

Legal Issues

REMOVAL FLOWCHART

The Constitution of the United States of America and the law of the State of New York prohibit the interference with parental rights absent the consent of the parents or a court order except in exigent circumstances. When considering whether it is appropriate to remove a child from his or her home, a child protective agency must employ the following analysis:

Is There Imminent Danger To the Life or Health of the Child?
(If Not, No Removal of Any Kind Can Be Made)



Can Reasonable Efforts Be Made
To Prevent or Eliminate the Need for Removal?
(E.g.: provision of services, removal of perpetrator from the home,
alternative living arrangements, additional safety measures)



If Not, Will Parent Consent to the Removal?
(Written, Informed Consent Required)
FCA 1021



If Not, Is there Time to File A Petition and Hold a 1027 Hearing?
(Notice to Parent Required)



If Not, Is There Time to Make an Application for a Pre-Petition Removal Order?
FCA 1022
(Notice to Parent Required Pursuant to 1023)



If Not, Is This an Emergency?
If So, And There Is No Time for Any of the Above, Emergency Removal Can Be Made.
(Petition To Be Filed No Later Than Next Court Day)
FCA 1024

(Note: Children's Services must keep in mind that, in every case, the court must determine whether a removal, even if justified, would be in the best interests of the child, balancing the protective need against any trauma the child might suffer as a consequence of the removal. See NY Court of Appeals decision in *Nicholson*.) Chris Guardo/ACS