

# Temporary Physical Custody Hearing Checklist - CHIPS

- General law is found in §§ 48.21 and § 48.299. See also TPC Hearing learning activity on the CCIP E-Learning Project website.
- Review TPC request (form JC-1608 or IW-1608, and, if filed, TPC Request Supplement, Form JC-1609), the proposed order for temporary physical custody, and, if filed, the CHIPS Petition. Possibly review earlier court history.
- Determine if hearing is within 48 hours of the decision to hold the child, excluding Saturdays, Sundays and legal holidays.
- Determine if there may be security issues or need for interpreter. Consider appointment of GAL for the child.
- Determine if anyone who is allowed to attend is not present and determine if anyone not allowed to attend is present.
- Ask each participant whether he/she knows or has reason to know that the case involves an Indian child.
- Determine whether all necessary parties have been given proper notice.
  - Address the following issues:
    - ❖ Paternity – who is/are alleged father(s)
    - ❖ Is anyone incarcerated – can they appear in person or by audio/visual means?
    - ❖ Any language or cognitive challenges – need for GAL for party?
- Inquire if all parties have received a copy of the TPC Request, TPC Request Supplement and, if filed, the CHIPS Petition.
- Advise the parties of:
  - Allegations of the temporary physical custody request, request supplement, and petition (if one filed).
  - The right to present, confront, and cross-examine witnesses.
  - Nature and possible consequences of the hearing (possibility that their children may be placed outside their home).
  - Right to oppose the allegations and to a hearing on the merits (that means you can say to me, “Judge my children should remain with me.”).
  - Opportunity to provide the names of three adult relatives or other adults they want considered for placement.

- Right to an attorney – see below.
- ☐ Determine whether parties want an attorney to help them and want time to consult. They may hire their own attorney. Public defender will generally not represent parent unless WICWA applies. Court has discretion to appoint an attorney. May want to consider *Joni B.* factors:
- The personal characteristics of the parent, such as age, mental capacity, education, and former contact with the court;
  - The parent's demonstrated level of interest in the proceedings and desire to participate;
  - Whether the petition alleges incidents of abuse or neglect which could lead to criminal prosecution;
  - The complexity of the case, including the likelihood of the introduction of medical or psychological evidence;
  - The probability of out-of-home placement and potential duration of separation, based on the allegations in the petition and the social worker's recommendation.
- ☐ Ask if objections to probable cause that child should be continued in custody. If so, determine if need for evidentiary hearing. General procedure for hearings is found in § 48.299.
- ☐ To continue child in custody, court must make findings that court has jurisdiction under § 48.13 **AND** that child may injure self or be injured, is neglected, will run away or be taken away.
- ☐ Decide if facts support removal from home, and make TPC decision/findings (see TPC order and follow language provided), including:
- Whether the agency made reasonable efforts to prevent removal and return the child safely at home.
  - Is the continued placement of the child in the home contrary to the child's welfare?
  - If child has siblings, have reasonable efforts been made to place the child in a placement that enables the sibling group to remain together?
- OR
- If a joint placement is contrary to the safety or well-being of the child or any of the siblings, the agency shall make reasonable efforts to provide frequent visitation unless interaction determined to be contrary to the safety or well-being of the child or siblings.
- Order the agency to provide notice to all relatives of the child or other adults named by the parents within 30 days after child's removal, unless reason to believe it would be dangerous to the child.
  - If case involved an Indian child, whether emergency removal and placement is necessary to prevent imminent physical damage or harm to the Indian child.
- ☐ If no petition has been filed, the petitioner may be granted one 72-hour extension to file the petition if any of the following apply:

- Additional time is required to determine whether the filing of a petition is necessary.
  - Child is an imminent danger to himself/herself or to others.
  - Probable cause to believe parent/guardian/legal custodian is neglecting, refusing, unable, or unavailable to provide adequate supervision and care.
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- ❑ Advise parties of court's expectation that they will comply with the court's orders.
  - ❑ Order parents to personally appear at future hearings and cooperate with counsel, and warn of possible default for failing to comply.
  - ❑ Schedule the Plea Hearing within the statutory time frame – within 30 days of the filing of the petition (10 days for a child held in secure custody).