

IN THE DISTRICT COURT OF \_\_\_\_\_ COUNTY, KANSAS

IN THE INTEREST OF

Name \_\_\_\_\_ Case No. \_\_\_\_\_

Year of Birth \_\_\_\_\_ A  male  female

**\*INDIAN CHILD WELFARE ACT**  
**QUALIFIED RESIDENTIAL TREATMENT PROGRAM PLACEMENT**  
**PERMANENCY HEARING ORDER FOR CHILD IN NEED OF CARE**  
**POST-TERMINATION**

Pursuant to K.S.A. 38-2203(a), 38-2264, 42 U.S.C. 671 *et seq.* and 25 U.S.C. § 1901 *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 before the Court **to determine progress being made to achieve the current permanency plan goal(s) of \_\_\_\_\_.**

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  **each child named above** or  **the child** \_\_\_\_\_ is an Indian child as defined by the Indian Child Welfare Act (ICWA)  **the Court has the following reason to know the child is an Indian child:**

\_\_\_\_\_  
Copies of the petition, reports, other information concerning the child, and notice of this hearing as required by ICWA have been timely provided to the Tribe. The Tribe has been given a full opportunity to participate in this proceeding.

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*, \_\_\_\_\_

The \_\_\_\_\_ Tribe  **appears by** \_\_\_\_\_, **attorney/representative or**  **does not appear.**

- Interested parties appearing are: \_\_\_\_\_  
\_\_\_\_\_
- The Secretary appears through: \_\_\_\_\_  
\_\_\_\_\_
- Also present: \_\_\_\_\_  
\_\_\_\_\_
- The \_\_\_\_\_ Tribe  **appears by** \_\_\_\_\_,  
**attorney/representative or  does not appear.**

The Court has received and considered evidence.

1.  A request to transfer of jurisdiction to the Tribe:
  - has not been made.
  - was made on \_\_\_\_\_ by \_\_\_\_\_  
and the transfer of jurisdiction was declined by the Tribe.
  - was made on \_\_\_\_\_ by \_\_\_\_\_  
and the transfer of jurisdiction was denied by the Court because:
    - the following parent(s) object(s) to the transfer: \_\_\_\_\_  
\_\_\_\_\_
    - after receiving arguments from all parties, the Court finds good cause exists  
for denying the transfer. (*Document specific findings that good cause  
exists.*)  
\_\_\_\_\_  
\_\_\_\_\_
    - see findings of fact and conclusion of law in the court's order filed  
\_\_\_\_\_.
  - was made on \_\_\_\_\_ by \_\_\_\_\_ and  
the transfer to \_\_\_\_\_ was granted. See  
attached Order Transferring Jurisdiction (Form 214).
2. Termination/relinquishment of parental rights occurred on \_\_\_\_\_  
\_\_\_\_\_
3.  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.

4. The progress toward achieving the permanency plan goal(s) of \_\_\_\_\_  
\_\_\_\_\_  is  is not adequate.

5. The child's needs  are  are not being adequately met. *(If the child's needs are not being met, explain.)* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. The reasonable and prudent parenting standard  has been  has not been met. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. The child  has had  has not had regular, on-going opportunities to engage in age or developmentally appropriate activities. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. **Custody**

The above-named child  shall be  shall remain placed in the custody of:

\_\_\_\_\_, a member of the child's extended family. *(Complete the placement section below.)*

\_\_\_\_\_, an unlicensed person approved or specified by the Tribe with close emotional ties to the child. *(Complete the placement section below.)*

\_\_\_\_\_, a youth residential or shelter facility approved or specified by the Tribe or operated by an Indian organization. *(Complete the placement section below.)*

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 or emotional or sexual abuse. *(Complete the placement section below.)*

**Placement**

*(It is unlikely that the placement of the child in a QRTP will fall within the ICWA or Tribe’s placement preference categories. Therefore, this form assumes the court must make the findings regarding whether there is good cause for the child not to be placed within the placement preferences.)*

**Child is not in a preferred placement** *(complete all subsections)*

(1) The child is placed \_\_\_\_\_, a qualified residential treatment program.

(2) The court, after considering evidence and arguments from all parties, finds that there is clear and convincing evidence that there is good cause to deviate from the placement preferences based on one or more of the following considerations:

- The request of one or both of the Indian child’s parents, if they attest that they have reviewed the placement options, if any, that comply with the order of preference.
- The request of the child, if the child is of sufficient age and capacity to understand the decision that is being made.
- The presence of a sibling attachment that can be maintained only through a particular placement.
- The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live.
- The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the preference criteria, but none has been located.

*(Specific findings of fact must be written here)*

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(3)  a. The child is currently placed in a qualified residential treatment program. The ongoing assessment of the strengths and needs of the child **continues to support** that the needs of the child cannot be met through placement in a foster family home; placement in a qualified residential treatment program provides the most effective and appropriate level of care for the child in the least restrictive environment; and the placement is consistent with the short-term and long-term goals for the child, as specified in the permanency plan for the child.

- i. Treatment or service needs are being or will be met in the qualified residential treatment program. The child is expected to need the treatment or services for \_\_\_\_\_ more months.
- ii. The Secretary has made the following efforts to prepare the child to be placed in a family home setting (*return home or be placed with a fit and willing relative, a legal guardian, or an adoptive parent, or in a foster home*):

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**OR**

- b. The child is currently placed in a qualified residential treatment program. The ongoing assessment of the strengths and needs of the child **does not support** continued placement in a qualified residential treatment program.

- 9.  **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. (*Identify*) \_\_\_\_\_

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- 10. 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.**

- 11. 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:

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THE COURT ORDERS:

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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 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. 38-2203(a), 38-2264, 42 U.S.C. 671, 25 U.S.C. § 1901 *et seq.*, and 25 C.F.R. 23.

## Notes on Use

This form is to be used only if, at the time of the permanency hearing, the Indian child is placed in a qualified residential treatment program (QRTP).

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. “An additional order or supplemental affidavit may be attached to a form.” Kansas Supreme Court Rule 174(b). 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.

### Timing of permanency hearing

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 or a permanent custodian is appointed. 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).

### Notice

Notice of a permanency hearing is dictated by K.S.A. 38-2265. 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 be sent to the child. K.S.A. 38-2265(a)(2). 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.

### Identifying the Tribe(s)

The court must determine whether the child’s Tribe has been identified and whether the Tribe has been afforded a full opportunity to participate in the proceedings. If so, the court must determine whether the agency provided the child’s Tribe with copies of the petition, reports, and information concerning the child in a timely manner. 25 U.S.C. 1911(c) & (d); 25 U.S.C. 1912(a).

### Prior Termination of Parental Rights

The date of termination or relinquishment of parental rights should be recited for each child and parent as set out in the form. If the parent of an Indian child voluntarily relinquishes parental rights or consents to an adoption, 25 U.S.C. 1913 provides the parent may withdraw the relinquishment for consent for any reason prior to a final decree of termination or adoption.

In the court's termination of parental rights order, the court found that active efforts had failed to prevent the breakup of the Indian family and that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. Therefore, it is unnecessary for the court to make those findings again at this permanency hearing. BIA Guidelines for Implementing the Indian Child Welfare Act, December 2016, Section E.5.

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).

### Preferred Placement

The Court must document where the child is placed. An Indian child must be placed in the least-restrictive setting that: (1) most approximates a family, taking into consideration sibling attachment; (2) allows the Indian child's special needs (if any) to be met; and (3) is in reasonable proximity to the Indian child's home, extended family, or siblings. 25 C.F.R. 23.131(a). Unless the child's Tribe has established a different order of preference, preference to placement of the child with the following people must be given, in descending order as listed below:

- (1) A member of the Indian child's extended family;
- (2) A foster home that is licensed, approved, or specified by the Indian child's Tribe;
- (3) An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- (4) An institution for children approved by an Indian Tribe or operated by an Indian organization which has a program suitable to meet the child's needs. 25 U.S.C. 1915; 25 C.F.R. 23.131(b).

The court must, where appropriate, also consider the preference of the Indian child or the Indian child's parent. 25 C.F.R. 23.131(d).

Because the child's placement in a qualified residential treatment program is unlikely to fall within any of the ICWA or Tribe's preferred placement categories, this form assumes the Court will make findings about whether there is good cause to deviate from the placement preferences. The Court must also make all the required findings about the QRTP placement.

If a party argues there is good cause to deviate from the placement preferences, the court



must allow for all parties to provide evidence and make arguments to the court regarding whether there is good cause to deviate. The court must make findings on the record or in writing about whether the party seeking the departure from the placement preferences has proven this through clear and convincing evidence. 25 C.F.R. 23.132(b). The court's finding of good cause should be based on one or more of the following considerations:

- (1) The request of one or both of the Indian child's parents, if they attest that they have reviewed the placement options, if any, that comply with the order of preference;
- (2) The request of the child, if the child is of sufficient age and capacity to understand the decision that is being made;
- (3) The presence of a sibling attachment that can be maintained only through a particular placement;
- (4) The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live; and/or
- (5) The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the preference criteria, but none have been located. The standard for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the parents or extended family maintains social and cultural ties. 25 C.F.R. 23.132(c).

A placement may not depart from the preferences based on socioeconomic statutes of any placement relative to another placement; or based solely on ordinary bonding or attachment that flowed from time spent in a non-preferred placement that was made in violation of ICWA. 25 C.F.R. 23.132(d) and (e). The court should make detailed findings as to whether the agency has made an ongoing, diligent search to locate extended family, a tribal member, or other Indian family for placement if the child is not already with a preferred placement pursuant to 25 U.S.C. 1915(b); 25 C.F.R. 23.130 and 23.131.

If the child is placed in a qualified residential treatment program (QRTP) at the time of the permanency hearing, the court must make specialized findings. The court must first determine whether the ongoing assessment of the strengths and needs of the child does or does not support the determination that the child's needs cannot be met through placement in a foster family home. If the court determines that the child's needs cannot be met through placement in a foster home, then the court must determine: whether that placement in a qualified residential treatment program provides the most effective and appropriate level of care for the child in the least restrictive environment, and whether the placement is consistent with the short-term and long-term goals for the child, as specified in the permanency plan for the child. The court must also make specific findings of fact regarding: the specific treatment or service needs that will be met for the child in the QRTP placement; the length of time the child is expected to need the treatment or services; and the efforts made by the secretary to prepare the child to return home or to be placed with a fit and willing relative, a legal guardian, or an adoptive parent, or in a foster family home.

Compliance with ICWA is jurisdictional. Failure to comply with ICWA may render orders devoid of authority.