

CHAPTER 8
EMERGENCY PROTECTIVE CARE (EPC) HEARING
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8.01	RECOMMENDED HEARING LENGTH 30 minutes	Resource Guidelines, p. 42
8.02	PURPOSE OF HEARING The purpose of the Emergency Protective Care (EPC) Hearing shall be to determine whether the child shall be returned home or placed in protective care, giving the responsible social services agency responsibility to place the child in foster care, including with a relative.	RJPP 30.01, subd. 1
8.03	TIMING OF HEARING The court shall hold an EPC Hearing within seventy-two (72) hours ¹ of the child being taken into emergency protective care, unless the child is released pursuant to RJPP 29 (see Chapter 7.07 and 7.08).	<ul style="list-style-type: none"> • RJPP 30.01, subd. 1 • Minn. Stat. § 260C.178, subd. 1(a)
8.04	CONTINUANCE OF 8-DAYS PERMITTED The court may, upon its own motion or upon the written or oral motion of a party made at the EPC Hearing, continue the EPC Hearing for a period not to exceed eight (8) days. A continuance may be granted: (a) Upon a determination by the court that there is a prima facie showing that the child should be held in emergency protective care pursuant to RJPP 28; <u>and</u> (b) If the court finds that a continuance is necessary for the protection of the child, for the accumulation or presentation of necessary evidence or witnesses, to protect the rights of a party, or for other good cause shown. <i>Comment: The court is required to make findings before permitting a continuance; any on-the-record findings must be reduced to writing. This requirement recognizes that parties may need time to prepare for the hearing, but assures that a child will not be held in protective care during the continuance unless it is necessary for the protection of the child.</i>	<ul style="list-style-type: none"> • RJPP 30.01, subd. 2 • RJPP 5.01 (requires oral or written findings to grant continuance) • RJPP 10.01 (oral orders reduced to writing)
8.05	PROVIDING NOTICE OF HEARING A. RESPONSIBILITY. The court administrator, or designee, is responsible for informing the parties, participants, and attorneys of the date, time, and place of the EPC Hearing. B. METHOD OF NOTICE. If the initial hearing is an EPC Hearing, written notice is not required to be served because of the expedited nature of the hearing. Instead, the court administrator, or designee, shall use whatever method is available (such a phone call, email, or fax) to inform all parties and participants identified by the petitioner, and their attorneys, of the date, time, and location of the hearing. C. FILING OF LIST OF PERSONS CONTACTED. Before the EPC Hearing, each person who informed or attempted to inform persons of the hearing shall file with the court a written statement (i.e., an "EPC Hearing Contact List") describing the	<p>RJPP 30.02</p> <p>RJPP 32.03, subd. 2(a)</p> <p>RJPP 30.04</p>

¹ When calculating the 72-hour period, the day 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

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	<p>8.05 Providing Notice of Hearing (continued)</p> <p>efforts to inform the parties, participants, and attorneys of the EPC Hearing, including the date, time, and method of each effort to inform each such person and whether contact was actually made.</p> <p><i>Comment: The "EPC Hearing Contact List" is located on CourtNet with other child protection court forms.</i></p>	
8.06	<p>PERSONS WHO MUST BE INFORMED OF EPC HEARING</p> <p>The court administrator or designee must inform at least the following persons of the date, time, and place of the EPC Hearing:</p> <p>(a) County attorney;</p> <p>(b) Responsible social services agency (case worker);</p> <p>(c) Child, regardless of age;</p> <p>(d) Child’s guardian ad litem;</p> <p>(e) Child’s parent;</p> <p>(f) Child’s legal custodian;</p> <p>(g) Child’s spouse;</p> <p>(h) Child’s Indian custodian, if the child is an Indian child;</p> <p>(i) Child’s Indian tribe, if the child is an Indian child;</p> <p>(j) School district of residence pursuant to Minn. Stat. § 124A.47, subd. 6;</p> <p>(k) Attorney for the child, if one has been appointed; and</p> <p>(l) Attorney for the parent or legal custodian, if one has been appointed.</p>	<ul style="list-style-type: none"> • RJPP 30.02 • Minn. Stat. § 260C.163, subd. 2 • <i>Valentine v. Lutz</i>, 512 N.W.2d 868 (Minn. 1994) (not former foster parents) • <i>In re Welfare of Scott</i>, 309 Minn. 458, 244 N.W.2d 669 (Minn. 1976) (grandparents in private TPR)
8.07	<p>OTHER PEOPLE WHOSE PRESENCE MAY BE NEEDED</p> <p>Upon the request of any party, participant, or attorney, or as otherwise directed by the court, the following additional people may be notified of the EPC Hearing:</p> <p>(a) Extended family members who may serve as resources for the child and family;</p> <p>(b) Pre-adoptive parents and foster parents;</p> <p>(c) Law enforcement officers;</p> <p>(d) School officials;</p> <p>(e) Service providers;</p> <p>(f) Adult or juvenile probation or parole officer; and</p> <p>(g) Witnesses whose testimony may be necessary.</p>	<p>Resource Guidelines, p. 33</p>
8.08	<p>FILING OF PETITION</p> <p>A petition shall be filed with the court at or before the EPC Hearing, if such a hearing is required.</p>	<p>RJPP 30.07</p>
8.09	<p>TIMING OF SERVICE OF SUMMONS AND PETITION UPON PARTIES</p> <p>In a CHIPS matter, the summons and petition shall be served either at or before the EPC Hearing or at least three (3)² days prior to the Admit/Deny Hearing, whichever is earlier. If service is made outside the state or by publication, the summons shall be personally served, mailed, or last published at least ten (10) days before the hearing. In</p>	<ul style="list-style-type: none"> • RJPP 32.02, subd. 5(a) (timing of service summons and petition) • RJPP 30.07 (CHIPS petition served prior to EPC hearing)

² When calculating the three (3) days, the day service was made and any Saturday, Sunday, or legal holiday are 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.*

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	<p>8.09 Timing of Service of Summons and Petition Upon Parties (continued)</p> <p>cases where publication of a child in need of protection or services petition is ordered, published notice shall be made one time at least ten (10) days before the date of the hearing.</p>	
8.10	<p>CONTENT OF SUMMONS</p> <p>A. GENERALLY. A summons shall contain or have attached:</p> <ol style="list-style-type: none"> 1. A copy of the petition, court order, motion, affidavit or other legal documents not previously provided; however, these documents shall not be contained in or attached to the summons and complaint if the court has authorized service of the summons by publication; 2. A statement of the time and place of the hearing; 3. A statement describing the purpose of the hearing; 4. A statement explaining the right to representation pursuant to RJPP 25; and 5. A statement that failure to appear may result in: <ol style="list-style-type: none"> (a) The child being removed from home pursuant to a child in need of protection or services petition; (b) The parent’s parental rights being permanently severed pursuant to a termination of parental rights petition; (c) Permanent transfer of the child’s legal and physical custody to a relative; (d) A finding that the statutory grounds set forth in the petition have been proved; and (e) An order granting the relief requested. <p>B. CHILD IN NEED OF PROTECTION OR SERVICES MATTERS. In addition to the content requirements set forth above in section A, in any child in need of protection or services matter the summons shall also contain or have attached a statement that:</p> <ol style="list-style-type: none"> 1. If the person summoned fails to appear, the court may conduct the hearing in the person’s absence; and 2. A possible consequence of the hearing is that the child may be removed from the home of the parent or legal custodian and placed in foster care, and such removal may lead to other proceedings for permanent out-of-home placement of the child or termination of parental rights. <p>C. Termination of Parental Rights Matters. In addition to the content requirements set forth in sections A and B above, in any termination of parental rights matter the summons shall also contain or have attached a statement pursuant to Rule 18.01 that if the person summoned fails to appear the court may conduct the hearing in the person’s absence and the hearing may result in termination of the person’s parental rights.</p>	<p>RJPP 32.02, subd. 4(a)</p> <p>RJPP 32.02, subd. 4(b)</p> <p>RJPP 32.02, subd. 4(c)</p>

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	<p>8.10 Content of Summons (continued)</p> <p>D. Permanent Placement Matters. In addition to the content requirements set forth in sections A and B above, in any permanent placement matter the summons shall also contain or have attached a statement pursuant to Rule 18.01 that if the person summoned fails to appear the court may conduct the hearing in the person’s absence and the hearing may result in an order granting the relief requested in the petition.</p> <p><i>Comment: The Summons form located on CourtNet complies with the Rules content requirements, including stating the consequences of failure to appear.</i></p>	<p>RJPP 32.02, subd. 4(d)</p>
<p>8.11</p>	<p>PERSONS TO BE SERVED SUMMONS AND METHOD OF SERVICE</p> <p>A. PERSONS TO BE SERVED. The court administrator shall serve the Summons and Petition upon each party identified in RJPP 21 and upon any other person whose presence the court deems necessary to a determination concerning the best interests of the child. Pursuant to RJPP 21, parties are:</p> <ol style="list-style-type: none"> 1. The child, regardless of age, if the petition alleges the child to be a <u>truant, runaway, or engaged in prostitution</u> (otherwise the child is a participant and only receives notice of the hearing and the petition); 2. The child’s guardian ad litem; 3. The child’s legal custodian (defined in Chapter 3.34); 4. In the case of an Indian child, the child’s parents, Indian custodian, and Indian tribe through the tribal representative; 5. The petitioner; 6. Any person who intervenes as a party pursuant to RJPP 23; 7. Any person or agency joined as a party pursuant to RJPP 24, including the school district if joined in a <u>truancy</u> matter; 8. Any other person, including a child, who is deemed by the court to be important to a resolution that is in the best interests of the child. <p>B. METHOD OF SERVICE.</p> <ol style="list-style-type: none"> 1. Generally -- CHIPS, TPR, Other Permanency. Unless the court orders service by publication, the summons and petition shall be personally served upon the child’s parent or legal custodian, and personally or by U.S. mail upon all other parties and attorneys. 2. Habitual <u>Truant, Runaway, and Prostitution Matters.</u> <ol style="list-style-type: none"> (a) Generally. When the sole allegation is that the child is a habitual <u>truant</u>, a <u>runaway</u>, or engaged in prostitution, initial service may be made as follows: <ol style="list-style-type: none"> (1) the court may send notice and a copy of the petition or notice to appear by U.S. mail to the legal custodian, the person with custody or control of the child, and each party and participant; or 	<p>RJPP 32.02, subd. 2</p> <p>RJPP 21.01 (identifies parties)</p> <p>Minn. Stat. 260C.151, subd. 1</p> <p>RJPP 32.02, subd. 3(a)</p> <p>RJPP 32.02, subd. 3(b)(1)</p>

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	<p>8.11 Persons to be Served Summons and Method of Service (continued)</p> <p>(2) a peace officer may issue a notice to appear or a citation.</p> <p>(b) Failure to Appear. If the child or the child’s parent or legal custodian or the person with custody or control of the child fails to appear in response to the initial service, the court shall order such person to be personally served with a summons.</p> <p>3. Voluntary Placement – Service by Mail. In all cases involving a voluntary placement of a child pursuant to RJPP 44, the summons shall be served by U.S. mail upon the parent or legal custodian.</p> <p>C. WAIVER. Service is waived by voluntary appearance in court or by a written waiver of service filed with the court.</p> <p>D. FAILURE TO APPEAR. If any person personally served with a summons or subpoena fails, without reasonable cause, to appear or bring the child if ordered to do so, or if the court has reason to believe the person is avoiding personal service, the court may sua sponte or upon the motion of a party or the county attorney pursuant to RJPP 15 proceed against the person for contempt of court or the court may issue a warrant for the person’s arrest, or both. When it appears to the court that service will be ineffectual, or that the welfare of the child requires that the child be immediately brought into the custody of the court, the court may issue a warrant for immediate custody of the child.</p> <p><i>Comment: Pursuant to Minn. Stat. § 260C.181, subd. 3, a child taken into custody by reason of having been adjudicated in need of protection or services, including a child who is a <u>truant</u> or <u>runaway</u>, and including a child who has been conditionally released by the court without adjudication, “may be placed only in a shelter care facility.” “Shelter care facility” means a “physically unrestricting facility.” Thus, a child who fails to appear may be taken into custody, but may not be held in secure detention.</i></p>	<p>RJPP 32.02, subd. 3(b)(2)</p> <p>RJPP 32.02, subd. 3(c)</p> <p>RJPP 32.02, subd. 6</p> <p>RJPP 32.02, subd. 7</p> <p>RJPP 15 (specifies process for serving and filing motions)</p> <ul style="list-style-type: none"> • Minn. Stat. § 260C.181, subds. 1, 3 (child, including truant or runaway, may be placed only in a non-secure “shelter care facility”) • RJPP 28.03(a) (lists shelter care facility as placement option at EPC Hearing) • RJPP 2.01(28) (“shelter care facility” defined as physically unrestricting) <p>Minn. Stat. § 260C.007, subd. 30 (“shelter care facility” defined as physically unrestricting)</p>

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8.12	<p>INSPECTION OF REPORTS</p> <p>Prior to the EPC Hearing, the parties shall be permitted to inspect reports or other written information or records that any party intends to present at the hearing.</p> <p><i>Comment: RJPP 30.03 places upon each party the burden of permitting inspection by opposing parties of all documentation the party intends to introduce at the hearing. The rule is intended to ensure that the parties have the relevant information before the hearing so they are prepared to respond. This rule is not intended to limit discovery allowed by RJPP 17.</i></p>	RJPP 30.03
	HEARING PROCEDURE	
8.13	<p>ADVISORY</p> <p>At the beginning of the emergency protective care hearing the court shall on the record advise all parties and participants present of:</p> <ul style="list-style-type: none"> (a) the reasons why the child was taken into emergency protective care; (b) the substance of the statutory grounds and supporting factual allegations set forth in the petition; (c) the purpose and scope of the hearing; (d) the possible consequences of the proceedings; (e) the right of the parties and participants to legal representation, including the right of the child, the child’s parent or legal custodian, and the child’s Indian custodian to court appointed counsel pursuant to Rule 25; (f) the right of the parties to present evidence and to cross-examine witnesses regarding whether the child should return home with or without conditions or whether the child should be placed in protective care; and (g) that failure to appear at future hearings could result in a finding that the petition has been proved, issuance of an order adjudicating the child in need of protection or services, and an order transferring permanent legal and physical custody of the child to another. 	RJPP 30.05
8.14	<p>IDENTIFICATION OF FILE NAME AND NUMBER AND PERSONS PRESENT</p> <p>At the commencement of the hearing, the court shall on the record:</p> <ol style="list-style-type: none"> 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. 	<p>See RJPP 34.03</p> <p>Minn. Stat. § 260C.163, subd. 7</p>

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8.15	<p>INITIAL PROCEDURES</p> <p>A. CHIPS Proceedings</p> <p>At the commencement of the hearing the court shall:</p> <ol style="list-style-type: none"> 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. Review the “EPC Hearing Contact” list located in the court file and 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 either at or before the commencement of the hearing. 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. 8. If the parties agree to combine an Admit/Deny Hearing with the EPC Hearing, determine whether the affected person waives the 3-day service requirement if the notice requirements have not been met; if the person does not waive the 3-day service requirement, an Admit/Deny Hearing cannot be commenced in conjunction with the EPC Hearing. <p>B. Termination of Parental Rights Matters.</p> <p>(a) In each termination of parental rights matter, after completing the initial inquiries set forth in subdivision 1, the court shall determine whether the petition states a prima facie case in support of one or more statutory grounds set forth in the petition to terminate parental rights and a prime facie showing that a juvenile protection matter exists and that the child is the subject of the matter. 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.</p>	<p>RJPP 30.05</p> <p>RJPP 34.03</p>

PROCEDURE	AUTHORITY
<p>8.15 Initial Procedures (continued)</p> <p>(b) When the petition alleges that reasonable efforts, or active efforts in the case of an Indian child, have been made to reunify the child with the parent or legal custodian, the court shall enter a separate finding regarding whether the factual allegations contained in the petition state a prima facie case that the agency has provided reasonable efforts, or active efforts in the case of an Indian child, to reunify the child and the parent or legal custodian. In the alternative, the court may enter a finding that reasonable efforts to reunify the child and the parent or legal custodian were not required under Minnesota Statutes § 260.012.</p> <p>(c) If the court determines that the petition states a prima facie case in support of termination of parental rights, the court shall proceed pursuant to Rule 35. If the court determines that the petition fails to state a prima facie case in support of termination of parental rights, the court shall:</p> <ul style="list-style-type: none">(i) return the child to the care of the parent or legal custodian;(ii) give the petitioner ten (10) days to file an amended petition or supplementary information if the petitioner represents there are additional facts which, if presented to the court, would establish a prima facie case in support of termination of parental rights;(iii) give the petitioner ten (10) days to file a child in need of protection or services petition; or(iv) dismiss the petition. <p>C. Permanent Placement Matters.</p> <p>(a) In each permanent placement matter, after completing the initial inquiries set forth in subdivision 1, the court shall review the facts set forth in the petition, consider such argument as the parties may make, and determine whether the petition states a prima facie case in support of one or more of the permanent placement options.</p> <p>(b) When the petition seeking permanent placement of the child away from the parent or legal custodian requires a determination by the court that reasonable efforts, or active efforts in the case of an Indian child, have been made to reunify the child with the parent or legal custodian, the court shall enter a separate finding regarding whether the factual allegations in the petition state a prima facie case that the agency has provided reasonable efforts, or active efforts in the case of an Indian child, to reunify the child and the parent or legal custodian. In the alternative, the court may enter a finding that reasonable efforts were not required under Minnesota Statutes § 260.012.</p>	<p>RJPP 34.03</p> <p>RJPP 34.03</p>

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	<p>8.15 Initial Procedures (continued)</p> <p>(c) If the court determines that the petition states a prima facie case, the court shall proceed pursuant to Rule 35. If the court determines that the petition fails to state a prima facie case, the court may:</p> <ul style="list-style-type: none"> (i) return the child to the care of the parent; (ii) give the petitioner ten (10) days to file an amended petition or supplementary information if the petitioner represents there are additional facts which, if presented to the court, would establish a prima facie case; or (iii) dismiss the petition. 	RJPP 34.03
8.16	<p>GENERAL RIGHTS ADVISORY</p> <p>A. INQUIRE ABOUT VIEWING OF VIDEO. Inquire whether the parties and participants have viewed the video entitled “<i>In the Best Interests of Your Child.</i>” 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.</p> <p><i>Comment: Contact State CJI Staff at 651-297-7587 if your court has not received a copy of the video.</i></p> <p>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:</p> <ol style="list-style-type: none"> 1. The purpose of the hearing: To determine whether the conditions that necessitated removal of the child from the home have been mitigated to the degree that it is safe for the child to return home and, if the parties agree, to also determine whether the pertinent parties wish to admit or deny the statutory allegations stated in the petition. 2. The possible consequences of failure to appear at hearings: <ol style="list-style-type: none"> (1) A finding that the petition has been proved, (2) An order adjudicating the child 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) Arrest and/or contempt of court. 3. 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 	<p>See RJPP 30.05</p> <ul style="list-style-type: none"> • RJPP 21.02 • RJPP 22.02 <p>RJPP 30.01</p> <ul style="list-style-type: none"> • RJPP 34.03, subd. 1(h) • RJPP 32.02, subd. 4(a)(5) • RJPP 18.01 (default options) • RJPP 32.02, subd. 7 (contempt or warrant for arrest may be issued) <p>Minn. Stat. § 260C.201 (permanency decision may include permanent removal of the child)</p>

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	<p>8.16 General Rights Advisory (continued)</p> <p>parent’s rights or transferring permanent legal and physical custody of the child to another.</p> <p>4. 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.</p> <p>a. Right to Representation Generally: Every party and participant has the right to be represented by counsel in every juvenile protection matter, including through appeal, if any. This right attaches no later than when the party or participant first appears in court. This does not mean the person has the right to court-appointed counsel.</p> <p>b. Right to Representation – Child: The child is entitled to counsel as follows:</p> <p>(1) Except in proceedings where the sole basis for the petition is habitual <u>truancy</u>, if the child desires counsel but is financially unable to employ one, the court shall appoint counsel to represent the child who is 10 years of age or older and may appoint counsel to represent a child under age 10 in any case in which the court determines that such appointment is appropriate.</p> <p>(2) In any proceeding where the sole basis for the petition is habitual <u>truancy</u>, the child does not have the right to appointment of a public defender or other counsel at public expense. However, before any out-of-home placement can be ordered, including foster care or inpatient treatment, the court shall appoint a public defender or other counsel at public expense to represent the child.</p> <p>(3) In any juvenile protection matter involving an Indian child, the court in its discretion may appoint counsel for an Indian child upon finding that such appointment is in the best interests of the child.</p> <p>(4) Counsel for the child shall not serve as the child’s guardian ad litem.</p> <p>c. Right to Representation – Parent or Legal Custodian:</p> <p>1. Except in proceedings where the sole basis for the petition is <u>truancy</u>, if the child’s parent or legal custodian desires counsel but is financially unable to employ one, the court shall appoint counsel to represent the parent or legal custodian in any juvenile protection matter in which the court determines that such appointment is appropriate.</p>	<p>RJPP 25</p> <p>RJPP 25.01</p> <ul style="list-style-type: none"> • RJPP 25.02, subd. 1(a) • Minn. Stat. § 260C.163, subd. 3(b) • RJPP 25.02, subd. 1(b) • Minn. Stat. § 260C.163, subd. 3(c) • RJPP 25.02, subd. 1(c) • 25 U.S.C. § 1912(b) RJPP 25.02, subd. 1 • RJPP 25.02, subd. 2(a) • Minn. Stat. § 260C.163, subd. (d)

	PROCEDURE	AUTHORITY
	<p>8.16 General Rights Advisory (continued)</p> <p>2. In any proceeding where the sole basis for the petition is <u>truancy</u>, the parent or legal custodian does not have the right to appointment of a public defender or other counsel at public expense. However, before ordering out-of-home placement the court shall appoint counsel.</p> <p>3. In any juvenile protection matter involving an Indian child, if the child’s parent or Indian custodian is unable to afford it, the court shall appoint counsel to represent the parent or Indian custodian.</p> <p>d. Right to Representation – Guardian Ad Litem: The court may appoint separate counsel for the guardian ad litem if necessary. A public defender may not be appointed as counsel for a guardian ad litem.</p> <p>e. Reimbursement: When an attorney or a guardian ad litem is appointed for a child or a child’s parent or legal custodian, the court may inquire into the ability of the parent or legal custodian to pay for the person’s services and, after giving the parent or legal custodian a reasonable opportunity to be heard, may order the parent or legal custodian to pay such fees.</p> <p>5. Basic procedural rights of a party, including the right to:</p> <p>a. Notice of all hearings;</p> <p>b. Legal representation;</p> <p>c. Be present at all hearings unless excluded;</p> <p>d. Conduct discovery, including copies of social services file;</p> <p>e. Bring motions before the court;</p> <p>f. Participate in settlement agreements;</p> <p>g. Subpoena witnesses to testify on the person’s behalf;</p> <p>h. Cross-examine other parties’ witnesses;</p> <p>i. Make argument in support of or against the petition;</p> <p>j. Present evidence;</p> <p>k. Request review of the referee’s findings and recommended order, where applicable;</p> <p>l. Request review of the court’s disposition upon a showing of a substantial change of circumstances or that the previous disposition was inappropriate;</p> <p>m. Bring post-trial motions;</p> <p>n. Appeal from final orders of the court.</p>	<ul style="list-style-type: none"> • RJPP 25.02, subd. 2(b) • Minn. Stat. § 260C.163, subd. 3(b) • RJPP 25.02, subd. 2(c) • Minn. Stat. § 260C.163, subd. 5(a) • RJPP 26.05 (GAL) • RJPP 25.03 (attorney) • Minn. Stat. § 260C.163, subd. 3 (attorney) • Minn. Stat. § 260C.163, subd. 5 (GAL) • Minn. Stat. § 260C.331, subds. 5 and 6 (attorney and GAL) • RJPP 21.02

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	<p>8.16 General Rights Advisory (continued)</p> <p>6. Basic procedural rights of a participant, including the right to:</p> <ol style="list-style-type: none"> Notice of all hearings; A copy of the petition; Be present at all hearings, unless excluded; and Offer information at the discretion of the court. <p>7. The expedited permanency timeline. If the child has been ordered into out-of-home placement and has not been returned home:</p> <p>(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.</p> <p>(1) If the parent is complying with the case plan <u>and</u> 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:</p> <ol style="list-style-type: none"> 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 court must conduct a Permanent Placement Determination Hearing if the child has not been safely returned home. <p>(2) If the parent is not complying with the case plan <u>or</u> 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.</p> <p>(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</p>	<p>RJPP 22.02, subd. 1</p> <ul style="list-style-type: none"> • RJPP 42.02, subd. 2 • Minn. Stat. § 260C.201, subd. 11a <ul style="list-style-type: none"> • RJPP 42.04 • Minn. Stat. § 260C.201, subd. 11(a)

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	rights or permanently transferring the child’s legal and physical custody to a relative.	
8.17	<p>UNDERSTANDING OF STATUTORY GROUNDS AND FACTUAL ALLEGATIONS</p> <p>At the beginning of the hearing, the court on its own may explain, or may ask the county attorney to explain, the following:</p> <ol style="list-style-type: none"> 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. <p>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.</p>	<p>RJPP 30.05(a), (b)</p> <p>Resource Guidelines, p. 31-32, 36</p>
8.18	<p>MOTIONS</p> <p>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.</p> <p>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.</p> <p>C. INTERVENTION. The court should determine whether there are any motions to intervene.</p>	<p>RJPP 34.03, subd. 5</p> <p>RJPP 35.01, subd. 3</p> <p>RJPP 23.03 (automatic and permissive intervention)</p>
8.19	<p>TYPE OF EVIDENCE ADMISSIBLE DURING EPC HEARING</p> <p>At the EPC Hearing the court may admit any evidence, including reliable hearsay and opinion evidence, that is relevant to the decision of whether to continue protective care of the child or return the child home. Privileged communications may be admitted in accordance with Minnesota Statutes § 626.556, subd. 8.</p> <p><i>Comment: Minn. Stat. § 626.556, subd. 8, provides that "no evidence relating to the neglect or abuse of a child or to any prior incidents of abuse or neglect involving any of the same persons accused of neglect or abuse shall be excluded in any proceeding arising out of the alleged neglect or abuse on the grounds of privilege set forth in Minn. Stat. § 595.02, subd. 1(a), (d) and (g)." Minn. Stat. 595.02, subd. 1(a), (d), and (g) deal with communication between husband and wife, and between medical or therapeutic professional and patient. While such communications might otherwise be privileged, they shall not be excluded during child protection proceedings.</i></p>	<p>RJPP 30.06</p> <ul style="list-style-type: none"> • Minn. Stat. § 626.556, subd. 8 • Minn. Stat. § 595.02
8.20	<p>EVIDENCE REQUIRED TO BE PRESENTED BY PETITIONER</p> <p>Except in cases where “egregious harm” (see definition in Chapter 3.20) is alleged, or when the parental rights of the parent to a sibling of the child have been terminated involuntarily, or the child is an “abandoned infant” (see definition in Chapter 3.01), at the EPC Hearing the court shall require the petitioner to present information in the petition, sworn affidavit, certified report, or on the record regarding the following issues:</p>	<ul style="list-style-type: none"> • RJPP 30.09, subd. 1; • Minn. Stat. § 260.012 (requires reasonable efforts or active efforts if Indian child, to prevent placement or to

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	<p>8.20 Evidence required to be presented by petitioner (continued)</p> <ol style="list-style-type: none"> 1. Whether the responsible social services agency made reasonable efforts, or active efforts in the case of an Indian child, to prevent or eliminate the need for removal of the child from the home; <i>Comment: Reasonable efforts are not required if "egregious harm"³ is alleged.</i> 2. Whether there are services the court could order that would allow the child to safely return home; 3. Whether responsible relatives or other responsible adults are available to provide services or to serve as placement options if licensed; 4. Whether the placement proposed by the agency is the least restrictive and most home-like setting that meets the needs of the child; 5. Whether restraining orders, or orders expelling an allegedly abusive parent from the home, are appropriate; 6. Whether orders are needed for examinations, evaluations, or immediate services; 7. The terms and conditions for parental visitation; and 8. What consideration has been given for financial support of the child. 	<p>reunify if child was placed)</p>
<p>8.21</p>	<p>REQUIRED FINDINGS/DETERMINATIONS</p> <p>A. PRIMA FACIE 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.</p> <p>B. PROTECTIVE CARE DETERMINATION.</p> <ol style="list-style-type: none"> 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: <ol style="list-style-type: none"> (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. <i>Comment: This is a critical finding not only for the sake of the child and family, but also for federal funding for foster care placement.</i> 	<p>RJPP 30.08, subd. 1</p> <p>RJPP 30.08, subd. 1(b)</p> <ul style="list-style-type: none"> • RJPP 30.08, subd. 1(b)(3) • Minn. Stat. § 260C.178, subd. 1(d); • 42 U.S.C. § 672(1) • 45 C.F.R. § 1356.21(c)

³ See footnote 2 for definition of "egregious harm."

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	<p>8.21 Required Findings/Determinations (continued)</p> <p>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.</p> <p>C. Indian Child Determination. The court shall determine whether the child is an Indian child through review of the petition and other documents and an on-the-record inquiry. If the court is unable to determine whether the child is an Indian child, the court shall direct the petitioner to make further inquiry and provide to the court and parties additional information regarding whether the child is an Indian child.</p> <p>D. Emergency Removal and Placement Authority For Indian Child Ward, Resident, or Domiciliary.</p> <p>(a) Finding. If the district court finds from review of the petition or other information that an Indian child resides or is domiciled on an Indian reservation or that an Indian child is a ward of tribal court but is temporarily located off the reservation, the district court may order emergency removal of the child from the child’s parent or Indian custodian and emergency placement in foster care.</p> <p>(b) Required Actions for Wards of Tribal Court. If the district court finds from review of the petition or other information that an Indian child is a ward of tribal court, the court shall order that the child be expeditiously returned to the jurisdiction of the Indian child’s tribe and shall consult with the tribal court regarding the child’s safe transition pursuant to Rule 48.02, subd. 1.</p> <p>E. 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. In the alternative, the court shall determine that reasonable efforts are not required if the court makes a prima facie determination that the case is one permitting bypass of reasonable or active efforts (see Chapter 29).</p>	<p>RJPP 30.08, subd. 1(b)(2)</p> <p>RJPP 30.08, subd. 2</p> <ul style="list-style-type: none"> • RJPP 30.08, subd. 3 • 25 USC § 1911(a) • Minn. Stat. 260.771, subd. 1 • Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30 (1989) <ul style="list-style-type: none"> • RJPP 30.09, subd. 2. • Minn. Stat. § 260.012(b) and (c) • 25 U.S.C. § 1912 (e) and (f) • <i>Matter of Welfare of M.S.S.</i>, 465 N.W.2d 412 (Minn. Ct. App. 1991)

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	<p>8.21 Required Findings/Determinations (continued)</p> <p>F. BYPASS CASES: REASONABLE EFFORTS FOR REUNIFICATION ARE NOT REQUIRED.</p> <p>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:</p> <p>(1) 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”;</p> <p>(2) Whether the county attorney has determined not to proceed with a termination of parental rights petition under Minn. Stat. § 260C.307; or</p> <p>(3) 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.</p> <p>2. Permanency Hearing Required. Once the court makes the determination required above, the court shall schedule a permanency hearing within 30 days unless the county attorney files a petition to terminate parental rights.</p>	<ul style="list-style-type: none"> • Minn. Stat. § 260.012(a) • Minn. Stat. 260C.178 • Minn. Stat. § 260C.301, subd. 3 • Minn. Stat. § 260.012(a), (d) • RJPP 30.09, subd. 3 <p>RJPP 30.09, subd. 3(b)</p>
8.22	<p>ADMISSION OR DENIAL</p> <p>Upon agreement of the parties, an Admit/Deny hearing may be combined with an EPC Hearing. A party may not be required to enter an admission or denial to a petition if the party was not in possession of the petition at least three (3) days before the hearing.</p> <p><i>Comment: If an admission or denial is entered, proceed to the Admit/Deny Hearing Chapter (Benchbook Chapter 8). If no admission at EPC hearing, schedule an Admit/Deny hearing to take place within ten (10) days of the EPC hearing.</i></p>	<ul style="list-style-type: none"> • RJPP 34.02, subd. 1 • RJPP 32.02, subd. 5(a)
8.23	<p>FINDINGS, DETERMINATIONS, AND ORDER</p> <p>The court shall determine the following, which shall be included in the order:</p> <ol style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> • RJPP 30.09 • RJPP 30.10

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	<p>8.23 Findings, Determinations and Order (continued)</p> <p>6. The parents’ names, addresses, and dates of birth.</p> <p>7. The father’s legal status as of the date of the hearing as either alleged, adjudicated, presumed, custodial, or unknown.</p> <p>8. Whether paternity must be established for any father, and order paternity testing if appropriate.</p> <p>9. Whether the child is an Indian child and, if so, whether the child’s parent or Indian custodian and Indian tribe were served with the ICWA notice by the petitioner by registered mail, return receipt requested, and whether the return receipt is located in the court file, and whether the tribe was timely notified of the hearing.</p> <p>10. If the child is determined to be an Indian child and is proposed to be placed in foster care, testimony of a qualified expert witness pursuant to Rule 49 (chapter 35).</p> <p>11. 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.</p> <p>12. The child’s placement pending further proceedings, including whether the child shall:</p> <ol style="list-style-type: none"> 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. <p><i>Comment: Do not order child into specific foster home or with unlicensed relative for the following reasons:</i></p> <ul style="list-style-type: none"> <i>Minn. Stat. § 260C.201, subd. 1(a)(2)(ii), and § 260C.212, subd. 2, make it the responsibility of the agency to make an individualized determination as to how the particular placement selected meets the child’s needs and best interests;</i> <i>Minn. Stat. § 245A prohibits an agency from making a placement in an unlicensed facility; and</i> <i>45 C.F.R. § 1356.21(g)(3) prohibits Title IV-E reimbursement for a placement when the court orders a specific provider.</i> <p>13. 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.</p> <p>14. The conditions, if any, to be imposed upon the parent, legal custodian, or a party.</p> <p>15. 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.</p> <p>16. 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).</p> <p>17. The terms of parental and sibling visitation pending further proceedings.</p>	<ul style="list-style-type: none"> • RJPP 30.09 • RJPP 30.10 <ul style="list-style-type: none"> • Minn. Stat. § 260C.201, subd. 1(a)(2)(ii) • Minn. Stat. § 260C.212, subd. 2 • Minn. Stat. § 245A • 45 C.F.R. § 1356.21(g)(3)

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	<p>8.23 Findings, Determinations and Order (continued)</p> <p>18. The parent’s responsibility for costs of care (see definition in Chapter 3.14) pursuant to Minn. Stat. § 260C.331, subd. 1.</p> <p>19. Set the date for the next hearing.</p> <p>20. A statement 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 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 12 months of the child’s court-ordered removal if the child has not been returned home.</p> <p>21. Any findings regarding admission or denial (see Chapter 9.22 for additional orders content regarding admission or denial).</p> <p>22. A statement that, unless otherwise modified by this order, all previous orders shall remain in full force and effect.</p>	<ul style="list-style-type: none"> • RJPP 30.09 • RJPP 30.10
8.24	<p>ORDER</p> <p>A. ORAL ORDER REDUCED TO WRITTEN ORDER. Court orders may be written or stated on the record. An order stated on the record shall also be reduced to writing.</p> <p>B. TIMING OF ORDER. The order shall be filed with the court administrator within 15 days of the conclusion of the testimony; the court may add an additional 15 days if it finds that good cause exists and the extra time is in the best interests of the child. An order shall remain in full force and effect until the first occurrence of one of the following:</p> <ol style="list-style-type: none"> 1. Issuance of an inconsistent order; 2. The order ends pursuant to the terms of the order; or 3. Jurisdiction of the juvenile court is terminated. <p>C. IMMEDIATE EFFECT OF ORAL ORDER. Unless otherwise ordered by the court, orders on the record are effective immediately.</p> <p>D. DELIVERY; MAILING. Court orders shall be:</p> <ol style="list-style-type: none"> 1. Delivered at the close of the hearing; or 2. Mailed by the court administrator to each party, the county attorney, and such other persons as the court may direct. 3. If a party is represented by counsel, delivery or service shall be upon counsel. If service of the summons was by publication and the person has not appeared either personally or through counsel, service of court orders upon the person is not required. Filing and mailing of the order by the court administrator must be accomplished within 15 days of the date the judicial officer delivers the order to the court administrator. <p><i>Comment: While the Rule provides that service shall be upon counsel for a party is the party is represented, the best practice is to also provide a copy directly to the party to ensure it is timely received and to allow the parent to more quickly begin work on the case plan. The best practice is to distribute the order at the close of the hearing.</i></p>	<p>RJPP 10.01</p> <p>RJPP 10.01</p> <p>RJPP 10.02</p> <p>RJPP 10.03</p>

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8.25	<p>NOTICE OF SUBSEQUENT HEARINGS</p> <p>For each hearing following the EPC 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:</p> <ol style="list-style-type: none"> 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 5 days before the date of the next hearing, or 3. Mailed 10 days before the date of the hearing if mailed to an address outside the state. 	RJPP 32.04