

## EMERGENCY PROTECTIVE CARE (EPC) HEARING CHECKLIST

### IDENTIFICATION OF FILE NAME AND NUMBER AND PERSONS PRESENT

At the commencement of the hearing, the court shall on the record:

1. State the **case name** and **file number**.
2. Ask all **parties, participants, and attorneys** present to **identify themselves** for the record.
3. 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 to admit or deny the statutory grounds stated in the petition.
4. Inquire whether there is anyone in the audience who wishes to be identified because of an interest regarding the child or family.
5. State that this is an Admit/Deny Hearing and that the **purpose of the hearing** is to determine whether the **parent, legal custodian, or child if appropriate, admits or denies** the statutory grounds and factual allegations set forth in the petition.

### INITIAL PROCEDURES

1. Verify the **name, date of birth, race, and current address of the child** who is the subject of the matter, unless stating the information would endanger the child or seriously risk disruption of the current placement.
2. Determine **whether the child is an Indian child** and, if so, determine **whether the child's parent or Indian custodian and Indian tribe** have been **notified** of the hearing by **registered letter, return receipt requested**, and that the return receipt is in the court file.
3. Determine whether all **required persons** have been **informed of the time and place of the hearing** and what further efforts, if any, must be taken to notify all parties and participants as rapidly as possible of the pendency of the matter and the date and time of the next hearing.
4. Determine **whether any other persons**, including relatives, **should be included** as a **parties or participants** and notified of the date and time of the next hearing.
5. Determine whether **all parties and participants have been served a copy of the petition**. Unless a party otherwise consents to do so, a party may not be required to admit or deny the statutory allegations of the petition if the party did not receive possession of the petition at least three (3) days before the hearing.

6. Inquire about the **address or location of any party, participant, or other person who is not present** at the hearing.
7. **Advise** any child or the child's parent or legal custodian who appears in court and is unrepresented of the **right to representation** pursuant to RJPP 25.

### GENERAL RIGHTS ADVISORY

- A. **INQUIRE ABOUT VIEWING OF VIDEO.** Inquire whether the parties and participants have **viewed the video entitled "In the Best Interests of Your Child."** This video is intended to replace the need for the court to discuss in detail the "General Rights and Procedures Advisory" set forth below and, instead, allow the court to go into detail about any right or procedure that a party may not fully understand.
- B. **INQUIRE ABOUT UNDERSTANDING OF BASIC RIGHTS AND PROCEDURES.** The court shall on the record inquire about **whether they parties and participants understand the basic rights**. For parties and participants who have not viewed the video, or who state that they do not understand the rights, the court shall on the record advise all parties, participants, and attorneys present of the following:
  1. **The possible consequences of failure to appear at hearings:**
    - (a) A finding that the petition has been proved,
    - (b) An order adjudicating the child in need of protection or services,
    - (c) 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
    - (d) Arrest and/or contempt of court.
  2. **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.
  3. **The Right to Representation:** The right to representation if any child or child's parent or legal custodian appears in court and is not represented by counsel.

4. **Basic procedural rights of a parties and participants.**
5. **The expedited permanency timeline.** If the child has been ordered into out-of-home placement and has not been returned home:
  - (a) For a child under age 8, a **Permanency Progress Review Hearing** must be commenced within 180 days 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.
    - (1) 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:
      - (i) 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
      - (ii) Continue the matter up to a total of six additional months, at which time the court must conduct a Permanent Placement Determination Hearing if the child has not been safely returned home.
    - (2) 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 responsible social services agency to file a petition for the child's permanent placement away from the parent.
  - (b) If the child, regardless of age, remains in out-of-home placement, a **Permanent Placement Determination Hearing** must be commenced within 365 days of the child's court-ordered removal from home. 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 or permanently transferring the child's legal and physical custody to a relative.

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

At the beginning of the hearing, the court on its own may explain, or may ask the county attorney to explain, the following:

1. The **reasons why the child was taken into emergency protective care**; and
2. The substance of the **statutory grounds** and supporting **factual allegations** set forth in the petition.

The court should determine whether the child and the child's parent or legal custodian understand the statutory grounds and the factual allegations set forth in the petition and, if not, provide an explanation.

#### **MOTIONS**

- A. **SUFFICIENCY OF PETITION AND JURISDICTION.** The court shall hear any motions addressed to the **sufficiency of the petition or jurisdiction** of the court without requiring any person to admit or deny the statutory grounds set forth in the petition prior to making a finding on the motion. The court should ask for any such motions before asking for the admission or denial.
- B. **PRIVATE PETITION.** Any party has the right to **contest the basis of a petition** filed by an individual who is not a county attorney or an agent of the commissioner of human services.
- C. **INTERVENTION.** The court should determine whether there are any **motions to intervene**.

#### **REQUIRED FINDINGS/DETERMINATIONS**

- A. **INITIAL DETERMINATION.** The court shall dismiss the petition if it finds that the petition fails to **establish a prima facie showing that a juvenile protection matter exists** and that the child is the subject of that matter.
- B. **PROTECTIVE CARE DETERMINATION.**
  1. **Endangerment.** If the court finds that the petition establishes a prima facie showing that a juvenile protection matter exists and the child is the subject of that matter, the court shall 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.
2. **Continued custody by parent contrary to welfare of child.** The court may not order or continue the foster care placement of the child unless the court makes explicit, individualized findings that **continued custody of the child by the parent or legal custodian is contrary to the welfare of the child.**
3. **Continued placement or release.** If the court finds that endangerment does exist, the court shall continue protective care or release the child to the child's parent or legal custodian and impose conditions to assure the safety of the child or others. If the court finds that endangerment does not exist, the court shall release the child to the child's parent or legal custodian subject to reasonable conditions of release to assure the safety of the child or others.
- C. **DETERMINATION REGARDING REASONABLE OR ACTIVE EFFORTS.** The court shall determine whether **reasonable efforts**, or **active efforts** in the case of an **Indian** child, were made **to prevent the child's out-of-home placement.** The court shall also determine whether there are available services that would prevent the need for further placement. **OR**, in the alternative, the court shall determine that **reasonable efforts are not required** if the court makes a prima facie determination that one of the "egregious harm" circumstances exists.
- D. **REASONABLE EFFORTS FOR REUNIFICATION ARE NOT REQUIRED.**
1. **General.** At the EPC, or at any time prior to adjudication, and upon notice and request of the county attorney, the court shall make the following determinations:
- (a) Whether a **termination of parental rights petition as 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";
- (b) Whether the **county attorney has determined not to proceed with a termination of parental rights** petition under Minn. Stat. § 260C.307; or

- (c) Whether a termination of parental rights petition or other petition according to Minn. Stat. § 260C.201, subd. 11, 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.
2. **Permanency Hearing Required.** 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.

#### **PERSONS REQUIRED TO ENTER ADMISSION OR DENIAL**

The court shall ask the following persons to enter an admission or denial to the petition:

- A. **PARENT OR LEGAL CUSTODIAN.**
1. **Generally.** Unless the child's parent or legal custodian is the petitioner, **a parent or legal custodian who is a party shall admit or deny** the statutory grounds set forth in the petition or remain silent. If the parent or legal custodian denies the statutory grounds set forth in the petition or remains silent, or if the court refuses to accept an admission, the court shall enter a denial of the petition on the record.
2. **Termination of Parental Rights and Permanent Placement Matters.** In a termination of parental rights matter, only the **child's parent or legal custodian** are required to admit or deny the petition.
- B. **CHILD.** The child shall **not be required to admit or deny** the petition, **except** in matters where the sole allegation is that the **child's behavior** is the basis for the petition.

#### **PROCEDURES, FINDINGS, AND ORDER IF DENIAL ENTERED**

- A. **DENIAL WITHOUT APPEARANCE.** A **written denial or a denial on the record** of the statutory grounds set forth in a petition may be entered by counsel without the personal appearance of the person represented by counsel.
- B. **FURTHER PROCEEDINGS AFTER DENIAL.** When a denial by any party is entered, the court shall **schedule a Pretrial Conference and/or Trial**, the dates of which shall be included in a scheduling order which shall be issued at the

conclusion of, or with five (5) days of, the Admit/Deny Hearing.

#### **FINDINGS, DETERMINATIONS, AND ORDER**

The court shall determine the following, which shall be included in the order:

1. The names of all **parties, participants, and attorneys who appeared** at the hearing.
2. 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.
3. 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.
4. 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.
5. 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.
6. The **parents' names, addresses, and dates of birth**.
7. The **father's legal status** as of the date of the hearing as either alleged, adjudicated, presumed, custodial, or unknown.
8. Whether **paternity must be established** for any father, and order paternity testing if appropriate.
9. Whether the **child is an Indian** child and, if so, whether the child's parent or **Indian** custodian and **Indian** tribe were **notified of the hearing by registered mail, return receipt requested**, and whether the return receipt is located in the court file.
10. 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.
11. The **child's placement pending** further proceedings, including whether the child shall:
  - (a) Continue in out-of-home placement;
  - (b) Return home with conditions in place to assure the safety of the child or others;
  - (c) Return home with reasonable conditions of release; or
  - (d) Return home with no conditions.
12. 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.
13. The **conditions, if any, to be imposed** upon the parent, legal custodian, or a party.
14. 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.
15. 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 such services if the parent agrees to accept such services despite a denial or if the court grants another party's discovery motion).
16. The terms of **parental and sibling visitation** pending further proceedings.
17. The **parent's responsibility for costs of care** (see definition in Chapter 3.14) pursuant to Minn. Stat. § 260C.331, subd. 1.
18. Set the **date for the next hearing**.
19. A statement regarding the **expedited permanency timeline**: that if the child is under 8 years of age at the time the petition is filed, a Permanency Progress Review Hearing must be commenced within six (6) months of the child's court-ordered removal if the child remains in out-of-home placement; and a statement that if the child, regardless of age, remains in out-of-home placement, a Permanent Placement Determination Hearing must be commenced within twelve (12) months of the child's court-ordered removal if the child has not been returned home.
20. Any **findings regarding admission or denial** (see Chapter for checklist regarding admission or denial).
21. A statement that, unless otherwise modified by this order, all **previous orders shall remain in full force and effect**.

#### **NOTICE OF SUBSEQUENT HEARINGS**

For each hearing following the Admit/Deny Hearing, the court administrator shall serve upon each party, participant, and attorney a **notice of the date, time, and location of the next hearing**. The notice shall be:

1. Delivered at the close of the hearing (if written notice is delivered at the end of the hearing, later written notice is not required),
2. Mailed at least five (5) days before the date of the next hearing, or
3. Mailed fifteen (15) days before the date of the hearing if mailed to an address outside the state.