

Motion for Ex-Parte “Emergency” Custody

Before you take the time to fill out this packet, you need to read this document carefully.

Is This Truly an Emergency?

This motion is a supplement to the *Motion for Custody* packet that you have/are filling out. It is not a stand-alone document. By that we mean it’s in-addition-to the *Motion for Custody* packet that you are filling out.

When you file a regular *Motion for Custody*, you are seeking to take custody away from the person who has custody now (whom we call the custodian). In order to do that, we will take the documents that you are filing and serve them on the custodian. In other words, they will be given notice that you are filing this before the Court takes any action. In the legal world, we call that “due process.”

Once the custodian is served, you and the custodian will come to Court to discuss it. You need to understand it is not a quick process. It’s not an easy process either, especially when the custodian is not in agreement with you getting custody. It will require you to come to Court, probably several times, and if an agreement is not reached before the trial date, then a full hearing will be held for the Court to decide whether you have presented sufficient evidence to prove that a change in custody is warranted and in the child’s best interest.

That’s the usual way custody changes are done.

However, in those rare instances in which an emergency is present, you can sometimes ask the Court to entertain an *Ex-Parte Motion for Custody*. Ex-Parte is Latin for “one sided.” In other words, you are asking the Court to grant you custody of a child without the benefit of the person who has custody (the custodian) to come into Court to argue their side of it. You are asking the Court to act solely on your word that an emergency exists. As you can imagine, that is an extraordinary request and it can only be utilized if a true emergency actually exists.

So, you might be wondering – what constitutes an emergency? We have a local rule that defines it. It is as follows:

“Emergency” means there is an imminent or immediate risk of injury or damage to the health, safety or welfare of the child who is the subject of the pleading.

Local Rule 18(E)

Pursuant to local rule, we do not have to afford you a hearing, and if we do grant you a hearing, it's more than likely going to happen the next business day. In that hearing, be prepared to answer a few questions:

1. Were the police called? If so, why didn't they act?
2. Was Children Services called? If so, why didn't they act?
3. Did you notify the current custodian that you are here at Court trying to get custody away from them on an emergency basis? If you haven't done that, then you need to because our local rules require it. Or, be prepared to explain why contacting the current custodian would put the child at risk.
4. Has THIS court or any other court acted on behalf of this child? If so, which court? And, why didn't you go back to that court? You will need to produce any copies of any prior orders from other courts pertaining to this child.
5. Are the parents to this child married?

What to Do if it's Truly an Emergency?

If it is truly an emergency, then you want to take the time to fill out the *Ex-Parte Motion for Custody* packet. There are several fill-in-the-blank forms which must be completed before your request will be considered by the Court. Again, these forms are a supplement to you filing a *Motion for Custody* packet. The forms are mandatory and must be completed **in full** before the Clerk may accept the packet. These forms are being provided for you as a convenience. If the forms are not filled out legibly and completely, then you run the risk of the Clerk's office not accepting them for filing.

You need to remember that custody of children is a very serious undertaking and you are encouraged to consult with an attorney before proceeding. The forms should be typewritten or printed.

You also need to be advised of the following:

The Clerk of Courts cannot give you legal advice.

The Clerk of Courts cannot fill the forms out for you.

The Clerk of Courts cannot advise you as to how the forms are to be completed.

If you are in need of legal advice, consult an attorney.

Here are the forms you will need to file for emergency custody:

FORM 1: EX-PARTE MOTION FOR CUSTODY

This is the basic document which asks the Court to give you emergency temporary custody of the child involved. This form must be filled out completely and signed by you. The child's name must be inserted at the top left of the first page. DO NOT fill in the Case Number. This will be supplied by the Clerk of Courts. Be sure to explain in detail why you are requesting an Ex-Parte Order and how it is in the child's best interest.

FORM 2: TEMPORARY CUSTODY AFFIDAVIT

The temporary custody affidavit must be completed in full and signed by you. The affidavit must be notarized before turning the packet in for filing.

**STATE OF OHIO, WARREN COUNTY
COMMON PLEAS COURT
JUVENILE DIVISION**

IN THE MATTER OF:

Full Legal Name

Case No. _____

DOB: _____

EX-PARTE MOTION FOR CUSTODY PURSUANT
TO JUVENILE RULE 13 AND OHIO REVISED CODE
2151.33 AND 3127.18

Now comes (your name) _____ Petitioner(s) and request the Court for an Ex-Parte Order granting him/her/them a Temporary Emergency Ex-Parte Custody Order, pursuant to Ohio Juvenile Rule 13 and Ohio Revised Code Sections 2151.33 and 3127.18 of minor child(ren):

Name of Child _____ Date of Birth: _____

Name of Child _____ Date of Birth: _____

Name of Child: _____ Date of Birth: _____

Petitioner(s) state that an Ex-Parte Custody Order is necessary for the following reasons:

Please check any or all that applies and provide a detailed summary under each section. Use a separate page if necessary.

The child(ren) has been abandoned:

The child(ren) needs protection from immediate or threatened emotional or physical harm:

- A sibling or parent of the child(ren) has been subject to or threatened with mistreatment or abuse:

- The child(ren)'s best interests and welfare require that Petitioner(s) be awarded temporary custody for the following reasons:

WHEREFORE, Petitioner(s) request an award of a Temporary Emergency Ex-Parte Custody Order to him / her / them and for other relief as may be necessary.

THE FOLLOWING FORMS ARE ATTACHED: (check all that apply)

- _____ Temporary Custody Affidavit
_____ Referral from Warren County Children Services
_____ Police Report
_____ Other: _____

1st Petitioner's Signature

Print or Type Name

Street Address

City / State/ Zip

Date of Birth

Phone No., Email Address

Attorney's Signature

Print or Type Name

Street Address

City / State / Zip

Attorney Registration Number

Phone No., Fax No., Email Address

2nd Petitioner's Signature

Print or Type Name

Street Address

City / State/ Zip

Date of Birth

Phone No., Email Address

TEMPORARY CUSTODY AFFIDAVIT

STATE OF OHIO, WARREN COUNTY, SS:

Now comes _____, and after being duly cautioned and sworn, states the following:

1. Notification - Choose "a" or "b"
 - a. The parent/parents of the child(ren) identified below should not be notified of the proceedings because:

 - b. The parent/parents of the child (ren) identified below could not be reached. Petitioner made the following efforts to notify them:

2. The information contained herein pertains to the following minor Child(ren):
 - a. _____ dob: _____
 - b. _____ dob: _____
 - c. _____ dob: _____

3. Petitioner(s) relationship to subject minor child(ren) is:

4. Subject minor child(ren) currently resides with:
_____ at

5. The child(ren) has resided there since _____

6. The former residence of subject child(ren) was with:
_____ at

7. For the past year the child(ren) has resided as follows:

| <u>With</u> | <u>Address</u> | <u>From</u> | <u>To</u> |
|-------------|----------------|-------------|-----------|
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |

8. Child(ren) current school district: _____

9. Grade level of child(ren): a. _____
b. _____
c. _____

10. There are no prior or pending court or administrative cases which concern this child(ren), or, if there are, the details are as follows:

| <u>Court Type</u> | <u>County</u> | <u>Approx. Dates</u> |
|-------------------|---------------|----------------------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

11. Any persons having a legal right to pay child support or to exercise custody or visitation are as follows:

| <u>Name</u> | <u>Relationship</u> | <u>Custody/Support/Visitation</u> |
|-------------|---------------------|-----------------------------------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

12. That he / she HAS / HAS NOT (circle one) been convicted of or has pled guilty to a charge involving neglect, abuse, abandonment, or violence towards a child or an adult. If so, the details are as follows:

13. The facts alleged in the attached Ex-Parte Custody Motion are true to the best of Petitioner's knowledge.

_____, being first duly sworn, says that the information contained herein is true to the best of his/her knowledge.

Petitioner

Sworn to before me and subscribed in my presence this _____ day of

_____, _____.

Notary Public/Deputy Clerk

CAROLYN A. DUVELIUS
Chief Magistrate

LAURA A. SCHNECKER
Court Administrator

ANDREW L. SIEVERS
JENNA L. SEITZ
JEFFREY W. STUEVE
Magistrates

JOSEPH W. KIRBY, JUDGE
Warren County Common Pleas Court
Probate Juvenile Division
900 Memorial Drive • Lebanon, Ohio 45036



MEGAN M. DAVENPORT
Staff Attorney

In the Matter of: _____

Case No: _____

RE: Contact Information of All Interested Parties

Name & Relationship to Child: _____

Address: _____

Telephone Numbers: _____

Email Address: _____

Name & Relationship to Child: _____

Address: _____

Telephone Numbers: _____

Email Address: _____

Name & Relationship to Child: _____

Address: _____

Telephone Numbers: _____

Email Address: _____

Name & Relationship to Child: _____

Address: _____

Telephone Numbers: _____

Email Address: _____

Name & Relationship to Child: _____

Address: _____

Telephone Numbers: _____

Email Address: _____

Probate Division
513.695.1180
513.695.2945 (Fax)

Juvenile Division
513.695.1160
513.695.2948 (Fax)

Detention Center
513.695.1393
513.695.1394 (Fax)

Mary Haven
513.695.1366
513.695.1839 (Fax)