

ADVISEMENT OF RIGHTS

Bench Card

A Child Protective Act petition concerning child(ren) in your custody or control has been filed with the court, and has been scheduled for a shelter care hearing. The purpose of the shelter care hearing is to determine whether the child(ren) will be placed in or remain in shelter care pending the adjudicatory hearing.¹

RIGHTS OF THE CUSTODIAL PARTY

You have the following rights:

Right to Counsel. You have the right to be represented by an attorney. If you are financially unable to hire an attorney, you have the right to be represented by a court-appointed attorney.²

Knowledge of the Allegations. The allegations claiming to bring the child(ren) within the jurisdiction of the Child Protective Act are found in the petition. You are entitled to a copy of the petition, and to be advised of the allegations contained in the petition³

Evidentiary Rights. At the shelter care hearing, you have the right to present evidence and cross-examine witnesses regarding whether the child(ren) should return home with or without conditions, or whether the child(ren) should be placed in protective care.⁴

Indian Child Welfare Act. If your child is a member of a federally recognized Indian Tribe or you are a member and your child is eligible for membership, the Indian Child Welfare Act is applicable to your case. The court, the Department of Health and Welfare, and the prosecuting attorney must follow certain additional standards.⁵ Please provide the court and your caseworker with any information about possible Tribal membership regarding your child, yourself, the child's other parent, or any custodian of the child.

POSSIBLE CONSEQUENCES OF PROTECTIVE PROCEEDINGS

The court has four options in child protection proceedings:

Dismissing the Case. The court may dismiss the petition.⁶

Protective Supervision. The court may order that the child(ren) be placed under the protective supervision of the Department of Health and Welfare.⁷ "Protective Supervision" is a legal status-created by court order whereby the child is in the legal custody of his or her parent(s), guardian(s) or other legal custodian(s) under the supervision of the Department of Health and Welfare.⁸

Legal Custody. The court may order that the legal custody of the child(ren) be placed with the Department of Health and Welfare.⁹ "Legal Custody" means a relationship created by court order which vests in the custodian the right to have physical custody and control of the child; to determine where and with whom the child shall live; and to make legal decisions on the child's behalf.¹⁰

When the court places legal custody of a child with the Department of Health and Welfare, it often results in the child's placement in foster care or other out-of-home care.

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Termination of Parental Rights. In appropriate cases, a petition to terminate the parent-child relationship may be filed with the court.¹¹ If the court approves a permanency plan with a permanency goal of termination of parental rights and adoption, the petition to terminate parental rights must be filed within thirty (30) days of the date of the order.¹²

If a child has been in the custody of the Department for fifteen (15) of the most recent twenty-two (22) months, the department shall file, prior to the last day of the fifteenth month, a petition to terminate parental rights unless the Court finds that: 1) the child is placed permanently with a relative; 2) there are compelling reasons why termination is not in the best interests of the child; or 3) the Department has failed to provide reasonable efforts to reunify the child with his family.¹³

FAILURE TO APPEAR AT SCHEDULED HEARINGS

Your failure, without reasonable cause, to appear at scheduled hearings could result in the following:

- (1) The court may proceed without your presence and you may forfeit your rights.¹⁴
- (2) The court could find that the petition has been proved.¹⁵
- (3) The court could issue an order adjudicating that the child(ren) is/are in need of protection or services.¹⁶
- (4) The court could issue an order transferring permanent legal or physical custody of your child(ren) to another.¹⁷
- (5) Your failure to appear at a scheduled hearing could be grounds for contempt. Each count of contempt is punishable by up to five (5) days in jail and/or a \$5,000 fine.¹⁸

ENDNOTES

¹ IJR 39(a), (g).

² IC §16-1613(1); IJR 37(d) and (e); IJR 39(g).

³ IJR 39(g).

⁴ IJR 39(g).

⁵ 25 U.S.C. §§1901-1921.

⁶ IC §16-1615(7); IC §16-1619(10).

⁷ IC §16-1619(5)(a).

⁸ IC §16-1602(30).

⁹ IC §16-1619(5)(b).

¹⁰ IC §16-1602(24).

¹¹ IC §16-1624; IJR 39(g).

¹² IC §16-1624(2).

¹³ IC §16-1622(g).

¹⁴ IJR 33(b).

¹⁵ IJR 39(g).

¹⁶ IJR 39(g).

¹⁷ IJR 39(g).

¹⁸ IC §1-1901; §1-1902.