

IN THE DISTRICT COURT OF _____ COUNTY, KANSAS

IN THE INTEREST OF

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

***EX PARTE ORDER OF PROTECTIVE CUSTODY OF INDIAN CHILD**

Pursuant to K.S.A. 38-2242, 42 U.S.C. 671 *et seq.*, 25 U.S.C. §1901 *et seq.*, and 25 C.F.R. 23
(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 asked each participant if the participant knows or has a reason to know the child is an Indian child. The Court has **sufficient evidence to determine the child is an Indian child as defined in the Indian Child Welfare Act** **the following reason to know the child is an Indian child:**

_____. Therefore, the Indian Child Welfare Act (ICWA) applies.

Petitioner **has given** **shall give** the required ICWA notice of the proceeding to the Tribe or Tribes that may be the Indian child’s Tribe, the parents, and Indian custodians, if any.

The Court has jurisdiction to proceed.

THE COURT FINDS:

1. There is probable cause to believe that the allegations in the application for protective custody are true and:

Appropriate public or private agencies have made reasonable and active efforts but have failed to maintain the family and prevent the removal of the child from the child’s home **or** an emergency exists which threatens the safety of the child as follows: *(Specific findings of fact must be written here)*

AND

There is clear and convincing evidence that the child is likely to sustain imminent physical damage or harm pursuant to 25 C.F.R. 23.113 and remaining in the home would be contrary to the welfare of the child as follows: *(Specific findings of facts must be written here.)*

2. 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 the above named child **shall be** placed in the protective custody of:

- _____, a parent.
- _____, a relative.
- _____, an unlicensed person with close emotional ties to the child.
- _____, a youth residential facility.
- _____, a shelter facility.
- _____, a juvenile crisis intervention center.
- _____, a staff secure facility.
- The Secretary, if the child is 15 years of age or younger, or if the child is 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.

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).

- Visitation during protective custody pursuant to K.S.A. 38-2242(b)(2) is not in the best interest of the child and is prohibited.
- A restraining order shall be filed against _____.
- IT IS FURTHER ORDERED that any duly authorized law enforcement officer of the jurisdiction where the child can be found shall take the child named above into custody and deliver the child to _____.

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

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