

## AT A GLANCE

	<b>Adversary</b>	<b>Status</b>	<b>Perm Hearing Before Final Order</b>	<b>Perm Hearing After Final Order</b>
<b>Hearing Set Timely</b>	<b>14 days or 30 days</b>	<b>60 days</b>	<b>1<sup>st</sup> at 180 days, thereafter, 120 days</b>	<b>180 days, except 1<sup>st</sup> at 90 days if TPR</b>
<b>Court of Exclusive, Continuing Jurisdiction</b>	<b>Yes</b>	<b>No</b>	<b>No</b>	<b>No</b>
<b>Child AAL and GAL Appointed</b>	<b>No later than 14-day Hearing</b>	<b>Required before 14-day Hearing</b>	<b>Required before 14-day Hearing</b>	<b>Required before 14-day Hearing</b>
<b>Parent Attorney</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>No</b>
<b>Notice of Removal Provided</b>	<b>Yes</b>	<b>Yes</b>	<b>No</b>	<b>No</b>
<b>Notice of Hearing</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
<b>Court Report Filed and Provided</b>	<b>Not Required</b>	<b>Not Required</b>	<b>Yes</b>	<b>Yes</b>
<b>Identify All Parties and Swear Witnesses</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
<b>Inquire About Absent Parties</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
<b>Inquire About Diligent Efforts</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>No</b>
<b>Address Service on Parties</b>	<b>Yes</b>	<b>Yes, if outstanding</b>	<b>Yes, if outstanding</b>	<b>No</b>
<b>Address Parentage Issues</b>	<b>Yes</b>	<b>Yes, if outstanding</b>	<b>Yes, if outstanding</b>	<b>No</b>
<b>Issue Orders Regarding Service</b>	<b>Yes</b>	<b>Yes, if outstanding</b>	<b>Yes, if outstanding</b>	<b>No</b>
<b>Admonish Parents of Right to Atty</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>No</b>
<b>Admonish Parents of TPR</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>No</b>
<b>Aggravated Circumstances</b>	<b>Yes</b>	<b>No</b>	<b>No</b>	<b>No</b>
<b>Inquire About Indian Heritage and Document</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>No, unless new information</b>
<b>Indian Child Welfare Act Standards</b>	<b>If applicable: clear and convincing, expert testimony</b>	<b>If applicable: active efforts</b>	<b>If applicable: active efforts</b>	<b>No</b>
<b>Child Placement Resources Form</b>	<b>Yes</b>	<b>Yes, if outstanding</b>	<b>No</b>	<b>No</b>
<b>Initial Home Studies on File</b>	<b>Yes</b>	<b>Yes</b>	<b>No</b>	<b>No</b>
<b>Child Present</b>	<b>No</b>	<b>No</b>	<b>Yes</b>	<b>Yes</b>

## AT A GLANCE

	Adversary	Status	Perm Hearing Before Final Order	Perm Hearing After Final Order
AAL met with client, form submitted if not	Yes	Yes	Yes	Yes
Review Current and Alternative Placement	Yes	Yes	Yes	Yes
Determine if able to place with relative, cite evidence	Yes	Yes	Yes	No
Temporary Visitation Plan on File	Yes	No	No	No
Review Visitation Plan	No	Yes	Yes	Yes
Service Plan Development	No	Yes	No	No
Review Service Plan	No	Yes	Review Compliance	Review Compliance
Review Permanency Goal	No	No	Yes	Yes
Review Education Goals, Progress, and Needs	No	If needed	Yes	Yes
Education Decision-Maker Identified	No	Yes	Yes	Yes
Review Medical Care	No	Yes	Yes	Yes
Medical Consenter Identified	Yes	Yes	Yes	Yes
Child's Opinion on Medical Care Known	No	No	Yes	Yes
Normalcy Activities	No	No	Yes	Yes
Reasonable Efforts Findings Required	Yes, to determine evidence sufficient for TMC to DFPS	Yes, as relates to Service Plan requirements	Yes, as relates to execution of permanency plan	Yes, as relates to execution of permanency plan
Determine Dismissal Date	Yes	Yes	Yes	No
Transitional Living Plan on File if Child is 16 or Older	No	No	No	Yes
If APPLA, Dept has conducted Independent Living Skills Assmt	No	No	Yes	Yes
Review Extended Jurisdiction	No	No	No	Yes
Set Next Hearing	Yes	Yes	Yes	Yes
Issue Order and Provide to Parties	Yes	Yes	Yes	Yes

# Adversary Hearing Checklist

15 minutes; up to 25 suggested best practice

## Prior to Hearing:

- Hearing within 14 days of removal unless temporary order extended
- Child's GAL/AAL appointed
- Parties served
- CCEJ identified
- Hearing within 30 days of petition filed if non-emergency under 262.113

## At Hearing:

- Identify parties present and served
- Inform parents of right to attorney
- Determine indigence
- DFPS provided notice to relatives
- Need for language interpretation
- Child Placement Resources Form/efforts to identify/locate parties not present
- CPS and criminal background checks conducted and home studies initiated
- Indian/Native American Heritage
- Temporary Family Visitation Plan
- AAL form provided if client not seen

## At the End of the Hearing:

- Determine sufficient evidence to grant DFPS TMC of child; if not, return child
- Document danger to child to return to home or remain in home and remaining in home is contrary to welfare; reasonable efforts to prevent removal and to return child home;
- If TMC to DFPS, inform parents that rights may be terminated or limited
- If cite by pub needed, may render temporary order anyway
- Determine aggravated circumstances alleged or exist

- If family violence, protective order necessary or available
- If child victim of human trafficking, placement in secure agency foster or group home
- Place child with noncustodial parent or relative unless not in best interest
- Determine whether DFPS is able to place child with relative or other designated caregiver; note evidence supporting finding either way
- ISSUE COURT ORDER**
  - Service
  - Notice of removal
  - Parentage or DNA testing
  - Dismissal date
  - Transfer CCEJ, if applicable

## Best Practices:

- Engage parties with direct questions
- Review services with parents
- Set Status Hearing date
- Open court notice
- Ask the following questions:**
  - *What is preventing this child from returning home today?*
  - *How is my decision specific to this child and this family?*
  - *Are there cultural issues we need to understand?*

## Well-being Issues at Adversary Hearing:

- School stability, education goals, progress, and issues, and education decision-maker
- Medical care and behavioral or psychiatric care
- Young adult presence at hearing or opinion about education or medical care



# Status Hearing Checklist

15 minutes; up to 25 suggested best practice

## Prior to Hearing:

- Hearing 60 days after DFPS appointed TMC, unless aggravated circumstances
- Persons given 10 days' notice of hearing
- Visitation Plan filed least 10 days before
- Family Plan of Service filed no later than 45<sup>th</sup> day after DFPS appointed TMC
- Education decision-maker form filed
- Medical consent form filed
- Parent attorneys appointed
- Dismissal date set
- Child assessment by no later than 45<sup>th</sup> day after child entered TMC of DFPS
- Texas Health Steps administered by no later than 30<sup>th</sup> day after child entered TMC of DFPS

## At Hearing:

### Due Process and General Matters

- Identify parties present and served
- DFPS due diligence to locate parties
- DFPS provided notice to relatives
- Need for language interpretation
- Inform parents of right to attorney
- If AAL hasn't seen client, form filed
- Child Placement Resources Form filed
- Paternity issues/Paternity Registry
- Home studies initiated
- Review current and alternative placements
- Review conservatorship and substitute care of the child
- Indian/Native American Heritage
- DFPS held or plans to hold Permanency Planning Meeting
- Address citizenship issues, consulate notified
- Review child's medical care

## Family Plan of Service (SP)

- Determine if:
  - SP developed jointly with parents
  - Each term reviewed/discussed with parents; parents understand
  - Parents informed of rights with SP process
  - Noted if parent not able or willing to participate in development of SP
  - Plan has primary and concurrent goal
  - Plan is signed by parents and DFPS
- Parent has opportunity to comment on SP
- Court can modify SP at any time

## Visitation Plan (VP)

- Review VP:
  - Age and safety of child at/during visitation
  - Desires of each parent regarding visitation
  - Location of each parent and child
  - Transportation to/from visits
  - DFPS/other resources available to support visitation
- Court may modify VP at any time
- If find visitation not in child's best interest, include in order reasons and specific steps parent must take to have visitation

## At the End of the Hearing:

- Determine whether SP reasonably tailored for specific issues identified by DFPS
- Determine whether any SP with goal of reunification adequately ensures that reasonable efforts made to enable parents to provide safe environment for child
- Advise/warn parents & parties:
  - Custodial rights and duties subject to restriction or termination or child not returned unless parent demonstrates

willingness and ability to provide child with safe environment

- Progress under SP reviewed at all hearings, including review of newly acquired knowledge or skills

Incorporate SP into court order and render additional, appropriate orders to require compliance with or implement SP

**ISSUE COURT ORDER:**

- Dismissal date
- May transfer to court of continuing, exclusive jurisdiction, if CCEJ exists

**Best Practices:**

Set first Permanency Hearing Before Final Order and announce in open court

Engage parties with direct questions

- *Do you understand the purpose of the Service Plan?*

Ask direct and specific questions of the Department about reasonable efforts

- *What about this plan is reasonably tailored to address specific issues present in Ms. Smith's case?*

**Ask the following questions:**

- *What is preventing this child from returning home today?*
- *How is my decision specific to this child and this family?*
- *Are there cultural issues we need to understand?*

**Well-being Issues at Status Hearing:**

School stability, education goals, progress, and issues, and education decision-maker

Medical Consenter may need to be identified or updated

Review psychiatric care, especially if child or youth prescribed psychotropic medication

Young adult presence at hearing or opinion about education or medical care

# Permanency Hearing Before Final Order Checklist

15 Minutes; up to 25 suggested best practice

## Prior to Permanency Hearing (PH):

- If first PH, scheduled within 180 days after DFPS named TMC
- If subsequent PH, scheduled within 120 days of last PH
- 10 days' notice provided
- DFPS Permanency Progress Report filed at least 10 days before PH and includes:
  - Child's Permanency Plan
  - Summary of Medical Care
- The court file includes:
  - Notification of consent for medical care
  - Education decision-maker Form 2085-E
  - Visitation Plan

## At Hearing:

- Identify those present
- Child in attendance
- DFPS due diligence to locate and serve parties not present
- Parent, alleged father or relative provided locating information for absent parents, alleged fathers, or relatives
- Paternity issues/Paternity Registry
- Need for language interpretation
- Advise parents of right to counsel
- Determine indigence
- Indian/Native American Heritage
- Citizenship issues, consulate notified
- Compliance with orders/Service Plan and progress made
- Parties and those present heard and provided opportunity to present evidence
- If caregiver is present, must be given opportunity to provide information about the child.
- If AAL has not seen child, form filed
- Review Permanency Progress Report:

KEY: Statutory Court Findings Best Practices Well-Being

- Safety and well-being of child
- Child's needs (medical/special)
- Child's placement
- Evidence as to whether DFPS is able to place with relative
- Child's primary and alternative permanency goals
- DFPS reasonable efforts to finalize permanency plan
- Child provided opportunity to express opinion about medical care
- For child receiving psychotropic medication, whether child has:
  - been provided non-pharmacological interventions.
  - seen prescribing physician every 90 days for review
- Child's education decision-maker identified, education needs and goals identified and addressed, and major changes in school performance or disciplinary events
- If 14 or older, transition services to assist from care to independent living
- For child with goal of APPLA:
  - child's desired permanency outcome; and
  - whether APPLA best permanency plan; if so, provide compelling reasons why not in child's best interest to:
    - return home,
    - adoption,
    - placed with legal guardian, or
    - placed with a fit and willing relative
  - whether DFPS has conducted an Independent Living Skills (ILS) assessment
  - whether DFPS has addressed the goals identified in the youth's permanency plan.
  - For youth 16 years of age or older, whether DFPS has provided documents required by Section 264.121(e)
  - For youth 18 years or older, or has had disabilities of minority removed,

whether DFPS has provided youth with documents and information listed in Section 264.121(e-1)

- Child receiving appropriate medical care
- Child has regular, ongoing opportunities for age-appropriate normalcy activities, including those not in child's service plan

### **At End of Hearing:**

- Determine whether to return child if parents willing and able to provide safe environment and in child's best interest
- Advise/warn custodial rights and duties subject to restriction or termination
- Incorporate changes or modifications to Service Plan into order
- Likely date child returned home, placed for adoption, or placed in PMC
- Set next PH within 120 days or sooner
- Announce dismissal date and any upcoming hearings

### **Best Practices:**

- If lack of notice, consider resetting hearing to secure attendance
- Engage parties with direct questions
- Engage youth
- Ask DFPS direct, child-specific questions about primary and concurrent goal
- If not moving to positive permanency, set timelines and tasks to be completed prior to next hearing
- AAL knowledgeable about child's needs and legal objectives
- Set next PH 90 instead of 120 days
- For Older Youth:
  - Family group decision-making
  - Preparation for Adult Living (PAL)
  - If will turn 18 while in foster care:
    - Discuss extended foster care and trial independence
    - Ensure referrals to Texas Workforce Commission

- Endure appropriate documents in possession *before* leave care

### **Ask the following questions:**

- *What is preventing this child from returning home today?*
- *How is my decision specific to this child and this family?*
- *Are there cultural issues we need to understand?*

### **Well-being issues at Permanency Hearing:**

#### **Medical Care and Mental Health:**

- Summary of medical care:
  - Nature of emergency medical care
  - All medical and mental health treatment receiving and progress
  - Any medication prescribed/progress
  - Caregiver compliance with treatment plan
  - Adverse reaction or side effects
  - Diagnosis or diagnostic tests
  - Activity to avoid that affect effectiveness of treatment
  - Other info required

#### **Education and Educational Decisions:**

- Enrolled and in appropriate grade
- Remain in current school, even if placement changes
- If change placement, determine:
  - Where child wants to attend school
  - Whether transportation is available
  - Whether change coordinated with grading and testing periods
  - Whether records/credits transferred
- If 0-3, child assessed for developmental milestones through ECI
- If 0-5, enrolled in Early Head Start, Head Start, or Pre-Kindergarten
- Educational Decision-maker/Form 2085E on file
- School supports and disciplinary issues
- Extracurricular activities/normalcy
- Evaluated for/receiving special education
- If 14 or older, postsecondary education plan



# Final Hearing Checklist

(for non-jury trial)

## Prior to Final Hearing:

- Notice provided to parties within 45 days of trial
- All parties served
- Legal relief properly plead
- Compliance with Indian Child Welfare Act, if applicable

## At Hearing:

- Note appearances of all parties present
- Take announcements about readiness to proceed to trial
- Rule on any pending pretrial motions
- Opening Statements, unless waived
- Presentation of evidence
- Closing arguments, unless waived
- Evidence
  - Grounds for termination
  - *Holley v. Adams* Best Interest:
    - desires of the child
    - emotional and physical needs of child now and in future
    - emotional and physical danger to child now and in future
    - parental abilities of individuals seeking custody
    - programs available to assist those individuals to promote best interest of child
    - plans for child by these individuals or by agency seeking custody
    - stability of home or proposed placement
    - acts or omissions of parent which may indicate that existing parent-child relationship not a proper one
    - any excuse for acts or omissions of the parent

## At the End of the Hearing:

- Determine if met burden of proof:
  - Termination of Parental Rights: Clear and Convincing Evidence
  - If ICWA applies: Beyond a Reasonable Doubt
  - Conservatorship: Preponderance of the Evidence
- If termination, appoint DFPS or individual as managing conservator (MC)
- If no termination and DFPS awarded MC, find that:
  - Appointment of parent not in child's best interest because would significantly impair child's physical health or emotional development; and
  - Not in child's best interest to appoint relative of child or another person as managing conservator
- If no termination and DFPS awarded MC, consider whether:
  - The child will turn 18 in not less than 3 years;
  - The child is at least 12 years old or has continuously expressed a strong desire against being adopted; and
  - Needs and desires of child
- Advise parties of right to appeal
- Set Permanency Hearing After Final Order (PHAFO) within 90 days if MC granted to DFPS with termination
- Set PHAFO within 180 days if MC granted to DFPS without termination

## Best Practices:

- Remind Parent Attorney of appellate duties
- Set initial hearings sooner than statutorily required to ensure progress toward child's permanency goal
- Continue appointment of child's attorney ad litem (AAL) and guardian ad litem (GAL) until child reaches permanency.



# Permanency Hearing After Final Order Checklist

15 minutes; up to 25 suggested best practice

## Prior to Permanency Hearing (PH):

- If parental rights terminated, first PH within 90 days of final order
- If parent rights not terminated, first PH within 180 days of final order
- 10 days' notice of hearing
- DFPS Permanency Progress Report filed 10 days before hearing; includes
  - Summary of Medical Care
- The court file includes:
  - Notification of consent for medical care
  - Education Decision-Maker Form 2085E

## At Hearing:

- Identify those present
- Child in attendance
- Review Dept efforts to notify of hearing
- If AAL has not seen client, form filed
- Review Permanency Progress Report:
  - Child's safety and well-being
  - Child's needs (medical/special)
  - Child's placement, noting evidence as to whether DFPS can place child with relative
  - If in institutional care, efforts to ensure least restrictive environment
  - Primary/alternative permanency goals
  - DFPS reasonable efforts to finalize the permanency plan:
    - due diligence to place for adoption if rights terminated and child eligible; or
    - APPLA, including appointing relative as PMC or returning the child to parent, appropriate for child
  - For child with APPLA goal:
    - desired permanency outcome; and

- whether APPLA best permanency plan; if so, compelling reasons why not in child's best interest to:
  - return home,
  - be placed for adoption,
  - be placed with legal guardian, or
  - be placed with fit and willing relative
- whether DFPS has conducted an Independent Living Skills (ILS) assessment
- whether DFPS has addressed the goals identified in the youth's permanency plan.
- For youth 16 years of age or older, whether DFPS has provided documents required by Section 264.121(e)
- For youth 18 years or older, or has had disabilities of minority removed, whether DFPS has provided youth with documents and information listed in Section 264.121(e-1)
- If 14 or older, services to assist in transitioning from care to independent living in community
- Receiving appropriate medical care and provided opportunity to express opinion on medical care
- If receiving psychotropic medication:
  - Provided appropriate non-pharmacological interventions, therapies, or strategies to meet needs; or
  - seen by prescribing physician, physician assistant, or advanced practice nurse at least once every 90 days
- Education decision-maker and education needs and goals identified, major changes in school performance or serious disciplinary events
- For child in PMC without termination, whether DFPS to provide services to parent for up to 6 months after PH if:

- child not placed with relative or other individual, including foster parent, seeking PMC; and
- court determines further efforts at reunification with parent:
  - in best interest of child; and
  - likely to result in child's safe return to parent
- DFPS identified family or other caring adult with permanent commitment to child
- Address citizenship issues, consulate notified, SIJS
- Ensure those present given opportunity to be heard and if caregiver is present, must be allowed to provide information
- Confer with child about permanency plan
- Regular, ongoing opportunities to engage in age-appropriate normalcy activities

#### **At End of Hearing:**

- Issue court order
- Set next PH within 180 days

#### **Best Practices:**

- If inadequate notice, consider resetting hearing to secure attendance
- Engage parties with direct questions
- Engage youth
- Ask DFPS direct, child-specific questions about both primary and concurrent goal
- Next PH by 90 or 120 instead of 180 days
- For youth who will turn 18 while in care:
  - Discuss extended foster care and trial independence
  - Ensure referrals to Texas Workforce Commission
  - Ensure delivery of documents *before* leave care
- Youth advised of eligibility for Family Group Decision-Making or Circles of Support to discuss future plans

- Youth enrolled in PAL or provided transitional services after 14<sup>th</sup> birthday
- Ask the following questions:**
  - *What is preventing this child from returning home today?*
  - *How is my decision specific to this child and this family?*
  - *Are there cultural issues we need to understand?*

#### **Well-being issues at Permanency Hearing: Medical Care and Mental Health:**

- Summary of medical care:
  - Nature of emergency medical care
  - All medical and mental health treatment receiving and progress
  - Any medication prescribed/progress
  - Caregiver compliance with treatment plan
  - Adverse reaction or side effects
  - Diagnosis or diagnostic tests
  - Activity to avoid that affect effectiveness of treatment
  - Other info required

#### **Education and Educational Decisions:**

- Enrolled in school/in appropriate grade
- Remains in current school, if placement change
- If placement change, determine:
  - where child wants to attend school
  - whether transportation available
  - whether change coordinated with grading and testing periods
  - whether records/credits transferred
- If 0-3, child assessed for developmental milestones through ECI
- If 0-5, child enrolled in Early Head Start, Head Start, or Pre-Kindergarten
- Educational Decision-maker Form 2085E on file
- School supports and disciplinary issues
- Extracurricular activities/normalcy
- Evaluated/receiving special ed services
- If 14 or older, postsecondary edu plan

# FOSTER CARE & EDUCATION JUDICIAL CHECKLIST

## **School Readiness**

- Children ages 0-3 assessed for Early Childhood Intervention (ECI) services.
- Children ages 0-5 enrolled in Early Head Start, Head Start, or Pre-Kindergarten.

## **School Stability**

- Child enrolled in and has transportation to current school.
- Child remains in current school, regardless of additional placement changes.
- School changes occur at the end of grading periods.
- School changes do not conflict with standardized testing or final exams.

## **Education Decision-Making**

- DFPS has conservatorship and designated an Education Decision-Maker (EDM).
- Parent retains or other person given specific education-related rights as appropriate.
- DFPS provided EDM Form 2085-E to child's school and information regarding the EDM given to others.
- Surrogate parent appointed to make decisions regarding special education if a foster parent is unwilling or unable to fulfill that role.

## **School Enrollment**

- Child immediately enrolled in a new school if a change was required.
- Education record or credit transfer issues addressed by court as necessary.

## **School Placement and School Success**

- What does the child say about school and where wants to attend?
- Child in an appropriate school.
- Child progressing academically and on grade level.
- Additional school supports addressed as needed.
- Child involved in extracurricular activities.
- Discipline issues addressed (truancy, suspension, expulsion, restraints).
- Caregiver signed annual form to prohibit corporal punishment at school.

## **Post-Secondary Education**

- If the youth is at least grade 9, personal graduation plan created and graduation endorsement chosen (this is in addition to the Foundation High School Program in STEM, Business & Industry, Public Services, Arts & Humanities, or Multi-Disciplinary Studies).
- Child has a college or career plan.
- Child and his caregivers know about high school graduation requirements and how to prepare and apply for post-secondary education.

## **Special Education**

- If needed, child evaluated for special education services.
- If eligible:
  - Date of child's last Admission, Review, and Dismissal (ARD) committee meeting.
  - Child has Individualized Education Program (IEP) that is current, appropriate, and in-force.
  - Transition planning coordinated, beginning no later than age 14.



# INDIAN CHILD WELFARE ACT

## **When Does ICWA Apply?**

- In a “child custody proceeding” defined as any action, other than an emergency proceeding, that may result in a foster care placement, termination of parental rights, pre-adoptive placement or adoptive placement; and
- Involving an “Indian child” defined as
  - Unmarried, under the age of 18, and a member of an Indian Tribe; or
  - Unmarried, under the age of 18, *eligible* for membership in an Indian Tribe and is the biological child of a member of a federally-recognized Indian Tribe.

**Each Tribe determines eligibility for membership or enrollment, not the court.**

**If ICWA applies, please also refer to NCJFCJ ICWA Checklists:**

<http://www.ncjfcj.org/sites/default/files/ICWAChecklistFullDoc.pdf>

## **Notice**

- The child’s parent, Indian custodian, and Tribe have been notified by registered mail or certified mail, return receipt requested, with copies to the appropriate BIA Regional Directors. Upon request of a party, the BIA will make a reasonable attempt to identify and locate the Tribe, parents or Indian custodian.
- Finding on the record that timely notice was or was not provided as required.

**If not sure, but there is reason to believe the child might be an Indian child, NOTIFY!**

## **Foster Care or Pre-adoptive Placement Preferences**

- Child must be placed in the least restrictive setting that most approximates a family, taking into consideration sibling attachment, allows the Indian child’s special needs (if any) to be met; and is in reasonable proximity to the Indian child’s home, extended family, or siblings.
- Where the Tribe has not established a different order, preference must be given, in descending order to (1) extended family; (2) a foster home approved by the Tribe; (3) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or (4) an institution for children approved by an Indian Tribe or operated by an Indian organization which has a program suitable to meet the child’s needs.
- The court must, where appropriate, also consider the preference of the Indian child or the Indian child’s parent.
- If any party asserts that there is good cause not to follow the placement preferences, the reasons for that belief or assertion must be stated orally on the record or provided in writing to the parties and the court. The party seeking departure from the placement preferences should bear the burden of proving by clear and convincing evidence that there is “good cause” to depart from the placement preferences. A court’s determination of good cause to depart from the placement preferences must be made on the record or in writing and should be based on one or more of the following considerations:

- (1) The request of one or both of the Indian child's parents, if they attest that they have reviewed the placement options, if any, that comply with the order of preference;
- (2) The request of the child, if the child is of sufficient age and capacity to understand the decision that is being made;
- (3) The presence of a sibling attachment that can be maintained only through a particular placement; or
- (4) The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live.

### **Special Evidentiary Rules**

#### **☐ Threshold for Removal of the Child**

- Clear and convincing evidence that custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The evidence must show a causal relationship between the particular conditions in the home and the likelihood that continued custody of the child will result in serious emotional or physical damage.
- Must include testimony of a "qualified expert witness" who is qualified to testify about whether the child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child and should be qualified to testify as to the prevailing social and cultural standards of the Indian child's tribe.
- Finding of "Active Efforts" to prevent to prevent the breakup of the Indian family and that those efforts have been unsuccessful.

#### **☐ Threshold for Termination of Parental Rights**

- Evidence **beyond a reasonable doubt** that custody of the child by the parent of Indian custodian is likely to result in serious emotional or physical damage to the child and a causal relationship.
- Supported by testimony of a "qualified expert witness".
- Finding that "Active Efforts" have been made to prevent the breakup of the Indian family and that those efforts have been unsuccessful.

**Best practices for Active Efforts include:** (i) early contact and active engagement with the child's Tribe; (ii) higher level of efforts using methods and providing services that are culturally appropriate; and (iii) commitment to the spirit of ICWA in the context of the historical trauma. Remember that active efforts must be documented in detail in the record.



# MEDICAL AND MENTAL HEALTH CARE FOR FOSTER YOUTH

Physical, dental, eye, immunization, and behavioral health for children in foster care are covered by two managed care programs, STAR Health, a division of Superior Health, and Cenpatico Behavioral Health, a division of the Centene Corporation.

## **Eligibility**

- All children in DFPS conservatorship and young adults in extended foster care or those young adults who have returned to foster care, up to age 22
- All youth who turned 18 in foster care and received healthcare through Medicaid (STAR Health or other), but who did not return to extended foster care, are covered under STAR Health or STAR Medicaid under the Affordable Care Act up to age 26

## **Information Required in DFPS Permanency Review Hearing Court Reports:**

- Nature of any emergency medical care provided to child and circumstances necessitating care, include injury or acute illness of child
- All medical and mental health treatment child is receiving and child's progress with treatment (this includes ANY physical, dental, eye, immunization, and mental health issues)
- Any medication prescribed for child, condition, diagnosis, and symptoms for which medication was prescribed, and child's progress with medication
- For child receiving psychotropic medication:
  - Any psychosocial therapies, behavior strategies, or other non-pharmacological interventions provided to child
  - The child has seen or is seeing his/her prescribing physician, physician assistant or advanced practice nurse every 90 days
  - Degree to which child or foster care provider complied or failed to comply with any plan of medical treatment for child
  - Any adverse reaction to, or side effects of, any medical treatment provided to child
  - Any specific medical condition of child diagnosed or for which tests are being conducted to make diagnosis
  - Any activity child should avoid or engage in that might impact effectiveness of treatment, including physical activities, other medications, and diet
  - Other info required by DFPS or rule of court

## **Additional Requirements that Courts Should Monitor:**

- Child has been provided the opportunity to comment on the medical care being provided
- DFPS has provided any parent who retains rights notice of initial prescriptions or changes in dosage
- Each AAL and GAL has reviewed the medical care
- Each AAL has elicited from client his/her view on the medical care being provided
- AAL has advised youth 16 and older of the right to request medical consentor designation from the court
- Child received comprehensive, preventive health care checkup within 30 days of entering conservatorship
- If removed for sexual abuse, physical abuse, chronic medical condition, medically fragile or has a diagnosed mental illness, child must receive medical examination by the end of the third business day after the child is removed from the child's home



# HUMAN TRAFFICKING JUDICIAL CHECKLIST

## **Has child been victim of sex trafficking?**

- A person knowingly transported, enticed, recruited, harbored, provided, or otherwise obtained the child by any means:
  - Caused the child to engage in, or become the victim of, an enumerated sex offense;
  - Received a benefit from participating in a venture that involves an enumerated sex offense; OR
  - Engaged in sexual conduct with a trafficked child
- Child under 18 years of age, regardless of trafficker's knowledge

## **What is child labor trafficking?**

- A person knowingly:
  - Trafficked child with intent that the child engage in forced labor or services; OR
  - Received a benefit from participating in a venture that involves forced child labor or services including knowingly receiving forced child labor or services
- Child under 18 years of age, regardless of trafficker's knowledge

## **Under what circumstances will DFPS investigate trafficking?**

- If a person traditionally responsible for child's care, custody, or welfare:
  - Compelled or encouraged the child to engage in sexual conduct including child sex trafficking, prostitution, or compelling prostitution;
  - Knowingly caused, permitted, encouraged, engaged in, or allowed a child to be trafficked for sex or labor; OR
  - Failed to make a reasonable effort to prevent the child from being trafficked for sex or labor

## **If child has been missing from foster care, were the following steps taken?**

- DFPS made report:
  - To law enforcement and the National Center for Missing and Exploited Children (NCMEC) no later than 24 hours after learning a child is missing or abducted
- Within 24 hours of learning child missing or returned to care after missing, DFPS notified law enforcement, court, child's AAL and GAL, and parents (unless no known location, TPR, or relinquishment)
- While a child is missing, DFPS makes continuing efforts to locate the child including monthly contacts with law enforcement and former caregivers and supervisory-level review
- After a missing child returns to care, DFPS interviewed the child about why the child was missing, where the child stayed while missing, and whether the child was a victim of sex trafficking while missing

## **Are there any red flags to help identify child trafficking victims?**

- Multiple runaways from foster care placement in a short period of time
- Changes in school attendance habits, appearance, socio-economic status and possessions, friend groups, interests, school activities, vocabulary, demeanor, attitude, and sexual behavior
- Unexplained injuries: bruising, swelling, redness, cigarette burns
- Tattoos or branding
- Hotel key cards or refillable gift cards

