

There is no non-respondent parent, legal custodian or guardian or relative or suitable person with whom the child(ren) may appropriately reside.

B. [Required]: Imminent risk to the child(ren) would would not be eliminated by the

² "Legal custodian" refers to an individual with an order of custody issued prior to, and separate from, the child protective proceeding. A release to such an individual is distinguished from a child placed in the custody of an individual pursuant to an order of custody issued under Article 6 and section 1055-b of the Family Court Act. Such a custody order results in the termination of all orders under Article 10 of the Family Court Act, would not be deemed a "release" of the child and would thus not be the subject of a violation petition.

issuance of a temporary order of protection or order of protection directing the removal of [specify]: _____ from the child(ren)'s residence;

[REQUIRED if placement in a Qualified Residential Treatment Program (QRTP) pending resolution of this matter is requested; DELETE if inapplicable]:

This Court, upon examination of the motion papers and supporting affidavit(s); the Qualified Individual's written assessment, if any, of the appropriateness of the requested placement; and any response thereto, including [specify]: _____ ;
and [specify other information considered]: _____

; and

upon hearing testimony in relation thereto upon consent of all parties without a hearing, finds the following [check applicable box(es)]:

A. The needs of the child can cannot be met through placement in a foster family home pending resolution of this matter because [specify facts and reasons]:

B. Placement of the child in a Qualified Residential Treatment Program (QRTP) does does not provide the most effective and appropriate level of care for the child in the least restrictive environment pending resolution of this matter because: [specify facts and reasons]:

C. Placement in [specify name of QRTP]:
 is is not consistent with the short-term and long-term goals for the child, as specified in the child's permanency plan from a prior matter [specify] _____ because [specify facts and reasons]:

D. Where the Qualified Individual has already determined that the placement of the above-named child in the Qualified Residential Treatment Program (QRTP) pending resolution of this matter is not appropriate, the Court nevertheless finds:

Circumstances exist that necessitate the placement of the above-named child in the Qualified Residential Treatment Program (QRTP) pending resolution of this matter as follows [specify facts and reasons]:

There is not an alternative setting available that can meet the above-named child's needs in a less restrictive environment pending resolution of this matter; **and**

Placement in the Qualified Residential Treatment Program (QRTP) pending resolution of this matter is in the child's best interests because [specify facts and reasons]:

ORDERED that, pending further proceedings, the child(ren) shall be placed in the temporary custody of [check applicable box]:

- the Commissioner of Social Services of _____ County;
the Commissioner of Social Services of _____ County to reside with
[specify]:
- the following relative(s) or other suitable person(s) [specify]:

OR

ORDERED that, pursuant to a petition filed under Article 6 of the Family Court Act, Docket # [specify]: _____, the child(ren) (is) (are) placed in the temporary custody of the following non-respondent parent [specify]:

_____ ; (and it is further)

ORDERED that, during the period of temporary release or temporary custody, as applicable, the non-respondent parent, relative or suitable person shall submit to the jurisdiction of the Court with respect to the child(ren) and shall cooperate with respect to making the child(ren) available for court-ordered visitation with respondents, siblings and others, appointments with the child(ren)'s attorneys and clinicians and other individuals or programs providing services to the children, visits (including home visits) by the child protective agency

and the following additional direction(s) [specify]:

ORDERED that, during the period of release or temporary custody, as applicable, the individual to whom the child(ren) have been released or with whom the child(ren) have been placed into temporary custody under this Order may [check applicable box(es)]:

enroll the child(ren) in public school in the applicable school district and, upon verifying the Order and that the individual resides within the district, such district shall enroll the child(ren);

enroll the child(ren) in their employer-based health insurance plan with the same rights as child(ren) for whom the individual is the legal guardian or custodian;
and

make decisions and provide any necessary consents regarding the child(ren)'s:
 protection education care and control physical custody health and medical needs,
provided that this Order does not limit any rights of the child(ren) to consent to medical care under applicable laws.

AND IT IS FURTHER ORDERED that, during the period of temporary release or temporary custody, as applicable, the child protective agency, social services official or duly authorized agency shall provide the following services or assistance to the child(ren) and their family, pursuant to section 1015-a of the Family Court Act [specify]:³

³ Services and assistance ordered under F.C.A. §1015-a must be authorized under the comprehensive annual services program plan in effect.

ORDERED that: Hospital [specify]: Physician [specify]: is hereby authorized to provide such emergency medical or surgical procedures for the child(ren) as may be necessary to safeguard the child(ren)'s life or health; (and it is further)

[Required in child abuse cases unless petition commenced on the basis of medical examination and discretionary in child neglect cases, pursuant to FCA §1027(g)]:

ORDERED that the child undergo a medical examination, pursuant to Family Court Act §251 by the following physician [specify]: , which shall include the taking of colored photographs and, if appropriate, a radiological examination, the results of which, along with the photographs, shall be submitted to the Court;

ORDERED that colored photographs be taken of areas of visible trauma to the child, if any; (and it is further)

ORDERED that the child protective agency provide arrange for the provision of the following appropriate services or assistance to the child(ren) and to the child(ren)'s family pursuant to Family Court Act §§ 1015-a or 1022 (c) [specify]:

; (and it is further)

ORDERED that the Commissioner of Social Services shall conduct a diligent search for any non-respondent parents of the child(ren), inform them of the pendency of the proceeding and of the opportunity for seeking custody of the child(ren) and record the results of such investigation in the child's Uniform Case Record and report the results of the investigation to the Court, all parties and counsels, including the child(ren)'s attorney, forthwith. Such search shall also include, but not be limited to, a person not recognized as a legal parent of the child but who has filed an instrument pursuant to section 4-1.2 of the Estate s, Powers and Trusts Law acknowledging paternity with the putative father registry, has a pending paternity petition or has been identified as a parent by the other parent in a written, s worn statement. Such search shall include, but not be limited to, the following person(s) [specify, if known]:

; (and it is further)

ORDERED that the Commissioner of Social Services shall investigate whether there are any grandparents, other relatives or other suitable person(s) with whom the child(ren) may appropriately reside, including, but not limited to [specify]:

; shall inform them of the pendency of the proceeding, shall ascertain (in the case of relatives or suitable persons) whether such person(s) wish to seek approval as foster parent(s) in order to provide care for the child(ren) or wish to provide care and custody for the child(ren) without foster care subsidy during the pendency of any order herein; and shall record the results of such investigation in the child's Uniform Case Record;

; (and it is further)

ORDERED that, within 24 hours of this order, the Commissioner of Social Services shall commence an investigation of the following relatives or other suitable persons as foster parents and thereafter approve such person(s) to be foster parents, if qualified, and, if not, to report such fact to the Court, all parties and counsels, including the attorney for the child(ren), forthwith [specify]:

; (and it is further)

[Applicable where child in custody of Commissioner of Social Services]:

ORDERED that if the child absconds from the above-named custodial person or facility, written notice shall be given within 48 hours to the Clerk of Court by the custodial person or by an authorized representative of the facility, stating the name of the child, the docket number of this procedure, and the date on which the child ran away; (and it is further)

ORDERED that [specify Respondent(s)]: (is)(are) required to comply with the terms and conditions specified in the order of protection, issued pursuant to Family Court Act §1029, annexed to this order and made a part thereof;

[REQUIRED where placement in a Qualified Residential Treatment Program is requested; delete if inapplicable]: After examination and inquiry into the facts and circumstances [check box if applicable]: **and after hearing the proof and testimony offered in relation thereto, it is therefore** [Check applicable box(es)]:

ORDERED, that the Petitioner’s application for placement of the child in the “Qualified Residential Treatment Program” is GRANTED, and placement of the child in [specify name of QRTP]: pending resolution of this matter is hereby approved.

OR

ORDERED, that the Petitioner’s application for placement of the child in the “Qualified Residential Treatment Program” is DENIED, and on or before [specify date]: the above-named child shall be [check applicable box and specify]:

- returned to or placed with the following parent [specify]:
- returned to or placed with the following legal guardian [specify]:

- returned to or placed with the following suitable adult/relative [specify]:
- returned to or placed in the following foster home [specify]:
- returned to or placed in the following facility providing supports for pre-natal, post-partum and parenting youth: (specify):

- returned to or placed in the following residential program providing supportive services for youth suspected of being or at risk of becoming sexually exploited, as defined in Social Services Law §447-a (1) [specify]:

- returned or placed in an available supervised setting, as defined in Social

Services Law §371, that is approved and supervised by an authorized agency or the local social services district and that provides a transitional experience for older youth in which such youth may live independently [specify]:

OR

On or before [specify date]: _____, Petitioner shall make such other arrangements for the above-named child’s care and welfare that is in the best interests of the child and in the most effective and least restrictive setting pending resolution of this matter as the facts of the case require as follows [specify]:

[Applicable where child is Native-American]:

ORDERED that the following should be notified of this proceeding [specify]:
the custodian of the child; tribe/nation; United States Secretary of the Interior

ORDERED that in light of the assumption of jurisdiction by the tribe/nation, this petition is **DISMISSED WITHOUT PREJUDICE**.

[Applicable to child(ren) placed in the custody of the Commissioner of Social Services]:

ORDERED that if the child(ren) remain in foster care or is/are directly placed pursuant to Sections 1017 or 1055 of the Family Court Act, a permanency hearing shall be held on [specify]:⁴

; (and it is further)

ORDERED that

ENTER

Dated: _____, _____

Judge of the Family Court

PURSUANT TO SECTION 1113 OF THE FAMILY COURT ACT, AN APPEAL FROM THIS ORDER MUST BE TAKEN WITHIN 30 DAYS OF RECEIPT OF THE ORDER BY APPELLANT IN COURT, 35 DAYS FROM THE DATE OF MAILING OF THE ORDER TO APPELLANT BY THE CLERK OF COURT, OR 30 DAYS AFTER SERVICE BY A PARTY OR THE ATTORNEY FOR THE CHILD UPON THE APPELLANT, WHICHEVER IS EARLIEST.

Check applicable box:

Order mailed on [specify date(s) and to whom mailed]:

Order received in court on [specify date(s) and to whom given]:

⁴ Specify a date certain not more than eight months from the date of removal. If the child has a sibling or half-sibling removed from the home, whose permanency hearing is scheduled before this Court, the date certain shall be the same as the date certain for the sibling’s or half-sibling’s permanency hearing, unless the sibling or half-sibling was removed on a juvenile delinquency or PINS petition or unless he or she has been freed for adoption. If the child is finally discharged from care on the scheduled date, the permanency hearing shall be cancelled.