

AGGRAVATED CIRCUMSTANCES DETERMINATION

(NOT TO BE USED IN AN ICWA CASE)

Bench Card

PURPOSE

To determine whether the parent(s) subjected the child to aggravated circumstances, and if so, that reasonable efforts to prevent placement of the child in foster care and to reunify are not required.¹

WHEN

At the shelter care hearing or at any time in the case upon motion and notice.²

WHO MAY BE PRESENT

1. The general public shall be excluded, and only such persons shall be admitted as are found by the court to have a direct interest in the case.³
2. If the State raises the aggravated circumstances issue subsequent to the adjudicatory hearing, the Department shall provide notice of the hearing to: 1) the foster parents; 2) pre-adoptive parents; 3) a relative who is providing care to a child who is in the custody of the Department; and 4) children aged eight (8) and older. The Department shall confirm to the court that this notice was given.⁴
3. If the aggravated circumstances issue is raised subsequent to the adjudicatory hearing, a child eight (8) or older and the foster parents have the right to be heard.⁵ The child may be excluded from hearings at any time in the discretion of the court. If the child testifies, a counselor, friend, or other person shall be permitted to remain in the courtroom at the witness stand as the child testifies.⁶

EVIDENCE

The Rules of Evidence apply.⁷

STIPULATIONS

Stipulations must be on the record and are subject to court approval. The court may enter orders or decrees based upon stipulations only upon a reasonable inquiry by the court to confirm that the stipulation is: knowing and voluntary, has a reasonable basis in fact, and is in the best interest of the child.⁸

FINDINGS (WRITTEN AND CASE SPECIFIC)

1. Parent(s) subjected the child to aggravated circumstances as defined in the CPA.
2. The Department is not required to make reasonable efforts to prevent removal or to reunify the child(ren) with his/her parents.⁹
3. If the State raises the issue after the adjudicatory hearing, that the Department confirmed notice was provided to the individuals identified above in "Who May Be Present" - #2.¹⁰

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ORDER

1. Order the Department to prepare a written permanency plan that includes the information set forth in I.C. §16-1620 and IJR 44(b).
2. Schedule a permanency hearing within thirty (30) days of the determination of aggravated circumstances.¹¹
3. Order the Department either to file the petition to terminate parental rights no later than thirty (30) days from the date of the aggravated circumstance finding or file a motion requesting the court find compelling reasons why termination of parental rights would not be in the best interest of the child.¹²

ENDNOTES

¹ IC §16-1602(5); IC §16-1619(6)(d); IC §16-1620(1).

² IC §16-1619(6)(d); IJR 39(m).

³ IC §16-1613(1); IJR 39(h); IJR 52(a).

⁴ IC §16-1620(1); IJR 40(a) and (b).

⁵ IJR 40(a) and (b).

⁶ IC §16-1613(2).

⁷ IRE 101(e)(6); IJR 51(b).

⁸ IJR 38.

⁹ IC §16-1602(5); IC §16-1619(6)(d); IC §16-1620(1).

¹⁰ IJR 40(a) and (b).

¹¹ IC §16-1619(6)(d); IC §16-1620.

¹² IC 16-1620(1); IC §16-1624(2) and (3).