

CHAPTER 8
RESOURCE MATERIALS



Practicing the **CASA/GAL** Volunteer Role— Gathering Information

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Resource Guidelines—Improving Court Practice in Child Abuse & Neglect Cases: Master Checklists

Preliminary Protective Hearing Checklist

Persons who should always be present at the preliminary protective hearing:

- Judge or judicial officer
- Parents whose rights have not been terminated, including putative fathers
- Relatives with legal standing or other custodial adults
- Assigned caseworker
- Agency attorney
- Attorney for parents (separate attorneys if conflict warrants)
- Legal advocate for the child and/or GAL/CASA
- Court reporter or suitable technology
- Security personnel

Persons whose presence may also be needed at the preliminary protective hearing:

- Age-appropriate children
- Extended family members
- Adoptive parents
- Judicial case management staff
- Law enforcement officers
- Service providers
- Adult or juvenile probation or parole officer
- Other witnesses

Courts can make sure that parties and key witnesses are present by:

- Requiring quick and diligent notification efforts by the agency;

- Requiring both oral and written notification in language understandable to each party and witness;
- Requiring notice to include reason for removal, purpose of hearing, availability of legal assistance;
- Requiring caseworkers to encourage attendance of parents and other parties.

Filing the petition:

- A sworn petition or complaint should be filed at or prior to the time of the preliminary protective hearing.
- The petition should be complete and accurate.

Key decisions the court should make at the preliminary protective hearing:

- Should the child be returned home immediately or kept in foster care prior to trial?
- What services will allow the child to remain safely at home?
- Will the parties voluntarily agree to participate in such services?
- Has the agency made reasonable efforts to avoid protective placement of the child?
- Are responsible relatives or other responsible adults available?
- Is the placement proposed by the agency the least disruptive and most family-like setting that meets the needs of the child?
- Will implementation of the service plan and the child's continued well-being be monitored on an ongoing basis by a GAL/CASA?
- Are restraining orders, or orders expelling an allegedly abusive parent from the home appropriate?



- Are orders needed for examinations, evaluations, or immediate services?
- What are the terms and conditions for parental visitation?
- What consideration has been given to financial support of the child?

Additional activities at the preliminary protective hearing:

- Reviewing notice to missing parties and relatives;
- Serving the parties with a copy of the petition;
- Advising parties of their rights;
- Accepting admissions to allegations of abuse or neglect.

Submission of reports to the court:

- The court should require submission of agency and/or law enforcement reports at least one hour prior to the preliminary protective hearing.
- Reports to the court should describe all circumstances of removal, any allegations of abuse or neglect, and all efforts made to try to ensure safety and prevent need for removal.

The court's written findings of fact and conclusions of law at the preliminary protective hearing should:

- Be written in easily understandable language which allows the parents and all parties to fully understand the court's order.

If child is placed outside the home:

- Describe who is to have custody and where child is to be placed;
- Specify why continuation of child in the home would be contrary to the child's welfare (as required to be eligible for federal matching funds);
- Specify whether reasonable efforts have been made to prevent placement (including a brief description of what services, if any, were provided and why placement is necessary);
- Specify the terms of visitation.

Whether or not the child is returned home:

- Provide further directions to the parties such as those governing future parental conduct and any agency services to the child and parent agreed upon prior to adjudication.
- Set date and time of next hearing.



Adjudication Hearing Checklist

Persons who should always be present at the adjudication hearing:

- Judge or judicial officer
- Parents whose rights have not been terminated, including putative fathers
- Relatives with legal standing or other custodial adults
- Assigned caseworker
- Agency attorney
- Attorney for parents (separate attorneys if conflict warrants)
- Legal advocate for the child and/or GAL/CASA
- Court reporter or suitable technology
- Security personnel

Persons whose presence may also be needed at the adjudication hearing:

- Age-appropriate children
- Extended family members
- Adoptive parents
- Judicial case management staff
- Law enforcement officers
- Service providers
- Other witnesses

Key decisions the court should make at the adjudication hearing:

- Which allegations of the petition have been proved or admitted, if any;
- Whether there is a legal basis for continued court and agency intervention;
- Whether reasonable efforts have been made to prevent the need for placement or to safely reunify the family.

Additional decisions at the adjudication hearing:

If the disposition hearing will not occur within a short time after the adjudication hearing, the judge may need to make additional temporary decisions at the conclusion of adjudication. For example, the judge may need to:

- Determine where the child is to be placed prior to disposition hearing;
- Order further testing or evaluation of the child or parents in preparation for the disposition hearing;
- Make sure that the agency is, in preparation for disposition, taking prompt steps to evaluate relatives as possible caretakers, including relatives from outside the area;
- Order the alleged perpetrator to stay out of the family home and have no contacts with the child;
- Direct the agency to continue its efforts to notify noncustodial parents, including unwed fathers; and
- When the child is to be in foster care prior to disposition, set terms for visitation, support, and other intra-family communication including both parent-child and sibling visits.

The court's written findings of fact and conclusions of law at the adjudication hearing should:

- Accurately reflect the reasons for state intervention.
- Provide sufficiently detailed information to justify agency and court choices for treatment and services.
- Provide a defensible basis for refusing to return a child home or terminating parental rights if parents fail to improve.
- Be written in easily understandable language so that all parties know how the court's findings relate to subsequent case planning.
- Set date and time of next hearing, if needed.



Disposition Hearing Checklist

Persons who should always be present at the disposition hearing:

- Judge or judicial officer
- Parents whose rights have not been terminated, including putative fathers
- Relatives with legal standing or other custodial adults
- Assigned caseworker
- Agency attorney
- Attorney for parents (separate attorneys if conflict warrants)
- Legal advocate for the child and/or GAL/CASA
- Court reporter or suitable technology
- Security personnel

Persons whose presence may also be needed at the disposition hearing:

- Age-appropriate children
- Extended family members
- Adoptive parents
- Judicial case management staff
- Law enforcement officers
- Service providers
- Adult or juvenile probation or parole officer
- Other witnesses

Submission of reports to the court. Predisposition reports should include:

- A statement of family changes needed to correct the problems necessitating state intervention, with timetables for accomplishing them;
- A description of services to be provided to assist the family; and
- A description of actions to be taken by parents to correct the identified problems.

When the agency recommends foster placement, an affidavit of reasonable efforts should be submitted. The following are some additional key elements of the affidavit:

- A description of the efforts made by the agency to avoid the need for placement and an explanation why they were not successful;
- An explanation of why the child cannot be protected from the identified problems in the home even if services are provided to the child and family; and
- Identification of relatives and friends who have been contacted about providing a placement for the child.

Other information that should be included either in the affidavit of reasonable efforts or an accompanying court report is:

- A description of the placement and where it is located;
- Proposed arrangements for visitation;
- Placement of the child's siblings and, if they are to be apart, proposed arrangements for visitation;
- An appropriate long-term plan for the child's future; and
- Proposed child support.

Key decisions the court should make at the disposition hearing:

- What is the appropriate statutory disposition of the case and long-term plan for the child?
- Where should the child be placed?
- Does the agency-proposed case plan reasonably address the problems and needs of child and parent?
- Has the agency made reasonable efforts to eliminate the need for placement or prevent the need for placement?
- What, if any, child support should be ordered?
- When will the case be reviewed?

The court's written findings of fact and conclusions of law at the disposition hearing should:

- Determine the legal disposition of the case, including the custody of the child, based upon the statutory options provided under state law.



- ❑ State the long-term plan for the child (e.g., maintenance of the child in the home of a parent, reunification with a parent or relative, permanent placement of child with a relative, placement of the child in a permanent adoptive home.)
- ❑ When applicable, specify why continuation of child in the home would be contrary to the child's welfare.
- ❑ Where charged with this responsibility under state law and based upon evidence before the court, approve, disapprove or modify the agency's proposed case plan.
- ❑ Determine whether there is a plan for monitoring the implementation of the service plan and assuming the child's continued well-being. Is a GAL/CASA available to do this?
- ❑ When placement or services are ordered that were not agreed upon by the parties, specify the evidence or legal basis upon which the order is made.
- ❑ Specify whether reasonable efforts have been made to prevent or eliminate the need for placement.
- ❑ Specify the terms of parental visitation.
- ❑ Specify parental responsibilities for child support.
- ❑ Be written in easily understandable language so that parents and all parties fully understand the court's order.
- ❑ Set date and time of next hearing, if needed.



Review Hearing Checklist

Persons who should always be present at the review hearing:

- Judge or judicial officer
- Parents whose rights have not been terminated, including putative fathers
- Age-appropriate children
- Relatives with legal standing or other custodial adults
- Foster parents
- Assigned caseworker
- Agency attorney
- Attorney for parents (separate attorneys if conflict warrants)
- Legal advocate for the child and/or GAL/CASA
- Court reporter or suitable technology
- Security personnel

Persons whose presence may also be needed at the review hearing:

- Extended family members
- Adoptive parents
- Judicial case management staff
- Service providers
- Adult or juvenile probation or parole officer
- Other witnesses
- School officials

Key decisions the court should make at the review hearing:

- Whether there is a need for continued placement of a child.
- Whether the court-approved, long-term permanent plan for the child remains the best plan for the child.
- Whether the agency is making reasonable efforts to rehabilitate the family and eliminate the need for placement of a child.
- Whether services set forth in the case plan and the responsibilities of the parties need to be clarified

or modified due to the availability of additional information or changed circumstances.

- Whether the child is in an appropriate placement which adequately meets all physical, emotional and educational needs.
- Whether the terms of visitation need to be modified.
- Whether terms of child support need to be set or adjusted.
- Whether any additional court orders need to be made to move the case toward successful completion.
- What time frame should be set forth as goals to achieve reunification or other permanent plan for each child.

Submission of reports to the court:

Pre-Review Report

Pre-review reports by the child welfare agency and the GAL/CASA can serve the same purpose as predisposition reports. Pre-review reports should include:

- A statement of family changes needed to correct the problems necessitating state intervention, with timetables for accomplishing them;
- A description of services to be provided to assist the family; and
- A description of actions to be taken by parents to correct the identified problems.

Affidavit of Reasonable Efforts

When the agency recommends continued foster placement, an affidavit of reasonable efforts should be submitted. The following are some key elements of the affidavit:

- A description of the efforts made by the agency to reunify the family since the last disposition or review hearing and an explanation why those efforts were not successful;
- An explanation why the child cannot presently be protected from the identified problems in the home even if services are provided to the child and family.



The court's written findings of fact and conclusions of law at the review hearing should:

- ❑ Set forth findings as to why the children are in need of continued placement outside the parents' home or continued court supervision, including the specific risks to the child;
- ❑ Set forth findings as to whether and why family reunification and an end to court supervision continues to be the long-term case goal;
- ❑ Set forth findings as to whether the agency has made reasonable efforts to eliminate the need for placement, with specific findings as to what actions the agency is taking;
- ❑ Set forth detailed findings of fact and conclusions of law as to whether the parents are in compliance with the case plan and identify specifically what further actions the parents need to complete;
- ❑ Set forth orders for the agency to make additional efforts necessary to meet the needs of the family and move the case toward completion;
- ❑ Be written in easily understandable language which allows the parents and all parties to fully understand what action they must take to have their children returned to their care;
- ❑ Approve proposed changes in the case plan and set forth any court-ordered modifications needed as a result of information presented at the review;
- ❑ Identify an expected date for final reunification or other permanent plan for the child;
- ❑ Make any other orders necessary to resolve the problems that are preventing reunification or the completion of another permanent plan for the child; and
- ❑ Set date and time of next hearing, if needed.



Permanency Planning Hearing Checklist

Persons who should always be present at the permanency planning hearing:

- Judge or judicial officer
- Age-appropriate children
- Parents whose rights have not been terminated, including putative fathers
- Relatives with legal standing or other custodial adults
- Assigned caseworker
- Agency attorney
- Attorney for parents (separate attorneys if conflict warrants)
- Legal advocate for the child and/or GAL/CASA
- Court reporter or suitable technology
- Security personnel

Persons whose presence may also be needed at the permanency planning hearing:

- Extended family members
- Foster parents
- Prospective adoptive parents
- Judicial case management staff
- Service providers
- Adult or juvenile probation or parole officer
- Other witnesses

Key decisions the court should make at the permanency planning hearing:

- The child is to be returned home on a specific date.
- The child will be legally freed for adoption.
- The custody of the child will be transferred to an individual or couple on a permanent basis.
- The child will remain in foster care on a permanent or long-term basis.
- Foster care will be extended for a specific time, with a continued goal of family reunification.

Submission of reports to the court. A report for a permanency planning hearing should:

- Specify the relief being sought and address the same issues that the judge needs to determine.
- Examine the reasons for excluding higher priority options.
- Set forth a plan to carry out the placement decision.

When the report or petition requests that a child be returned home on a date certain, it should set forth:

- How the conditions or circumstances leading to the removal of the child have been corrected;
- The frequency of recent visitation and its impact on the child; and
- A plan for the child's safe return home and follow-up supervision after family reunification.

When the report requests termination of parental rights, it should set forth:

- Facts and circumstances supporting the grounds for termination; and
- A plan to place the child for adoption.

When a custody award to an individual or couple is proposed, the report should set forth:

- Facts and circumstances refuting the grounds for termination of parental rights (demonstrating the fitness of the parents) or showing that although the child cannot be placed with parents, termination is not in the best interests of the child;
- Facts and circumstances demonstrating the appropriateness of the individual or couple to serve as permanent caretaker of the child; and
- A plan to ensure the stability of the placement.

When permanent foster care with a specific family is proposed, the report should set forth:

- Facts and circumstances refuting the grounds for termination of parental rights (demonstrating the fitness of the parents) or showing that although the child cannot be placed with parents, termination is not in the best interests of the child;



- ❑ Facts and circumstances explaining why custody is not practical or appropriate;
- ❑ Facts and circumstances demonstrating the appropriateness of the foster parents and the foster parents' commitment to permanently caring for the child; and
- ❑ A plan to ensure the stability of the placement.

When long-term foster care is proposed because the child cannot function in a family setting, the report should set forth:

- ❑ Facts and circumstances leading to that conclusion; and
- ❑ A plan to prepare the child to live in a family setting at the earliest possible time and for visitation with parents and siblings.

When long-term foster care in connection with independent living arrangements is proposed, the report should set forth:

- ❑ Facts and circumstances refuting the grounds for termination of parental rights (demonstrating the fitness of the parents) or showing that although the child cannot be placed with parents, termination is not in the best interests of the child;
- ❑ Facts and circumstances explaining why continued custody or permanent foster care is not appropriate at the same time that independent living services are being provided; and
- ❑ A plan to prepare the child for independent living and for visitation between the child, parents and siblings.

When an extension of foster care for a time certain is proposed with a goal of reunification, the report should set forth:

- ❑ Facts and circumstances showing that the parents and child have a strong and positive relationship, parents have made substantial progress toward the child's return home, and return home is likely within the next six months.
- ❑ Facts and circumstances showing why it is too early to specify a time certain for reunification.
- ❑ A plan to achieve reunification within six months.

The court's written findings of fact and conclusions of law at the permanency planning hearing should:

- ❑ Be prepared within a reasonable time after the permanency planning hearing;
- ❑ Be written in easily understandable language so that parents and all parties fully understand the court's order;
- ❑ Provide documentation for further proceedings;
- ❑ Address the same issues as those to be addressed in the report discussed above; and
- ❑ Set date and time of next hearing, if needed.



Termination of Parental Rights Hearing Checklist

Persons who should always be present at the termination of parental rights hearing:

- Judge or judicial officer
- Parents, including putative fathers
- Assigned caseworker
- Agency attorney
- Attorney for parents (separate attorneys if conflict warrants)
- Legal advocate for the child and/or GAL/CASA
- Court reporter or suitable technology
- Security personnel

The following are persons whose presence may also be needed at the termination of parental rights hearing:

- Age-appropriate children whose testimony is required
- Judicial case management staff
- Law enforcement officers
- Service providers
- Adult or juvenile probation or parole officer
- Other witnesses

Key decisions the court should make at the termination of parental rights hearing:

- Whether the statutory grounds for termination of parental rights have been satisfied.
- Whether termination is in the best interests of the child.

The court's written findings of fact and conclusions of law at the termination of parental rights hearing should:

- Indicate whether or not termination of parental rights is granted.
- Address whether the grounds for termination were satisfied and, if so, whether termination was in the best interests of the child.
- Be sufficient for the purpose of appellate review.
- Set schedule for subsequent judicial review.



Adoption Hearing Checklist

Persons who should always be present at the uncontested adoption hearing:

- Judge or judicial officer
- Adoptive parents
- Assigned caseworker
- Legal advocate for the child and/or GAL/CASA
- Court reporter or suitable technology
- The child

Persons who should always be present at the contested adoption hearing:

- Judge or judicial officer
- Prospective adoptive parents
- Assigned caseworker
- Agency attorney
- Legal advocate for the child and/or GAL/CASA
- Parties contesting the adoption
- Attorneys for all parties
- Court reporter or suitable technology
- Security personnel

Persons whose presence may also be needed at the contested adoption hearing:

- The child
- Judicial case management staff
- Other witnesses

The court's written findings of fact and conclusions of law at the adoption hearing should:

- Determine whether all of the necessary consents to adoption have been provided, including the consent of the agency with custody of the child, the consent of the child (if the child is old enough that consent is required under state law), and, in some cases, the consent of parents whose rights have not been terminated.
- Thoroughly describe the conditions and circumstances under which parental consent to adoption was obtained. When there has been no prior termination of parental rights in some states, parental consent must occur in the presence of the judge. Other states require a signed voluntary relinquishment of parental rights.
- Determine whether the consent was voluntary and informed and that all alternatives to adoption were explained.
- Determine that the child is doing well in the adoptive home and that the adoptive parents have made a clear and knowledgeable commitment to care for the child on a permanent basis.
- Determine that the adoptive parents fully understand the legal and financial consequences of adoption. Review with the parents and agency the need for and sufficiency of any adoption subsidy arrangements.
- At contested adoption hearings, determine whether the adoption should be granted. A contested adoption hearing must be conducted with procedural fairness, including notice to the parties and the opportunity to be represented by counsel.
- Conclude the proceeding without undue delay, applying principles of case flow management.

From Resource Guidelines—Improving Court Practice in Child Abuse and Neglect Cases, published by the National Council of Juvenile and Family Court Judges, Reno, Nevada.



Initial Investigation Plan

This worksheet is a helpful tool for creating your investigation plan. Remember, the plan for your investigation will be different in each case because each child's situation is unique.

Date of Next Court Hearing:		
Type/Purpose of Hearing:		
Court Report Is Due:		
Questions I Would Like Answered	Possible Sources of Information	Priority #
A.		
B.		
C.		
D.		
E.		
F.		
G.		
H.		
I.		
J.		



CASA/GAL Volunteer Interview with Child (1 of 2)

Although you wish to gather information from the child, it is important to build rapport first and not bombard him/her with questions. Make it more of a conversation that takes place over several visits.

Name of Child:	Date and Time:
Place of Interview:	CASA/GAL Volunteer:
Placement Phone #:	Case Name:
Name of Interviewer:	File #:
<p>1. The child's feelings about . . .</p> <ul style="list-style-type: none"> • This placement: • Whether he/she feels safe here: • His/her sibling(s): • Being separated from his/her parent(s): • Visitation and telephone contact with parent(s) and sibling(s): 	
<p>2. The child's interests/hobbies/friends: <i>(to establish strengths and to discover ways to support the child and normalize his/her experience in care)</i></p>	
<p>3. This child has already discussed the allegations in the petition with the following persons: <i>(It is not the CASA/GAL volunteer's role to reinterview the child about those allegations unless the child wants to discuss them—and even then proceed cautiously because the child may have already been traumatized by multiple interviews, and/or there may be criminal matters pending.)</i></p>	



CASA/GAL Volunteer Interview with Child (2 of 2)

4. Unsolicited, the child provided the following additional information about the underlying allegations:

5. The child would like the following needs to be addressed or options to be explored:

6. The other people living in this home are:

7. The child's sleeping arrangements are:

8. The child's after-school arrangements are:

9. The child has medical or mental health needs that are being addressed by:

10. The child's primary caretaker provided the following information about the child:

- Sleeping habits:
- Eating habits:
- Interactions with other family members:
- School performance and attitude toward school:
- Other:

11. Other relatives or family friends who might be resources on this case are:

12. My observations about this child are:



CASA/GAL Volunteer Interview with Parent(s) (1 of 2)

Prior to scheduling an interview with the parent, inform the attorney for the parent of your intentions to meet with his/her client. In the initial discussion with the parent, explain that the CASA/GAL volunteer does not work for CPS and is in a neutral, objective role. Acknowledge how difficult the situation is for the parent as well as the child/children.

Name of Parent:	Date and Time:
Parent's Phone #:	CASA/GAL Volunteer:
Place of Interview:	Case Name:
Name of Interviewer:	File #:
1. The parent provided the following general information about the child/children:	
2. The parent provided the following specific information about the child/children: <ul style="list-style-type: none">• School performance concerns:• Medical/dental treatment needs:• Special needs:• Other concerns:	
3. Information about the history of this family includes:	
4. Events leading to child protection agency involvement include:	
5. Services provided by the child protection agency to the family include:	



CASA/GAL Volunteer Interview with Parent(s) (2 of 2)

6. Services the parent believes would be helpful are:

7. The parent's goals include:

8. Tribal affiliation, and tribal advocates:

9. Other:



Culturally Sensitive Interviewing with Native Children

By Roe Bubar

A qualified interviewer is key to a successful investigation of child abuse. In Indian Country, a qualified interviewer must be culturally sensitive. Interviewers should be familiar with verbal and nonverbal communication styles common in Native populations:

Storytelling: Most Native traditions are passed down from generation to generation by listening to elders. This is how traditional teachings have historically been passed along in Native communities. Storytelling, with its gestures and cadence, is often incorporated into dialogue as well as everyday conversations. Simultaneously, courtesy and listening to others, even when it is time-consuming, is a strong cultural value that indicates respect.

Cadence of Speech: Many Native people speak in a soft and deliberate manner where the importance or value is placed on the feeling or content of the speech versus the linguistic component. There are many accents and unique expressions in Indian Country which are comforting and familiar to Natives, that may be unfamiliar to non-Natives. Speech and language have a distinct rhythm in Indian Country that is often unfamiliar to interviewers.

Pace: In a forensic interview, it is helpful to mirror the pace of the child or adolescent. Since speech and language are forms of communication, it is important to be aware of the dynamics of interaction. Mirroring and reflecting the pace that the child has set is respectful and sets the tone for empowering a child victim. I once supervised an interview where the interviewer was asking questions of the child with a rapid pace, leaving little time for the child to respond, and speaking in a tone much louder than the child. The child did not have a hearing problem. This clearly indicates that the interviewer was using her preferred style of communication during the interview, rather than matching her style to the child's. When the pace of the interviewer is fast, aggressive, and focused, in comparison to the child's pace that may be slow, deliberate and filled with silence,

the result is communication that is awkward and counterproductive in making a child feel comfortable in a forensic setting.

Silence: Often, with the urgency associated in a child abuse investigation, there is a priority on getting information from the child. I have observed a tendency in forensic interviews to fill every moment with words. It is imperative to understand the myriad functions of silence in Native communities. Being comfortable with silence is an important aspect of interviewing Native children and their families. Silence can be used as a way to choose not to answer a question, or to not say out loud the obvious. Silence can represent the pace of the communication with the significance being that every moment does not need to be filled with sound to be meaningful.

Nonverbal Communication: It is important to understand the value that our respective cultures place on nonverbal communication and the degree to which we operate ethnocentrically relative to that value. Gesturing and facial expressions convey a variety of meanings depending on the culture. Often when non-Native people address cultural differences in Indian Country, lack of direct eye contact is offered as the typical noticeable difference. Eye contact, or a lack thereof, may be identified readily because it is noticed by non-Natives who place a value and make value judgments based on how they interpret what eye contact may mean about a person in their respective culture.

Another example is the degree of personal space a person may feel comfortable with and how that is interpreted. Native people may allow a high degree of near body contact without showing discomfort whereas many non-Native persons would find this highly affrontive and confrontational. This may be misinterpreted as lacking boundaries or displaying inappropriate behavior.

Many Native people choose not to point with their fingers because of politeness and point instead with their lips. Since this may not be an important



communication style for non-Natives, this nonverbal communication may go unnoticed. Hand gestures may accompany many Native words that heighten meaningfulness of the communication given.

Professionals who are knowledgeable about communication patterns among Native children can help avoid misinterpretations and assure accuracy in child abuse interviews.

Roe Bubar is an attorney and partner in a Native-owned consulting firm, Bubar & Hall. She works with state, federal, and tribal agencies and has worked extensively in Indian Country. This article appeared in *Child Law Practice*, November 2002, Vol. 21, No. 9, p. 142. © 2006, American Bar Association. All rights reserved. Reprinted with permission from the ABA Center on Children and the Law, Washington, D.C. For information about this publication, visit www.childlawpractice.org.



Indian Child Welfare Act

[25 U.S.C. §§ 1901–1903, 1911–1923, 1951]

SECTION 1901. CONGRESSIONAL FINDINGS

Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds—

- (1) that clause 3, section 8, article I of the United States Constitution provides that “The Congress shall have power to regulate commerce with Indian tribes” and, through this and other constitutional authority, Congress has plenary power over Indian affairs;
- (2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;
- (3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;
- (4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and
- (5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

SECTION 1902. CONGRESSIONAL DECLARATION OF POLICY

The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

SECTION 1903. DEFINITIONS

For the purposes of this chapter, except as may be specifically provided otherwise, the term—

- (1) “**child custody proceeding**” shall mean and include—
 - (i) “**foster care placement**” which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;
 - (ii) “**termination of parental rights**” which shall mean any action resulting in the termination of the parent-child relationship;
 - (iii) “**preadoptive placement**” which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and
 - (iv) “**adoptive placement**” which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.



Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents;

- (2) **“extended family member”** shall be as defined by the law or custom of the Indian child’s tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child’s grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;
- (3) **“Indian”** means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional corporation as defined in *section 1606 of Title 43*;
- (4) **“Indian child”** means any unmarried person who is under age eighteen and is either a) a member of an Indian tribe or b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;
- (5) **“Indian child’s tribe”** means a) the Indian tribe in which an Indian child is a member or eligible for membership or b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;
- (6) **“Indian custodian”** means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;
- (7) **“Indian organization”** means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;
- (8) **“Indian tribe”** means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in *section 1602(c) of Title 43*;
- (9) **“parent”** means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;

- (10) **“reservation”** means Indian country as defined in *section 1151 of Title 18* and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;
- (11) **“Secretary”** means the Secretary of the Interior; and
- (12) **“tribal court”** means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

SECTION 1911. INDIAN TRIBE JURISDICTION OVER INDIAN CHILD CUSTODY PROCEEDINGS

- (a) **Exclusive Jurisdiction.** An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.
- (b) **Transfer of Proceedings; Declination by Tribal Court.** In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child’s tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child’s tribe: Provided, That such transfer shall be subject to declination by the tribal court of such tribe.
- (c) **State Court Proceedings; Intervention.** In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child’s tribe shall have a right to intervene at any point in the proceeding.



- (d) **Full Faith and Credit to Public Acts, Records, and Judicial Proceedings of Indian Tribes.** The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

SECTION 1912. PENDING COURT PROCEEDINGS

- (a) **Notice; Time for Commencement of Proceedings; Additional Time for Preparation.** In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: Provided, That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.
- (b) **Appointment of Counsel.** In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to *section 13 of this title*.

- (c) **Examination of Reports or Other Documents.** Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.
- (d) **Remedial Services and Rehabilitative Programs; Preventive Measures.** Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.
- (e) **Foster Care Placement Orders; Evidence; Determination of Damage to Child.** No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, 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.
- (f) **Parental Rights Termination Orders; Evidence; Determination of Damage to Child.** No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, 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.

SECTION 1913. PARENTAL RIGHTS, VOLUNTARY TERMINATION

- (a) **Consent; Record; Certification Matters; Invalid Consents.** Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either



the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent and Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

- (b) **Foster Care Placement; Withdrawal of Consent.** Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.
- (c) **Voluntary Termination of Parental Rights or Adoptive Placement; Withdrawal of Consent; Return of Custody.** In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.
- (d) **Collateral Attack; Vacation of Decree and Return of Custody; Limitations.** After the entry of a final decree of adoption of an Indian child in any State court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under State law.

SECTION 1914. PETITION TO COURT OF COMPETENT JURISDICTION TO INVALIDATE ACTION UPON SHOWING OF CERTAIN VIOLATIONS

Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of *sections 1911, 1912, and 1913 of this title*.

SECTION 1915. PLACEMENT OF INDIAN CHILDREN

- (a) **Adoptive Placements; Preferences.** In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with 1) a member of the child's extended family; 2) other members of the Indian child's tribe; or 3) other Indian families.
- (b) **Foster Care or Preadoptive Placements; Criteria; Preferences.** Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his/her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with—
 - (i) a member of the Indian child's extended family;
 - (ii) a foster home licensed, approved, or specified by the Indian child's tribe;
 - (iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
 - (iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.
- (c) **Tribal Resolution for Different Order of Preference; Personal Preference Considered; Anonymity in Application of Preferences.** In the case of a placement under *subsection (a) or (b) of this section*, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in *subsection (b) of this section*. Where appropriate, the preference of the Indian child or parent shall be considered: Provided, That where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.



- (d) **Social and Cultural Standards Applicable.** The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.
- (e) **Record of Placement; Availability.** A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the Secretary or the Indian child's tribe.

SECTION 1916. RETURN OF CUSTODY

- (a) **Petition; Best Interests of Child.** Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of *section 1912 of this title*, that such return of custody is not in the best interests of the child.
- (b) **Removal From Foster Care Home; Placement Procedure.** Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, such placement shall be in accordance with the provisions of this chapter, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

SECTION 1917. TRIBAL AFFILIATION INFORMATION & OTHER INFORMATION FOR PROTECTION OF RIGHTS FROM TRIBAL RELATIONSHIP; APPLICATION OF SUBJECT OF ADOPTIVE PLACEMENT; DISCLOSURE BY COURT

Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the court which entered the final decree shall inform such individual of the

tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

SECTION 1918. REASSUMPTION OF JURISDICTION OVER CHILD CUSTODY PROCEEDINGS

- (a) **Petition; Suitable Plan; Approval by Secretary.** Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by Title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.
- (b) **Criteria Applicable to Consideration by Secretary; Partial Retrocession.**
- (1) In considering the petition and feasibility of the plan of a tribe *under subsection (a) of this section*, the Secretary may consider, among other things:
 - (i) whether or not the tribe maintains a membership roll or alternative provision for clearly identifying the persons who will be affected by the reassumption of jurisdiction by the tribe;
 - (ii) the size of the reservation or former reservation area which will be affected by retrocession and reassumption of jurisdiction by the tribe;
 - (iii) the population base of the tribe, or distribution of the population in homogeneous communities or geographic areas; and
 - (iv) the feasibility of the plan in cases of multitribal occupation of a single reservation or geographic area.
 - (2) In those cases where the Secretary determines that the jurisdictional provisions of *section 1911(a) of this title* are not feasible, he is authorized to accept partial retrocession which will enable tribes to exercise referral jurisdiction as provided in *section 1911(b) of this title*, or, where appropriate, will allow them to exercise exclusive



jurisdiction as provided in *section 1911(a) of this title* over limited community or geographic areas without regard for the reservation status of the area affected.

- (c) **Approval of Petition; Publication in Federal Register; Notice; Reassumption Period; Correction of Causes for Disapproval.** If the Secretary approves any petition under *subsection (a) of this section*, the Secretary shall publish notice of such approval in the Federal Register and shall notify the affected State or States of such approval. The Indian tribe concerned shall reassume jurisdiction sixty days after publication in the Federal Register of notice of approval. If the Secretary disapproves any petition under *subsection (a) of this section*, the Secretary shall provide such technical assistance as may be necessary to enable the tribe to correct any deficiency which the Secretary identified as a cause for disapproval.
- (d) **Pending Actions or Proceedings Unaffected.** Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction, except as may be provided pursuant to any agreement under *section 1919 of this title*.

SECTION 1919. AGREEMENTS BETWEEN STATES & INDIAN TRIBES

- (a) **Subject Coverage.** States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes.
- (b) **Revocation; Notice; Actions or Proceedings Unaffected.** Such agreements may be revoked by either party upon one hundred and eighty days' written notice to the other party. Such revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

SECTION 1920. IMPROPER REMOVAL OF CHILD FROM CUSTODY; DECLINATION OF JURISDICTION; FORTHWITH RETURN OF CHILD: DANGER EXCEPTION

Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

SECTION 1921. HIGHER STATE OR FEDERAL STANDARD APPLICABLE TO PROTECT RIGHTS OF PARENT OR INDIAN CUSTODIAN OF INDIAN CHILD

In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian Child than the rights provided under this subchapter, the State or Federal court shall apply the State or Federal standard.

SECTION 1922. EMERGENCY REMOVAL OR PLACEMENT OF CHILD; TERMINATION; APPROPRIATE ACTION

Nothing in this subchapter shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this subchapter, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.



SECTION 1923. EFFECTIVE DATE

None of the provisions of this subchapter, except **sections 1911(a), 1918, and 1919** of this title, shall affect a proceeding under State law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to one hundred and eighty days after November 8, 1978, but shall apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

SECTION 1951. INFORMATION AVAILABILITY TO & DISCLOSURE BY SECRETARY

- (a) **Copy of Final Decree or Order; Other Information; Anonymity Affidavit; Exemption From Freedom of Information Act.** Any State court entering a final decree or order in any Indian child adoptive placement after November 8, 1978, shall provide the Secretary with a copy of such decree or order together with such other information as may be necessary to show—
- (1) the name and tribal affiliation of the child;
 - (2) the names and addresses of the biological parents;
 - (3) the names and addresses of the adoptive parents; and
 - (4) the identity of any agency having files or information relating to such adoptive placement.

Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information shall not be subject to the Freedom of Information Act (5 U.S.C. 552), as amended.

- (b) **Disclosure of Information for Enrollment of Indian Child in Tribe or for Determination of Member Rights or Benefits; Certification of Entitlement to Enrollment.** Upon the request of the adopted Indian child over the age of eighteen, the adoptive or foster parents of an Indian child, or an Indian tribe, the Secretary shall disclose such information as may be necessary for the enrollment of an Indian child in the tribe in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting anonymity, the Secretary shall certify to the Indian child's tribe, where the information warrants, that the child's parentage and other circumstances of birth entitle the child to enrollment under the criteria established by such tribe.

