

IN THE DISTRICT COURT OF _____ COUNTY, KANSAS

IN THE INTEREST OF

Name _____ Case No. _____

Year of Birth _____ A male female

***JOURNAL ENTRY OF PERMANENCY HEARING FOR CHILD IN NEED OF CARE
POST-TERMINATION**

Pursuant to K.S.A. 38-2264 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.)

NOW on this _____ day of _____, 20_____, the above-captioned matters come on for a permanency hearing **to establish a permanency plan and/or** **for review of the plan for permanency or progress being made towards the goals of the plan and the viability of those goals.**

THE COURT FINDS jurisdiction and venue are proper. Notice to parties, interested parties and those required to receive notice has been given as required by law.

The child is 14 years of age or older and has been given notice of the time and place of the permanency hearing.

The Court finds that the Indian Child Welfare Act (ICWA) is not applicable. *(If there is reason to know the child is an Indian child, use the appropriate ICWA form.)*

The petitioner appears by _____ **County/District Attorney or designee** **other** _____.

The child appears **in person and** **not in person, but** by the child guardian *ad litem*

Interested parties appearing are: _____

The Secretary appears through: _____

Also present: _____

The Court finds termination/relinquishment of all parental rights occurred on:

THE COURT FINDS:

1. a. Appropriate public or private agencies have made reasonable efforts to accomplish the current permanency goal(s) set out in the permanency plan.

OR

- b. Appropriate public or private agencies have not made reasonable efforts to accomplish the current permanency goal(s) set out in the permanency plan.
2. The progress toward achieving the permanency plan goal(s) of _____
_____ **is** **is not** adequate.
3. The child's needs **are** **are not** being adequately met. (*If the child's needs are not being met, explain.*) _____

4. The reasonable and prudent parenting standard **has been** **has not been** met. _____

5. The child **has had** **has not had** regular, on-going opportunities to engage in age or developmentally appropriate activities. _____

6. The Court has considered in-state and out-of-state permanent placement options. The child **is** **is not** in out-of-state placement, and such placement **continues** **does not continue** to be appropriate and in the best interest of the child.
7. **The child is 14 years of age** or older and the court finds that Secretary had made the following efforts to help the child prepare for the transition from custody to a successful adulthood. _____

8. The Court **approves and adopts the proposed permanency plan as the plan for permanency in the present matter or** **does not approve the proposed permanency plan and orders a new permanency plan submitted to the Court within 30 days.**

9. The above name child shall remain in custody of the Secretary.

10. The previous orders of this Court **shall continue in full force and effect** **except as hereby modified** **are hereby rescinded and the following orders are hereby issued pursuant to K.S.A. 38-2255.**

THE COURT FURTHER FINDS:

THE COURT FURTHER ORDERS:

THE COURT FURTHER 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 Secretary Court Services _____ shall complete reports and submit them to the Court by _____.

THE COURT FURTHER ORDERS this matter set for _____ hearing before **the Court** **the CRB** on the _____ day of _____, 20_____, at _____:____ **a.m.** **p.m.**

IT IS SO ORDERED THIS _____ day of _____, 20_____.

Authority

K.S.A. 38-2264 and 42 U.S.C. 671 *et seq.*

Notes on Use

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.

Supreme Court Rule 174 requires the use of this form or another form approved by the Supreme Court as meeting the Adoption and Safe Families Act (ASFA) requirements. Failure to make and properly document the findings required by ASFA will result in the loss of federal funding. 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. The loss of federal funding continues until the court finds reasonable efforts have been made and the court's findings are properly documented.

After termination of parental rights permanency hearings continue to be required at least every 12 months from the date the child first entered out of home placement. Termination of parental rights does not change the requirement for permanency hearings, and they shall continue until the child is adopted, a permanent custodian is appointed or jurisdiction is terminated. During the permanency hearing the court shall consider whether reasonable efforts have been made to achieve the case plan goals. If the court determines that reasonable efforts have not been made or progress is not sufficient, the court may rescind its prior orders and enter other orders regarding custody and adoption that are appropriate under the circumstances. K.S.A. 38-2264(h).

If the permanency hearing is for a child 14 years of age or older, the court shall require notice of the time and place of the permanency hearing. The notice shall request the child's participation in the hearing by attendance or by report to the court. A sample report form may be obtained on the Kansas Judicial Council website or through the Office of Judicial Administration.

At the time of the permanency hearing, if the child is placed in a qualified residential treatment program, Form 188.5 must be used.

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 221.1 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;
- (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).

If the court finds that (1) appropriate public or private agencies have not made reasonable efforts to assist and support the family to accomplish the current permanency goal(s) set out in the permanency plan, (2) the reasonable and prudent parenting standard has not been met, or (3) the child does not have regular, ongoing opportunities to engage in age or developmentally appropriate activities, then the court will hold another permanency hearing no later than 60 days following the finding. K.S.A. 38-2264(f).