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JUDICIAL PROCEEDINGS

TABLE OF CONTENTS

8.1	Introduction.....	8
8.1.1	Venue.....	8
8.1.2	Names and contact information of persons with a legitimate interest	8
8.1.3	Court consider person with a legitimate interest	8
8.2	Emergency removal order	9
8.2.1	Ex parte emergency removal order.....	9
8.2.1.1	Petition for an emergency removal order must allege child is abused or neglected.....	10
8.2.2	Affidavit or sworn testimony must accompany petition	10
8.2.3	Affidavit or sworn statement in support of emergency removal order	10
8.2.3.1	The petition, affidavit, or sworn statement must specify the factual circumstances warranting removal	10
8.2.3.2	Evidence must establish an immediate threat to life or health of the child. 10	
8.2.3.3	Petition, affidavit, or sworn testimony must show reasonable efforts to prevent removal	10
8.2.3.4	Petition, affidavit, or sworn testimony must show no alternatives less drastic than removal	10
8.2.3.5	No opportunity to provide preventive services	11
8.2.3.6	Petition or affidavit must include the following facts.....	11
8.2.3.7	CPS worker shall consult with supervisor and must consult foster care	

Child and Family Services Manual C. Child Protective Services

	worker	11
8.2.4	Five-day hearing must occur following emergency removal order	12
8.2.5	Suitable relatives shall be considered for placement	12
8.2.6	When LDSS has legal custody of child	12
8.3	Preliminary removal order.....	12
8.3.1	Service worker shall consult with supervisor and foster care worker	13
8.3.2	Notice shall be given to all parties	13
	8.3.2.1 If notice cannot be provided.....	13
	8.3.2.2 Notice shall include specific information	13
8.3.3	Parties may obtain counsel.....	14
8.3.4	Preliminary removal hearing	14
8.3.5	For a preliminary removal order to be issued, burden is on the requesting party	14
	8.3.5.1 Burden of proof – preponderance of the evidence	14
	8.3.5.2 Requesting party must prove imminent threat to life or health of child	14
	8.3.5.3 Reasonable efforts must have been made to prevent removal	15
	8.3.5.4 No alternatives less drastic than removal	15
	8.3.5.5 No reasonable opportunity to provide services.....	15
8.3.6	The preliminary removal hearing	15
	8.3.6.1 Parties may present witnesses and evidence	15
	8.3.6.2 Testimony of the child may be taken by closed-circuit television	16
	8.3.6.3 Out-of-court statements made by a child describing act of sexual nature ..	16
	8.3.6.4 Use of videotaped statement of alleged victim as evidence	17
8.3.7	If court orders removal, court must determine who shall have custody of the child	17
	8.3.7.1 If court orders removal, court may provide for reasonable visitation.....	18
	8.3.7.2 If court orders removal, court shall obtain child support	18
	8.3.7.3 Court may impose additional requirements or conditions	18
8.3.8	Court shall make finding of abuse or neglect	18
	8.3.8.1 A party may object to the court making a finding of abuse or neglect.....	18
	8.3.8.2 Adjudicatory hearing	19
	8.3.8.3 Notification of adjudicatory hearing	19
	8.3.8.4 Preliminary removal order or protection orders remain in effect pending adjudicatory hearing.....	19
	8.3.8.5 Dispositional hearing	19

Child and Family Services Manual C. Child Protective Services

8.3.8.6	Scheduling the dispositional hearing	19
8.3.9	Person gaining legal custody of child	19
8.3.10	Violation of order constitutes contempt of court	20
8.4	Preliminary protective order	20
8.4.1	Purpose of preliminary protective order	20
8.4.2	The court's authority	20
8.4.2.1	The court may order person to abstain from offensive conduct	20
8.4.2.2	The court may order services	20
8.4.2.3	The court may order home visits	20
8.4.2.4	The court may order visitation with the child	21
8.4.2.5	The court may order person to refrain from certain acts	21
8.4.2.6	The court may order person to have no contact with child or family	21
8.4.3	Requesting a preliminary protective order	21
8.4.3.1	Motion or petition must establish imminent threat	21
8.4.3.2	Ex parte preliminary protective order	21
8.4.3.3	Adversary hearing shall occur within five days of issuance of ex parte order	22
8.4.4	Notice of hearing shall be given	22
8.4.5	Right to counsel	22
8.4.6	Right to present witnesses and cross-examination	22
8.4.7	If the preliminary protective order petition alleges abuse or neglect, then the court shall make finding of abuse or neglect	23
8.4.7.1	A party may object to the court making a finding of abuse or neglect	23
8.4.7.2	If a party objects to the court making a finding of abuse or neglect	23
8.4.7.3	Purpose of adjudicatory hearing	23
8.4.7.4	Notice for adjudicatory hearing	23
8.4.7.5	Court order carries full force and effect	23
8.4.8	Dispositional hearing	24
8.4.8.1	Scheduling and notice for dispositional hearing	24
8.4.9	Preliminary protective order cannot remove custody from parents or guardians	24
8.4.10	Violation of preliminary protective order constitutes contempt of court	24
8.5	Petition for child support	24
8.6	Immunity from civil or criminal liability	24

8

JUDICIAL PROCEEDINGS

8.1 Introduction

This section describes some of the judicial proceedings regarding child abuse or neglect. It is imperative that local departments of social services (LDSS) seek legal counsel and advice when seeking court intervention in a Child Protective Services (CPS) referral or CPS on-going case.

Text that is indented and denoted with a blue vertical line is verbatim from the Code of Virginia or the Virginia Administrative Code (VAC).

8.1.1 Venue

Pursuant to [§ 16.1-243 A \(1d\)](#) of the Code of Virginia, in cases involving an allegedly abused or neglected child, the proceeding may be commenced in:

- The city or county where the child resides;
- The city or county where the child is present when the proceedings are commenced; or
- The city or county where the alleged abuse or neglect occurred.

8.1.2 Names and contact information of persons with a legitimate interest

Pursuant to [§16.1-229.1](#) of the Code of Virginia, in any proceeding held in which a child is removed from their home, the court may order the parents or guardians of the child to provide the names and contact information for all persons with a legitimate interest to the LDSS.

8.1.3 Court consider person with a legitimate interest

The Code of Virginia (§§ [16.1-252](#), [16.1-277.01](#), [16.1-277.02](#), [16.1-278.2](#), [16.1-278.3](#), and [16.1-283](#)) requires courts consider persons with a legitimate interest for custody of the child when evaluating removal, entrustment, relief of custody, and termination of parental rights petitions.

8.2 Emergency removal order

A CPS worker is authorized to petition the court to request an order to remove a child pursuant to [22 VAC 40-705-100 A](#).

The LDSS must work closely with the county or city attorney and the juvenile and domestic relations district court to develop protocols for these actions.

It is important and necessary for the LDSS to obtain legal counsel prior to petitioning for the removal of a child. The evidence supporting the decision to seek court intervention must be well documented in the case record. When an LDSS petitions a court for an emergency removal order, the LDSS may be referred to as the petitioner during the proceedings.

8.2.1 Ex parte emergency removal order

Pursuant to [§ 16.1-251 A](#) of the Code of Virginia, ex parte is defined as “done or made at the insistence and for the benefit of one party only, without notice or argument by, any person adversely interested.”¹ Essentially, an ex parte hearing allows the court to conduct a hearing without the presence of one of the parties because the situation demands immediate action or irreparable harm will likely occur. An emergency removal order may be issued ex parte by the court upon a petition supported by an affidavit or by sworn testimony in person before the judge or intake officer. If a court enters an emergency removal order, a preliminary removal hearing must occur **no later than five (5) business days** after the removal.

¹Black’s Law Dictionary 657 (9th ed. 2009).

8.2.1.1 Petition for an emergency removal order must allege child is abused or neglected

In order to request an emergency removal order, the LDSS must file a petition requesting removal. The petition requesting removal of the child must allege that the child is abused or neglected.

8.2.2 Affidavit or sworn testimony must accompany petition

The worker will be required to submit an affidavit or to present sworn testimony to prove that the case meets the criteria set forth for removing a child from the home. Competent evidence by a physician that a child is abused or neglected is considered adequate to support this type of petition.

8.2.3 Affidavit or sworn statement in support of emergency removal order

8.2.3.1 The petition, affidavit, or sworn statement must specify the factual circumstances warranting removal

The petition or accompanying affidavit must contain a specific statement or account of the factual circumstances necessitating the removal of the child.

8.2.3.2 Evidence must establish an immediate threat to life or health of the child

Pursuant to [§ 16.1-251 A1](#) of the Code of Virginia, the circumstances of the child are such that remaining with the parent, legal guardian, or caretaker presents an imminent danger to the child's life or health.

8.2.3.3 Petition, affidavit, or sworn testimony must show reasonable efforts to prevent removal

Pursuant to [§ 16.1-251 A2](#) of the Code of Virginia, removal of a child should only occur after consideration of alternatives to out-of-home placement. The court must be presented with an affidavit or sworn testimony establishing that reasonable efforts have been made to prevent removal of the child from their home.

8.2.3.4 Petition, affidavit, or sworn testimony must show no alternatives less drastic than removal

Pursuant to [§ 16.1-251 A2](#) of the Code of Virginia, the safety of the child precludes provision of services to prevent placement because there are no alternatives less drastic than removal that could reasonably protect the child's life or health.

8.2.3.4.1 Alternatives less drastic than removal

Pursuant to [§ 16.1-251 A2](#) of the Code of Virginia, alternatives less drastic than removal may include but are not limited to medical, educational, psychiatric, psychological, homemaking or other similar services to the child or family or the issuance of a preliminary protective order.

8.2.3.5 No opportunity to provide preventive services

Pursuant to [§ 16.1-251 A2](#) of the Code of Virginia, circumstances may occur when there is no reasonable opportunity to provide preventive services before removing a child from the home.

8.2.3.6 Petition or affidavit must include the following facts

The petition shall include the following facts:

- The name of the person who took emergency custody, the person's professional capacity, and the telephone number where the person can be reached.
- The child's name and birth date.
- The names of parents or guardians.
- The present or last known address of parents or guardians.
- A detailed description of the child's condition.
- Any information known concerning the circumstances of the suspected abuse or neglect, including the petitioner's name and the nature of the complaint.
- A brief explanation of the reasons why preventive services were not successful or could not be delivered.
- The specific time and date emergency custody was taken.
- Documentation of the petitioning person's efforts to obtain a courtorder.

8.2.3.7 CPS worker shall consult with supervisor and must consult foster care worker

Child and Family Services Manual C. Child Protective Services

Whenever a worker considers removal of a child, supervisory consultation and concurrence is required. When petitioning the court for removal of the child is seen as the only alternative, the worker must involve the foster care worker in staffing the case. The focus of the staffing shall be to assess whether or not there are any alternatives to removal. Evaluation shall be made of the resources available to meet the needs of the family and the specific child who is to be placed.

8.2.4 Five-day hearing must occur following emergency removal order

Pursuant to [§ 16.1-251 B](#) of the Code of Virginia, whenever a child is taken into immediate custody pursuant to an emergency removal order, a hearing must be held no later than five business days after the removal of the child.

8.2.5 Suitable relatives shall be considered for placement

Pursuant to [§ 16.1-251 C](#) of the Code of Virginia, the court must give consideration to the temporary placement of the child with a suitable relative or other interested individual, including grandparents, under the supervision of the LDSS, until the preliminary removal hearing.

8.2.6 When LDSS has legal custody of child

Pursuant to [§ 16.1-251 D](#) of the Code of Virginia, this section of the Code of Virginia means the presumption that it is in the best interest of the child to remain with their parents or guardians no longer exists, unless the child was placed in the custody of a natural parent. For example, if the LDSS has been given legal custody of a child as defined in [§ 16.1-228](#), then the LDSS will not be required to comply with the requirements of this section in order to re-determine where and with whom the child shall live.

[§ 16.1-228](#) of the Code of Virginia defines legal custody as meaning “(i) a legal status created by court order which vests in a custodian the right to have physical custody of the child, to determine and re-determine where and with whom he shall live, the right and duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care, all subject to any residual parental rights and responsibilities or (ii) the legal status created by court order of joint custody as defined in [§ 20-107.2](#).”

8.3 Preliminary removal order

Pursuant to [§ 16.1-252 A](#) of the Code of Virginia, this order may be requested when the LDSS can prove that the circumstances of the child are such that the child is subject to severe or irremediable injury to their life or health and that no less drastic alternatives to removing custody are available. This order differs from the emergency removal order in that a hearing must take place before a preliminary removal order can be issued.

8.3.1 Service worker shall consult with supervisor and foster care worker

Whenever a worker considers removing a child, supervisory consultation and concurrence is required. When petitioning the court for removal of the child is seen as the only alternative, the CPS worker or service worker shall involve the foster care worker in staffing the case. The focus of the staffing shall be to assess whether or not there are any additional alternatives to removal. Evaluation shall be made of the resources available to meet the needs of the family and the specific child who is to be placed.

8.3.2 Notice shall be given to all parties

Pursuant to [§ 16.1-252 B](#) of the Code of Virginia, notice shall be sent to the parents, guardian, legal custodian, or other person standing in loco parentis. In loco parentis means, “of, relating to, or acting as a temporary guardian or caretaker of a child, taking on all or some of the responsibilities of a parent.”²

8.3.2.1 If notice cannot be provided

Diligent efforts must be made to provide all parties with notice of the hearing. However, if notice to any of the parties cannot be given despite diligent efforts to do so, the hearing shall be held. The parents, guardian, legal custodian, or other person standing in loco parentis shall be afforded a later hearing on their motion regarding a continuation of the summary removal order.

8.3.2.2 Notice shall include specific information

The notice provided to the parties shall state:

- The time, date, and place for the hearing.
- A specific statement of the factual circumstances which allegedly necessitate removal of the child.
- Notice that child support will be considered if a determination is made that the child shall be removed from the home.

²Black’s Law Dictionary 858 (9th ed. 2009).

8.3.3 Parties may obtain counsel

Pursuant to [§ 16.1-252 C](#) of the Code of Virginia, prior to the preliminary removal hearing by the court of any case involving a parent, guardian or other adult charged with abuse or neglect of a child or a parent or guardian who could be subjected to the loss of residual parental rights and responsibilities, such parent, guardian, or other adult shall be informed by a judge, clerk, or probation officer of their right to counsel and be given an opportunity to:

- Retain counsel; or
- If the court determines that the parent, guardian or other adult is indigent or qualified, the court may appoint counsel; or
- Waive the right to representation by an attorney.

8.3.4 Preliminary removal hearing

The preliminary removal hearing will be conducted in the nature of a preliminary hearing rather than a final determination of custody.

8.3.5 For a preliminary removal order to be issued, burden is on the requesting party

The burden to prove that the court should issue the preliminary removal order is placed upon the petitioning party. If the LDSS is the party asking the court to issue the order, then the burden is on the LDSS to prove the need to issue the order. The CPS worker must file a petition requesting a preliminary removal order, which includes a specific statement of the factual circumstances necessitating the removal of the child.

8.3.5.1 Burden of proof – preponderance of the evidence

Each criterion for establishing the need to issue a preliminary removal order must be satisfied by a preponderance of the evidence.³

8.3.5.2 Requesting party must prove imminent threat to life or health of child

Pursuant to [§ 16.1-252 E1](#) of the Code of Virginia, in order to obtain a preliminary removal order, the LDSS must prove the child would be subjected to an imminent threat to life or health to the extent that severe or irremediable injury would be likely to result if the child were returned to or left in the custody of their current caregivers pending a final hearing.

Child and Family Services Manual C. Child Protective Services**8.3.5.3 Reasonable efforts must have been made to prevent removal**

Pursuant to [§ 16.1-252 E2](#) of the Code of Virginia, the circumstances of the child are such that remaining with the parent, legal guardian, or caretaker presents an imminent danger to the child's life or health.

8.3.5.4 No alternatives less drastic than removal

Pursuant to [§ 16.1-252 E2](#) of the Code of Virginia, alternatives less drastic than removal may include but are not limited to medical, educational, psychiatric, psychological, homemaking or other similar services to the child or family or the issuance of a preliminary protective order.

8.3.5.5 No reasonable opportunity to provide services

Circumstances may occur when there is no reasonable opportunity to provide preventive services before removing a child from the home. When there is no opportunity to provide preventive services before removing a child, the court has the authority to deem that reasonable efforts to prevent removal were made by the LDSS.

8.3.6 The preliminary removal hearing

In the hearing, petitioner must prove:

- The child would be subjected to imminent threat to their life or health if the child remained with the caretaker.
- Such circumstances would result in severe and irreparable injury to the child.
- The provision of services to prevent placement was not successful or services to prevent placement could not be given or delivered, and there are no alternatives less drastic than removal which could reasonably protect the child's life and health.

8.3.6.1 Parties may present witnesses and evidence

Pursuant to [§ 16.1-252 D](#) of the Code of Virginia, at the removal hearing the child and their parent, guardian, legal custodian or other person standing in loco parentis have the right to cross-examine all adverse witnesses and evidence and to present guidance on their own behalf.

³ See: *Wright v. Arlington County Dept. of Social Services*, 9 Va. App. 411, 388 S.E.2d 477 (1990).

8.3.6.2 Testimony of the child may be taken by closed-circuit television

Pursuant to [§ 16.1-252 D](#) of the Code of Virginia, a child, 14 years of age or under at the time of the alleged incident, may testify under certain conditions as determined by the court in any civil proceeding involving allegations of abuse and neglect of that child. By motion of a party, the child's testimony may be taken by closed-circuit television, if the court finds that the child cannot testify in open court in the presence of the alleged abuser or neglecter for the following reasons:

- The child's persistent refusal to testify despite judicial request to do so;
- The child's substantial inability to communicate about the offense; or
- The substantial likelihood, based on expert opinion testimony, that the child will suffer severe emotional trauma as a result of testifying.

Additional information regarding the use of closed-circuit testimony can be found on the [Virginia Department of Criminal Justice](#) (DCJS) website.

8.3.6.3 Out-of-court statements made by a child describing act of sexual nature

Pursuant to [§ 63.2-1522 A](#) of the Code of Virginia, an out-of-court statement may be admitted into evidence if a child, 14 years of age or younger at the time of the hearing, testifies at the proceeding, or testifies by means of a videotaped deposition or closed-circuit television, and at the time of such testimony is subject to cross examination concerning the out-of-court statement or the child is found by the court to be unavailable to testify on any of these grounds:

- The child's death.
- The child's absence from the jurisdiction, provided such absence is not for the purpose of preventing the availability of the child to testify.
- The child's total failure of memory.
- The child's physical or mental disability.
- The existence of a privilege involving the child.
- The child's inability to communicate about the offense because of fear or a similar reason.
- The substantial likelihood, based upon expert opinion testimony, that the child would suffer severe emotional trauma from testifying at the

Child and Family Services Manual C. Child Protective Services

proceeding or by means of a videotaped deposition or closed-circuit television.

8.3.6.4 Use of videotaped statement of alleged victim as evidence

Pursuant to [§ 63.2-1523 A](#) of the Code of Virginia, an out-of-court statement may be admitted into evidence if a child, 14 years of age or younger at the time of the hearing, testifies at the proceeding, or testifies by means of a videotaped deposition or closed-circuit television, and at the time of such testimony is subject to cross examination concerning the out-of-court statement or the child is found by the court to be unavailable to testify on any of these grounds:

- The child's death.
- The child's absence from the jurisdiction, provided such absence is not for the purpose of preventing the availability of the child to testify.
- The child's total failure of memory.
- The child's physical or mental disability.
- The existence of a privilege involving the child.
- The child's inability to communicate about the offense because of fear or a similar reason.
- The substantial likelihood, based upon expert opinion testimony, that the child would suffer severe emotional trauma from testifying at the proceeding or by means of a videotaped deposition or closed-circuit television.

8.3.7 If court orders removal, court must determine who shall have custody of the child

Pursuant to [§ 16.1-252 F1](#) of the Code of Virginia, if the court determines that the child shall be removed pursuant to [§ 16.1-252 E](#), then the court must determine with whom the child shall be placed. The court must place the child in the care and custody of a suitable person. The court must give consideration to placing the child in the care and custody of a nearest kin, including grandparents or personal friend. If such placement is not available, then the court may place the child in the care and custody of a suitable agency.

Child and Family Services Manual C. Child Protective Services**8.3.7.1 If court orders removal, court may provide for reasonable visitation**

Pursuant to [§ 16.1-252 F2](#) of the Code of Virginia, if the court finds that the child must be removed pursuant to [§ 16.1-252 E](#), the court shall determine whether reasonable visitation should be allowed between the child and their guardian, legal custodian, or other person standing in loco parentis, and between the child and their siblings. The court may allow reasonable visitation only if such visitation would not endanger the child's life or health.

8.3.7.2 If court orders removal, court shall obtain child support

Pursuant to [§ 16.1-252 F3](#) of the Code of Virginia, if the court finds that the child must be removed pursuant to [§ 16.1-252 E](#), the court shall order that the parent or person legally obligated for the child pay child support.

The court is required by [§ 16.1-290 C](#) to require that the parent or other person legally responsible for the child pay child support.

If a determination is made that the child must be removed from the home, then the LDSS must file a separate petition for child support as soon as practicable. To facilitate the requirement that the court order child support at the initial hearing, it is recommended that the worker request that the petition requesting removal of the child include a statement that if custody is transferred, the petitioner requests that the court address parental child support as defined in [§ 63.2-909](#).

8.3.7.3 Court may impose additional requirements or conditions

Pursuant to [§ 16.1-252 F](#) of the Code of Virginia, the court may enter a preliminary protective order [§ 16.1-253](#) imposing requirements and conditions the court deems appropriate for the protection of the child.

8.3.8 Court shall make finding of abuse or neglect

Pursuant to [§ 16.1-252 G](#) of the Code of Virginia, at the conclusion of the preliminary order hearing, the court must determine whether the allegations of abuse or neglect have been proven by a preponderance of the evidence. A finding of abuse or neglect must be stated in the court order.

8.3.8.1 A party may object to the court making a finding of abuse or neglect

Pursuant to [§ 16.1-252 G](#) of the Code of Virginia, if an objection to the finding is made at the preliminary removal hearing, the court must schedule an adjudicatory hearing to be held within 30 days of the initial preliminary removal hearing.

Child and Family Services Manual C. Child Protective Services**8.3.8.2 Adjudicatory hearing**

Pursuant to [§ 16.1-252 G](#) of the Code of Virginia, at the adjudicatory hearing, the court shall make a finding of abuse or neglect. It is not necessary to determine the perpetrator of the abuse or neglect in order to make a finding of abuse or neglect.

8.3.8.3 Notification of adjudicatory hearing

Pursuant to [§ 16.1-252 G](#) of the Code of Virginia, parties who are present at the preliminary removal order hearing must be given notice of the date set for the adjudicatory hearing and parties who are not present must be summoned as provided in [§ 16.1-263](#).

8.3.8.4 Preliminary removal order or protection orders remain in effect pending adjudicatory hearing

Pursuant to [§ 16.1-252 G](#), if a party raises an objection at the preliminary removal hearing to the court making a finding of abuse or neglect, the court may still issue a preliminary removal order or a preliminary protective order. The preliminary removal order and any preliminary protective order issued shall remain in full force and effect pending the adjudicatory hearing.

8.3.8.5 Dispositional hearing

Pursuant to [§ 16.1-252 H](#) of the Code of Virginia, regardless of whether the court makes a finding of abuse or neglect at the preliminary removal hearing, the court shall schedule a dispositional hearing pursuant to [§ 16.1-278.2](#).

8.3.8.6 Scheduling the dispositional hearing

Pursuant to [§ 16.1-252 H](#) of the Code of Virginia, the dispositional hearing must be scheduled at the time of the preliminary removal order hearing and must be held within 60 days of the preliminary removal order hearing.

8.3.9 Person gaining legal custody of child

Pursuant to [§ 16.1-252 I](#) of the Code of Virginia, this section means the presumption that it is in the best interest of the child to remain with their parents or guardians no longer exists, unless the child was placed in the custody of a natural parent. For example, if the LDSS has been given legal custody of a child as defined in [§ 16.1-228](#), then the LDSS will not be required to comply with the requirements of this section in order to re-determine where and with whom the child shall live.⁴ This means that when the LDSS has legal custody of a child, it can move the child from the home of a natural parent and can change the child's placement without having to comply with the preliminary removal statute.

4 Virginia Code § 16.1-228 defines legal custody as meaning "(i) a legal status created by court order which vests in a custodian the right to have physical custody of the child, to determine and redetermine where and with whom he shall live, the right and duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care, all subject to any residual parental rights and responsibilities or (ii) the legal status created by court order of joint custody as defined in § 20-107.2."

8.3.10 Violation of order constitutes contempt of court

The violation of any order issued pursuant to [§ 16.1-252 J](#) of the Code of Virginia shall constitute contempt of court.

8.4 Preliminary protective order

8.4.1 Purpose of preliminary protective order

Pursuant to [§ 16.1-253 A](#), this order may be requested when it is not necessary to assume custody of the child, but court intervention is necessary. The court may intervene to assure that a child's parent or person responsible for the child's care observe reasonable conditions of behavior in order to preserve the child's life, health and safety, and to maintain the child in their own home.

8.4.2 The court's authority

Pursuant to [§ 16.1-253 A](#) of the Code of Virginia, the order may require a child's parents, guardian, legal custodian, other person standing in loco parentis or other family or household member of the child to observe reasonable conditions of behavior for a specified length of time.

8.4.2.1 The court may order person to abstain from offensive conduct

Pursuant to [§ 16.1-253 A1](#) of the Code of Virginia, the order may require a child's parents, guardian, legal custodian, other person standing in loco parentis or other family or household member of the child to abstain from offensive conduct against the child, a family or household member of the child or any person whom custody of the child is awarded.

8.4.2.2 The court may order services

Pursuant to [§ 16.1-253 A3](#) of the Code of Virginia, the order may require a child's parents, guardian, legal custodian, other person standing in loco parentis or other family or household member of the child to cooperate in the provision of reasonable services or programs designed to protect the child's life, health or normal development.

8.4.2.3 The court may order home visits

Pursuant to [§ 16.1-253 A3](#) of the Code of Virginia, the order may allow persons named by the court to come into the child's home at reasonable times designated by the court to visit the child or inspect the fitness of the home and to determine the physical or emotional health of the child.

Child and Family Services Manual C. Child Protective Services**8.4.2.4 The court may order visitation with the child**

Pursuant to [§ 16.1-253 A4](#) of the Code of Virginia, the order may allow visitation with the child.

8.4.2.5 The court may order person to refrain from certain acts

Pursuant to [§ 16.1-253 A5](#) of the Code of Virginia, the order may require a child's parents, guardian, legal custodian, other person standing in loco parentis or other family or household member of the child to refrain from acts of commission or omission which tend to endanger the child's life, health or normal development.

8.4.2.6 The court may order person to have no contact with child or family

Pursuant to [§ 16.1-253 A6](#) of the Code of Virginia, the court may limit contact between the alleged abusive person and the child and the family or household members of the child. The court can remove a person from the residence. In order to remove a person from the residence, the court must find that a preponderance of the evidence establishes that the person's probable conduct in the future constitutes a danger to the life or health of the child. The court must also find, by a preponderance of the evidence, that there are no less drastic alternatives which could reasonably and adequately protect the child's life or health pending a final determination on the petition.

8.4.3 Requesting a preliminary protective order

Pursuant to [§ 16.1-253 B](#), a preliminary protective order can be requested by making a motion during any matter before the court or by filing a petition. The court may issue the preliminary protective order ex parte.

8.4.3.1 Motion or petition must establish imminent threat

Any motion or petition shall be supported by an affidavit or by sworn testimony in person before the judge or intake officer. The testimony or petition must establish that the child would be subjected to an imminent threat to life or health to the extent that any delay would be likely to result in serious or irreparable injury to the child's life or health.

8.4.3.2 Ex parte preliminary protective order

A preliminary protective order may be issued ex parte by the court upon a petition supported by an affidavit or by sworn testimony in person before the judge or intake officer. Ex parte is defined as "Done or made at the insistence and for the benefit of one party only, without notice or argument by, any person adversely interested."⁵ Essentially, an ex parte hearing allows the court to conduct a hearing without the presence of one of the parties because the situation demands immediate action or

Child and Family Services Manual C. Child Protective Services

irreparable harm will likely occur. If an ex parte order is issued without an affidavit being presented, the court must state the basis upon which the order was entered in the order. The preliminary protective order shall also include a summary of the allegations made and the court's findings.

8.4.3.3 Adversary hearing shall occur within five days of issuance of ex parte order

If a court enters a preliminary protective order ex parte, the court shall provide an adversary hearing within the shortest practicable time **not to exceed five (5) business days** after the issuance of the order.

8.4.4 Notice of hearing shall be given

Pursuant to [§ 16.1-253 C](#) of the Code of Virginia, notice of the hearing shall be given at least 24 hours in advance of the hearing.

8.4.5 Right to counsel

Pursuant to [§ 16.1-253 D](#), prior to the preliminary protective order hearing by the court of any case involving a parent, guardian, or other adult charged with abuse or neglect of a child or a parent or guardian who could be subjected to the loss of residual parental rights and responsibilities, such parent, guardian, or other adult shall be informed by a judge, clerk, or probation officer of their right to counsel and be given an opportunity to:

- Retain counsel; or
- If the court determines that the parent, guardian, or other adult is indigent or qualified, the court may appoint counsel; or
- Waive the right to representation by an attorney.

8.4.6 Right to present witnesses and cross-examination

Pursuant to [§ 16.1-253 E](#) of the Code of Virginia, the LDSS may present evidence to establish the need for the protective order to be issued. That evidence may include witnesses, medical reports, or any other evidence relevant to the subject matter. The parties to the proceeding maintain the right to cross-examine all adverse witnesses and evidence and to present evidence on their own behalf.

⁵ Black's Law Dictionary 858 (9th ed. 2009).

8.4.7 If the preliminary protective order petition alleges abuse or neglect, then the court shall make finding of abuse or neglect

Pursuant to [§ 16.1-253 F](#) of the Code of Virginia, if the petition requesting the issuance of a protective order alleges that the child was abused or neglected, then the court shall make a determination whether the child was abused or neglected. The court shall make that finding during the adversary hearing and based upon a preponderance of the evidence. Any finding of abuse shall be stated in the court order.

8.4.7.1 A party may object to the court making a finding of abuse or neglect

At the preliminary protective order hearing, any party (a person responsible for the care and custody of the child, the child's guardian ad litem or the LDSS) may object to the court making a finding of abuse or neglect.

8.4.7.2 If a party objects to the court making a finding of abuse or neglect

If one of the parties objects to the court making a finding of abuse or neglect, then the court shall schedule an adjudicatory hearing to determine whether the allegations of abuse or neglect have merit. The adjudicatory hearing shall be scheduled within 30 days of the date of the initial preliminary hearing.

8.4.7.3 Purpose of adjudicatory hearing

The adjudicatory hearing will be held to determine whether the allegations of abuse or neglect have been proven by a preponderance of the evidence.

8.4.7.4 Notice for adjudicatory hearing

The court must provide notice and schedule the adjudicatory hearing during the preliminary removal order hearing while all parties are present. Those parties who are not present for the preliminary removal hearing shall be summoned as provided in [§ 16.1-263](#). Pursuant to [§ 16.1-253 F](#), if proper notice has been provided or attempted and a party fails to appear for the adjudicatory hearing, the court may conduct the hearing and make a finding of abuse or neglect without that party present.

8.4.7.5 Court order carries full force and effect

If the court issued a preliminary protective order, the preliminary protective order remains in effect pending the adjudicatory hearing. An objection to the court making a finding of abuse or neglect does not stay the preliminary protective order.

Child and Family Services Manual C. Child Protective Services**8.4.8 Dispositional hearing**

Pursuant to [§ 16.1-253 G](#) of the Code of Virginia, if there is no objection to the court making a finding of abuse or neglect, then the court should schedule a dispositional hearing to be conducted within 60 days of the date of the initial preliminary hearing.

8.4.8.1 Scheduling and notice for dispositional hearing

Scheduling of the hearing and notice to all parties will be made during the initial preliminary hearing. If an objection to a finding of abuse or neglect is made by a party to the proceeding, then the court shall schedule an adjudicatory hearing to be held within 30 days of the initial preliminary hearing.

8.4.9 Preliminary protective order cannot remove custody from parents or guardians

Pursuant to [§ 16.1-253 H](#) of the Code of Virginia, a preliminary protective order cannot be used to remove custody of a child from the child's parents, guardian, legal custodian, or other person standing in loco parentis.

8.4.10 Violation of preliminary protective order constitutes contempt of court

The violation of any order issued pursuant to [§ 16.1-253 J](#) of the Code of Virginia shall constitute contempt of court.

8.5 Petition for child support

Pursuant to [22 VAC 40-705-100 C](#), at the initial hearing whenever custody of a child is removed (except in emergency removal order hearings) the court is required to order the parents to pay child support.

- To facilitate the requirement that the court order child support at the initial hearing, it is recommended that the worker include in the petition requesting custody of the child a statement that, if custody is transferred, the petitioner requests the court to address parental child support as defined in Code of Virginia [§ 63.2-909](#).
- The CPS worker is encouraged to discuss this aspect of the removal process with parents; the worker may wish to discuss the parents' financial status with them to help determine whether the court should be requested to exempt them from a support obligation.

8.6 Immunity from civil or criminal liability

Pursuant to [22 VAC 40-705-100 D](#), any person who participates in a judicial proceeding resulting from making a child protective services report or complaint or from taking a child

Child and Family Services Manual C. Child Protective Services

into custody pursuant to §§ [63.2-1509](#), [63.2-1510](#), and [63.2-1517](#) of the Code of Virginia, shall be immune from any civil or criminal liability in connection therewith unless it is proven that such person acted in bad faith or with malicious intent pursuant to § [63.2-1512](#) of the Code of Virginia.