

**PETITION FOR TEMPORARY
CUSTODY ABUSE OR NEGLECT**

STATE OF SOUTH DAKOTA:

IN CIRCUIT COURT

SS:

COUNTY OF _____

_____ JUDICIAL CIRCUIT

THE PEOPLE OF THE STATE OF
SOUTH DAKOTA IN THE INTEREST OF,

Court File No: _____

(DOB: _____)

(DOB: _____)
Child(ren), and concerning

(DOB: _____)

(DOB: _____)
Respondent(s),

**PETITION FOR TEMPORARY
CUSTODY ABUSE OR NEGLECT**

The State of South Dakota, through (DEPUTY STATE'S ATTORNEY/STATE'S ATTORNEY),
(FIRST AND LAST NAME), hereby petitions the Court for an Order granting temporary custody of the
minor child to the South Dakota Department of Social Services and does hereby advise the parents,
guardians, and/or custodians of the following:

REMOVAL

The minor child was removed from the home on the (DAY) day of (MONTH), (YEAR), pursuant to SDCL
26-7A-12:

The child was placed into the temporary custody of the South Dakota Department of Social Services for
the reason that:

☐ the child was abandoned or seriously endangered in the child's surroundings or was seriously
endangering others and immediate removal of the child appeared to be necessary for the child's protection
or for the protection of others or

☐ the officer reasonably believed that temporary custody was warranted because there existed an
imminent danger to the child's life or safety and there was not time to apply for a court order and the
child's parents, guardian, or custodian refused an oral request or consent to the child's removal from their
custody or the child's parents, guardian or custodian were unavailable. Pursuant to SDCL 26-7A-13 the
Court Ordered temporary custody of the child during a noticed hearing; or Pursuant to SDCL 26-7A-13

without a noticed hearing, the Court may immediately issue a written temporary custody directive on receipt of an Affidavit, or on receipt of sworn testimony, stating good cause to believe:

- ☐ The child is abandoned or is seriously endangered by the child's environment; or
- ☐ There exists an imminent danger to the child's life or safety and immediate removal of the child from the parent's, guardian, or custodian appears to be necessary for the protection of the child
- ☐ If the Indian Child Welfare Act applies, removal of the child from the custody of the child's parents, guardian or custodian was necessary to prevent imminent physical damage or harm to the minor child.

INCORPORATED DOCUMENTS

The following documents are incorporated by reference and copies of said documents are attached to the Petition for Temporary Custody:

- ☐ Notice of Temporary Custody
- ☐ Petition for Abuse or Neglect
- ☐ Summons for Abuse or Neglect Advisory Hearing
- ☐ Email correspondence as to the facts that led to the child's removal
- ☐ Court Order authorizing placement

If the Indian Child Welfare Act (ICWA) applies to these proceedings the following documents are also incorporated by reference and copies of said documents are attached to the Petition for Temporary Custody:

- ☐ ICWA Affidavit (prepared by DSS worker)

PURPOSE

The purpose of the Petition for Temporary Custody is to seek continued temporary custody of the child with the Department of Social Services. At the Temporary Custody Hearing the Court shall consider the evidence of the need for continued temporary custody of the child in keeping with the best interests of the child. If the Indian Child Welfare Act applies, the Court shall consider the evidence of whether emergency

removal is no longer necessary to prevent imminent physical damage or harm to the child and the State has the burden to prove by a preponderance of the evidence that continued removal of the child is necessary to prevent imminent physical damage or harm to the child.

POSSIBLE IMMEDIATE CONSEQUENCES

The possible immediate consequences of the Temporary Custody Hearing are as follows:

Pursuant to SDCL 26-7A-19 the Court has the following options available following the Temporary Custody Hearing, if the child is an apparent, alleged, or adjudicated abused or neglected child, after the temporary custody hearing the Court may:

- (1) Order the release of the child from temporary custody, either with or without restriction or condition or upon written promise of the child's parent, guardian, or custodian regarding the care and protection of the child; or
- (2) Continue the temporary custody of the child under the terms and conditions for duration and placement that the court requires, including placement of temporary custody of the child with the Department of Social Services, in foster care or shelter.

The Court and the Department of Social Services shall give placement preference to a relative or custodian who is available and who has been determined by the Department to be qualified, provided that placement with the relative or custodian is in the best interest of the child. If temporary custody of the child is continued by the Court, the court may provide for visitation of the child by the parents, guardian or custodian, or family members in keeping with the best interests of the child.

If the Indian Child Welfare Act applies, pursuant to 25 USC 1922 any emergency removal or placement of an Indian Child under State law must terminate immediately when the removal or placement is no longer necessary to prevent imminent physical damage or harm to the child. The State Court must (1) make a finding on the record that the emergency removal or placement is necessary to prevent imminent physical damage or harm to the child; (2) promptly hold a hearing on whether the emergency removal or placement continue to be necessary whenever new information indicates that the emergency situation has ended; and (3) at any court hearing during the emergency proceeding, determine whether the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child; and (4) immediately terminate

(or ensure that the agency immediately terminates) the emergency proceeding once the court or agency possesses sufficient evidence to determine that the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

An emergency proceeding can be terminated by one or more of the following actions:

- (1) Initiation of a child custody proceeding subject to the provisions of ICWA;
- (2) Transfer of the child to the jurisdiction of the appropriate Indian Tribe; or
- (3) Restoring the child to the parent or Indian Custodian.

If the child is in the temporary custody of the Department of Social Services and has not been adjudicated to be an abused or neglected child the Court shall review the child's temporary custody placement at least once every 60 days.

Placement preference shall be given to a relative. If the Department of Social Services is contacted by a family member who desires to be a temporary or permanent placement for alleged or adjudicated abused or neglected child who have been removed from the child's parent, guardian or custodian, the Department shall document the contact in the child's file. The Department shall send information to the relative within five business days informing the relative of the steps required in order for the relative to be considered for placement.

POSSIBLE ULTIMATE CONSEQUENCES

The possible ultimate consequence of an Abuse or Neglect proceeding are as follows:

Pursuant to SDCL 26-8A-22 and 26-8A-26 and 26-8A-27 at the completion of the dispositional phase of the proceeding, the Court shall enter a final decree of disposition. That Final Decree can include:

- (1) The Court may place the child in the custody of one or both of the child's parents, a guardian, a relative of the child, or another suitable person, or a party or agency (with, or without, protective supervision) or the Department of Social Services subject to the conditions and the length of time that the Court deems necessary or appropriate. If the Court returns custody to the parent, guardian, or custodian, such return of custody may be with supervision during which the court may require the parent, guardian, custodian, and any other adult residing in the home, to cooperate with home visits by the Department and may require the parent, guardian, custodian, and any other adult residing in the home to submit, at the request of the Department to tests for alcohol, marijuana, or any controlled drug or substance. If the adjudication of abuse or neglect was related to the use of alcohol, marijuana, or any controlled drug or substance, the parent, guardian, or custodian, and any other adult residing in the home, may be required, in those areas

where such testing is available, to submit to regular tests for alcohol, marijuana, or any controlled drug or substance. If a positive test for alcohol, marijuana, or any controlled drug or substance is obtained, or the person fails to submit to the test as required, the Department may immediately remove the child from the physical custody of the parent, guardian, custodian, or any other adult residing in the home whose test was positive or who failed to submit to the test, without prior Court order subject to a review hearing, which may be held telephonically, within 48-hours excluding weekends and court holidays.

- (2) The Court (after determining that compelling reasons exist) may place the child in the permanent custody of the Department of Social Services for purpose of creating a guardianship for the child until the child reaches the age of eighteen.
- (3) The Court may order that the child be examined or treated by a physician or by a qualified mental health professional or that the child receives other special care and may place the child in a suitable facility for such purposes under conditions that the court deems necessary or appropriate.
- (4) The Court can Order that the parental rights of the parents be terminated and place the child in the adoptive custody of the Department of Social Services.
- (5) The Court can continue foster care placement of the child for a specified period of time and order that the child receive independent living services.

COURT APPOINTED ATTORNEY

Pursuant to SDCL 26-8A-18 the Court shall appoint an attorney to represent any child alleged to be abused or neglected in any judicial proceeding. The attorney for the child shall represent the child's best interests and may not be an attorney for any other party involved in the proceedings. The Court may designate other persons, including a guardian ad litem or special advocate, who may or may not be attorneys licensed to practice law, to assist the attorney of the child in the performance of the attorney's duties.

If a parent, guardian or custodian is indigent and cannot afford an attorney, the Court will appoint counsel to represent the parent, guardian or custodian and counsel may request the 48 Hour Hearing be continued; and the Court will grant a continuance, not to exceed 24 hours, to enable the attorney to become familiar with the facts of the case and to meet and confer with the parent, guardian, or custodian and to permit the parent, custodian and Tribe and counsel to prepare for the Hearing.

INDIAN CHILD WELFARE ACT

If the child is eligible for membership or enrollment, or is enrolled in or is a member of, a federally recognized Native American Tribe then the Indian Child Welfare Act will apply to these proceedings and the parent, guardian, or custodian has the following rights:

If a parent, guardian, or custodian is indigent and cannot afford an attorney, the Court will appoint counsel to represent the parent, guardian, or custodian and the Court will grant a continuance, not to exceed 24 hours, to enable the attorney to become familiar with the facts of the case and to meet and confer with the parent, guardian, or custodian.

If the Indian Child Welfare Act applies, the parents, guardians or custodians and their attorney and the Tribe have the following rights at the Temporary Custody Hearing:

- (1) To contest the allegations in the Petition for Temporary Custody;
- (2) To require the State to present evidence in support of the Petition for Temporary Custody;
- (3) To cross-examine the State's witnesses and the preparers of any documents presented to the Court; including the DSS Child Protection Services Staff member who signed the ICWA Affidavit as well as all other witnesses whose statements form the factual basis for any document submitted to the Court for consideration during the 48-Hour Hearing;
- (4) To subpoena witnesses and present sworn testimony and other evidence; and
- (5) To subpoena any person who provided information in support of or in contradiction to the ICWA Affidavit or Petition for Temporary Custody
- (6) The parent, guardian or custodian has the right to request that these proceedings be transferred to the Tribal Court.
- (7) To an Order based on the evidence presented at the hearing

The parent, guardian, custodian, and Tribe must be given a copy of the ICWA Affidavit (prepared by DSS) and the Petition for Temporary Custody at the earliest practical time but in no event later than the commencement of the 48-Hour Hearing.

WHEREFORE, the State of South Dakota prays that the Court enter an Order granting temporary custody of the above-named child to the South Dakota Department of Social Services.

Dated this (DAY) day of (MONTH), (YEAR).

(DEPUTY STATE'S/STATE'S)
Attorney
(COUNTY NAME) County,
South Dakota