

REDISPOSITION HEARING

(REMOVAL FROM PROTECTIVE SUPERVISION)

Bench Card

PURPOSE

To determine whether to vest legal custody of a child, who is removed from home after being placed under protective supervision, with the Department or other authorized agency.¹

WHEN

1. Within 48 hours of the child's removal from his/her home.²
2. The hearing may be continued for a reasonable time upon request of the parties.³

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.⁴
2. Notice shall be in the same manner as required for a shelter care hearing.⁵ The Department shall provide notice of the redispotion 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 age eight and older. The Department shall confirm to the court that this notice was given.⁶
3. A child eight or older has the right to be heard, either in person or in writing.⁷ The Department must confirm to the court that this notice was given.⁸ 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.⁹

EVIDENCE

1. The Rules of Evidence do not apply. The court may consider any information relevant to the redispotion of the child.¹⁰
2. The foster parent, the pre-adoptive parent and/or the relative who is providing care to a child who is in the custody of the Department, and the child (if eight years or older) each have the right to be heard at the redispotion hearing.¹¹
3. Privileges in effect at the redispotion hearing are the lawyer/client privilege and the clergy privilege. There is no other privilege as to a communication relevant to an issue concerning the physical, mental, or emotional condition of or injury to a child, or concerning the welfare of a child.¹²

MAKING THE RECORD

Findings regarding reasonable efforts, contrary to the welfare, and best interests must be detailed, written, and on the record.¹³

QUESTIONS THE COURT MUST ASK

ICWA (See the ICWA Bench Card.)

If there is reason to believe the child is an Indian child, and there has been no final determination of the child's status as an Indian child:¹⁴

1. The efforts made to determine whether the child is an Indian child.
2. The Department's efforts to work with all tribes of which the child may be a member and to verify whether the child is a member or eligible for membership.
3. If there is reason to believe the child is an Indian child, but the court does not have enough evidence to determine the child's status, the court must treat the child as an Indian child.¹⁵

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*Questions the court should ask at disposition:*¹⁶

If the court vests legal custody of the child in the Department or other authorized agency, the court must ask about these issues:

1. Educational stability:¹⁷

The court must ask about the Department's efforts to ensure educational stability for the child, including efforts made to keep the child in the same school or the reasons why staying in the same school is not in the child's best interest.

2. Sibling placement:¹⁸

If a group of siblings was removed from the home but was not placed together, the court must ask about:

1) the Department's efforts to place the siblings together, 2) the reasons the siblings were not placed together, and 3) the Department's plan to ensure frequent visitation or ongoing contact among the siblings, unless visitation or contact would be contrary to the wellbeing of one or more siblings.

3. Psychotropic medications:¹⁹

If the child is placed in the Department's custody and the child is being treated with psychotropic medications, the Department must document and the court must inquire about the type of medication, the dosage and the medical professional who prescribed the medication. The court may make any additional relevant inquiry.

REQUIRED FINDINGS²⁰

1. The Department confirmed to the court that it provided notice as required by IJR 40(a) and (b).
2. The court finds, as appropriate:
 - a. Continued residence in the home is contrary to the welfare of the child.²¹ and
 - b. Vesting custody with the Department is in the best interests of the child.²²
 - c. The Department made reasonable efforts to prevent the placement of the child(ren) into foster care:
 - i. But was not successful in eliminating the need for foster care placement; or
 - ii. But was not able to safely provide preventative services; or
 - iii. But efforts to temporarily place the child(ren) with a related person were not successful; or
 - iv. Reasonable efforts were not required because the parent(s) subjected the child(ren) to aggravated circumstances.²³
3. Legal custody of the child is vested with the Department or other authorized agency and may continue until the child's 18th birthday.²⁴

ORDER

1. The order returning legal custody to the Department shall be treated the same as the original Adjudicatory order.²⁵
2. The court may order the Department to prepare a written case plan, to be filed with the court and served upon the parties five days prior to the case plan hearing. The court may hold a case plan hearing, to be held within 30 days of the redisposition hearing.²⁶
3. If aggravated circumstances exist, order the Department to prepare a written permanency plan to be filed with the court and served upon the parties five (5) days prior to the permanency hearing.²⁷ A permanency hearing shall occur within thirty (30) days of the redisposition hearing.²⁸

ADDITIONAL QUESTIONS

1. What are the specific safety issues that caused the child to be removed from the home, and what is preventing the child from returning home today?
2. **If the child is an Indian child, and the child is in the custody of the Department, does the child's placement comply with ICWA? (See ICWA Bench card.)**

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3. Is the Department fully exploring placement options with a fit and willing relative:
 - a. Who are the members of the child's extended family (including out-of-state family, adult siblings, and fictive kin)?
 - b. Who has been contacted?
 - c. Are they placement options?²⁹
4. Does the placement support the child's cultural identity?
5. Parents
 - a. Do you understand what happened here today?
 - b. Do you understand what the next steps are?
 - c. Do you have any questions for the court?
6. Department and Guardian *ad Litem*:
 - a. Do you understand what is required of the Department and/or Guardian *ad Litem* prior to the next hearing?
 - b. Do you have any questions for the court?

ENDNOTES

¹ IC §16-1623(4); IJR 47.

² IC §16-1623(3).

³ IC §16-1623(7).

⁴ IC §16-1613(1); IJR 52(a).

⁵ IC §16-1623(6).

⁶ IC §16-1621(2); IJR 40(a) and (b).

⁷ IJR 40(b).

⁸ *Id.*

⁹ IC §16-1613(2).

¹⁰ IRE 101(e)(6); IJR 51(b); and §16-1623(4).

¹¹ IJR 40(a) and (b).

¹² IRE 502, IRE 505 *See also* IRE 504(d)(1); IRE 503(d)(4); IRE 516(d)(3); IRE 517(d)(3); and IRE 518(d)(5).

¹³ IC §16-1619(6), §16-1623(4).

¹⁴ IC §16-1619(7)(a), §16-1623(4).

¹⁵ 25 C.F.R. § 23.107(2).

¹⁶ At a redisposition hearing, the court is making the same decisions that it would make in the disposition portion of an adjudicatory hearing. Therefore, the court should make the same inquiry at a redisposition hearing. IC §16-1619(7)

¹⁷ IC §16-1619(7)(b)(i).

¹⁸ IC §16-1619(7)(b)(ii).

¹⁹ IC §16-1619(7)(c)

²⁰ 42 U.S.C. §672(a)(2)(a)(ii), 42 U.S.C. §671(a)(15); 45 C.F.R. §1356.21(b),(c), and (d); IC §16-1619(6) and §16-1623(4).

²¹ IC §16-1619(6).

²² *Id.*

²³ IC §16-1619(6)(a)-(d).

²⁴ IC §16-1619(8) and (9).

²⁵ IC §16-1623(5).

²⁶ *Id.*

²⁷ IJR 41(i).

²⁸ IC §16-1620(1).

²⁹ IC §16-1629(11); 42 U.S.C. §671(a)(29).