

Module 6: Emergency Proceedings

Module 6: Emergency Proceedings

- Overview
- Standard
- Petition Contents
- Termination of Emergency
- Limit on Length

This module is important because many children are removed on an emergency basis and this portion of the statute and rule limit emergency removals and placements to only those situations where they are absolutely necessary, and even then, that they last only as long as absolutely necessary.

Module 6: Emergency Proceedings Overview

- Emergency proceeding: any court action that involves an emergency removal or emergency placement of an Indian child.
 - Federal standard for emergency removal / placement
 - Petition contents (recommended)
 - Federal limit on how long emergency removal / placement can last without initiating a full “child custody proceeding” (i.e., with the full suite of ICWA protections) under the Act

Module 6: Emergency Proceedings Standard

- Federal standard
 - The State court must make a finding on the record that the emergency removal or placement is necessary to prevent “imminent physical damage or harm to the child”
 - Undefined, but BIA has determined this may include endangerment of the child’s health, safety, and welfare, not just bodily injury or death

Module 6: Emergency Proceedings

Petition Contents

- Petition (or its attachments) for a court order authorizing the emergency removal or continued emergency placement should contain:
 - A statement of the risk of “imminent physical damage or harm to the Indian child” and any evidence that the emergency removal or placement continues to be necessary to prevent such imminent physical damage or harm to the child
 - The name, age, and last known address of the child;
 - The name and address of the child’s parents and Indian custodians, if any;
 - The steps taken to provide notice to the child’s parents, custodians, and Tribe about the emergency proceeding;...

Module 6: Emergency Proceedings Petition Contents

- Petition (or its attachments) contents (cont'd):
 - If the child's parents and Indian custodians are unknown, a detailed explanation of what efforts have been made to locate and contact them, including contact with the appropriate BIA Regional Director (see www.bia.gov);
 - The residence and the domicile of the child;
 - If either the residence or the domicile of the child is believed to be on a reservation or in an Alaska Native village, the name of the Tribe affiliated with that reservation or village;...

Module 6: Emergency Proceedings Petition Contents

- Petition (or accompanying documents) contents (cont'd):
 - The Tribal affiliation of the child and of the parents or Indian custodians;
 - A specific and detailed account of the circumstances that led the agency responsible to take emergency removal action;
 - If the child is believed to reside or be domiciled on a reservation where the Tribe exercises exclusive jurisdiction over child-custody matters, a statement of efforts that have been made and are being made to contact the Tribe and transfer the child to the Tribe's jurisdiction; and
 - A statement of the efforts that have been taken to assist the parents or Indian custodians so the child may safely be returned to their custody

Module 6: Emergency Proceedings

Termination of Emergency

- An emergency proceeding can be terminated by:
 - Initiating a child-custody proceeding subject to the provisions of ICWA (e.g., an involuntary foster care placement proceeding);
 - Transferring of the child to the jurisdiction of the appropriate Indian Tribe; or
 - Restoring the child to the parent or Indian custodian

Module 6: Emergency Proceedings

Limit on Length

- Federal limit on length of emergency removal / placement
 - Whenever new information indicates that the emergency situation has ended, the court must promptly hold a hearing on whether the emergency removal / placement continues to be necessary
 - At any court hearing during the emergency proceeding, court must determine whether the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child
 - The court must immediately terminate (or ensure that the agency immediately terminates) the emergency proceeding once the court or agency possesses sufficient evidence to determine that the removal / placement is no longer necessary to prevent imminent physical damage or harm to the child

Module 6: Emergency Proceedings

Limit on Length

- An emergency proceeding regarding an Indian child should not be continued for more than 30 days unless the court makes the following determinations:
 - (1) Restoring the child to the parent or Indian custodian would subject the child to imminent physical damage or harm;
 - (2) The court has been unable to transfer the proceeding to the jurisdiction of the appropriate Indian Tribe; and
 - (3) It has not been possible to initiate a “child-custody proceeding” as defined in § 23.2

Module 6: Emergency Proceedings

Key Points to Remember

- There is a Federal standard for emergency removal / placement of an “Indian child”
- There is a Federal limit on how long emergency removal / placement can last without initiating a full “child custody proceeding” (i.e., with the full suite of ICWA protections) under the Act
- An emergency proceeding can be terminated by:
 - Initiating a child-custody proceeding subject to the provisions of ICWA (e.g., an involuntary foster care placement proceeding);
 - Transferring of the child to the jurisdiction of the appropriate Indian Tribe; or
 - Restoring the child to the parent or Indian custodian