

REVIEW HEARINGS

Bench Card

PURPOSE

To review the progress of the case, monitor compliance with the case plan or permanency plan, and to modify the case plan or permanency plan as appropriate.¹

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.²
2. Best practice is to hold hearings at least every 90 days or more frequently as needed to ensure timely permanency for the child.³
3. The Department and the guardian *ad litem* must file progress reports with the court at least five days before each six-month review hearing.⁴
4. For a youth in the legal custody of the Department, within 90 days prior to the youth's 18th birthday.⁵
5. A review hearing may be combined with a permanency hearing.⁶ (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.⁷

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.⁸
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 and older. The Department must confirm to the court that this notice was given.⁹
3. A child eight or older has the right to be heard, either in person or in writing.¹⁰ The Department must confirm to the court that this notice was given.¹¹ The child may be excluded from hearings at any time in the discretion of the court.¹²
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.¹³
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.¹⁴

EVIDENCE

1. The Rules of Evidence do not apply.¹⁵
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 review hearing.¹⁶
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.¹⁷

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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.¹⁸

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:¹⁹
 - a. Is there reason to believe 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 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.²⁰

Placement

1. The Department must include information about the child's placement in its report to the court.²¹
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.²²

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.²³

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.²⁴

NEW! *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.²⁵ Refer to the Independent Living/Transition Planning bench card.

OTHER FINDINGS²⁶

1. Modify disposition, as appropriate.²⁷
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 duration.²⁸

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3. Parent and child visits: Approve (as appropriate), disapprove or modify visitation proposed in the reunification plan.²⁹
4. Approve, reject or modify changes to the case plan or permanency plan as appropriate.³⁰
5. If appropriate, the Department made/did not make reasonable efforts to finalize the permanency plan in effect.³¹
6. When the child will not be returned home, review the Department's consideration of in-state and out-of-state placements.³²
7. If appropriate, a specific finding about the parent's progress on accomplishing the requirements of the case plan.³³

ORDER

1. Enter further orders as necessary to ensure the progress of the case toward achieving permanency for the child.³⁴
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.³⁵
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 15th month, unless the court makes one of these findings:³⁶
 - 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 Independent Living/Transition Planning 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?
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.)**
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?**³⁷
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

¹ IC §16-1622(1)(a); IJR 45(a).

² IC §16-1622(1)(a).

³ NCJFCJ Enhanced Resource Guidelines - Improving Court Practice in Child Abuse and Neglect Cases, <http://www.ncjfcj.org/sites/default/files/%20NCJFCJ%20Enhanced%20Resource%20Guidelines%2005-2016.pdf>, Pg. 260, Last accessed June 23, 2016.

⁴ IC §16-1622(1)(a).

⁵ IC §16-1622(3).

⁶ IC §16-1622(2)(b).

⁷ IJR 45(b).

⁸ IC §16-1613(1); IJR 52(a)

⁹ IJR 40(a) and (b).

¹⁰ IJR 40(b).

¹¹ *Id.*

¹² IC §16-1613(1).

¹³ IJR 40(c).

¹⁴ IC §16-1613(2).

¹⁵ IRE 101(e)(6); IJR 51(b).

¹⁶ IJR 40(a) and (b).

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

¹⁸ IJR 38.

¹⁹ IC §16-1622(1)(a)(ii).

²⁰ 25 C.F.R. § 23.107(2).

²¹ IJR 43(2).

²² IC §16-1622(1)(a)(iv).

²³ IC §16-1622(1)(a)(iii).

²⁴ IC §16-1622(1)(a)(ix).

²⁵ IC §16-1622(1)(a)(v)-(vi).

²⁶ 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.

²⁷ IJR 45(a)(2).

²⁸ IJR 42.

²⁹ IC §16-1621(3)(b)(iii).

³⁰ IJR 45(a)(1).

³¹ IJR 45(a)(3).

³² IJR 45(a)(3).

³³ IC §16-1622(1)(a)(i).

³⁴ IJR 45(a)(4).

³⁵ IJR 45(c).

³⁶ IC §16-1622(2)(g).

³⁷ IC §16-1629(11); 42 U.S.C. §671(a)(29).