

Emergency Removal Hearing (Child Placed at Home)

Judicial Bench Card

MCR 3.974 | SCAO Form JC 75

An emergency removal hearing is conducted when the agency requests that a child, over whom the court has authorized a petition but maintained in his or her home, be removed from the home.

When to use this Bench Card

When an amended or supplemental petition is filed seeking the child's removal from home and either:

- The child was taken into protective custody pursuant to MCL 712A.14b (the court must conduct this hearing within 24 hours. MCR 3.974(C)(3)); OR
- The petitioner requests a hearing to remove the child from home. MCR 3.974(B).

If the court has not taken jurisdiction in the case (preadjudication), the court must conduct an Emergency Removal Hearing in the manner prescribed in MCR 3.965, Preliminary Hearing.

Procedural Issues

Was legally sufficient notice given to the parties?

Inquire if the child or either parent is a member of an Indian Tribe. If so or possible see the ICWA/MIFPA Bench Card & [MJI Quick Reference Flowcharts](#) for the heightened removal standards.

The parent(s) must be given an opportunity to make a statement as to why the child should not be removed from, or should be returned to, the custody of the parent.

If a parent is in a Michigan prison, he or she must be afforded an opportunity to participate in person or via telephone/video conference in compliance with [MCR 2.004](#). A parent incarcerated in an out-of-state facility may attend a hearing via telephone/videoconference.

Advise the respondent of the following rights:

1. To be represented by an attorney at the hearing;
2. To contest the continuing placement at the hearing within 14 days; and
3. To use the compulsory process to obtain witnesses for the hearing.

★ Required Judicial Findings/Orders

The court must determine whether to:

- Remove the child from the home pursuant to the *Out-of-Home Placement Standards* (below), or maintain the child in the home under the court supervision; OR
- Return the child home if taken into protective custody.

The court must inquire whether a family member can take custody of the child pending the next hearing; and whether there has been a central registry clearance and criminal history check.

The written order must contain specific findings of fact.

The order must be communicated, electronically or otherwise, to MDHHS.

Out-of-Home Placement Standards

The court may place a child in foster care if it finds **ALL** of the following five conditions. [MCL 712A.13a\(9\)](#).

1. Substantial risk of harm to child's life, physical health, or mental well-being.
2. No service or other arrangement is reasonably available to adequately safeguard the child from the substantial risk of harm.
3. Continuing child's residence in home is contrary to child's welfare.
4. Reasonable efforts were made to prevent/eliminate need for removal (not required if the parent has subjected the child to aggravated circumstances as listed in [MCL 722.638](#)); and
5. Conditions away from the parent are adequate to safeguard the child's health and welfare.

Continued on Reverse

Emergency Removal Hearing (Child Placed at Home) Cont. Judicial Bench Card

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Federal Title IV-E Judicial Findings

Contrary to the Welfare to Remain in the Home

Must be made in the first court order authorizing removal. The court order must be signed the same day as the removal to preserve Title IV-E Federal eligibility.

- Why is it contrary to the child's welfare to remain in the home? What is causing an imminent risk of harm?
- What special conditions make the home an unsafe place for the child, requiring removal?
- What prevents the child from remaining in/returning home today?

Reasonable Efforts to Prevent Removal

Must be made within 60 days of removing the child from the home (state law requires this finding at removal or placement into foster care). Federal funding will not begin until the finding is made.

- Has the agency made reasonable efforts to prevent the child's removal from the home?
- Were there any pre-hearing conferences or meetings, such as a Family Team Meeting (FTM), that included the family?
- What services were considered and offered to allow the child to remain at home?
- What was done to create a safety plan to allow the child to remain at home or in the home of another without court involvement?

Placement and Permanency Issues

Have relatives been identified and considered for placement or meaningful contact with the child?

What diligent efforts have been made to locate and engage them?

If there is a putative father, has he been advised of his responsibility to establish paternity?

Will the child need to change schools?

Family Time with Parent(s) & Sibling

Family time should occur **as often as possible** but must occur at a minimum of at least once a week unless exigent circumstances exist.

Where and how frequently has parenting time occurred? Are the visits supervised or unsupervised?

What is the plan for sibling visitation or interaction?

Denial of parenting time may not be used as a punishment for noncompliance with the case service plan.

How does the parenting time plan incorporate continued parental responsibilities such as appointments, school events, or extracurricular activities?

If supervised parenting time is requested, what are the specific safety risks preventing unsupervised parenting time?

What is needed for expanded or unsupervised parenting time?

Consider additional electronic contact (email, phone, etc.) between visits.

Next Hearing Required

If the court removes the child at this Emergency Removal Hearing and:

- The child is not already under the jurisdiction of the court: schedule a pretrial conference or adjudication hearing; OR
- The child is already under the court's jurisdiction but the court has not held a dispositional hearing: schedule and conduct a dispositional hearing within 28 days: OR
- The child is already under the court's jurisdiction and the court has already conducted a dispositional hearing: schedule a dispositional review hearing within 14 days.