

# REVIEW HEARINGS

## *Bench Card*

### **PURPOSE**

To review the progress of the case, determine the continuing need for the child's placement, monitor compliance with the case plan or permanency plan, and to modify the case plan or permanency plan as appropriate.<sup>1</sup>

### **WHEN**

1. No later than six (6) months after entry of the court's order taking jurisdiction and at least every six (6) months thereafter.<sup>2</sup>
2. Best practice is to hold hearings at least every 90 days or more frequently as needed to ensure timely permanency for the child.<sup>3</sup>
3. The Department and the guardian *ad litem* must file progress reports with the court at least five (5) days before each six-month review hearing.<sup>4</sup>
4. For a youth in the legal custody of the Department, within 90 days prior to the youth's 18<sup>th</sup> birthday.<sup>5</sup>
5. A review hearing may be combined with a permanency hearing.<sup>6</sup> (NOTE: Clerks must "result" both hearings.)
6. Continuances: The court may continue a review hearing for a short period of time to respond to substantive issues raised for the first time at a review hearing. The court may enter temporary orders as appropriate pending the hearing.<sup>7</sup>

### **WHO MAY BE PRESENT**

1. The general public is excluded, and only such persons found by the court to have a direct interest in the case may be admitted.<sup>8</sup>
2. The Department must provide notice of the review 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 (8) and older. The Department must confirm to the court that this notice was given.<sup>9</sup>
3. A child age eight (8) or older has the right to be heard, either in person or in writing.<sup>10</sup> The Department must confirm to the court that this notice was given.<sup>11</sup> The child may be excluded from hearings at any time in the discretion of the court.<sup>12</sup>
4. Youth age 12 and older are required to attend six-month review hearings in person or telephonically, unless the youth declines in writing prior to the hearing, declines through counsel, or the court finds good cause to excuse the youth from attending the hearing.<sup>13</sup>
5. If the child or youth testifies, a counselor, friend or other person shall be permitted to remain in the courtroom at the witness stand as the child or youth testifies.<sup>14</sup>

### **EVIDENCE**

1. The Rules of Evidence do not apply.<sup>15</sup>
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 (8) years or older) each have the right to be heard at the review hearing.<sup>16</sup>
3. Privileges in effect at the review 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.<sup>17</sup>

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## 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.<sup>18</sup>

## INFORMATION THE DEPARTMENT MUST PROVIDE/QUESTIONS THE COURT MUST ASK

### *ICWA (See the ICWA Bench Card)*

1. The Department must document and the court must ask:<sup>19</sup>
  - a. Is there reason to know that the child is an Indian child?
  - b. What efforts have been made since the last hearing to determine whether the child is an Indian child?
  - c. What efforts have been made by the Department 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?
2. The court must determine whether the Department is using active efforts to work with all tribes of which the child may be a member to verify whether the child is a member or eligible for membership.
3. If there is reason to know 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.<sup>20</sup>

### *Placement*

1. The Department must include information about the child's placement in its report to the court.<sup>21</sup>
2. If a group of siblings was removed from the home but was not placed together, the Department must document, and 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.<sup>22</sup>

### *APPLA*

1. If the permanency goal is APPLA, the plan must document:<sup>23</sup>
  - a) Intensive, ongoing, and unsuccessful efforts the Department made to place the youth with a parent, in an adoptive placement, in a guardianship, or in the legal custody of the Department in a placement with a fit and willing relative, including an adult sibling.
  - b) Reasons why APPLA is the best permanency goal for the youth and compelling reasons why one of the other placements is not in the youth's best interest.
  - c) Steps taken by the Department to ensure that the youth's foster parents or child care institution are following the reasonable and prudent parent standard when making decisions about the youth's participation in extracurricular, enrichment, cultural, and social activities.
  - d) Opportunities provided to the youth to regularly engage in age or developmentally appropriate activities.

### *Educational Stability*

The Department must document and 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.<sup>24</sup>

### *Psychotropic medication*

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.<sup>25</sup>

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## *Youth Age 12 and Older*

For youth age 12 and older, the Department must provide additional information and the court must ask additional questions and make additional findings regarding the permanency plan, independent living skills and transition planning.<sup>26</sup> Refer to the Transition to Successful Adulthood Bench Card.

## **OTHER FINDINGS<sup>27</sup>**

1. Modify disposition, as appropriate.<sup>28</sup>
2. Extended Home Visits: Extended home visits must be approved by the court in writing prior to the extended home visit. An extended home visit is any period of unsupervised visitation between the parent and the child that exceeds 48 hours in duration.<sup>29</sup>
3. Parent and child visits: Approve (as appropriate), reject or modify visitation proposed in the reunification plan.<sup>30</sup>
4. Approve, reject or modify changes to the case plan or permanency plan as appropriate.<sup>31</sup>
5. If appropriate, the Department made/did not make reasonable efforts to finalize the permanency plan in effect.<sup>32</sup>
6. When the child will not be returned home, review the Department's consideration of in-state and out-of-state placements.<sup>33</sup>
7. If appropriate, a specific finding about the parent's progress on accomplishing the requirements of the case plan.<sup>34</sup>
8. If the permanency goal is APPLA, the court must find:
  - a. APPLA is the best permanency goal for the youth; and
  - b. There are compelling reasons why it is not in the best interest of the youth to be placed permanently with a parent, in an adoptive placement, in a guardianship, or in the legal custody of the Department in a placement with a fit and willing relative, including an adult sibling.

## **ORDER**

1. Enter further orders as necessary to ensure the progress of the case toward achieving permanency for the child.<sup>35</sup>
2. If the next review hearing is the annual permanency hearing, order the Department to prepare a written permanency plan to be filed and served five (5) days prior to the hearing.<sup>36</sup>
3. Deadline for achieving reunification:

If the child has been in the temporary or legal custody of the Department for 15 of the last 22 months, the Department must file a petition to terminate parental rights prior to the last day of the 15<sup>th</sup> month, unless the court makes one of these findings:<sup>37</sup>

  - a. The child is placed permanently with a relative.
  - b. There are compelling reasons why termination of parental rights is not in the child's best interest.
  - c. The Department has failed to provide reasonable efforts to reunify the child with the family.

If the deadline is approaching (or has passed), the court should enter orders as appropriate, which may include making the finding based on information already before the court, setting deadlines for further proceedings for the court to make the finding, or ordering the Department to file a petition to terminate.
4. Enter appropriate orders for youth age 12 and older. See Transition to Successful Adulthood Bench Card.
5. Schedule the next hearing.

## **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?

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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 the ICWA Bench Card*)**
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?**<sup>38</sup>
4. **Has the child been moved since the last hearing? If so:**
  - a. **Why?**
  - b. **What further efforts are needed to ensure the child's placement stability?**
  - c. **Does the new 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 review hearing?**
  - b. **Do you have any questions for the court?**

## ENDNOTES

<sup>1</sup> I.C. § 16-1622(1)(a); I.J.R. 45(a).

<sup>2</sup> I.C. § 16-1622(1)(a).

<sup>3</sup> NCJFCJ Enhanced Resource Guidelines - Improving Court Practice in Child Abuse and Neglect Cases, <https://www.ncjfcj.org/sites/default/files/%20NCJFCJ%20Enhanced%20Resource%20Guidelines%2005-2016.pdf>, Pg. 260, Last accessed April 28, 2018.

<sup>4</sup> I.C. § 16-1622(1)(a).

<sup>5</sup> I.C. § 16-1622(3).

<sup>6</sup> I.C. § 16-1622(2)(b).

<sup>7</sup> I.J.R. 45(b).

<sup>8</sup> I.C. § 16-1613(1); I.J.R. 52(a)

<sup>9</sup> I.J.R. 40(a) and (b).

<sup>10</sup> I.J.R. 40(b).

<sup>11</sup> *Id.*

<sup>12</sup> I.C. § 16-1613(1).

<sup>13</sup> I.J.R. 40(c).

<sup>14</sup> I.C. § 16-1613(2).

<sup>15</sup> I.R.E. 101(e)(6); I.J.R. 51(b).

<sup>16</sup> I.J.R. 40(a) and (b).

<sup>17</sup> I.R.E. 502, IRE 505 *See also* I.R.E. 504(d)(1) Husband/wife privilege; b) I.R.E. 503(d)(4) Physicians and psychotherapists; c) I.R.E. 516(d)(3) School counselors; d) I.R.E. 517(d)(3) Licensed counselors; and e) I.R.E. 518(d)(5) Licensed social workers.

<sup>18</sup> I.J.R. 38.

<sup>19</sup> I.C. § 16-1622(1)(a)(ii).

<sup>20</sup> 25 C.F.R. § 23.107.

<sup>21</sup> I.J.R. 43(2).

<sup>22</sup> I.C. § 16-1622(1)(a)(iv).

<sup>23</sup> I.C. § 16-1622(2)(a), § 16-1621(3)(d)(viii).

<sup>24</sup> I.C. § 16-1622(1)(a)(iii).

<sup>25</sup> I.C. § 16-1622(1)(a)(ix).

<sup>26</sup> I.C. § 16-1622(1)(a)(v)-(vi).

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<sup>27</sup> If the 12-month review hearing is combined with the permanency hearing, see also Permanency Hearing Bench Card.

Findings for both the review hearing and the permanency hearing must be made.

<sup>28</sup> I.J.R. 45(a)(2).

<sup>29</sup> I.J.R. 42.

<sup>30</sup> I.J.R. 45(a)(1), I.C. § 16-1620(3)(c).

<sup>31</sup> I.J.R. 45(a)(1).

<sup>32</sup> I.J.R. 45(a)(3).

<sup>33</sup> I.J.R. 45(a)(3).

<sup>34</sup> I.C. § 16-1622(1)(a)(i).

<sup>35</sup> I.J.R. 45(a)(4).

<sup>36</sup> I.J.R. 45(c).

<sup>37</sup> I.C. § 16-1622(2)(g).

<sup>38</sup> I.C. § 16-1629(11); 42 U.S.C. § 671(a)(29).