

## EMERGENCY PROTECTIVE CARE (EPC) HEARING REQUIREMENTS

### FILE NAME AND NUMBER

1. State the **case name** and **file number**.

### TYPE AND PURPOSE OF HEARING

2. State that this is an **Emergency Protective Care Hearing**.
3. State that the **purpose of the hearing** is to determine **whether the child may be safely returned home today** or whether the child needs to be under protective care of the social services agency for **placement in foster care**.
4. Ask the parents what language they speak and obtain an **interpreters** if necessary.

### IDENTIFICATION OF PARTIES, PARTICIPANTS, AND ATTORNEYS

5. Ask all **parties, participants, and attorneys** present to **identify themselves** for the record. Ask for any unusual names to be spelled out.
6. Ask whether there is **anyone in the audience** who wishes to be identified because of an interest regarding the child or family. Specifically ask if any **relatives or foster parents are present**.
7. Ask whether any **parties or participants are appearing by phone** (e.g., child's tribe, incarcerated parents, etc.).
8. If the child is present, and after consultation with the child's attorney and guardian ad litem, determine whether it is in the **child's best interests** to be **present or to be excluded** from the hearing. In cases where the child's behavior is the underlying cause of the petition, the child must be present.
9. Review the **EPC Hearing Contact List**, which is required to be filed by court administration prior to the hearing, and determine whether all **parties, participants, and attorneys** have been **informed of the date, time, and place of the hearing**.
10. Determine whether any party or participant is absent and what steps must be taken **to identify, locate, and notify any absent parties and participants** as rapidly as possible of the pendency of the case and the date and time of the next hearing.
11. Determine **whether any other persons**, including maternal and paternal relatives, **should be included** as a **parties or participants** and notified of the date and time of the next hearing.
12. Verify the **name, date of birth, race, and current address of the child** who is the subject of the case, unless stating the information would endanger the child or seriously risk disruption of the current placement. If the child is in placement, make sure the address in the petition and in MNCIS is the address of the foster parent, not the address of the parent(s) or social services agency.
13. Ask about the **address or location of any party, participant, or other person who is not present** at the hearing.

## RECEIPT OF PETITION

14. Determine whether **all parties and participants have been timely and appropriately served with a copy of the summons and petition**. If not, direct what action must be taken to ensure everyone is timely and appropriately served.
15. Unless a party otherwise consents to do so, a party may not be required to admit or deny the factual allegations or the statutory grounds of a petition if the party did not receive possession of the petition at least three (3) days before the hearing.

## APPOINTMENT OF COUNSEL

16. **Provide notice about the right to a court-appointed attorney** to a child age 10 or older and the child's parents or legal custodians and the child's Indian custodian who appear in court and are unrepresented.
17. **Appoint counsel** for any child, parent, legal custodian, or Indian custodian who qualifies:
  - a. A **child age 10+** must be appointed an attorney unless after consultation with an attorney the child files a written waiver of the right to counsel and the court finds the waiver was made voluntarily and intelligently after being fully and effectively informed of the right to counsel.
  - b. The child's **parents** (regardless of party or participant status) must be appointed counsel if a request is made, the parent qualifies financially, and the court believes such appointment is appropriate.
  - c. An **Indian child's parents** (regardless of party or participant status) and Indian custodian must be appointed counsel if a request is made and the person qualifies financially (no discretion).

## ADVISORY OF RIGHTS AND POTENTIAL OUTCOMES OR CONSEQUENCES OF CHIPS PROCEEDING

18. The Rules require that at the beginning of the EPC Hearing the court must **provide the following on-the-record general rights advisory to all parties and participants**. In lieu of the full on-the-record advisory, the court may instead ensure that court administration staff shows the [juvenile court orientation video entitled "In the Best Interests of Your Child"](#) prior to the hearing, and then on the record inquire whether the parties/participants viewed the juvenile court orientation video and whether they understood the content or have questions.

### Option 1: Review of video advisory

Ask whether the parties and participants have **viewed the juvenile court orientation video**. Ask what **questions the parents and others have** about the information in the video and provide detail about any right or procedure that person may not fully understand.

**OR**

### Option 2: Full in-court advisory if video not watched

Advise the parents and child of the following rights and possible consequences:

- a. The importance of attending all hearings and the **possible consequences of failure to appear at hearings:**
  - (1) A finding that the county's petition has been proved,
  - (2) An order finding that the child is in need of protection or services,
  - (3) An order removing the child from the parent's care, including an order terminating the parent's rights or transferring permanent legal and physical custody of the child to another, and
  - (4) Contempt of court.
- b. **The possible consequences of child protection proceeding:** Failure to comply with the court's orders and to make progress on a case plan ordered or approved by the court may result in the **permanent removal of the child from the parent's care**,

including an order terminating the parent's rights or transferring permanent legal and physical custody of the child to another.

- c. **The right to an attorney:** The right to representation if any child or child's parent or legal custodian appears in court and is not represented by counsel.
- d. **The 12-month permanency timeline:** If the child has been ordered into out-of-home placement and has not been returned home:
  - (1) A **Permanency Progress Review Hearing** must be commenced no later than 180 days (month 6) of the child's court-ordered removal from home. The purpose of the hearing is to determine whether the parent or legal custodian has maintained regular contact with the child and is complying with the case plan, and whether it is safe for the child to be returned home.
    - If the **parent is complying** with the case plan **and** maintaining regular contact with the child as required in the case plan, and if the court determines that the child would benefit from continuing this relationship, the court may either:
      - ✓ Return the child home, if the conditions that led to the out-of-home placement have been sufficiently mitigated that it is safe and in the child's best interests to be returned home; or
      - ✓ Continue the matter up to a total of six additional months, at which time the county must file a petition for the child's permanent placement away from home if it is still not safe for the child to return home.
    - If the **parent is not complying** with the case plan **or** not maintaining regular contact with the child as required in the case plan, the court may order the social services agency to file a petition for the child's permanent placement away from the parent.
  - (2) If the child has not been able to safely return home, the **county must file a permanency petition by month 11.**
  - (3) If the child has not been able to safely return home, the court must commence a **permanency determination hearing (an admit/deny hearing) by month 12.** The purpose of the hearing is to review the parent's or legal custodian's progress on the case plan and the services provided by the agency. The court shall determine whether the child can be safely returned home or, if not, order permanent placement consistent with the child's best interests, including terminating the parent's rights leading to adoption or permanently transferring the child's legal and physical custody to a relative.

#### **UNDERSTANDING OF STATUTORY GROUNDS AND FACTUAL ALLEGATIONS**

19. The court may explain or may ask the county attorney to explain the following:
  - a. The **reasons why the child was taken into emergency protective custody;** and
  - b. An overview of the **factual allegations** and **statutory grounds** set forth in the petition.
20. Ask the parents and child if they have had an **opportunity to discuss the petition with their attorneys,** including the factual allegations and the statutory grounds.
21. **Determine whether the child and the child's parent or legal custodian fully understand** the statutory grounds and the factual allegations set forth in the petition and, if not, provide an explanation.

### **EXISTENCE OF OTHER CASES**

22. Determine whether there are **past or pending cases involving the child or parents**, including family, delinquency, domestic violence, probate, guardianship, criminal, or protection orders.
23. If there are other pending proceedings, notify the other court that the **juvenile court has exclusive and original jurisdiction over the child** and the other proceeding must be on hold until the child protection proceeding is finalized.

### **MOTIONS TO INTERVENE**

24. **Consider any motions to intervene** by parents, relatives, or others.
  - a. **Intervention as a Matter of Right:** The child, parents who are not legal custodians, and grandparents with whom the child has lived in the two years prior to the petition are entitled to intervention as a matter of right by filing and serving a notice to intervene, which shall become effective 10 days after service unless an objection is filed.
  - b. **Permissive intervention:** Any other person may seek permissive intervention by filing and serving a notice of motion and motion to intervene. The motion must state the nature and extent of the person's interest in the child and the reason(s) that the person's intervention would be in the best interests of the child. A hearing on the motion must be held within 10 days of the filing of the motion.

### **INDIAN CHILD INQUIRY AND DETERMINATION**

25. Ask whether the **child has any tribal heritage or ancestry on either the mother's side or father's side of the family.**
  - a. Don't ask whether the child is an Indian child as only the tribe can make that determination.
  - b. Don't ask whether the child is enrolled or eligible for enrollment in an Indian tribe as only the tribe can make that determination.
26. If the **tribe has responded to the ICWA notice** and provided information about whether the child is enrolled or eligible for enrollment, make a determination based on that information about whether:
  - a. the child is an Indian child for purposes of ICWA, and
  - b. ICWA applies.
27. If the **tribe has not responded to the ICWA notice** but there is **reason to believe the child may be an Indian child:**
  - a. follow all ICWA requirements unless/until the child's tribe notifies the court the child is not enrolled or not eligible for enrollment; and
  - b. remind the social worker to file with the court as soon as possible a copy of each ICWA notice sent by registered/certified mail to the child's parents, Indian custodian(s), tribe(s), and BIA Regional Office, along with the return receipts.
28. If the child is an Indian child, determine whether the child **resides or is domiciled on an Indian reservation** or is a **ward of tribal court but is temporarily located off the reservation.** If yes, the court may order emergency removal of the child from the child's parent or Indian custodian and emergency placement in foster care.
29. If the child is a **ward of tribal court**, after ordering temporary emergency placement the court must order the child to be **expeditiously returned to the jurisdiction of the Indian child's tribe** and must consult with the tribal court regarding the child's safe transition before transferring the child. The case must be dismissed once a process is in place for a safe transition.
30. **Consider any motions** regarding state versus tribal court jurisdiction.

## **PRIMA FACIE DETERMINATION REGARDING SUFFICIENCY OF PETITION**

31. Review and discuss the sufficiency of the petition:
  - a. A sworn petition must be **filed prior to the EPC** hearing.
  - b. The petition must be **personally served upon the parents** and the other parties, participants, and attorneys at the EPC hearing.
  - c. The petition must be **specific about the facts** that bring the child before the court.
  - d. The petition **should not be conclusory** without relevant facts to explain and support the conclusions.
  - e. Petitions must include **allegations specific to the legal parent** or legal guardian if appropriate. If the petition does not contain allegations against a legal parent or legal guardian, the child should be placed with or returned to that parent or legal guardian.
  - f. Petitions must **include specific language clearly articulating the current threat to the child's safety**.
  
32. Based **solely on the content of the petition** and no additional testimony or information, determine whether the petition establishes **a prima facie showing that a juvenile protection matter exists and that a child is the subject of that petition**:
  - a. Assume the alleged facts are true and consider whether they are sufficient to meet one of the 16 statutory grounds for adjudicating a child as in need of protection or services under [Minn. Stat. 260C.007, subd. 6](#);AND
  - b. Consider whether the person (child) who is the subject of the petition is or is not a child (for example, a petition cannot be filed regarding an unborn being because under Minnesota law such a being is not a child).
  
33. The court **must dismiss the petition and return child to care of parent** if the petition fails to **establish a prima facie showing** that a juvenile protection matter exists and a child is the subject of that matter.

## **ENDANGERMENT DETERMINATION**

34. If the petition established a prima facie showing, determine whether the petition also makes a prima facie showing that:
  - a. The **child or others would be immediately endangered by the child's actions if the child were released** to the care of the parent or legal custodian; or
  - b. The **child's health, safety, or welfare would be immediately endangered** if the child were released to the care of the parent or legal custodian.
  
35. **Decide any motions regarding** endangerment, including taking testimony of social worker, parent, or others if appropriate.
  
36. If **endangerment exists**, the court must **continue protective care and place child in foster care or release the child** to the parent or legal custodian and impose conditions to ensure the safety of the child or others.
  
37. If **endangerment does not exist**, the court must **release the child** to the parent or legal custodian subject to reasonable conditions of release (CHIPS case may continue so as to allow agency to provide services to parent and child).

## REASONABLE OR ACTIVE EFFORTS TO PREVENT REMOVAL DETERMINATION

38. Review the petition and **identify and discuss the specific safety risks** that led to removal of the child from the care of the parent.
39. Review the petition and **identify the efforts or services offered or made by the social services agency to prevent the child's removal from home.**
40. **Determine whether the services were culturally appropriate.**
41. **Ask the social worker** whether any additional efforts or services were offered or made that are not listed in the petition.
42. **Ask the parents** what services were offered and what services were received or accepted.
43. Based on the above information, determine and state on the record whether:
  - a. **Reasonable efforts, or active efforts** in the case of an Indian child, were **made by the social services agency to prevent the child's out-of-home placement.**  
Making this finding means either that:
    - the agency has made reasonable efforts to prevent placement of the child in foster care by working with the family to develop and implement a safety plan; or
    - given the particular circumstances of the child and family at the time of the child's removal, there are no services or efforts available that could allow the child to safely remain in the home.The order must either list the specific efforts made by the agency or must reference the social worker report filed with the court that specifies in detail the efforts made and services provided.
  - OR**
  - b. **Reasonable efforts, or active efforts** in the case of an Indian child, by the social services agency **to prevent placement and for rehabilitation and reunification are not required** because the petition establishes a prima facie case for an expedited permanency proceeding such as in the case of a petition alleging egregious harm. At the request of the county attorney the court must determine:
    - Whether a **termination of parental rights petition has been filed** stating that (a) the parent has subjected a child to "egregious harm"; (b) the parental rights of the parent to another child have been terminated involuntarily; or (c) the child is an "abandoned infant";
    - Whether the **county attorney has determined not to proceed with a termination of parental rights** petition under Minn. Stat. § 260C.307; or
    - Whether a termination of parental rights petition or other petition has been filed alleging a prima facie case that the **provision of services or future services for the purpose of rehabilitation and reunification is futile** and therefore unreasonable under the circumstances.
    - Once the court makes the determination required above, the court shall **schedule a permanency** hearing pursuant to RJPP 42 within thirty (30) days unless the county attorney files a petition to terminate parental rights.
44. The order must either **list the specific efforts made by the agency to prevent removal** or must reference the social worker report filed with the court that specifies in detail the efforts made and services provided.

### **REASONABLE OR ACTIVE EFFORTS TO REUNIFY OR PREVENT ONGOING PLACEMENT**

45. Ask **what the social worker to identify the current and immediate safety threat** that is preventing the child from returning to the care of the parent.
46. Ask whether the **threat has been diminished** and, if so, how the parents or social worker knows the threat is diminished.
47. Discuss what **safety plan, if any, could be developed and implemented in order for the child to SAFELY return home today?**
48. Discuss what **services, if any, are available today or in the coming days that could be put in place to SAFELY allow the child to return home today** or in the coming days.
49. Discuss how those services are related to the safety threat.
50. Discuss what specifically is preventing the parents from being able to provide the minimally adequate standard of care to protect the child such as mental health or chemical health issues.
51. Ask the parents what services or help they need in order to be successful at parenting the child.
52. Discuss whether the removal or addition of any person from or to the home allow the child to be safe and be placed back in the home.
53. If the safety threat is too high to return the child home, discuss the safety threat and conditions with the parent(s) and ask whether they understand.

### **CONTRARY TO THE WELFARE DETERMINATION**

54. If the court is ordering or continuing foster care placement of the child, the court must make a finding on the record and in writing that **continued custody of the child by the parent or legal custodian is contrary to the welfare of the child and out of home placement is in the child's best interests.**
55. The contrary to welfare **finding must be made in the first order** placing the child in foster care and at the EPC hearing. If the finding is not made, or not timely made, the child will not be eligible for federal Title IV-E foster care assistance for the entire time the child is in foster care. An amended order will not be sufficient to correct the deficiency.

### **ADMISSION OR DENIAL** (See the "Admit/Deny Hearing Requirements")

56. A parent may choose or be asked to enter an admission or denial at the time of the EPC hearing **ONLY** if the following happens:
  - a. the parent has been properly and timely served with the petition; and
  - b. the parent knowingly and voluntarily waives their right to having the petition for at least 3 days prior to entering an admission or denial; and
  - c. the parent acknowledges the parent has had sufficient time to review the petition in consultation their attorney; and
  - d. the case is not an ICWA case (an admit/deny hearing on a CHIPS case involving an Indian child cannot be commenced until at least 10 days after the Indian child's parents, Indian custodian, and tribe, and the BIA Regional Office have all been served by the social services agency by registered/certified mail return receipt requested with the ICWA notice and copy of each notice and the return receipt is filed in the court file. The court must continue to hold EPC hearings at least every 30 days until all requirements to hold the Admit/Deny Hearing have been completed.)

## NOTICE OF NEXT HEARING

57. At the close of the hearing the court must schedule the **date, time, type, and location of the next hearing**. The notice must be:
- a. Delivered at the close of the hearing (if written notice is delivered at the end of the hearing, later written notice is not required),
  - b. Mailed at least five (5) days before the date of the next hearing, or
  - c. Mailed fifteen (15) days before the date of the hearing if mailed to an address outside the state.

## FINDINGS, DETERMINATIONS, AND ORDER

58. The court must determine the following, which must be stated on the record and included in the order:
- a. The names of all **parties, participants, and attorneys who appeared** at the hearing.
  - b. The names of all **parties served** with the Summons and Petition at least three (3) days before the hearing, **including any who failed to appear** despite proper service.
  - c. The names of all **parties not served** with the Summons and Petition at least three (3) days before the hearing, but who nevertheless **agree to proceed** with the Admit/Deny Hearing.
  - d. The names of all **parties who were entitled to be served** but who were **not served**, and direct immediate service, including service by publication if necessary.
  - e. The names of all **participants and attorneys** who were **entitled to be served** with a Notice of the Hearing and a copy of the Petition, but who were **not served**, and direct immediate service.
  - f. The **parents' names, addresses, and dates of birth**.
  - g. The **father's legal status** as of the date of the hearing as either alleged, adjudicated, presumed, legal custodian, or unknown.
  - h. Whether **paternity must be established** for any father, and order paternity testing if appropriate.
  - i. Whether the **child is an Indian child** and whether ICWA applies or, if more information is needed, that additional steps must be taken by the agency to serve the ICWA notice and file copies and the return receipts in the court file.
  - j. The actual **date of the child's removal** from home, if the child was removed from home by the responsible social services agency or law enforcement.
  - k. The **child's placement pending** further proceedings, including whether the child shall:
    - Continue in out-of-home placement;
    - Return home with conditions in place to assure the safety of the child or others;
    - Return home with reasonable conditions of release; or
    - Return home with no conditions.
  - l. The date by which the out-of-home placement plan or child protective services **case plan will be served and filed**, and who will participate in the development of such plan (the plan must be filed within 30 days of the child's removal from home).
  - m. The **conditions, if any, to be imposed** upon the parent, legal custodian, or a party.
  - n. The **services, examinations, or evaluations**, if any, to be provided to the **child** and by whom and the date the report shall be served and filed.
  - o. The **services, examinations, or evaluations**, if any, to be provided to the child's **parent** and by whom and the date the report shall be served and filed (the court may order assessments and evaluations prior to adjudication but cannot order the parent to follow recommendations until after adjudication).
  - p. The terms of **parental and sibling visitation** pending further proceedings.
  - q. The **parent's responsibility for costs of care** (see definition in Chapter 3.14) pursuant to Minn. Stat. § 260C.331, subd. 1.
  - r. Set the **date for the next hearing**.
  - s. The permanency timeline dates, including:

- The date by which the **Permanency Progress Review Hearing** must be held (no later than 6 months or 180 days after removal)
  - The date by which the **permanency petition must be filed** (no later than 11 months or 335 days after removal)
  - The date by which the **admit/deny hearing on the permanency petition** must be commenced (no later than 12 months or 365 days after removal).
- t. Any **findings regarding admission or denial**.
- u. A statement that, unless otherwise modified by this order, all **previous orders shall remain in full force and effect**.