

**CHAPTER 7**
**EX PARTE EMERGENCY PROTECTIVE CARE PROCEEDINGS**
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	PROCEDURE	AUTHORITY
	<b>EMERGENCY PROTECTIVE CARE ORDER AND NOTICE</b>	
7.01	<p><b>EMERGENCY PROTECTIVE CARE DEFINED</b>                      A child is in “emergency protective care” when:</p> <ol style="list-style-type: none"> <li>(1) taken into custody by a peace officer pursuant to Minn. Stat. § 260C.151, subd. 6; § 260C.154; or § 260C.175; or</li> <li>(2) returned home before an Emergency Protective Care (EPC) Hearing pursuant to RJPP 30 (See Chapter 8) with court-ordered conditions of release.</li> </ol> <p><i>Comment – Secure detention precluded: Minnesota’s statutes and rules provide that a child taken into emergency protective care who is alleged or adjudicated to be in need of protection or services, including a child alleged to be a truant or runaway, may be placed only in a shelter care facility. “Shelter care facility” is defined as a “physically unrestricting facility.” Thus, a child taken into emergency protective care should never be held in secure detention except as allowed under Minn. Stat. § 260C.181, subds. 1-3 (may be detained for up to 24 hours in secure detention).</i></p>	<ul style="list-style-type: none"> <li>• Minn. Stat. § 260C.181</li> <li>• RJPP 28.01</li>   <li>• Minn. Stat. § 260C.181, subds. 1, 3 (child, including truant or runaway, may be placed only in a non-secure “shelter care facility”)</li> <li>• RJPP 28.03(a) (lists shelter care facility as placement option at EPC Hearing)</li> <li>• RJPP 2.01(28) (“shelter care facility” defined as physically unrestricting)</li> <li>• Minn. Stat. § 260C.007, subd. 30 (“shelter care facility” defined as physically unrestricting)</li> </ul>
7.02	<p><b>FINDINGS</b></p> <p>A. <b>GENERALLY.</b> When the court makes individualized, explicit findings, the court may issue an Ex Parte Order for Emergency Protective Care if it finds from the facts set forth in the petition or any supporting affidavits or sworn testimony that:</p> <ol style="list-style-type: none"> <li>1. the child has left or been removed from a court-ordered placement; <b>or</b></li> <li>2. there is a prima facie showing that the child is in surroundings or conditions that endanger the child’s health, safety, or welfare and that require that the child’s custody and care be immediately assumed by the court; <b>and</b></li> <li>3. continuation of the child in the custody of the parent or legal custodian is contrary to the child’s welfare, <b>and</b></li> <li>4. The placement is in the child’s best interests.</li> </ol>	<p>RJPP 28.02, subd. 1</p>

	PROCEDURE	AUTHORITY
	<p><b>7.02 Findings (continued)</b></p> <p><b>B. ADDITIONAL FINDINGS IF HABITUAL TRUANT, RUNAWAY, PROSTITUTION, DELINQUENT UNDER AGE 10, INCOMPETENT TO PROCEED, AND DOMESTIC ABUSE MATTERS</b></p> <p>In addition to the findings required in section A above, the court may issue an Ex Parte Order for Emergency Protective Care (see order template at end of this Chapter) if it finds from the facts set forth in the petition or any supporting affidavits or sworn testimony that:</p> <p>(a) there is a prima facie showing that the child has engaged in prostitution, is a <u>habitual truant</u>, is a <u>runaway</u>, has committed a delinquent act before becoming ten (10) years of age, has been found incompetent to proceed or not guilty by reason of mental illness or mental deficiency, or has been found by the court to have committed domestic abuse, as those terms are defined in Minn. Stat. § 260C.007, subds. 19 and 27, (see "Definitions" in Chapter 2); and</p> <p>(b) the child failed to appear after having been personally served with a summons or subpoena, reasonable efforts to personally serve the child have failed, or there is a substantial likelihood that the child will fail to respond to a summons; and</p> <p>(c) continuation of the child in the custody of the parent or legal custodian is contrary to the child's welfare.</p>	RJPP 28.02, subd. 2
7.03	<p><b>REQUIRED CONTENTS OF ORDER</b></p> <p>An Order for Emergency Protective Care shall be signed by a judge, shall include the findings required under section 7.02 above, and shall:</p> <ol style="list-style-type: none"> <li>1. Order the child to be placed with an appropriate relative (see "Placement Issues and Relative Searches" Chapter 29) or a shelter care facility (see definition in Chapter 3.53) designated by the court pending an Emergency Protective Care (EPC) Hearing (see Chapter 8);</li> <li>2. State the name and address of the child, unless such information would endanger the child, or, if unknown, designate the child by any name or description by which the child can be identified with reasonable certainty;</li> <li>3. State the age and gender of the child or, if the age of the child is unknown, that the child is believed to be of an age subject to the jurisdiction of the court;</li> <li>4. State the reasons why the child is being taken into emergency protective care;</li> <li>5. State the reasons for any limitation on the time or location of the execution of the emergency protective care order;</li> <li>6. State the date when issued and the county and court where issued; and</li> <li>7. State the date, time, and location of the EPC Hearing.</li> </ol>	RJPP 28.03
7.04	<p><b>EXECUTION OF ORDER</b></p> <p>An Order for Emergency Protective Care:</p> <ol style="list-style-type: none"> <li>1. May only be executed by a peace officer authorized by law to execute a warrant;</li> </ol>	RJPP 28.04



	PROCEDURE	AUTHORITY
	<p><b>7.07 Release from Emergency Protective Care (continued)</b></p> <p>2. <b>Release Required.</b> A child taken into emergency protective care pursuant to a court order shall not be held in emergency protective care for more than 72 hours<sup>2</sup> unless an Emergency Protective Care (EPC) Hearing (see Chapter 8) has commenced within the 72 hours and the court has ordered continued protective care.</p> <p><b>B. CHILD TAKEN INTO EMERGENCY PROTECTIVE CARE WITHOUT COURT ORDER</b></p> <p>1. <b>Release Required.</b> A child taken into emergency protective care without a court order shall be released unless an Emergency Protective Care (EPC) Hearing (see Chapter 8) has commenced within 72 hours<sup>3</sup> of the time the child was removed from home and the court has ordered continued protective care.</p> <p>2. <b>Discretionary Release by Peace Officer or County Attorney.</b> When a peace officer has taken a child into emergency protective care without a court order, the peace officer, peace officer's supervisor, or the county attorney may release the child any time prior to an Emergency Protective Care (EPC) Hearing (see Chapter 8). The peace officer, the peace officer's supervisor, or the county attorney who releases the child may not place any conditions of release on the child.</p>	<p>RJPP 29.01, subd. 1(b)</p> <p>RJPP 29.01, subd. 1(a)</p> <p>RJPP 29.01, subd. 1(b)</p>
7.08	<p><b>DISCRETIONARY RELEASE BY COURT; CUSTODIAL CONDITIONS</b></p> <p>At any time before commencement of an Emergency Protective Care (EPC) Hearing (see Chapter 8), the court may release a child and may:</p> <ol style="list-style-type: none"> <li>Place restrictions on the child's travel, associations, or place of abode during the period of the child's release; and</li> <li>Impose any other conditions upon the child or the child's parent or legal custodian deemed reasonably necessary and consistent with criteria for protecting the child.</li> </ol> <p>Any conditions terminate after 72 hours,<sup>4</sup> unless an EPC Hearing has commenced and the court has ordered continuation of the condition.</p>	RJPP 29.02
7.09	<p><b>RELEASE TO CUSTODY OF PARENT OR OTHER SUITABLE PERSON</b></p> <p>A child released from emergency protective care shall be released to the custody of the child's parent, legal custodian, or other suitable person.</p>	RJPP 29.03

<sup>2</sup> See footnote 1 for how to calculate the 72-hour period.

<sup>3</sup> See footnote 1 for how to calculate the 72-hour period.

<sup>4</sup> See footnote 1 for how to calculate the 72-hour period.

	<b>PROCEDURE</b>	<b>AUTHORITY</b>
	<b>EMERGENCY PROTECTIVE CARE HEARING</b>	
7.10	<p><b>REPORT BY PEACE OFFICER</b></p> <p>A peace officer who removes a child from the home of a parent and places the child in a shelter care facility is required to deliver to the court and the supervisor of the shelter care facility, on or before the first court day following the child's placement, a report that shall include at least:</p> <ol style="list-style-type: none"> <li>1. The time the child was taken into emergency protective care;</li> <li>2. The time the child was delivered for transportation to the shelter care facility;</li> <li>3. The reasons why the child was taken into emergency protective care;</li> <li>4. The reasons why the child has been placed;</li> <li>5. A statement that the child and the child's parent or legal custodian have received the advisory required by Minn. Stat. § 260C.176, subd. 3, or the reasons why the advisory has not been made; and</li> <li>6. Reasons to support the non-disclosure, if disclosure of the location of the placement has not been made because there is reason to believe that the child's health and welfare would be immediately endangered pursuant to Minn. Stat. 260C.176, subd. 4.</li> </ol>	<ul style="list-style-type: none"> <li>• Minn. Stat. § 260C.176, subd. 3 (content of report)</li> <li>• RJPP 29.04, subd. 1 (timing of filing of report)</li> </ul>
7.11	<p><b>REPORT BY SUPERVISOR OF SHELTER CARE FACILITY</b></p> <p>When a child has been delivered to a shelter care facility, the supervisor of the facility shall deliver to the court a signed report acknowledging receipt of the child and the time of the child's arrival. The supervisor of the facility shall ascertain from the report of the person who has taken the child into emergency protective care whether the child's parent, guardian or custodian has been notified of the placement of the child at the shelter care facility and its location, and the supervisor shall follow any instructions concerning notification contained in that report. The report shall be filed with the court on or before the first court day following placement.</p>	<ul style="list-style-type: none"> <li>• Minn. Stat. § 260C.176, subd. 6 (content of report)</li> <li>• RJPP 29.04, subd. 2 (timing for filing of report)</li> <li>• Minn. Stat. § 260C.176, subd. 4 (content of report)</li> <li>• RJPP 29.04, subd. 2 (timing for filing of report)</li> </ul>
7.12	<p><b>NEXT STEPS: EMERGENCY PROTECTIVE CARE (EPC) HEARING</b></p> <p>The court shall hold an Emergency Protective Care (EPC) Hearing within 72 hours of the child being taken into emergency protective care. (See Chapter 8 for procedures regarding the EPC Hearing.)</p>	<ul style="list-style-type: none"> <li>• RJPP 30</li> <li>• RJPP 30.01, subd. 1</li> </ul>