

TO: Office of Child Safety Employees
Office of Child Programs Employees
Office of the General Counsel Employees

FROM: Scott J. Modell, Ph.D., Deputy Commissioner 
Sherri Hale, Deputy Commissioner 
Douglas E. Dimond, General Counsel

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RE: Exigent Circumstances

There has been some question as to whether the law requires the existence of exigent circumstances before DCS may enter into an Immediate Protection Agreement, or IPA, with a parent or guardian. There is no such legal requirement. "Exigent circumstances" is a legal term that applies to searches and seizures, including entry to a family's home and removal of a child from the child's parent(s) or guardian(s). As a general rule, the Fourth Amendment to the United States Constitution requires that DCS must have parental/guardian consent or a court order before it can enter a home or remove a child from the parent(s) or guardian(s). There are two major exceptions to that general rule: (1) the existence of "exigent circumstances," (i.e., an emergency situation so dangerous to the child that DCS must act, even without a court order); and, (2) consent, meaning that the parent or guardian has voluntarily agreed to the removal of the child.

Because consent, not exigent circumstances, is the legal precondition of an IPA, DCS is free to set by policy what level of threat justifies an IPA. In some cases, the threat may rise to the level of exigent circumstances; in others it may not. The legality of an IPA depends upon parental consent, not the existence of exigent circumstances. Accordingly, an IPA does not require exigent circumstances nor do exigent circumstances require the use of an IPA.

In order to demonstrate the voluntary nature of IPAs, any DCS employee implementing an IPA with a family shall not advise the family that a child may be removed into the legal custody of DCS and placed into foster care if the IPA form is not signed or the family does not agree to the non-custodial safety placement. Doing so will likely remove the perception that a parent or caregiver voluntarily agreed to the non-custodial safety placement. The DCS employee must also have a conversation with the parent/caregiver and the non-custodial safety placement about the anticipated timeframes of the safety placement and explain that the agreement is voluntary.