

5. OHIO APS LAW: PROTECTIVE SERVICES ORDERS

- ➔ In many instances, APS must seek a court order granting it authority to intervene on behalf of an adult in need of protective care. This chart outlines the procedural requirements and burdens of proof that must be met in order for the court to grant a protective services order.

| ORC INVOLUNTARY INTERVENTION | PROBATE FORM | REQUIRED STANDARD OF PROOF | DEMONSTRATE FACTS | PROCEDURES TO OBTAIN INTERVENTION |
|--|-----------------|----------------------------|---|---|
| <p>5101.63 or 5101.651</p> <p>Temporary Restraining Order.</p> <p>Renumbered as § 5101.651 by 132nd General Assembly File No. TBD, HB 49, §130.31, eff. 9/29/2018.</p> <p>When anyone denies access to the adult's residence during the course of an investigation under R.C. 5101.62.</p> | 23.4 (1/1/2010) | Reasonable cause | <ul style="list-style-type: none"> Caused to believe that an adult is being or has been abused, neglected or exploited. Access to the adult has been denied or obstructed. Unless the respondent is restrained APS is unable to perform its duty to complete the investigation by R.C. 5101.62. | <ul style="list-style-type: none"> APS files a petition in court Prima-facie evidence that immediate and irreparable injury, loss, or damage will result, so that notice is not required After obtaining the order, APS may have law enforcement accompany them to the adult's residence. |
| <p>5101.65 or 5101.68</p> <p>Petitioning for court order to provide protective services.</p> <p>Renumbered from § 5101.68 and amended by 132nd General Assembly File No. TBD, HB 49, §130.31, eff. 9/29/2018.</p> <p>See sample outline for APS staff to determine need for and type of order.</p> | 23.0 (1/1/2010) | Clear and convincing | <ul style="list-style-type: none"> Caused to believe that an adult is being or has been abused, neglected or exploited. List the proposed protective service plan with the least restrictive alternatives Specific facts alleging the abuse that the adult is being or has been abused, neglected and/or exploited. Adult is in need of protective services Adult is incapacitated There is no person authorized by law or court order to consent for needed services | <ul style="list-style-type: none"> APS files a petition in court with a specified protective service plan. The court can order the provision of protective services only if they are available locally Ordered placement must consider the adult's choice Meet the least restrictive standard; if an institutional setting, and represent the least restrictive alternative. Any transfer requires court authorization. Court orders remain in effect up to six months, continued orders require APS to apply for renewal for additional periods of up to one year each. The adult can petition for modification of the order anytime. |
| <p>5101.66 or 5101.681</p> <p>Notice of petition.</p> <p>Renumbered as § 5101.681 by 132nd General Assembly File No. TBD, HB 49, §130.31, eff. 9/29/2018.</p> | 23.1 (1/1/2010) | | | <ul style="list-style-type: none"> The adult is notified and others (adult's guardian, spouse, next of kin) about the petition and due process rights (e.g., right to be present at the hearing, to present evidence), at least five days before the hearing. The adult shall be informed of his right to counsel and his right to appointed counsel if he is indigent and if appointed counsel is requested. The adult who is the subject of the petition may waive notice as provided in this section. |

5. OHIO APS LAW: PROTECTIVE SERVICES ORDERS - *cont.*

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| <p>5101.67 or 5101.682</p> <p>Hearing.</p> <p>Renumbered as § 5101.682 by 132nd General Assembly File No. TBD, HB 49, §130.31, eff. 9/29/2018.</p> | N/A | Clear and convincing | <ul style="list-style-type: none"> • Adult has been abused, neglected or exploited • Needs protective services • Adult is incapacitated • No one legally available to give consent • Placement only if no less restrictive alternative services can be found • Cannot be committed to hospital as defined in 5122.01 | <p>The hearing occurs within 14 days of the petition's filing</p> <ul style="list-style-type: none"> • Adult has the right to be present, present evidence, examine and cross-examine witnesses. • The adult is represented by counsel (including appointed counsel if the adult is indigent) unless knowingly waived. • Order may remain in effect no more than 6 months • May apply for a renewal of the order for no longer than one year each |
| <p>5101.68 or 5101.69</p> <p>Temporary restraining order to restrain person from interfering with provision of protective services.</p> <p>Renumbered as § 5101.69 by 132nd General Assembly File No. TBD, HB 49, §130.31, eff. 9/29/2018.</p> | 23.6 (1/1/2010) | Preponderance | <ul style="list-style-type: none"> • Petition shall state specific facts sufficient to demonstrate the need for protective services. • Adult has consented to services • Refusal by some other person who is interfering with the provision of these services. | <ul style="list-style-type: none"> • APS files a petition in court • Court holds a hearing within 14 days of the petition's filing • If granted, issues a temporary restraining order to restrain the person from interfering with the provision of services. |
| <p>5101.68 or 5101.69</p> <p>Notice of Hearing on Petition for Temporary Restraining Order to Prevent Interference with the Provision of Services.</p> | 23.7 1/1/2010 | | | <ul style="list-style-type: none"> • Notice is understandable • Language is given the person alleged to interfering. |

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| <p>5101.69 or 5101.70 Emergency order.</p> <p>Renumbered as § 5101.70 by 132nd General Assembly File No. TBD, HB 49, §130.31, eff. 9/29/2018.</p> | 23.2 (1/1/2010) | Clear and convincing | <ul style="list-style-type: none"> • Supporting facts that an adult is being abused neglected and/or exploited. • Adult is in need of protective services • Adult is incapacitated • Nature of the emergency • The petitioner's reasonable belief, together with facts supportive thereof, as to the existence of the circumstances described in divisions (D)(1) to (3) of this section • Facts showing the petitioner's attempts to obtain the adult's consent to the protective services. | <ul style="list-style-type: none"> • APS files a petition in court with a proposed protective service plan. • The court can order the provision of protective services only if they are available locally • Ordered placement must consider the adult's choice • Meet the least restrictive standard; if an institutional setting, and represent the least restrictive alternative. • In its order the court shall authorize the director of the county department, the director's designee, or a representative of the department's designee to give consent for the person for the approved emergency services until the expiration of the order. • 14 days order; can be renewed for an additional 14 days upon showing that continuation of the order is necessary to address the emergency. |
| <p>Notice in pursuant to 5101.69</p> | 23.3 (1/1/2010) | | | <ul style="list-style-type: none"> • The adult is notified and others (adult's guardian, spouse, next of kin) about the petition and due process rights (e.g., right to be present at the hearing, to present evidence), at least five days before the hearing. • The hearing must occur within 24-72 hours of the petition's filing and the adult is represented by counsel (including appointed counsel if the adult is indigent) unless waived. |

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| <p>5101.691 or 5101.701</p> <p>Ex parte emergency order authorizing provision of protective services.</p> <p>Renumbered as § 5101.701 by 132nd General Assembly File No. TBD, HB 49, §130.31, eff. 9/29/2018. Court may issue by telephone an ex parte emergency order</p> | N/A | Reasonable cause | <ul style="list-style-type: none"> • Caused to believe that an adult is being or has been abused, neglected and/or exploited. • Adult is in need of protective services • There is no person authorized by law or court order to consent for needed services. | <ul style="list-style-type: none"> • A court, through a probate judge or a magistrate under the direction of a probate judge, may issue by telephone an ex parte emergency order authorizing the provision of protective services, including the relief available under division (B) of section 5101.692 of the Revised Code, to an adult on an emergency basis if all of the following are the case: • Court receives notice that APS believes an emergency order is needed • Adult is incapacitated • There is reasonable cause to believe that there is a substantial risk to the adult of immediate and irreparable physical harm, immediate and irreparable financial harm, or death • The judge or magistrate shall journalize any order issued under this section. • An order issued under this section shall be in effect for not longer than twenty-four hours, except that if the day following the day on which the order is issued is not a working day, the order shall remain in effect until the next working day. • May order emergency services • May freeze the financial assets of the adult • Order is effective for thirty days. Renew the order for an additional 30-day period. |
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| <p>5101.73 Effective 9/29/2018, denial or obstruction of access to adult victim's residence. Added by 132nd General Assembly File No. TBD, HB 49, §130.31, eff. 9/29/2018.</p> | <p>Reasonable cause</p> | | <ul style="list-style-type: none"> • If, during the course of an investigation by a local law enforcement agency of criminal exploitation. • If access has been denied or obstructed to the residence of the adult, the county prosecutor may file a petition in court for a temporary restraining order to prevent the interference or obstruction. | <ul style="list-style-type: none"> • The court shall issue a temporary restraining order to prevent the interference or obstruction if it finds there is reasonable cause to believe that the adult is being or has been abused, neglected, or exploited and access to the person's residence has been denied or obstructed. • Such a finding is prima facie evidence that immediate and irreparable injury, loss, or damage will result, so that notice is not required. • After obtaining an order restraining the obstruction of or interference with the access of the local law enforcement agency representative, the representative may be accompanied to the residence by a peace officer. |
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