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IN THE DISTRICT COURT OF _____ COUNTY, KANSAS

IN THE INTEREST OF

Name _____ Case No. _____
Year of Birth _____ A ☐ male ☐ female

***JOURNAL ENTRY AND ORDER OF TEMPORARY CUSTODY**

Pursuant to K.S.A. 38-2243 and 42 U.S.C. § 671 *et seq.*

(Orders pertaining to more than one child must include findings specific to each child listed in the caption.)

On this ____ day of _____, 20____ this matter comes before the Court.

~~The Court finds the Indian Child Welfare Act (ICWA) ☐ is applicable ☐ is not applicable ☐ applicability is undetermined. Petitioner ☐ need not give ☐ has given ☐ shall give notice to the Tribe and the Court has jurisdiction to proceed for the hearing.~~

The Court asked each participant if the participant knows or has a reason to know the child is an Indian child. The Court finds there is no reason to know that the child is an Indian child. Parties shall inform the court if they subsequently receive information that provides reason to know the child is an Indian child. (If there is a reason to know that the child is an Indian child, use ICWA Form 208.)

The Court finds that jurisdiction and venue are proper. Notice to parties, interested parties and those required to receive notice has been given as required by law.

- ☐ The petitioner appears by _____ ☐ County/District Attorney or designee ☐ other _____.
- ☐ The child appears ☐ in person, and ☐ not in person, but by the child's guardian *ad litem*, _____.
- ☐ _____ *Name of Mother*, the mother ☐ appears in person *pro se* ☐ appears in person, and through her attorney, _____ ☐ appears not in person, but by and through her attorney, _____ ☐ does not appear.
- ☐ _____ *Name of Father*, the ☐ father ☐ putative father of _____ *Name of child*, ☐ appears in person *pro se* ☐ appears in person, and through his attorney, _____ ☐ appears not in person, but by and through his attorney, _____ ☐ does not appear.

Comment [LN1]: Per 25 CFR 23.107(a)

I looked into whether "parties" is defined anywhere:
The ICWA or associated regulations do not specifically define "party." But both the federal statutes and the regulations seem to use "Party" to denote that the person/entity would have the right to participate in hearings and request things of the court. So I think this term is narrower than the term "participant" used above.

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☐ (Other parent appearances) _____

☐ Interested parties appearing are: _____

☐ The Secretary ~~appears~~ is present through: _____

☐ Also present: _____

THE COURT FURTHER FINDS there is probable cause to believe that the allegations in the application for custody are true and:

Appropriate public or private agencies have made reasonable efforts but have failed to maintain the family and prevent the removal of the child from the child's home or reasonable efforts are not required to maintain the child in the home because an emergency exists which threatens the safety of the child as follows: ~~(List finding of facts)~~ (Specific findings of fact must be written here)

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Comment [LN2]: Matching changes to form 309
Making language stronger so courts remember to write something after these first two paragraphs.

AND

The child is likely to sustain harm if not immediately removed from the home; remaining in the home or returning to the home would be contrary to the welfare of the child; and/or, immediate placement is in the best interest of the child. ~~-(List finding of facts)~~ (Specific findings of fact must be written here)

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Comment [LN3]: Matching changes to form 309
Making language stronger so courts remember to write something after these first two paragraphs.

THE COURT FURTHER FINDS:

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- ☐ A grandparent has requested custody and, in evaluating what custody, visitation and residency arrangements are in the best interests of the child, substantial consideration is given to (1) the wishes of the parents, child, and grandparent; (2) the extent that the grandparent has cared for the child; the intent and circumstances under which the child is placed; and (3) the physical and mental health of all involved individuals.

THE COURT THEREFORE ORDERS that the above named child **shall be** placed in the temporary custody of:

- ☐ _____, a parent.
☐ _____, a relative.
☐ _____, an unlicensed person with
close emotional ties to the child.
☐ _____, a youth residential facility.
☐ _____, a shelter facility.
☐ _____, a staff secure facility.
☐ _____, a juvenile crisis intervention center.
☐ The Secretary, if the child is 15 years of age or younger, or 16 or 17 years of age if the child has no identifiable parental or family resources or shows signs of physical, mental, emotional or sexual abuse.

Comment [LN4]: Added per K.S.A. 38-2242(c)(1)(E) - allowed if child has been subjected to human trafficking

Comment [LN5]: Added to KSA 38-2242(c)(1)(F)- per 18 SB 179

AND

- ☐ A child support order shall issue.
☐ Each parent shall submit information to the child support office for a child support order to be prepared, or present documentation of a current child support order within _____ days.

THE COURT ORDERS all providers of services including educational services, treatment, education or care of the child and family, even if not specifically referred to herein, to provide information including any and all educational records to the secretary, any entity providing services to the child and family, counsel for the parties including the county or district attorney, appointed CASA, Citizen Review Board members, the court, and each other to the extent needed to ensure the safety of the child, prevent further abuse or neglect, and to provide appropriate treatment, care and services to the child and family. This order encompasses and complies with the provisions of the Family Education Rights and Privacy Act (20 U.S.C. 1232g; 34 C.F.R. 99 and the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 C.F.R. 164.512(e)(1).

THE COURT FURTHER ORDERS:

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IT IS SO ORDERED THIS

~~Judge of the District Court~~

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Authority

K.S.A. 38-2205(b), 38-2243 and 42 U.S.C. § 671 *et seq.*

Notes on Use

When using this form no other journal entry is required or advised. —This form is complete in and of itself, reciting appearances and allowing space for findings and orders of the court.

If the court, in issuing this order, removes the child from the home, and if it is the first order removing the child from the home or the first order of removal after a previously removed child has been home for six months or longer, Supreme Court Rule 174 requires the use of this form or another form approved by the Supreme Court as meeting Adoption and Safe Families Act (ASFA) requirements. Federal funding is not available when the court finds reasonable efforts have not been made unless the court also finds the efforts were not required **because an emergency exists**. If reasonable efforts have not been made and no emergency exists a removal should not be ordered.

When a court has reason to know a child involved in a child in need of care proceeding is an Indian child, the Indian Child Welfare Act (ICWA) applies; notice requirements, findings and procedure are dictated by ICWA, and the ICWA forms must be used. **If ICWA applies, use form 208 instead of this form.** In addition to the federal ICWA statutes, all federal regulations (25 C.F.R. 23) must be followed. The court should also consult the BIA December 2016 guidelines (www.bia.gov/bia/ois/dhs/icwa).

The court must ask each participant in the case whether the participant knows or has reason to know that the child is an Indian child. The inquiry and all responses should be on the record. The term “participant” is used in the regulations and is meant to be very broad. The goal is to encourage anyone, not just parties, to provide information to the court. The court must also instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child. 25 C.F.R. 23.107(a). **If there is reason to know the child is an Indian child but the court does not have sufficient evidence to determine that the child is or is not an Indian child, the court must treat the child as an Indian child, unless and until it is determined on the record that the child does not meet the definition of an Indian child. 25 C.F.R. 23.107(b).** The court “has reason to know” a child is an Indian child if:

- “(1) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that the child is an Indian child;
- (2) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child;
- (3) The child who is the subject of the proceeding gives the court reason to know he or she is an Indian child;

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(4) The court is informed that the domicile or residence of the child, the child's parents, or the child's Indian custodian is on a reservation or in an Alaska Native village;

(5) The court is informed that the child is or has been a ward of a Tribal court; or

(6) The court is informed that either parent or the child possesses an identification card indicating membership in an Indian Tribe.” 25 C.F.R. 23.107(c).~~When a court has reason to believe know a child involved in a child in need of care proceeding is an Indian child, the Indian Child Welfare Act (ICWA), 25 U.S.C. 1901 *et seq.* applies; notice requirements, findings and procedure are dictated by ICWA, and the ICWA forms must be used. Removal of an Indian child from the home is prohibited without the specific findings required by ICWA either entered with the order of removal, or within 90 days if the removal was due to an emergency.~~

~~The circumstances under which a court has reason to believe a child is an Indian child include, but are not limited to, the following: any party to the case, Indian tribe, or agency informs the court that the child is an Indian child; any agency involved in child protection services or family support has discovered information suggesting that the child is an Indian child; the child gives the court reason to believe he or she is an Indian child; the residence of the child, parent(s), or custodian is known to be a predominantly Indian community; a parent of the child is enrolled in a tribe; or an officer of the court has knowledge that the child may be an Indian child. Department of the Interior, BIA Guidelines for State Courts, Indian Child Custody Proceedings. The court should inquire about possible Indian heritage of the child, and the state and the secretary should be pursuing ICWA information at this time.~~

The court may issue a temporary custody order after a hearing and upon making probable cause findings as required by ASFA and K.S.A. 38-2243(i), which are set out in this form. The statute requires that the temporary custody hearing take place within 72 hours (not including Saturday, Sunday, legal holidays and days on which the clerk of the court is not available) of the execution of a protective custody order (Form 106) or of a child's being admitted to a placement while in police protective custody pursuant to K.S.A. 38-2233(e). Notice of the temporary custody hearing shall be given to all parties and interested parties at least 24 hours prior to the hearing. Oral notice may be used if there is insufficient time to give written notice. Oral notice is completed upon the filing of a certificate of oral notice (Form 131).

The court may enter a restraining order (Form 134) against any alleged perpetrator of physical, sexual, mental or emotional abuse of the child. This form includes a provision allowing for issuance of a restraining order pursuant to K.S.A. 38-2255(d)(4).~~There is a provision in this form directing that a restraining order issue pursuant to K.S.A. 38-2243(h).~~

The Court may place the child in the protective custody of a staff secure facility if the child has been subjected to human trafficking or aggravated human trafficking, as defined in K.S.A. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, as defined by K.S.A. 21-6422, and amendments thereto, or the child committed an act which, if committed by an adult, would constitute a violation of K.S.A. 21-6419, and amendments thereto.

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K.S.A. 38-2242(c)(1)(E). The Court may place the child in the protective custody of a juvenile crisis intervention center only after written authorization by a community mental health center. K.S.A. 38-2242(c)(1)(F).

Comment [LN6]: 18 SB 179

If the petition alleges that the child is a runaway pursuant to K.S.A. 38-2202(d)(9) or (d)(10), but the child has not yet been adjudicated as a runaway, then the order may direct that the child be detained in a secure facility, which may be a juvenile detention facility, but not for more than 24 hours, excluding Saturdays, Sundays, legal holidays, and days on which the clerk of the court is not available. The time limitation of 24 hours is the total time permitted in a secure facility whether by police protective custody or court order.

If a grandparent requests custody, the form facilitates documentation required by K.S.A. 38-2286, which specified requirements concerning grandparents as potential custodians. If the court does not award custody of the child to a parent and, if a grandparent requests custody, the court shall give substantial consideration when evaluating what custody, visitation or residency arrangements are in the best interests of the child. Relevant factors to be considered include wishes of the parents, child and grandparent; the extent to which the grandparent has cared for, nurtured and supported the child; the intent and circumstances under which the child is placed with the grandparent, including whether domestic violence is a factor and whether the child is placed to allow the parent to seek work or attend school; and the physical and mental health of all individuals involved.

If the court awards custody of the child to the secretary then the secretary shall have the authority to place the child, and the court may make placement recommendations. If the court awards custody to the secretary, then the court shall provide the secretary with a copy of any orders entered.

The order of temporary custody shall remain in effect until modified or rescinded or until a disposition order is entered, but not exceeding 60 days, unless good cause is shown and stated on the record. The court shall make a child support determination if the child is placed with a person other than a parent.

When the term “or” stands alone between optional findings/orders, more than one choice may be checked. Each choice checked must be justified as instructed, *e.g. specify basis for finding for each child.*