

Order for Protective Custody ~ Judicial Bench Card

MCR 3.963 | SCAO Form JC 05b | MCL 712A.14a & 712A.14b

To take a child into protective custody due to imminent circumstances, the Michigan Department of Health and Human Services (MDHHS) must petition the court for a protective custody and placement order.

When to use this Bench Card

MDHHS petitions the court for a placement order after law enforcement takes a child into protective custody without a court order; OR
MDHHS petitions the court for an ex parte removal and placement order based on imminent danger.

Procedural Issues

The Judge or Referee may enter a written ex parte removal and placement order, electronically or otherwise, authorizing MDHHS to take a child into protective custody and place the child into foster care. The court must inquire whether a family member is available to take custody of the child, and whether there was a central registry clearance and criminal history check completed.
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, and ensure notice to the tribe(s).
If there are allegations against only one of the two legal parents, is the other legal parent able to assume physical custody of the child?

★ Required Judicial Findings/Orders

Determine if the child should be placed in protective custody pending the next hearing by making written findings of fact for each of the protective custody standards (see next section).
The court may authorize entry into specified premises to remove the child as part of the protective custody order.
Provide a signed and written order to MDHHS electronically or otherwise.
Schedule a Preliminary Hearing (if the court has not already taken jurisdiction of the child) or an Emergency Removal Hearing (if the court has previously authorized a petition for the child) to be held within 24 hours.

Protective Custody Standards

Upon receipt of a petition or affidavit, a judge or referee may issue a written ex parte order authorizing MDHHS to immediately take a child into protective custody and place the child if the court finds ***all of the following***:

1. There is reasonable cause to believe that the child is at substantial risk of harm or is in surroundings that present an imminent risk of harm and the child's immediate removal is necessary to protect the child's health and safety.
2. The circumstances warrant issuing an ex parte order pending the preliminary hearing.
3. Consistent with the circumstances, reasonable efforts were made to prevent or eliminate the need for removal of the child (not required if the parent has subjected the child to aggravated circumstances as listed in [MCL 722.638](#)).
4. No remedy other than protective custody is reasonably available to protect the child.
5. It is contrary to the welfare of the child to remain in the home.

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 funding eligibility.

- Why is it contrary to the child's welfare to remain in the home? What is causing an imminent risk of harm?
- What specific conditions make the home an unsafe place for the child, requiring removal?
- What prevents the child from remaining in the 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?
- Would any services or a safety plan allow the child to safely remain in the home?