

CHAPTER 7

EX PARTE EMERGENCY PROTECTIVE CARE PROCEEDINGS

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	PROCEDURE	AUTHORITY
	EMERGENCY PROTECTIVE CARE ORDER AND NOTICE	
7.01	<p>EMERGENCY PROTECTIVE CARE DEFINED A child is in “emergency protective care” when: (1) taken into custody by a peace officer pursuant to Minn. Stat. § 260C.151, subd. 6¹; § 260C.154²; or § 260C.175³; or (2) returned home before an Emergency Protective Care (EPC) Hearing pursuant to RJPP 30 (See Chapter 8) with court-ordered conditions of release.</p> <p><i>Comment: 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, subs. 1-3 (may be detained for up to 24 hours in secure detention).</i></p>	<ul style="list-style-type: none"> • Minn. Stat. § 260C.181 • RJPP 28.01 • Minn. Stat. § 260C.181, subd. 3 (child may be placed only in a “shelter care facility”) • RJPP 28.03(a) (lists shelter care facility as placement option at EPC Hearing) • RJPP 2.01(v) (“shelter care facility” defined)

¹ A law enforcement officer may take a child into immediate custody as follows: “If the court makes individualized, explicit findings, based on the notarized petition or sworn affidavit, that there are reasonable grounds to believe the child is in surroundings or conditions which endanger the child’s health, safety, or welfare that require that the child’s custody be immediately assumed by the court and that continuation of the child in the custody of the parent or guardian is contrary to the child’s welfare, the court may order that the officer serving the summons take the child into immediate custody.” Minn. Stat. § 260C.151, subd. 6.

² A child may be taken into custody as follows: “If any person personally served with summons or subpoena fails, without reasonable cause, to appear or bring the child, or if the court has reason to believe the person is avoiding personal service, the person may be proceeded against for contempt of court or the court may issue a warrant for the person’s arrest, or both. In any case when it appears to the court that the service will be ineffectual, or that the welfare of the child requires that the child be brought forthwith into the custody of the court, the court may issue a warrant for immediate custody of the child.” Minn. Stat. § 260C.154.

³ “No child may be taken into immediate custody except:
 (a) with an order issued by the court in accordance with the provisions of Minn. Stat. § 260C.151, subd. 5, or by a warrant issued in accordance with the provisions of Minn. Stat. 260C.154;
 (b) by a peace officer:
 (1) when a child has run away from a parent, guardian, or custodian, or when the peace officer reasonably believes the child has run away from a parent, guardian, or custodian; or
 (2) when a child is found in surroundings or conditions which endanger the child’s health or welfare or which such peace officer reasonably believes will endanger the child’s health or welfare. If an **Indian** child is a resident of a reservation or is domiciled on a reservation but temporarily located off the reservation, the taking of the child into custody under this clause shall be consistent with the **Indian** Child Welfare Act, 25 U.S.C. § 1922;
 (c) by a peace officer or probation or parole officer when it is reasonably believed that the child has violated the terms of probation, parole, or other field supervision; or
 (d) by a peace officer or probation officer under Minn. Stat. § 260C.143, subs. 1 or 4 260C.143, subd. .” Minn. Stat. § 260C.175.

	PROCEDURE	AUTHORITY
7.02	<p>FINDINGS</p> <p>A. GENERALLY. 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"> 1. the child has left or been removed from a court-ordered placement; or 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; and 3. continuation of the child in the custody of the parent or legal custodian is contrary to the child's welfare, and 4. The placement is in the child's best interests. <p>B. ADDITIONAL FINDINGS IF HABITUAL TRUANT, RUNAWAY, PROSTITUTION, DELINQUENT UNDER AGE 10, INCOMPETENT TO PROCEED, AND DOMESTIC ABUSE MATTERS</p> <ol style="list-style-type: none"> 1. 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: <ol style="list-style-type: none"> (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, subs. 19 and 27, (see "Definitions" in Chapter 2); and (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 (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. 1</p> <p>RJPP 28.02, subd. 2</p> <p>RJPP 28.02, subd. 2</p>

	PROCEDURE	AUTHORITY
7.03	<p>REQUIRED CONTENTS OF ORDER</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"> 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); 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; 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; 4. State the reasons why the child is being taken into emergency protective care; 5. State the reasons for any limitation on the time or location of the execution of the emergency protective care order; 6. State the date when issued and the county and court where issued; and 7. State the date, time, and location of the EPC Hearing. 	RJPP 28.03
7.04	<p>EXECUTION OF ORDER</p> <p>An Order for Emergency Protective Care:</p> <ol style="list-style-type: none"> 1. May only be executed by a peace officer authorized by law to execute a warrant; 2. Shall be executed by taking the child into custody; 3. May be executed at any place in the state except where prohibited by law or unless otherwise ordered by the court; 4. May be executed at any time unless otherwise ordered by the court; and 5. Need not be in the peace officer’s possession at the time the child is taken into emergency protective care. 	RJPP 28.04
7.05	<p>PEACE OFFICER’S NOTICE OF ORDER FOR EMERGENCY PROTECTIVE CARE</p> <p>A. CONTENT. When an Order for Emergency Protective Care is executed, the peace officer shall notify the child and the child’s parent or legal custodian:</p> <ol style="list-style-type: none"> 1. Of the existence of the Order for Emergency Protective Care; 2. Of the reasons why the child is being taken into emergency protective care; 3. Of the time and place of the Emergency Protective Care (EPC) Hearing (see Chapter 8); 	RJPP 28.05

	PROCEDURE	AUTHORITY
	<p>7.05 Peace Officer’s Notice of Order for Emergency Protective Care (continued)</p> <p>4. Of the name, address, and telephone number of the responsible social services agency; and</p> <p>5. That the parent or legal custodian or child may request that the court place the child with a relative or a designated caregiver rather than in a shelter care facility.</p> <p>B. SERVICE. The notice shall be delivered in written form and, when possible, the content of the notice shall also be orally summarized and explained. If the parent or legal custodian is not present when the child is removed from the premises, the notice shall be left with an adult on the premises. If no adult is present at the time the child is removed, the notice shall be left in a conspicuous place on the premises.</p>	<p>RJPP 28.05</p> <p>RJPP 28.05</p>
7.06	<p>ENFORCEMENT OF ORDER</p> <p>An Order for Emergency Protective Care shall be enforceable by any peace officer in any jurisdiction.</p>	RJPP 28.06
	PROCEDURES DURING PERIOD OF EMERGENCY PROTECTIVE CARE	
7.07	<p>RELEASE FROM EMERGENCY PROTECTIVE CARE</p> <p>A. CHILD TAKEN INTO EMERGENCY PROTECTIVE CARE PURSUANT TO COURT ORDER.</p> <p>1. Release Prohibited. A child taken into emergency protective care pursuant to a court order shall be held for seventy-two (72)⁴ hours unless the court issues an order authorizing release.</p> <p>2. Release Required. A child taken into emergency protective care pursuant to a court order shall not be held in emergency protective care for more than 72 hours⁵ 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>RJPP 29.01, subd. 1(a)</p> <p>RJPP 29.01, subd. 1(b)</p>

⁴ When calculating the 72-hour period, the date the child was removed from home and any Saturday, Sunday, or legal holiday is not counted. The last day of the period shall be included, unless it is a Saturday, Sunday, or legal holiday in which event the period runs to the end of the next day that is not a Saturday, Sunday, or legal holiday. RJPP 4.01.

⁵ See footnote 4 for how to calculate the 72-hour period.

⁶ See footnote 4 for how to calculate the 72-hour period.

	PROCEDURE	AUTHORITY
	<p>7.07 Release from Emergency Protective Care (continued)</p> <p>B. CHILD TAKEN INTO EMERGENCY PROTECTIVE CARE WITHOUT COURT ORDER</p> <p>1. Release Required. 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 hours⁶ of the time the child was removed from home and the court has ordered continued protective care.</p> <p>2. Discretionary Release by Peace Officer or County Attorney. 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(a)</p> <p>RJPP 29.01, subd. 1(b)</p>
7.08	<p>DISCRETIONARY RELEASE BY COURT; CUSTODIAL CONDITIONS</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"> Place restrictions on the child's travel, associations, or place of abode during the period of the child's release; and 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. <p>Any conditions terminate after 72 hours,⁷ unless an EPC Hearing has commenced and the court has ordered continuation of the condition.</p>	RJPP 29.02
7.09	<p>RELEASE TO CUSTODY OF PARENT OR OTHER SUITABLE PERSON</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

⁷ See footnote 4 for how to calculate 72-hour period.

	PROCEDURE	AUTHORITY
	EMERGENCY PROTECTIVE CARE HEARING	
7.10	<p>REPORT BY PEACE OFFICER</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"> 1. The time the child was taken into emergency protective care; 2. The time the child was delivered for transportation to the shelter care facility; 3. The reasons why the child was taken into emergency protective care; 4. The reasons why the child has been placed; 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. 3⁸, or the reasons why the advisory has not been made; and 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.⁹ 	<ul style="list-style-type: none"> • Minn. Stat. § 260C.176, subd. 3 (content of report) • RJPP 29.04, subd. 1 (timing of filing of report)
7.11	<p>REPORT BY SUPERVISOR OF SHELTER CARE FACILITY</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</p>	<ul style="list-style-type: none"> • Minn. Stat. § 260C.176, subd. 6 (content of report) • RJPP 29.04, subd. 2 (timing for filing of report)

⁸ Upon removal of the child from home and placement in a shelter care facility, the peace officer shall advise the child's parent or legal custodian of: "The reasons why the child has been taken into custody and is being placed in a shelter care facility; the location of the facility, unless there is reason to believe that disclosure of the facility location would place the child's health and welfare in immediate endangerment, in which case disclosure shall not be made; that the child's parent, legal guardian, or legal custodian and attorney or guardian ad litem may make an initial visit to facility at any time and subsequent visits may be made at reasonable hours; that the child may telephone parents and an attorney or guardian ad litem immediately after being admitted to the facility and thereafter on a reasonable basis to be determined by the director of the facility; that the child may not be detained longer than 72 hours, excluding Saturdays, Sundays, and holidays, unless a petition has been filed within that time and the court orders the child's continued detention; of the date, time, and place of the Emergency Protective Care (EPC) hearing, if this information is available to the person who has taken the child into custody; and that the child and the child's parent, legal guardian, or legal custodian have the right to be present and to be represented by counsel at the EPC hearing, and that if they cannot afford counsel, counsel will be appointed at public expense for the child, or for any party, if it is a child in need of protection or services, neglected and in foster care, or termination of parental rights matter." Minn. Stat. § 260C.176, subd. 3.

⁹ Upon placement of a child in a shelter care facility, the peace office is required to determine whether there is "reason to believe that disclosure of the shelter care facility's location to the child's parent, legal guardian, or legal custodian would immediately endanger the health and welfare of the child and, if so, disclosure of the location shall not be made. This determination shall be included in the report, along with instructions to the shelter care facility to notify or withhold notification." Minn. Stat. § 260C.176, subd. 4.

	PROCEDURE	AUTHORITY
	<p>Report by Supervisor of Shelter Care Facility (continued)</p> <p>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"> • Minn. Stat. § 260C.176, subd. 4 (content of report) • RJPP 29.04, subd. 2 (timing for filing of report)
7.12	<p>NEXT STEPS: EMERGENCY PROTECTIVE CARE (EPC) HEARING</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>	RJPP 30