

DISPOSITION HEARING CHECKLIST FOR ICWA CASES

WHO SHOULD ALWAYS BE PRESENT:

- Judge or judicial officer;
- Parents whose rights have not been terminated, including any putative father who has *acknowledged* paternity, even if he has not yet legally established paternity. 25 U.S.C. § 1903(9)
- Indian custodian, 25 U.S.C. § 1903(6), or other custodial adults;
- Extended relatives, as defined by child's tribe, 25 U.S.C. § 1903(2), or other tribal members or Indian families who may serve as a placement for the child;
- Assigned caseworker;
- Tribal caseworker or representative;
- Agency attorney;
- Attorney(s) for parent(s) or Indian custodian;
- Attorney for child's Indian tribe;
- GAL/CASA or advocate for the child;¹
- Court reporter; and
- Security personnel.

WHO MAY ALSO BE NEEDED:

- Interpreter;
- Age-appropriate children;
- Adoptive parents;
- Domestic violence advocate for parent;
- Judicial caseload management staff;
- Law enforcement officers;
- Services providers; and
- Other witnesses, including tribal members, elders, or child's extended relatives.

SUBMISSION OF PREDISPOSITION REPORTS TO THE COURT SHOULD INCLUDE:

- A statement of family changes needed to correct the problems necessitating state intervention, with timetables for accomplishing them;
- A description of services to be provided to assist the family, including those that the tribe or an Indian organization may offer and make available;
- A description of services to be provided to ensure the child's ongoing connection to his/her culture, including attendance at significant cultural events, while placed outside of his/her family; and
- A description of actions to be taken by parent(s) or Indian custodian to correct the identified problems and any steps the parent or Indian custodian has taken thus far.

WHEN THE AGENCY RECOMMENDS FOSTER PLACEMENT, AN AFFIDAVIT DOCUMENTING ACTIVE EFFORTS SHOULD BE SUBMITTED. THE FOLLOWING ARE SOME KEY ELEMENTS OF THE AFFIDAVIT:

- A description of the active efforts made by the agency to provide remedial services and rehabilitative programs designed to prevent the breakup of the family and an explanation why these efforts were unsuccessful. 25 U.S.C. § 1912(d)
- A description of the efforts made to coordinate with the child's tribe or any Indian organization in assisting the Indian parent or Indian custodian with services needed to avoid the need for placement, and an explanation if the services were unsuccessful.
- An explanation of why the child cannot be protected from the identified problems in the home even if services are provided to the child and family.
- An explanation of the active efforts made to contact the child's tribe, extended family, and other local Indian organizations for assistance in identifying and contacting extended family and other tribal members or Indian families about providing an appropriate placement for the child.
- A description of arrangements made by the agency to ensure visitation with extended family, or, if there is no family in the area, with other tribal members, to support the child's cultural connections.
- A description of the agency's plan to coordinate with the child's tribe and family to identify significant cultural and important familial events and arrange for the child's attendance.

KEY DECISIONS THE COURT MUST MAKE:

- Does the agency's proposed case plan address the needs of the child and the parent(s) or Indian custodian?
- Is the parent able to read the proposed case plan and, if not, what efforts will be made to ensure that the parent fully understands the requirements of the plan?
- Is removal of the child necessary to prevent serious emotional or physical damage to the child? 25 U.S.C. § 1912(e)
- Where should the child be placed?

THE COURT’S WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW SHOULD:

- Determine the legal disposition of the case, including the custody of the child, based upon the statutory options provided under federal law, unless state law provides a higher degree of protection, 25 U.S.C. § 1921, or unless there is a governing state-tribal agreement.
- State the long-term plan for the child (e.g., maintenance of the child in the home of a parent or Indian custodian, reunification with a parent (or Indian custodian), guardianship or permanent placement with a relative or other tribal member or Indian family, or placement of child in a permanent adoptive home).
- Identify the active efforts that have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian child’s family. 25 U.S.C. § 1912(d)
- Specify that there is *clear and convincing evidence* that continued custody of the child by the parent (or Indian custodian) would likely result in serious emotional or physical damage to the child. 25 U.S.C. § 1912(e)
- Specify whether the child was placed within the placement preferences under the ICWA, 25 U.S.C. § 1915(b), and, if not, whether the child’s tribe issued a resolution establishing a different order of preference, as long as the placement is the least restrictive setting appropriate to the particular needs of the child. 25 U.S.C. § 1915(c)
- Specify whether the agency relied upon the social and cultural standards of the Indian community in which the parent or extended family reside or with which the parent or extended family maintain social and cultural ties when the agency determined whether an individual is an appropriate placement for the child.
- If the child’s tribe did not issue a resolution indicating a different order of preference for the placement of the child, specify the reasons why there is good cause to deviate from the placement preferences. 25 U.S.C. § 1915(b)
- If there is not good cause to deviate from the placement preferences, and there is no tribal resolution re-ordering the placement preferences, order the agency to move the child to a home that complies with the placement preferences. 25 U.S.C. § 1915(b)

- If placement or services are ordered that were not agreed upon by the parties, specify the evidence or legal basis upon which the order is made.
- If applicable, specify why continuation of the child in the home would be contrary to the child’s welfare.
- If the state’s case plan conflicts with or does not meet the requirements of the ICWA, disapprove or modify the agency’s proposed case plan.

¹ The court should make every effort within its discretion to appoint an advocate for the child who is either a member of the child’s tribe, or who is familiar with and respectful of the child’s cultural needs.

Indian Child Welfare Act Checklists for Juvenile and Family Court Judges

"These Indian Child Welfare Act Checklists were created to assist juvenile and family court judges in assuring that the necessary inquiries are being made to determine as early as possible in every case whether the Indian Child Welfare Act applies. These checklists will help judges ensure that the necessary parties have been notified and are present in all cases where the ICWA may be applicable.

It is in the best interests of the child that the required inquiries be made from the time of the initial removal hearing, and that the inquiries continue throughout every stage of the case. Failure to make the necessary inquiries, notify the necessary parties, and follow the standards established within the ICWA can result in the case having to start over from the beginning, to the obvious detriment of the child. The checklists are designed to help avoid this result by assisting judges on a step-by-step basis in meeting the ICWA requirements at each hearing stage.

Leadership by the court is essential to ensure ICWA compliance. These children should not be subject to their placements and permanency plans being disrupted well into the final stages of the case. Because this affects cases in every state, the checklists have been drawn from the RESOURCE GUIDELINES and formatted so that they can be used by courts throughout the country, whether in a state with no tribes within its borders and small Native American populations, or states such as Alaska, where 60 percent of the children in the state dependency system are Alaska Natives for whom the ICWA applies.

Much has been written in recent years about the impact to affected children if the requirements of the ICWA are not met, most notable the significant delay in achieving permanency for these children as well as widespread non-compliance with the requirement that a qualified expert testify at hearings including the initial removal hearing. Because there are disproportionately high numbers of Native American and Alaska Native children in juvenile dependency systems in every state in the country, no court can overlook the requirement to make the necessary ICWA inquiries. The NCJFCJ Permanency Planning for Children Department hopes that you will find these new checklists to be useful to you in assuring compliance with the ICWA on all cases that come before your respective courts."

Honorable Dale R. Koch, Multnomah County Circuit Court, Portland, Oregon



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NATIONAL COUNCIL OF
JUVENILE AND FAMILY COURT JUDGES

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**"Native American Resource Directory
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(Contains tribal contact information)