

Emergency Custody

Emergency custody is a technical and complex legal claim that is difficult to pursue without assistance from an attorney. If you are interested in emergency custody, please contact an attorney or a legal aid provider if you are unable to afford private counsel.

What Is Emergency Custody?

Emergency custody is a specific procedure allowing a judge to make an immediate, temporary custody decision, often without first hearing from anyone other than the person requesting custody. These orders are called “*ex parte*” orders where the court only hears from one party.

A judge can only enter an emergency custody order after first determining that either:

1. There is a substantial risk of bodily injury to or sexual abuse of the minor child; **OR**
2. There is a substantial risk of abduction or removal of the child from the state to evade the jurisdiction of North Carolina courts.

In all custody cases, the Court must always ensure that its decision is guided by and centered around the best interests of the minor child.



Emergency Custody Process

01

A person seeking emergency custody submits a written document to the Court requesting emergency custody and describing the specific events and facts that require immediate court action. The request must also include basic information about the minor child and where the child has lived in the previous five years.

- **No Previous Custody Order:** If no court has ever issued an order about custody of the child, a person must request emergency custody in a Complaint seeking an initial custody ruling. The request should be filed in the county where the child or at least one parent/party lives.
- **Pre-Existing Custody Order:** A Motion must be filed in the existing case where there already is a custody order. *If the previous court order was issued in another state, a North Carolina court can issue a temporary order to safeguard the child until that state court can take action.*
- **Non-parents** can request emergency custody but must meet specific criteria before the Court can grant them custody over a child's biological parents.

02

A judge will review the request and may hold a hearing including witness testimony and evidence. The judge will decide if there is a substantial risk requiring that an *ex parte* order be entered without hearing from anyone but the person before the court.

03

If the order requires that a child be returned, then the judge will also issue a warrant directing law enforcement to help ensure the child's safe return.

04

Where an *ex parte* order is entered, the parties must return to Court within 10 days for a hearing where both parties can address the Court and provide additional evidence.