

Removal Hearing
(Also known as the Merits Hearing)

S.C. Code Ann. § 63-7-1610 et seq.

Child is removed from the home

Time Frame: Held within 35 days of receipt of removal complaint by family court.

1. The court must assure DSS has complied with due process requirements, including service of the summons, complaint, right to counsel, hearing notice and notice to noncustodial parent. No responsive pleading is required.
2. The court must determine by *a preponderance of the evidence*:
 - a) Whether the child has been subjected to, or is threatened with a substantial risk of harm as defined by S.C. Code Ann. § 63-7-20 of physical injury, mental injury, lack of supervision, neglect, abandonment, or a sexual offense.
Note: The court may authorize treatment, but not enter a finding of abuse by the parent, in cases where the caregiver failed to obtain medical care due to religious beliefs or an exercise of parental judgment concerning what treatment would be in the child's best interests. S.C. Code Ann. § 63-7-950.
 - b) Whether return of the child to the home would place the child at unreasonable risk of harm to his or her life, physical health or safety, or mental well-being, and
 - c) Whether the child can reasonably be protected from this harm through measures short of removal.
3. The court must make specific findings concerning whether the agency has made reasonable efforts to prevent the child's removal from the home, including findings regarding:
 - a) The types of services offered to the family before the removal and how these services related to the needs of the family;
 - b) The agency's efforts to provide services to the family before DSS removed the child from the home;
 - c) The reason the agency's efforts to provide the services to the family did not prevent the child's removal from the home;
 - d) The court must review the agency's efforts to provide services and determine whether the agency's efforts were timely, available, adequate and realistic under the circumstances;
 - e) Whether reasonable efforts to preserve or reunify the family are required pursuant to S.C. Code Ann. § 63-7-1640.
4. If the child is to be removed from the home, the court must advise the parents verbally on the record, and include in the written order, that failure to comply with the placement plan can result in termination of parental rights. S.C. Code Ann. § 63-7-1680.
5. The court must approve a placement plan, if the plan appropriately addresses all issues required by statute. S.C. Code Ann. § 63-7-1680. At a minimum, the placement plan is a written document, which must address the following:
 - a) Specific reasons for the removal and the specific changes that must be made before the child is returned home;
 - b) Other conditions in the home that warrant state intervention which would not alone justify removal, and the changes that must be made before intervention is terminated;
 - c) Specific time frames for the parents to accomplish the objectives of the plan, and the means for measuring when the objectives have been met;

- d) Goals of the plan must relate to the problems, which resulted in the removal;
 - e) Social and other services to be made available to the parents or other relevant adult;
 - f) Financial responsibility of the parents;
 - g) Visitations between the child and the child's parents, siblings and other close relatives;
 - h) Nature and location of child's placement unless disclosure would be contrary to the child's best interests;
 - i) Child's placement should be as close to the child's home as possible;
 - j) Preference for kinship placement or placement of the child with another responsible adult who has a constructive and caring relationship with the child;
 - k) Specify the number of contacts the caseworker or member of the casework team will have with the child, at a minimum of once per month. The court can order more frequent contacts;
 - l) Social and supportive services to benefit the child and the foster parents; and
 - m) The parent's participation or lack of participation in the development of the plan.
6. The placement plan must be submitted to the court at the removal hearing, or within 10 days after the hearing. If the plan is not submitted at the removal hearing, a hearing on the plan must be held if requested by a party.
7. If the conditions, which justified removal, include the parent's addiction or abuse of controlled substances, then the court may require that the plan address the substance abuse issues pursuant to S.C. Code Ann. § 63-7-1700.
8. Continuances
- a) Continuances are to be granted only in *exceptional circumstances*. If continued, the merits hearing must be completed within 65 days of the filing of the removal complaint.
 - b) If the hearing is to be held beyond 65 days and the child is not returned home, the court must issue a written order finding: (i) the child should remain in the custody of DSS because there is probable cause to believe return home would endanger the child; (ii) the hearing is set for a date and time certain not more than 30 days from the date hearing was to be held; and (iii) exceptional circumstances support a continuance or the parties and guardian *ad litem* agree to a continuance.
 - c) The case may be continued due to absence of a witness only if the testimony of the witness is necessary to the court's decision and the party exercised due diligence to secure attendance of witness and the court cannot start the hearing and have the witness testify at a later date or by deposition.
 - d) When a continuance is granted the court shall ensure that the hearing is rescheduled within the time frames and give the hearing priority over other matters except: probable cause hearings, detention hearings, and other custody cases if there are compelling reasons to do so. S.C. Code Ann. § 63-7-710.