# Guidelines for Judicial Process in Child Abuse and Neglect Cases



## ACKNOWLEDGMENTS

These guidelines were developed by the South Dakota Unified Judicial System, Court Improvement Program Committee, pursuant to a grant from the US Department of Health and Human Services for reforming the handling of child abuse and neglect court cases in South Dakota. A project of this magnitude requires the dedication and commitment of many people in various capacities. The core of this manual was developed and revised by a group of talented and dedicated people throughout the state who gave generously of their time, knowledge, and experience. The practicality of this manual is due in large measure to the contributions of the following individuals:

**1999 CIP Committee**

**Hon. Max A. Gors, Chairperson**
Circuit Judge, Sixth Judicial Circuit
**J Jay Alderman**
Pennington County Deputy State's Attorney
**Joan Baker**
Assistant Attorney General
**Jean Cline**
Attorney, Rapid City
**Joyce Country**
Department of Social Services
**Cheryl Schrempp DuPris**
Assistant U.S. Attorney
**Hon. John E. Fitzgerald**
Circuit Judge, Seventh Judicial Circuit
**Patrick M. Ginsbach**
Fall River County State's Attorney
**Dwight Hall**
Pennington County Sheriff's Office
**Judy Hines**
Department of Social Services
**Liza Kaiser**
Court Appointed Special Advocate
**Sharon Kallemeyn**
Victims Assistance Director,
Pennington County
**Hon. John K. Konenkamp**
South Dakota Supreme Court
**Lynn M. McLane**
Pennington County Sheriff's Office
**John Murphy**
Attorney, Rapid City
**Robert Pasqualucci**
Staff Judge Advocate,
SD Army National Guard
**Michael Shad**
Pennington County Deputy State's Attorney
**Sheila Troxel**
Seventh Circuit CASA
**LuAnn Van Hunnik**
Child Protection Services Regional Manager
Rapid City
**Jim Waggoner**
Attorney, Rapid City
**Merlin Weyer**
Department of Social Services
**Hon. Marshall Young**
United States Magistrate Judge

**2014 CIP Committee**

**Hon. Jeff W. Davis, Chairperson**
Presiding Judge,
Seventh Judicial Circuit
**Amy Benda**
Sioux Falls Area CASA
**Tony Benning**
Community Representative,
**Corey Brubakken**
Captain, Pennington County
Sheriff's Office
**Vicki Burger**
Department of Social Services,
CPS, Regional Manager,
Sioux Falls
**Susan Compaan**
Fifth Judicial Circuit,
Court Administrator
**Roxie Erickson**
Pennington County,
Deputy State's Attorney
**Hon. Timothy Johns**
Retired Circuit Judge,
Fourth Judicial Circuit
Representative, District 31
**Sharon Kallemeyn**
Victims Assistance Director,
Pennington County
**Hon. Scott Myren**
Circuit Judge,
Fifth Judicial Circuit
**Becky Morlock-Reeves**
Attorney, Watertown
**Todd Schlekeway**
Community Representative,
**Dr. Melody Schopp**
Secretary of Education
**Dave Valandra**
ICWA Director,
**LuAnn Van Hunnik**
Department of Social Services,
CPS, Regional Manager,
Rapid City
**Virgena Wieseler**
Department of Social Services,
CPS, Division Director
**Sara Kelly**
CIP Coordinator,
Unified Judicial System

**2019 CIP Committee**

**Hon. Scott Myren, Chairperson**
Presiding Judge,
Fifth Judicial Circuit
**Hon. Michelle Comer**
Circuit Judge,
Fourth Circuit
**Hon. Kent Shelton**
Circuit Judge
Third Judicial Circuit
**Hon. Timothy Johns**
Retired Circuit Judge,
Fourth Judicial Circuit
Representative, District 31
**Susan Compaan**
Circuit Administrator,
Fifth Judicial Circuit
**Roxie Erickson**
Pennington County,
Deputy State's Attorney
**Virgena Wieseler**
Department of Social Services,
CPS, Division Director
**Pamela Bennett**
Department of Social Services,
CPS, Deputy Division Director
**Vicki Burger**
Department of Social Services,
CPS, Regional Manager
**Lisa Fleming**
Department of Social Services,
CPS, Regional Manager
**Corey Brubakken**
Captain, Pennington County
Sheriff's Office
**Kate Kelley**
Director, Northern Hills CASA
Spearfish
**Dr. Becky Guffin**
Superintendent,
Aberdeen School District
**Carrie Sanderson**
Director
Center for the Prevention of
Child Maltreatment
Sioux Falls
**Dave Vallandra**
Tribal Representative
**Sara Kelly**
CIP Coordinator
Unified Judicial System

**2024 CIP Committee**

**Hon. Gregg Magera, Chairperson**
Presiding Judge,
Fifth Judicial Circuit
**Hon. Scott Myren**
SD Supreme Court Justice
**Hon. Rachel Rasmussen**
Circuit Judge, Second Judicial Cir.
**Susan Compaan**
Circuit Admin. Fifth Judicial Circuit
**Roxie Erickson**
Pennington County
Deputy State's Attorney
**Carrie Mees**
Minnehaha County,
Deputy State's Attorney
**Rep. Rebecca Reimer**
Representative, District 26B
**Pamela Bennett**
DSS-CPS, Division Director
**Sara Sheppick**
DSS-CPS, Division Director
**Eric Grover**
DSS-CPS, Division Director
**Vicki Burger**
DSS-CPS, Regional Manager
**Ashley Asmus**
DSS-CPS, Program Specialist
**Ashley Schlichenmayer-Okroi**
DSS-CPS, Program Specialist
**Christina Young**
Director, CPCM
**Dustin Morrison**
Captain, Pennington County
Sheriff's Office
**Jackie Horton**
Executive Director, CASA
**Lindsey-Riter-Rapp**
Attorney
**Dr. Michelle Vande Weerd**
Brookings School District
**Jessica Morson**
Flandreau Santee Sioux Tribe
**Deborah Devine**
Sisseton Wahpeton Oyate CPS
**Sara Kelly**
CIP Coordinator
Unified Judicial System
**Austin Gourley**
UJS Legal Intern
Unified Judicial System

**The South Dakota Guidelines for Judicial Process in Child Abuse and Neglect Cases are an overview of the process and is intended to be used as a reference tool. They are not binding legal authority. The United States Code, South Dakota Codified Laws, and case law govern.**

These guidelines were developed by the South Dakota Unified Judicial System in conjunction with the Court Improvement Program Grant received from the U.S. Department of Health and Human Services, Administration for Children and Families.

The guidelines were revised in 2025, 300 copies were printed at a cost of $18.57 per copy.

# SOUTH DAKOTA GUIDELINES FOR JUDICIAL PROCESS IN CHILD ABUSE AND NEGLECT CASES

## TABLE OF CONTENTS

## Contents


TABLE OF CONTENTS ..... iii

I. INTRODUCTION ..... 1

II. GENERAL ISSUES ..... 2

A. DEFINITION OF ABUSE/NEGLECT ..... 2

B. OTHER STATUTES RELATING TO CHILD ABUSE INCLUDING BUT NOT LIMITED TO: ..... 3

C. REPORTING STATUTES AND IMMUNITY FROM LIABILITY ..... 5

D. ROLE OF CHILD'S ATTORNEY ..... 7

E. ROLE OF THE DEPARTMENT OF SOCIAL SERVICES – CHILD PROTECTION SERVICES (DSS-CPS) ..... 8

1. Provide Accurate and Timely Information ..... 8
2. Ensure the Child's Safety ..... 8
3. Coordinate and Collaborate ..... 9
4. Prepare for and Participate in Court Proceedings ..... 9
5. Promote Case Resolution and Permanency ..... 9
6. Document and Maintain Confidentiality ..... 9

F. ROLE OF COURT APPOINTED SPECIAL ADVOCATE (CASA) ..... 9

1. Training ..... 9
2. Appointment To Individual Cases ..... 10
3. Reports ..... 10
4. Speaking For The Child ..... 10
5. Assignment Of A CASA ..... 10

G. INTERSTATE COMPACT PLACEMENT PROCESS (ICPC) ..... 10

H. UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT (UCCJEA) ..... 11

III. INDIAN CHILD WELFARE ACT (ICWA) ..... 12

A. JURISDICTION ..... 13

1. Exclusive Jurisdiction ..... 13
2. Intervention ..... 13

B. PLACEMENT PREFERENCES ..... 13

1. ICWA Placement Hierarchy ..... 13

2. **Tribal Override of Placement Preferences.** ..... 14
3. **Deviation of ICWA Preferences.** ..... 14
4. **Testimony of a QEW** ..... 14

**C. QUALIFIED EXPERT WITNESS UNDER THE ICWA ..... 14**

**D. ICWA CONSIDERATIONS/INQUIRIES AT EACH HEARING ..... 15**

1. **Temporary Custody Hearing (TCH)** ..... 15
2. **Advising** ..... 16
3. **Adjudication** ..... 16
4. **Active Efforts** ..... 17
5. **Review Hearing** ..... 17
6. **Disposition** ..... 17
7. **Good Cause Hearing Post-Termination** ..... 18

**ICWA FLOW CHART ..... 19**

**IV. PROTECTIVE CUSTODY/INTAKE ..... 22**

**A. WHEN LAW ENFORCEMENT TAKES CUSTODY ..... 22**

**B. COURT ORDERED PLACEMENT WITH NOTICED HEARING: ..... 22**

**C. AUTHORITY FOR A PICK-UP AND PLACE ORDER WITHOUT NOTICED HEARING: ..... 22**

**D. CONTACTING AN INTAKE OFFICER ..... 23**

**E. PURPOSE OF AN INTAKE HEARING ..... 23**

**F. PROCEDURES FOR AN INTAKE HEARING ..... 23**

**G. OPTIONS AT AN INTAKE HEARING ..... 24**

**H. NOTICE ..... 24**

**V. TEMPORARY CUSTODY HEARING (48-HOUR HEARING) ..... 25**

**A. TEMPORARY CUSTODY HEARING (48-HOUR HEARING) ..... 25**

**B. PROCEDURES FOR THE TCH (48 HOUR HEARING) ..... 26**

**C. NOTICE ..... 27**

**VI. ADVISORY HEARING ..... 28**

**A. PURPOSE ..... 28**

**B. NOTICE ..... 29**

**VII. ADJUDICATION HEARING ..... 30**

**A. TIMING AND PURPOSE OF ADJUDICATORY HEARINGS ..... 30**

**B. DISCOVERY ..... 31**

**C. ELEMENTS ..... 31**

**D. EVIDENCE** ..... **31**
**E. DEFENSES** ..... **33**
**F. FINDINGS OF FACT CONCLUSIONS OF LAW** ..... **33**
**G. NOTICE** ..... **33**
**H. NOTICE OF ENTRY** ..... **34**
**VIII. HEARINGS** ..... **35**
**A. REVIEW HEARING** ..... **35**
1. **Items to be addressed at the review hearing.** ..... 35
2. **Key decisions the court must make at the review hearing:** ..... 36
**B. PERMANENCY HEARING – BEFORE FINAL DISPOSITIONAL HEARING** ..... **36**
**C. ADOPTION SAFE FAMILIES ACT (ASFA) HEARING** ..... **37**
**D. MOTION/EVIDENTIARY HEARING** ..... **37**
**IX. FINAL DISPOSITION** ..... **38**
**A. KEY DECISIONS THE COURT MUST MAKE:** ..... **38**
1. **Placement and Care** ..... 38
2. **Reasonable Efforts** ..... 39
3. **Guardianship from an A&N Case** ..... 40
4. **The Guardianship Order** ..... 41
5. **Best Interests of the Child.** ..... 41
6. **Conditions for removal still exist.** ..... 42
7. **Compelling reasons to extend services over 1 year.** ..... 42
**B. EVIDENCE** ..... **42**
**C. FINDINGS OF FACT AND CONCLUSIONS OF LAW** ..... **42**
**D. NOTICE** ..... **43**
**X. POST-DISPOSITION/PERMANENCY HEARING** ..... **44**
**XI. APPEALS** ..... **45**
**XII. FORMS** ..... **46**

# STATUTORY REFERENCE TABLE

## II. GENERAL ISSUES

### A. DEFINITION OF ABUSE/NEGLECT


- SDCL 26-8A-2.....2


### B. OTHER STATUTES RELATING TO CHILD ABUSE INCLUDING BUT NOT LIMITED TO:

- **CHAPTER 22 - CRIMES**


  - SDCL 22-18-1.1.....3
  - SDCL 22-18-1.....3
  - SDCL 22-19-9.....3
  - SDCL 22-19-10.....3
  - SDCL 22-19A-7.....3
  - SDCL 22-22-1.....3
  - SDCL 22-22-2.....3
  - SDCL 22-22-7.....3
  - SDCL 22-22-7.1.....3
  - SDCL 22-22-7.3.....3
  - SDCL 22-22-24.3.....3
  - SDCL 22-23-2.....4
  - SDCL 22-24A-1.....4
  - SDCL 22-24A-3.....4
  - SDCL 24-24A-5.....4


- **CHAPTER 23A – CRIMINAL PROCEDURE**


  - SDCL 23A-42-2.....4


- **CHAPTER 25 – DOMESTIC RELATIONS**


  - SDCL 25-5A-18.....4
  - SDCL 25-6-1.1.....4
  - SDCL 25-7-16.....4
  - SDCL 25-10-1.....4
  - SDCL 25-10-13.....4


- **CHAPTER 26 – MINORS**


  - SDCL 26-7A-12.....4
  - SDCL 26-7A-13.....4
  - SDCL 26-7A-15.1.....5
  - SDCL 26-7A-15.2.....4
  - SDCL 26-7A-15.....5
  - SDCL 26-7A-17.....5
  - SDCL 26-7A-18.....5
  - SDCL 26-7A-19.1.....5
  - SDCL 26-7A-19.....5
  - SDCL 26-7A-27.....5
  - SDCL 26-7A-30.....5
  - SDCL 26-8A-27.....5
  - SDCL 26-10-1.....5
  - SDCL 26-10-31.....5
  - SDCL 26-10-30.....5


### C. REPORTING STATUTES AND IMMUNITY

#### 1. ABUSE AND NEGLECT CHILD DEFINED


- SDCL 26-8A-2.....6

2. REPORTING STATUTES
- SDCL 26-8A-3 ..... 5,6
- SDCL 26-8A-4 ..... 6
- SDCL 26-8A-6 ..... 6
- SDCL 26-8A-7 ..... 6
- SDCL 26-8A-8 ..... 6,7
- SDCL 26-8A-9 ..... 6
- SDCL 26-8A-10 ..... 6
- SDCL 26-8A-13 ..... 7
- SDCL 26-8A-14 ..... 7

D. ROLE OF CHILD'S ATTORNEY
- ICWA (INDIAN CHILD WELFARE ACT) ..... 8
- SDCL 19-19-806.2 ..... 8
- SDCL 19-19-807 ..... 8
- SDCL 26-7A-33 ..... 7
- SDCL 26-8A-18 ..... 7
- SDCL 26-8A-20 ..... 7
- SDCL 26-8A-30 ..... 8

G. INTERSTATE COMPACT PLACEMENT PROCESS (ICPC)
- SDCL 2-13 (INTERSTATE COMPACT ON PLACEMENT OF CHILDREN) ..... 10

H. UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT
- UCCJEA ..... 11
- SDCL 26-5B ..... 11

III. INDIAN CHILD WELFARE ACT (ICWA)

1. ICWA AND DEFINTIONS
- ICWA ..... 12

2. INDIAN CHILD DEFINITION
- 25 U.S.C. § 1903(4) ..... 12

3. CHILD CUSTODY PROCEEDINGS DEFINTION
- 25 U.S.C. § 1903(1)(i)-(iv) ..... 12

4. EMERGENCY JURISDICTION
- 25 U.S.C. § 1922 ..... 12

A. JURISDICTION

1. EXCLUSIVE JURISDICTION
- 25 U.S.C. § 1911(a) ..... 13

2. INTERVENTION
- 25 U.S.C § 1911(c) ..... 13

3. TRANSFER
- 25 U.S.C. § 1911(b) ..... 13

B. PLACEMENT PREFERENCES

1. ADOPTIVE PLACEMENT; PREFERENCES
- 25 U.S.C. § 1915 (a) ..... 13

2. TRIBAL RESOLUTION FOR DIFFERENT ORDER OF PREFERENCE; PERSONAL PREFERENCE CONSIDERED; ANONYMITY IN APPLICATION OF PREFERENCE.
- 25 U.S.C. § 1915 (c) ..... 14

D. ICWA CONSIDERATIONS/INQUIRIES AT EACH HEARING

1. TEMPORARY CUSTODY HEARING

- SDCL § 26-7A-19.1 ..... 15

**4. ACTIVE EFFORTS**

- 25 U.S.C. § 1912(d) ..... 17
- SDCL § 26-8A-21.1 ..... 17

**5. REVIEW HEARING**

**c. ADDRESSING PLACEMENT PREFERENCES**

- 25 U.S.C. § 1915 (b) ..... 17
- 25 U.S.C. § 1915 (c) ..... 17

## IV. PROTECTIVE CUSTODY/INTAKE

**1. TEMPORARY CUSTODY**

- SDCL 26-7A-12(2) ..... 22
- SDCL 26-7A-12(4) ..... 22
- SDCL 26-7A-13 ..... 22

### A. WHEN LAW ENFORCEMENT TAKES CUSTODY

- SDCL 26-7A-12(2) ..... 22
- SDCL 26-7A-12(4) ..... 22

### B. COURT ORDERED PLACEMENT WITH NOTICED HEARING

- SDCL 26-7A-13 ..... 22

### C. AUTHORITY FOR A PICK-UP AND PLACE ORDER WITHOUT NOTICED HEARING

- SDCL 26-7A-13 ..... 23

### D. CONTACTING AN INTAKE OFFICER

**1. DEFINITION OF INTAKE OFFICER**

- SDCL 26-7A-1(20) ..... 23

**2. HEARING BY INTAKE OFFICER**

- SDCL 26-7A-13.1 ..... 23

### E. PURPOSE OF AN INTAKE HEARING

- SDCL 26-7A-14 ..... 23

### F. PROCEDURES FOR AN INTAKE HEARING

- SDCL 26-7A-13 ..... 23
- SDCL 26-7A-56 ..... 24

### G. OPTIONS AT AN INTAKE HEARING

- SDCL 26-7A-14 ..... 24
- SDCL 26-7A-16 ..... 24
- SDCL 26-7A-26 ..... 24
- SDCL 26-7A-26(¶1) ..... 24

### H. NOTICE

- SDCL 26-7A-15 ..... 24
- SDCL 26-7A-17 ..... 24

## V. TEMPORARY CUSTODY HEARING

### A. TEMPORARY CUSTODY HEARING (48-HOUR HEARING)

- SDCL 26-7A-3 ..... 25
- SDCL 26-7A-13 ..... 26
- SDCL 26-7A-14 ..... 26
- SDCL 26-7A-15 ..... 25

- SDCL 26-7A-18....26
- SDCL 26-7A-19....25
- SDCL 26-7A-35....26
- SDCL 26-7A-36....26
- SDCL 26-7A-56....26

**B. NOTICE**

- 50 USCS § 3931....27
- SDCL 26-7A-47....27
- SDCL 26-7A-48....27

## VI. ADVISORY HEARING

**A. PURPOSE**

- SDCL 26-7A-54....28
- SDCL 26-7A-53....28
- SDCL 26-7A-55....28

## VII. ADJUDICATION HEARING

1. **ADJUDICATION OF AN ABUSED AND NEGLECTED CHILD**
   - SDCL 26-8A-1....30
2. **NON-ICWA CASES**
   - SDCL 26-7A-47....30
   - SDCL 26-7A-48....30

**A. TIMING AND PURPOSE OF ADJUDICATORY HEARINGS**

1. **PURPOSE OF AJUDICATORY HEARINGS and BURDEN OF PROOF**
   - SDCL 26-7A-1(2)....30
2. **FINDINGS OF FACT AND CONCLUSIONS OF LAW**
   - SDCL 26-7A-86....30
   - SDCL 26-7A-87....30

**B. DISCOVERY**

1. **SD-RCP EXCEPTION**
   - SDCL 26-7A-57 to 81....31
2. **ALL OTHER HEARINGS (APPLICATION OF CIVIL PROCEDURE AND RULES OF EVIDENCE EXCEPTION)**
   - SDCL 26-7A-56....31
3. **RIGHTS TO INSPECTION AND COPY OF CERTAIN DOCUMENTS THAT ARE MATERIAL TO THE PREPARATION BY THE PARTIES.**
   - SDCL 26-7A-60....31
   - SDCL 26-7A-61....31
   - SDCL 26-7A-68....31
   - SDCL 26-7A-69....31
4. **CONFIDENTIALITY, PRIVILEGE AND THE PRECLUSION OF DISCLOSURE OF CERTAIN DOCUMENTS.**
   - SDCL 26-7A-62....31
   - SDCL 26-7A-70....31

**C. ELEMENTS**

- SDCL 26-8A-2....31

1. **BURDEN OF PROOF**
   - SDCL 26-8A-86....31
   - SDCL 26-8A-87....31

**D. EVIDENCE**

- 25 USC § 1912(d) ....33

- 25 USC § 1912(e) ..... 33
- 25 USC § 1915(b) ..... 33
- SDCL 19-19-806.1 ..... 32
- SDCL 19-19-806.2 ..... 32
- SDCL 26-7A-34(1) ..... 32
- SDCL 26-7A-56 ..... 32
- SDCL 26-7A-82 ..... 32
- SDCL 26-7A-83 ..... 32
- SDCL 26-8A-15 ..... 32
- SDCL 26-8A-30 ..... 32
- SDCL 26-8A-31 ..... 32

**E. DEFENSES**

- SDCL 22-18-5 ..... 33
- SDCL 26-8A-2 ..... 33

**F. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

- SDCL 26-7A-86 ..... 33
- SDCL 26-7A-87 ..... 33

**G. NOTICE**

- SDCL 26-8A-24 ..... 33
- SDCL 26-8A-28 ..... 33

**1. DECISIONS THE COURT SHOULD MAKE AT THE ADJUDICATION**

- SDCL 26-7A-86 ..... 34

**H. NOTICE OF ENTRY**

- SDCL 26-8A-28 ..... 34
- SDCL 26-7A-87 ..... 34
- SDCL 15-26A-13 ..... 34

## VIII. HEARINGS

**A. REVIEW HEARING**

- 42 USC § 675(5)(B) ..... 35
- SDCL 26-8A-24 ..... 35

**2. KEY DECISION THE COURT MUST MAKE AT THE REVIEW HEARING.**

- SDCL 26-8A-25 ..... 36

**B. PERMANENCY HEARINGS – (BEFORE FINAL DISPOSITIONAL HEARING)**

- SDCL 26-8A-21.2 ..... 36
- SDCL 26-8A-22(2) ..... 36
- SDCL 26-8A-26(3) ..... 36

**C. ADOPTION SAFE FAMILIES ACT** (42. U.S.C. §§ 620-632, 670-679)

- SDCL 26-8A-21 ..... 37
- SDCL 26-8A-21.1 ..... 37
- SDCL 26-8A-21.2 ..... 37

## IX. FINAL DISPOSITION

**1. DISPOSITIONAL HEARING REQUIREMENT**

- SDCL 26-8A-22 ..... 38
- SDCL 26-7A-34 ..... 38

**A. KEY DECISIONS THE COURT MUST MAKE**

**1. PLACEMENT AND CARE**

- SDCL 26-8A-26 ..... 39

- SDCL 26-8A-26.1.....39
- SDCL 26-8A-27.....39

**2. REASONABLE EFFORTS**

- SDCL 26-8A-21.....39
- SDCL 26-8A-26.....40

**6. CONDITIONS FOR REMOVAL STILL EXIST.**

- SDCL 26-8A-26.....42

**7. COMPELLING REASONS TO EXTEND SERVICE OVER 1 YEAR.**

- SDCL 26-8A-22(2).....42
- SDCL 26-8A-26(3).....42

**B. EVIDENCE**

- SDCL 26-7A-56.....42
- SDCL 26-7A-90.....42

**C. FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

- SDCL 15-6-52(a).....42
- SDCL 25-5A-18.....42
- SDCL 26-8A-27.....42

**D. NOTICE**

- SDCL 26-8A-28.....43

## X. POST-DISPOSTION/PERMANENCY HEARING

- SDCL 26-8A-22(3).....44
- SDCL 26-8A-27.....44
- SDCL 26-8A-29.....44
- SDCL 26-8A-29.1.....44

## XI. APPEALS

- SDCL 15-26A-4(1).....45
- SDCL 15-26A-4(3).....45
- SDCL 15-26A-6.....45
- SDCL 15-26A-13.....45
- SDCL 15-26A-60.....45
- SDCL 15-26A-63.1.....45
- SDCL 15-26A-75.....45
- SDCL 26-7A-112.....45

# CASE LAW REFERENCE TABLE

**(Title)** **(Page)**


## II. GENERAL ISSUES

- *People ex rel. D.A.J.*, 757 NW2d 70 (SD 2008)....2
- *Baxter v. Palmigiano*, 425 US 308, 96 S.Ct. 1551, 47 L.Ed.2d 810....2

### D. ROLE OF CHILD'S ATTORNEY

- *In the Interest of T.A.*, 2003 S.D. 56, 663 N.W.2d 225....8

## III. INDIAN CHILD WELFARE ACT (ICWA)

- *People in Interest of C.R.M.*, 307 N.W.2d 131, 132 (S.D. 1981)....12

### A. JURISDICTION

#### 1. EXCLUSIVE JURISDICTION

- *Matter of Adoption of Halloway*, 732 P2d 962 (Utah 1986). ....13

#### 3. TRANSFER

- *In re D.M.*, 685 N.W.2d 768, 2004 S.D. 90 ....13

### C. QUALIFIED EXPERT WITNESSES UNDER ICWA

- *People ex rel. A.B.*, 2016 S.D. 44, 880 N.W.2d 95, 102. ....15
- *Matter of S.D.*, 402 N.W.2d 346 (S.D. 1987). ....15
- *Matter of K.A.B.E.*, 325 N.W.2d 840 (S.D. 1982)....15
- *Matter of J.L.H.*, 316 N.W.2d 650 (S.D. 1982)....15

### D. ICWA CONSIDERATIONS/INQUIRIES AT EACH HEARING

#### 4. ACTIVE EFFORTS

- *People In Interest of SHE*, 824 N.W.2d 420, 2012 S.D. 88 ....16

## IV. PROTECTIVE CUSTODY/INTAKE

### E. PURPOSE OF INTAKE HEARING

- *Cheyenne River Sioux Tribe v. Davis*, 2012 S.D. 69, 822 N.W.2d 62. ....23

## VI. ADVISORY HEARING

### B. NOTICE

- *INTEREST OF N.K., JR. AND S.K.*, 2024 S.D. 63. ....29

## VII. ADJUDICATION HEARING

### A. TIMING AND PURPOSE OF ADJUDICATORY HEARINGS

- *People in the Interest of D.A.J.*, 2008 S.D. 92, 757 N.W.2d 70. ....30
- *People in Interest of P.M.*, 299 N.W.2d (S.D. 1980). ....30
- *In the Interest of T.G.*, 2001 S.D. 15, 621 N.W.2d 608. ....31

### C. ELEMENTS

- *Matter of S.W.*, 428 N.W.2d 521 (S.D. 1988). ....31
- *People in Interest of S.R.*, 323 N.W.2d 885 (S.D. 1982). ....31
- *Matter of K.A.B.E.*, 325 N.W.2d 840 (S.D. 1982). ....31
- *People in Interest of P.B.*, 371 N.W.2d 366 (S.D. 1985)....31

### D. EVIDENCE

- *Matter of C.J.H.*, 371 N.W.2d 345 (S.D. 1985). ....31
- *In the Interest of S.O.B.*, 2006 S.D. 76, 721 N.W.2d 83. ....31
- *Matter of J.A.H.*, 502 N.W.2d 120 (S.D. 1993). ....31

- *Matter of C.E.*, 283 N.W.2d 554 (S.D. 1979) ....32
- *Matter of N.J.W.*, 273 N.W.2d 134 (S.D. 1978). ....32
- *People in Interest of T.L.J.*, 303 N.W.2d 800 (S.D. 1981) ....32
- *In the Matter of S.A.*, 2005 S.D. 120, 708 N.W.2d 673. ....32
- *In the Interest of T.A.*, 2003 S.D. 56, 663 N.W.2d 225. ....32

**E. DEFENSES**

- *In the Interest of C.F.*, 2005 S.D. 126, 708 N.W.2d 313. ....33

## IX. FINAL DISPOSITION

### A. KEY DECISIONS THE COURT MUST MAKE

#### 1. PLACEMENT AND CARE

- *In Re J.H.*, 1999 S.D. 36, 590 N.W.2d 473. ....39

#### 2. REASONABLE EFFORTS

- *People in Interest of C.L.*, 356 N.W.2d 476 (S.D. 1984). ....39
- *Matter of R.Z.F.*, 284 N.W.2d 879 (S.D. 1979). ....39
- *Matter of B.E.*, 287 N.W.2d 91 (S.D. 1979). ....39
- *Matter of D.A.B.*, 313 N.W.2d 787 (S.D. 1981). ....39
- *People in Interest of T.L.J.*, 303 N.W.2d 800 (S.D. 1981). ....39
- *Matter of A.I.*, 289 N.W.2d 247 (S.D. 1980). ....39
- *Matter of C.E.*, 283 N.W.2d 554 (S.D. 1979). ....40
- *Matter of M.S.M.*, 320 N.W.2d 795 (S.D. 1982) ....40
- *In the Interest of C.W.*, 2005 S.D. 54, 697 N.W.2d 18. ....40
- *In the Matter of S.A.*, 2005 S.D. 120, 708 N.W.2d 673. ....40
- *People in Interest of C.L.*, 356 N.W.2d 476 (S.D. 1984) ....40
- *People in Interest of S.M.M.*, 349 N.W.2d 63 (S.D. 1984) ....40
- *Matter of S.W.*, 428 N.W.2d 521 (S.D. 1988) ....40

#### 5. BEST INTERESTS OF THE CHILD

- *Matter of L.B.*, 416 N.W.2d 598 (S.D. 1987) ....42
- *Matter of Z.Z.*, 494 N.W.2d 608 (S.D. 1992) ....42
- *People in Interest of E.D.J.*, 499 N.W.2d 130 (S.D. 1993). ....42
- *In Interest of J.L.*, 2002 S.D. 144, 654 N.W.2d 786. ....42
- *In the Interests of J.G.R.*, 2004 S.D. 131, 691 N.W.2d 586. ....42

#### 6. CONDITIONS FOR REMOVAL STILL EXIST

- *In the Interest of T.I.*, 2005 S.D. 125, 707 N.W.2d 826. ....42

### B. EVIDENCE

- *In the Interest of T.I.*, 2005 S.D. 125, 707 N.W.2d 826 ....42

## XI. APPEALS

- *In the Interest of A.D.*, 2004 S.D. 39, 678 N.W.2d 594. ....45

# SOUTH DAKOTA GUIDELINES FOR JUDICIAL PROCESS IN CHILD ABUSE AND NEGLECT CASES

## GOAL: TO REDUCE THE TIME CHILDREN, SPEND IN TEMPORARY OUT OF HOME PLACEMENTS

## I. INTRODUCTION

Victims of child abuse and neglect come before the court for protection from further harm and for timely decision-making for their future. Courts must make critical decisions and oversee social service efforts to rehabilitate and maintain families or to provide alternate permanent care for children. **These guidelines are intended as a tool to assist professionals and are not binding law.** These guidelines set forth the essential elements of properly conducted abuse and neglect court proceedings. They are recommended for use by judges, attorneys, family services specialists, law enforcement officers, and related professionals.

The basic principle underlying these guidelines is the need for timely action in child abuse and neglect cases. Children have a different sense of time from adults. Delays caused by prolonged litigation can be especially stressful to abused and neglected children. The uncertainty of not knowing whether they will be removed from home, whether and when they will go home, and when they might be moved to another home is frightening. Extended periods of uncertainty exacerbate childhood anxiety and trauma.

Under federal and state law, a permanent placement decision of a child must be made within **12 months** of when a child is removed from their home.

The earlier stages of the case must occur in a timely manner to meet this deadline. Courts are the gatekeepers of the child welfare system and must make timely litigation in child abuse and neglect cases their highest priority. Family services specialists, law enforcement officers, attorneys, CASA[1] volunteers, and other service providers play a critical role in child abuse and neglect cases. For the court system to function in the best interests of abused and neglected children, it is essential that all these participants take active, affirmative steps to acquire knowledge and expertise in handling these cases and discharge their responsibilities in an effective and responsible manner. Ultimately, however, the court is responsible for holding the entire system accountable.

[1] Court Appointed Special Advocate (CASA)

## II. GENERAL ISSUES

Professionals in South Dakota dealing with child abuse and neglect cases must be well versed in the substantive and procedural requirements of the statutory law regarding child abuse and neglect cases. From reporting and investigation, to petition, adjudication and disposition, a thorough knowledge of the law is needed to best serve the client, whether parent or child. In addition to knowledge of the law, participants must understand the function and role of related disciplines involved in this type of litigation. Abuse and neglect cases are not based solely on legal principles, but also depend on psychological, cultural, educational, and social-welfare concerns (additional resource information on the Supplemental Resources tab).

The purpose of child abuse and neglect proceedings is to determine whether a child is abused and/or neglected and in need of protection. The culpability of a parent, guardian or custodian is not particularly relevant to these proceedings and abuse and neglect proceedings should continue independent of any criminal proceedings. If the matter is also pursued under the criminal statutes, culpability will be an issue. *People ex rel. D.A.J.*, 757 NW2d 70 (SD 2008); *Baxter v. Pamigiano*, 425 US 308, 96 S.Ct. 1551, 47 L.Ed.2d 810.

### A. DEFINITION OF ABUSE/NEGLECT

Pursuant to SDCL 26-8A-2, the existence of any one of several conditions constitutes abuse or neglect, so long as that ultimate finding is supported by clear and convincing evidence. An "abused or neglected child" means a child:

1. Whose parent, guardian, or custodian has abandoned the child or has subjected the child to mistreatment or abuse;
2. Who lacks proper parental care through the actions or omissions of child's parent, guardian, or custodian;
3. Whose environment is injurious to the child's welfare;
4. Whose parent, guardian, or custodian fails or refuses to provide proper or necessary subsistence, supervision, education, medical care, or any other care necessary for the child's health, guidance, or well-being;
5. Who is homeless, without proper care, or not domiciled with the child's parent, guardian, or custodian through no fault of the child's parent, guardian, or custodian;
6. Who is threatened with substantial harm;
7. Who has sustained emotional harm or mental injury as indicated by an injury to the child's intellectual or psychological capacity evidenced by an observable and substantial impairment in the child's ability to function within the child's normal range of performance and behavior, with due regard to the child's culture;
8. Who is subjected to sexual abuse, sexual molestation, or sexual exploitation by the child's parent, guardian, custodian, or any other person responsible for the child's care;

9. Who was subject to prenatal exposure to abusive use of alcohol, marijuana, or any controlled drug or substance not lawfully prescribed by a practitioner as authorized by chapters 22-42 and 34-20B; or
10. Whose parent, guardian, or custodian knowingly exposes the child to an environment that is being used for the manufacture, use, or distribution of methamphetamines or any other unlawfully manufactured controlled drug or substance.

**B. OTHER STATUTES RELATING TO CHILD ABUSE INCLUDING BUT NOT LIMITED TO:**

**CHAPTER 22 – CRIMES**

SDCL 22-18-1.1 -- AGGRAVATED ASSAULT DEFINED.

SDCL 22-18-1 -- SIMPLE ASSAULT DEFINED.

SDCL 22-19-9 – VIOLATION OF CUSTODY ORDER BY PARENT. A PARENT WHO TAKES, ENTICES AWAY, OR KEEPS A CHILD FROM THE CUSTODY OR VISITATION OF ANOTHER PARENT IS GUILTY OF A MISDEMEANOR.

SDCL 22-19-10 – REMOVAL OF CHILD FROM STATE. A PARENT WHO VIOLATES 22-19-9 AND REMOVES THE CHILD FROM THE STATE IS GUILTY OF A CLASS 5 FELONY.

SDCL 22-19A-7 – STALKING A CHILD TWELVE OR YOUNGER (WILLFULLY, MALICIOUSLY AND REPEATEDLY FOLLOWS OR HARASSES A CHILD 12 OR YOUNGER) IS GUILTY OF FELONY STALKING.

SDCL 22-22-1 -- RAPE DEFINED.

SDCL 22-22-2 -- SEXUAL PENETRATION DEFINED.

SDCL 22-22-7 -- SEXUAL CONTACT WITH CHILD UNDER SIXTEEN -- FELONY OR MISDEMEANOR.

SDCL 22-22-7.1 -- SEXUAL CONTACT DEFINED.

SDCL 22-22-7.3 -- SEXUAL CONTACT WITH PERSON UNDER SIXTEEN BY A PERSON UNDER SIXTEEN—MISDEMEANOR.

SDCL 22-22-24.3 -- SEXUAL EXPLOITATION OF MINOR.

SDCL 22-23-2 -- PROMOTING PROSTITUTION—FELONY.

SDCL 22-24A-1 -- SALE OF CHILD PORNOGRAPHY – FELONY.

SDCL 22-24A-3 -- POSSESSING, MANUFACTURING, OR DISTRIBUTING CHILD PORNOGRAPHY – FELONIES.

SDCL 22-24A-5 -- SOLICITATION OF MINOR –FELONY.

**CHAPTER 23A– CRIMINAL PROCEDURE**

SDCL 23A-42-2 -- SEVEN-YEAR LIMITATIONS PERIOD FOR OTHER PROSECUTIONS.

**CHAPTER 25 – DOMESTIC RELATIONS**

SDCL 25-5A-18 – ORDER TERMINATING PARENTAL RIGHTS.

SDCL 25-6-1.1 – FATHER OF ILLEGITIMATE CHILD NOT ENTITLED TO NOTICE OF ADOPTION UNLESS ACKNOWLEDGED.

SDCL 25-7-16 -- CRIMINAL NONSUPPORT. A PARENT WHO INTENTIONALLY OMITS TO FURNISH NECESSARY SUPPORT IS GUILTY OF MISDEMEANOR. IF A PARENT LEAVES THE STATE FOR MORE THAN 30 DAYS DURING A VIOLATION, NONSUPPORT IS A FELONY.

SDCL 25-10-1 -- DOMESTIC ABUSE— DEFINITIONS.

SDCL 25-10-13 -- VIOLATION OF PROTECTION ORDER OR NO CONTACT ORDER AS MISDEMEANOR OR FELONY.

**CHAPTER 26 - MINORS**

SDCL 26-7A-12 -- TEMPORARY CUSTODY BY LAW ENFORCEMENT OFFICER OR COURT SERVICES OFFICER WITHOUT COURT ORDER.

SDCL 26-7A-13 -- COURT-ORDERED TEMPORARY CUSTODY—NOTICED HEARING—WITHOUT NOTICED HEARING.

SDCL 26-7A-15 -- NOTICE TO PARENTS, GUARDIAN, OR CUSTODIAN OF CHILD TAKEN INTO TEMPORARY CUSTODY –NOTICE OF HEARING—INFORMATION TO INDIAN CUSTODIAN OR DESIGNATED TRIBAL AGENT.

SDCL 26-7A-15.1 -- PROCEEDINGS UNDER CERTAIN CHAPTERS TO WHICH ICWA[1] APPLIES – PROCEDURES.

[1] Indian Child Welfare Act (ICWA)

SDCL 26-7A-15.2 -- FORM OF NOTICE TO PARENT, CUSTODIAN, OR INDIAN TRIBE OF CHILD CUSTODY PROCEEDING.

SDCL 26-7A-17-- NOTICE TO STATE'S ATTORNEY OF CHILD TAKEN INTO TEMPORARY CUSTODY—WRITTEN REPORT--NOTICE TO COURT.

SDCL 26-7A-18 -- TEMPORARY CUSTODY HEARING –BEST INTERESTS OF CHILD—CONDUCTED TELEPHONICALLY.

SDCL 26-7A-19 -- OPTIONS OF COURT FOLLOWING TEMPORARY CUSTODY HEARING FOR ABUSED OR NEGLECTED CHILD.

SDCL 26-7A-19.1 -- PREFERENCE FOR PLACEMENT OF ABUSED OR NEGLECTED CHILD WITH RELATIVES AFTER HEARING.

SDCL 26-7A-27-- POLICE RECORDS OF CHILDREN TAKEN INTO TEMPORARY CUSTODY—CONFIDENTIALITY.

SDCL 26-7A-30 -- DUTY OF COURT TO ADVISE CHILD, PARENTS, GUARDIAN, OR CUSTODIAN OF RIGHTS--REPRESENTATION BY ATTORNEY—MOTION FOR NEW HEARING.

SDCL 26-8A-27— TERMINATION OF PARENTAL RIGHTS.

SDCL 26-8A-26.1 – VOLUNTARY TERMINATION OF PARENTAL RIGHTS.

SDCL 26-10-1 -- ABUSE OF OR CRUELTY TO A MINOR IS A FELONY.

SDCL 26-10-30 -- PERMITTING PHYSICAL OR SEXUAL ABUSE OF CHILD AS A FELONY.

SDCL 26-10-31-- CAUSING CHILD TO BE PRESENT WHERE METHAMPHETAMINES USED, DISTRIBUTED, OR MANUFACTURED AS A MISDEMEANOR.

**C. REPORTING STATUTES AND IMMUNITY FROM LIABILITY**

South Dakota law requires that certain professionals report child abuse or neglect. Those who are not mandated are permitted to report. SDCL 26-8A-3. Mandatory reporters are to report orally and immediately by telephone or otherwise to the state's attorney of the county in which the child resides or is present, to the Department of Social Services (DSS), or to law enforcement officers. SDCL 26-8A-8. A mandatory reporter who has reasonable cause to suspect that a child under the age of eighteen has been abused or neglected as defined in SDCL 26-8A-2 shall report that information. Any person who knows or has reason to suspect that a child has been abused or neglected as defined in SDCL 26-8A-2 may report that information as

provided in SDCL 26-8A-8. **Central intake number to report suspected abuse or neglect: 1-877-244-0864.**

The following list summarizes most of the statutes from SDCL 26-8A related to reporting, SDCL 26-8A-3 is a comprehensive list of mandatory reporters:

1. Any person who has reasonable cause to suspect that a child has died as a result of child abuse or neglect shall report that information to the medical examiner or coroner. SDCL 26-8A-4.

2. Hospitals must have a written policy regarding reporting. Staff of a hospital or similar institution shall immediately notify the person in charge of the institution, or his designee of suspected abuse or neglect and that person must make a report. The person required to report shall promptly submit all medical examination, treatment, and hospital records regarding the child to the state's attorney. SDCL 26-8A-6.

3. Schools (public or private, whether accredited or unaccredited) shall have a written policy regarding reporting of child abuse and neglect. When any person has contact with a child through the performance of services in any school shall notify the school principal or school superintendent or designee of suspected abuse or neglect. The superintendent or school principal shall make a report. SDCL 26-8A-7.

4. The person receiving the report shall ask the reporting party if they would like a written response as to whether the report will be investigated. When the state's attorney and law enforcement receive a report, they shall immediately notify DSS. SDCL 26-8A-8.

5. A report of child abuse or neglect shall be investigated by the DSS or law enforcement officers. SDCL 26-8A-9.

6. Investigating personnel may personally interview a child outside the presence of the child's parent, guardian, or custodian without advanced notice or consent. SDCL 26-8A-9.

7. DSS[1] is the central registry for child abuse and neglect reports. SDCL 26-8A-10. This is a separate administrative process, independent of the court proceedings. Parents receive notice from DSS of this process and their right to appeal.

[1] Department of Social Services (DSS)

8. All investigative case records and files relating to reports of child abuse or neglect are confidential and no disclosure of any such records, files, or other information may be made except as authorized by law. SDCL 26-8A-13.

9. DSS may release information as authorized by SDCL 26-8A-13.

10. Any person or party participating in good faith in the making of a report, or the submitting of copies of medical examination, treatment, or hospitalization records is immune from any liability, civil or criminal. SDCL 26-8A-14. Intentional failure of a mandatory reporter to make a required report under SDCL 26-8A-8 could result in charges of a Class 1 misdemeanor.

**D. ROLE OF CHILD'S ATTORNEY**

One of the strengths of the judicial process in child abuse and neglect cases is the requirement that the child be represented by an attorney. SDCL 26-8A-18. A special advocate may be appointed to represent the best interest of the child and to assist the child's attorney. SDCL 26-8A-20. The child's attorney and advocate have the function of protecting the child's best interest.

In achieving a speedy resolution to the case, and ensuring that children have stable, caring, and supportive families, the attorney has the following responsibilities:

1. Make cases involving child abuse and neglect a priority over all other cases. SDCL 26-7A-33.

2. Meet and continue to communicate with the child and become familiar with the child's past either by way of interviews with the child, his/her parents, family services specialists, counselors, teachers or others familiar with the child.

3. If the child is of another culture, acquire knowledge of that culture, including child rearing practices and communication barriers.

4. Obtain and review all discovery materials.

5. Interview all prospective witnesses prior to hearing.

6. Protect child's best interest while maintaining due process rights of the parents.

7. Advocate for a speedy resolution through adjudication and disposition.

8. Protect the child from testifying in court if proceedings may be a significantly traumatic event that harms the child. SDCL 19-19-806.2, 19-19-807.

9. Take all steps reasonably necessary to ease the effects that testifying may have on the child. SDCL 26-8A-30.

10. Monitor deadlines and notice requirements and advocate for compliance.

11. Take an active role in all proceedings affecting the child, including presenting evidence at the adjudicatory hearing. *In the Interest of T.A.*, 2003 S.D. 56, ¶ 18, 663 N.W.2d 225, 232-33.

12. Recommend removal from the home only upon showing that there is substantial risk of harm to the child that cannot be managed in the home.

13. Monitor compliance with the Indian Child Welfare Act (ICWA).

***According to Presiding Judge Policy 3-PJ-5 "An attorney appointed to represent abused and neglected children, including those appointed as guardian ad litem, shall certify that they have viewed and completed the abuse and neglect attorney training developed by the South Dakota Unified Judicial System" http://ujsatv.sd.gov/**

**E. ROLE OF THE DEPARTMENT OF SOCIAL SERVICES – CHILD PROTECTION SERVICES (DSS-CPS)**

1. **Provide Accurate and Timely Information**
   a. Family Services Specialist (FSS) must present clear, factual, and current updates about the child's safety, well-being, and progress.
   b. FSS staff must reflect any changes in the child's living situation, health, or family dynamics in reports and communications.
   c. FSS staff must include detailed information on family assessments, safety planning, and case management activities.
2. **Ensure the Child's Safety**
   d. FSS staff must prioritize the child's safety and welfare in all decisions, interactions, and court documents.
   e. FSS staff must be prepared to provide testimony regarding the child's safety, protective measures, and permanency goals.
   f. FSS staff must recommend and oversee the implementation of services that support the child's and family's progress.

3. **Coordinate and Collaborate**
    g. FSS staff must work closely with attorneys, judges, and other professionals to ensure timely and comprehensive case details are provided.
    h. FSS staff must partner with law enforcement, healthcare providers, and educators to gather relevant information and ensure the child's well-being.
    i. FSS staff must utilize community resources effectively to address the needs of the child and family.
4. **Prepare for and Participate in Court Proceedings**
    j. FSS[1] staff must deliver clear, evidence-based testimony, avoiding speculation.
    k. FSS staff must submit accurate and thorough reports to the court in advance of hearings.
    l. FSS staff must maintain professionalism and impartiality during all court interactions.
5. **Promote Case Resolution and Permanency**
    m. FSS staff must facilitate timely case progression to avoid unnecessary delays, ensuring the child's safety and stability.
    n. FSS staff must engage in permanency planning, continuously reassessing the child's needs to identify long-term solutions.
    o. FSS staff must support reunification efforts by clarifying court processes and connecting families with necessary resources.
6. **Document and Maintain Confidentiality**
    p. FSS staff must record significant developments in the case and communicate these to the appropriate parties, including the court.
    q. FSS staff must protect case information by maintaining strict confidentiality and sharing details only with authorized individuals.

## F. ROLE OF COURT APPOINTED SPECIAL ADVOCATE (CASA)[2]

CASA refers to a court appointed special advocate—a trained community volunteer appointed by a judge to represent the best interests of abused and neglected children in court. The CASA concept is founded on the belief that every child deserves a safe, loving, and permanent home.

1. **Training**

Before being assigned to any case, CASA volunteers must meet the following criteria:

a. pass a background check,
b. receive a minimum of 30 hours of pre-service training,
c. receive 12 hours of annual continuing educational training,

[1] Family Services Specialist (FSS)
[2] **https://sdcasa.org/**

d. take an oath of office, and
e. receive an appointment by a judge.

**2. Appointment To Individual Cases**

The court enters an order appointing the volunteer to the case and granting the volunteer access to the child's record.

**3. Reports**

The CASA volunteer manages the case by reviewing records and talking to people who have information about the child—parents, teachers, neighbors, doctors, school officials and others with information. The CASA volunteer's most important task is to get to know the child.

The CASA volunteer appointed to a case participates in court hearings and submits a report to the court, including a recommendation regarding placement.

**4. Speaking For The Child**

The CASA[1] volunteer helps the child understand the court process and answers questions for the child. The volunteer advocates to the judge of the child's needs and views. The volunteer helps keep the case moving towards a permanent outcome.

**5. Assignment Of A CASA**

In most counties, the local CASA office will generate a petition and order — accompanied by a judge's signature on the order — appointing a CASA volunteer to a case.

**G. INTERSTATE COMPACT PLACEMENT PROCESS (ICPC)**

The Interstate Compact on the Placement of Children (ICPC) is a binding agreement enacted in all 50 states, the District of Columbia, and the Virgin Islands, designed to ensure the safety, stability, and well-being of children placed across state lines. Governed by South Dakota Codified Law (SDCL 26-13) and administrative rules (ARSD 67:14:31:55), the ICPC applies to placements initiated by public and private agencies, courts, attorneys, physicians, or individuals. Exemptions include placements with specific relatives, such as parents, stepparents, grandparents, adult siblings, and legal guardians, as well as placements in educational or medical facilities. However, children in the legal custody of the state are always subject to ICPC requirements.

Placements across state lines require a structured process to ensure compliance with the Compact. The South Dakota Division of Child Protection Services (CPS) oversees these requests through the Interstate Compact Administrator. Written approval from the receiving state, via the ICPC-100A form, is mandatory before any placement occurs. This applies to foster care[2], adoption, and other placements involving children in state

[1] Court Appointed Special Advocate (CASA)
[2] Synonymous to "Out-of-Home Placement"

custody. Specific documentation must accompany placement requests, including court orders, medical and educational records, family history, and case service plans. For adoptions, additional steps involve confirming the child is legally free for adoption and obtaining agreements with Native American tribes, when applicable, under the Indian Child Welfare Act (ICWA). Local offices must defer to the CPS[1] State Office for all ICPC reviews, ensuring placements meet state and Compact requirements.

### H. UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT (UCCJEA)

The UCCJEA is a uniform state law drafted by the National Conference of Commissioners on Uniform State Laws (now the Uniform Law Commission) and enacted by all states (with the exception of Massachusetts), the District of Columbia, Guam, and the Virgin Islands. The UCCJEA addresses a court's subject matter jurisdiction in child custody cases, specifically answering the question of whether a court has the power to decide a custody case in which more than one state, tribe, or territory is involved. The law specifies which court has the power to decide a custody case, not how the court should decide the case, which is governed by the jurisdiction's general child custody laws.

[1] Child Protective Services (CPS)

## III. INDIAN CHILD WELFARE ACT (ICWA)

The Indian Child Welfare Act, commonly known as "ICWA," is codified at 25 U.S.C. § 1901-1963. Both ICWA and the Bureau of Indian Affairs (BIA) provide guidelines for state courts in administering ICWA cases.

The South Dakota Supreme Court mandates compliance with ICWA in all abuse and neglect cases involving an Indian child litigated in the Circuit Courts of the state of South Dakota. *People in Interest of C.R.M.*, 307 N.W.2d 131, 132 (S.D. 1981).

ICWA[1] applies when a child is an "Indian child" and "child custody proceedings" are involved. ICWA defines "Indian child" as "any unmarried person who is under the age of 18 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." 25 U.S.C. § 1903(4).

ICWA and the BIA Guidelines define "child custody proceedings" as specifically including the following:

1. Foster[2] care placement, which is any action removing an Indian child from his or her 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.
2. Termination of parental rights, which is any action resulting in the termination of a parent-child relationship.
3. Pre-adoptive placement, which is 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; or
4. Adoptive placement, which is the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption. 25 U.S.C. § 1903(1)(i)(iv), BIA[3] Guidelines § 23.2.

Jurisdiction between state and tribal courts can be exclusive or concurrent. If jurisdiction is exclusive, the state court cannot make any legal findings unless it is exercising emergency jurisdiction to prevent imminent physical damage or harm to the child. 25 U.S.C. § 1922. If jurisdiction is concurrent, the state retains jurisdiction over case proceedings unless the tribe intervenes, and the case is transferred to the tribe.

[1] Indian Child Welfare Act (ICWA)
[2] Synonymous to "Out-of-Home Placement"
[3] Bureau of Indian Affairs (BIA)

## A. JURISDICTION

### 1. Exclusive Jurisdiction

The tribe has exclusive jurisdiction in any of the following situations:

a. Child is a ward of the tribal court, regardless of where the child resides or is domiciled.
b. Child resides within the reservation of his or her tribe; or
c. Child is domiciled within the reservation.

Exclusive jurisdiction is not at transfer of jurisdiction because, absent emergency jurisdiction, the state court has no authority to act. This means the state cannot make an adjudicatory finding. Instead, the tribe should make arrangements to come and get the child and the case should be dismissed with the State noting that the tribe had jurisdiction. 25 U.S.C. § 1911(a); *Matter of Adoption of Halloway*, 732 P2d 962 (Utah 1986).

### 2. Intervention

Once the court confirms that ICWA applies, a tribe may intervene at any point during a case. 25 USC § 1911(c). The intervention can be telephonically or orally, and at times tribes may intervene at the Emergency Hearing (Temporary Custody Hearing).

If a tribe intervenes without a motion to transfer, the proceedings stay in state court and the tribe can fully participate in the proceedings, either through a representative or an attorney.

### 3. Transfer

Tribes can move to transfer the proceeding from state court to tribal court. 25 U.S.C. § 1911(b) . The state court must transfer the case unless a parent objects, or if there is good cause to the contrary. "Good cause" for denying a transfer can may include:

a. The proceeding is at an advanced stage (when the petition to transfer is received and the petition is not promptly filed after receipt of notice.
b. The child is over the age of 12 and objects to the transfer.
c. Evidence necessary to decide the case cannot be adequately presented to the tribal court without undue hardship to witnesses and parties; and
d. The parents of a child over the age of 5 are not available and the child has had little or no contact with the child's tribe or members of the child's tribe. *See: In re D.M.*, 685 N.W.2d 768, 2004 S.D. 90

**Note:** The party opposing the transfer has the burden of establishing good cause.

## B. PLACEMENT PREFERENCES[1]

### 1. ICWA Placement Hierarchy

In any placement of an Indian Child under state and federal law, a preference shall be given, in the absence of good cause to the contrary, to a placement with:

a. A member of the child's extended family.
b. Other members of the Indian Child's tribe; or
c. Other Indian families.

[1] *See* 25 U.S.C. § 1915(a)

**2. Tribal Override of Placement Preferences.**

A tribe can also establish a different order of preference and DSS/State court shall follow those preferences. 25 USC §1915(c).

**3. Deviation of ICWA Preferences.**

There can be good cause to deviate from the ICWA preferences. A court's decision to deviate should be based on one or more of the following:

a. Request by one or both of the parents.
b. Request of the child, if the child is of sufficient age and capacity to understand the decision that is being made.
c. The presence of sibling attachment that can be maintained only through a particular placement.
d. The extraordinary physical, mental, or emotional needs of the child; and
e. Unavailability of a suitable placement (i.e., lack of Native American foster homes).

**4. Testimony of a QEW**

A Qualified Expert Witness ("QEW") may be necessary to testify as to whether or not good cause exists to deviate from placement preferences at different stages of the case. A QEW is described below.

**C. QUALIFIED EXPERT WITNESS UNDER THE ICWA**

There has been much discussion to clarify what constitutes a "qualified ICWA[1] witness." The BIA[2] sets forth guidelines to help state courts decide what constitutes a qualified expert witness (QEW) under ICWA. Persons with the following characteristics are most likely to meet the requirements for a QEW for Indian Child custody proceedings:

1. A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and childrearing practices.
2. A member of another tribe who is recognized to be a QEW by the Indian child's tribe based on their knowledge of the delivery of child and family services to Indians and the Indian child's tribe.
3. A lay person who is recognized by the Indian child's tribe as having substantial experience in the delivery of child and family services to Indians, and knowledge of prevailing social and cultural standards and childrearing practices within the Indian child's tribe; and
4. A professional person having substantial education and experience in the area of his or her specialty who can demonstrate knowledge of the prevailing social and cultural standards and childrearing practices within the Indian child's tribe. *People ex rel. A.B.*, 2016 S.D. 44, ¶ 18, 880 N.W.2d 95, 102.

[1] Indian Child Welfare Act (ICWA)
[2] Bureau of Indian Affairs (BIA)

However, these are merely guidelines and do not have a binding legislative effect on any of the courts of the state of South Dakota. *Matter of S.D.*, 402 N.W.2d 346, 350 (S.D. 1987). The courts in the state of South Dakota have indicated that there is already "firm guidance" as to whom shall be considered an expert witness in South Dakota. *Matter of K.A.B.E.*, 325 N.W.2d 840, 843-844 (S.D. 1982). As far as the South Dakota Supreme Court is concerned:

> A witness is an expert witness and is qualified to give expert testimony if the judge finds that to perceive, know or understand the matter concerning which the witness is to testify, requires special knowledge, skill, experience, or training and that the witness has the requisite special knowledge, skill, experience or training. The qualifications and competency of a witness to give opinion evidence is primarily in the discretion of the trial court and his ruling in determining qualifications will not be disturbed unless there is no evidence that the witness had the qualification of an expert, or the trial court has proceeded upon erroneous legal standards. *K.A.B.E.*, at 844.

Whether an expert witness is in fact "qualified" is within the sound discretion of the trial court. The lower court's ruling would be disturbed only in the case of clear abuse of discretion. *Matter of J.L.H.*, 316 N.W.2d 650, 651-52 (S.D. 1982).

The QEW and the Court focus must be whether continued custody with a parent or Indian custodian is likely to cause serious emotional and/or physical harm to the child and a different placement is necessary to prevent such harm.

**D. ICWA CONSIDERATIONS/INQUIRIES AT EACH HEARING**

**1. Temporary Custody Hearing (TCH)**[1]

a. Even though written notice may not be possible, CPS should be reaching out to the tribe and the parents by phone and/or email to provide notice of the hearing.
b. At the hearing always ask parents if they are affiliated with a tribe.
c. Parental affiliation with a tribe does not trigger an automatic application of ICWA; however, ICWA MAY apply. The State and CPS should provide notice to the named tribes and the BIA for confirmation.
d. Although a TCH does not require a QEW[2], the court should still consider whether removal of the child(ren) was necessary to prevent imminent danger and whether the child(ren) would likely experience serious physical and/or emotional harm if returned to their parent without further investigation.
e. CPS should be looking at family placement, when possible, for placement under ICWA guidelines and SDCL § 26-7A-19.1.

[1] Also Known as “Emergency Hearing” or “48 Hour Hearing”
[2] Qualified Expert Witness (QEW)

f. The Court should authorize the release of information to the tribe if it is believed that ICWA may be applicable and include the release in the TCH Order.

**2. Advising**

a. At the Advising Hearing the Court should again inquire if the parents are affiliated with a tribe, and if so, what notice has been provided to the tribe(s).
b. The parents should be advised regarding the possibility of transferring the case to their tribe, which is discussed above. The tribe can make a motion to transfer the case to tribal court and the parents have a right to make a motion to the tribe to transfer the case. However, the tribe has a right to deny a parent's motion to transfer to tribal court, just as the parents have a right to object to the tribe's motion to transfer to tribal court.
c. Parents should be advised as to the burdens of proof at adjudication (clear and convincing evidence), and the burden of proof at disposition (proof beyond a reasonable doubt).
d. The Court should inquire as to placement and whether the children are placed in an ICWA[1] placement preference and if not, inquire as to the good cause for deviation from the placement preferences.

**3. Adjudication**

a. If ICWA has been confirmed by the court to apply to the proceeding, the tribe is required notice, via certified receipt mail, at least **10 days** prior to the hearing, and the tribe may ask for an additional **20 days** to prepare for the hearing.
b. If there is a contested hearing, the QEW should testify as to whether removal was necessary to prevent serious emotional/physical harm to the child. If the hearing is not contested**,** parents can stipulate to this finding.
c. Placement should be addressed at adjudication. If placement is outside of the placement preferences (above), then the prosecutor must present an affidavit or testimony from a QEW as to good cause to deviate from ICWA placement preferences. If the hearing is not contested, then the QEW can prepare an affidavit as to good cause and it must be filed with the adjudicatory order. If the hearing is contested, then the QEW should provide testimony about during the hearing.
    i. **Note:** How this is handled is a determination made by the prosecution and circuit court of the jurisdiction the proceeding is being handled in; however, placement

[1] Indian Child Welfare Act (ICWA)

needs to be addressed immediately if ICWA is applicable.

d. The state's burden of proof at adjudication is clear and convincing evidence.

**4. Active Efforts**

a. Active efforts must be made to provide remedial services and rehabilitative programs designed to prevent the breakup of the family. 25 U.S.C. § 1912(d).

i. Active efforts are efforts that are more than passive. "Active efforts occur when the FSS[1] worker takes the client through the steps of the plan rather than requiring that the plan be performed on its own." *People In Interest of SHE*, 824 N.W.2d 420, 426, 2012 S.D. 88, ¶ 21 .

ii. Active efforts must be provided to the family as a whole, regardless of a parent's location. In addition, DSS[2] must provide active efforts to a parent who is incarcerated**,** even though DSS's efforts will be limited due to the parent's incarceration. See *Id.*

iii. The state cannot be relieved from providing active efforts in ICWA cases under SDCL §26-8A-21.1.

**5. Review Hearing**

a. The court should make a record if the tribe(s) received proper notice. Proper notice is **10 days'** notice by certified mail.

b. The court should make findings as to what active efforts are being made, and whether continued placement is necessary in order to prevent serious emotional or physical damage to the child(ren).

c. Placement preference should be addressed at every review hearing. 25 U.S.C. § 1915(b) or (c).

**6. Disposition**

a. The tribe(s) must receive notice of a petition to terminate parental rights and notice of the scheduled dispositional hearing.

b. If a tribal representative is present at the hearing, the court may offer them an opportunity to be heard on the record without the present of an attorney.

c. A QEW[3] is required to testify as to whether continued custody by biological parent(s) is likely to cause serious physical and/or emotional harm to the child.

[1] Family Services Specialist

[2] Department of Social Services (DSS)

[3] Qualified Expert Witness (QEW)

d. There must be a record made of active efforts by CPS[1] to prevent the breakup of the Indian family.
e. The court must find beyond a reasonable doubt that termination of parental rights is the least restrictive alternative and is in the child's best interests.

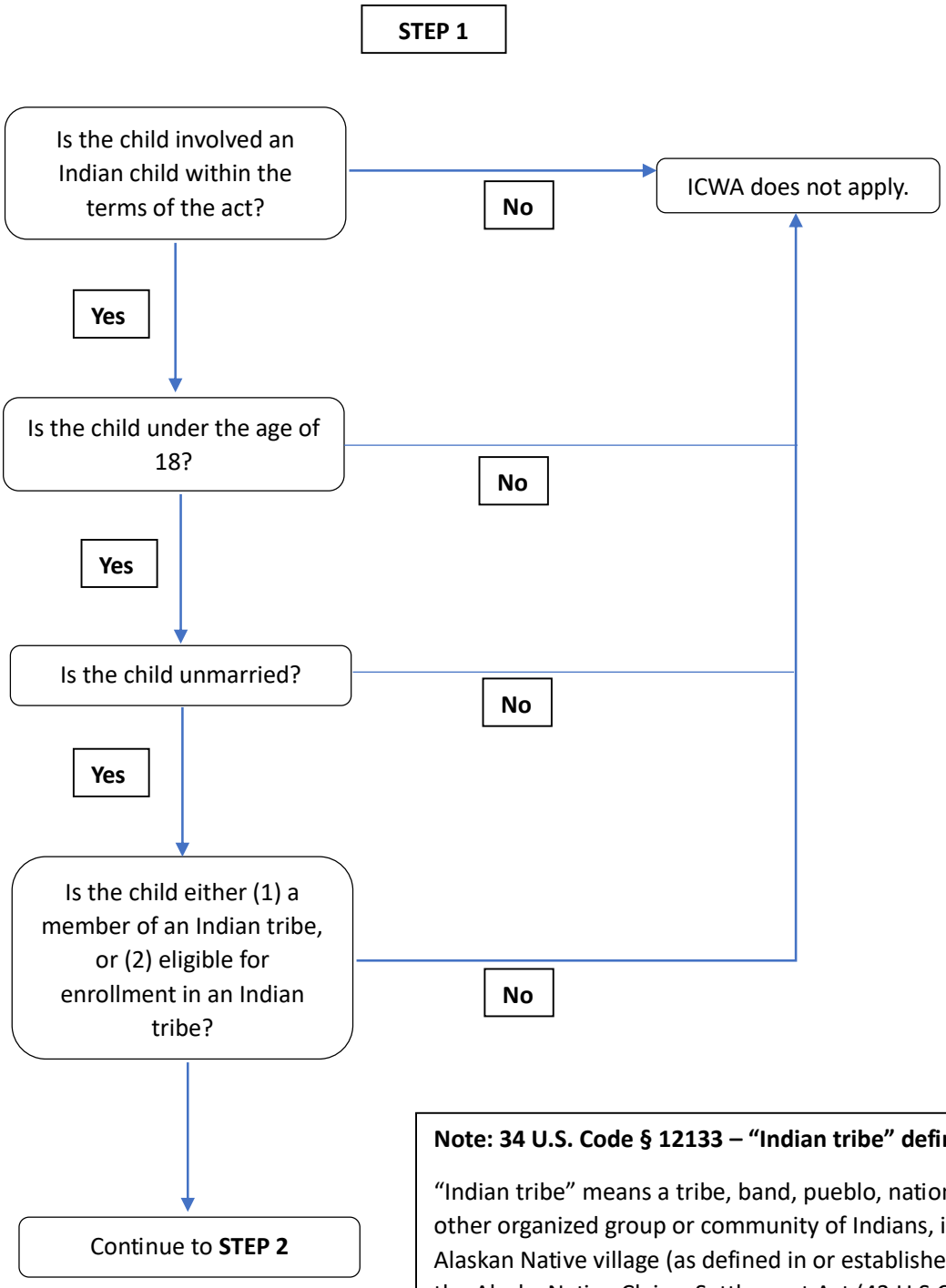
**7. Good Cause Hearing Post-Termination**

a. The ICWA[2] still applies even if the biological parents' rights have been terminated because the child's placement still needs to be determined.
b. A good cause hearing needs to be set before any adoptive hearing if the Indian child is not in an ICWA placement preference. Notice of the good cause hearing must be given to the tribe(s).
c. The DSS[3] will need to state their efforts for placement preference either by court report, affidavit, or testimony at the hearing what efforts they have made to identify placement within the ICWA guidelines and the good cause they have to deviate from the placement preferences.
d. Any proposed placement plan should include a cultural plan, and DSS should note whether the tribe(s) has responded and if they are in agreement with the proposed adoptive plan and placement.
e. The court must enter findings of fact and conclusions of law and an order as to any good cause finding.

[1] Child Protective Services (CPS)
[2] Indian Child Welfare Act (ICWA)
[3] Department of Social Services (DSS)

# ICWA FLOW CHART

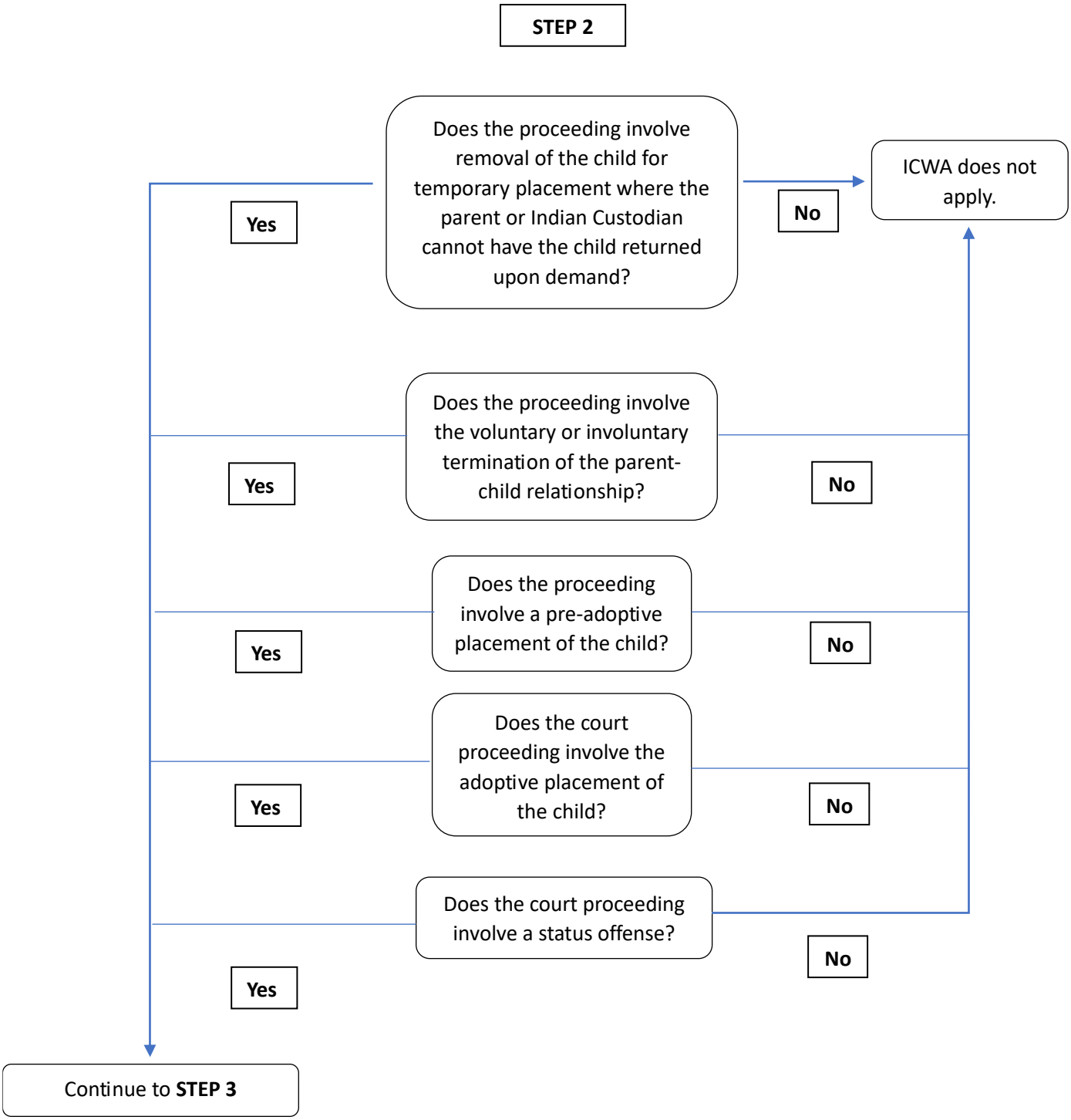
## B. FLOW CHART TO DETERMINE THE APPLICABILITY OF THE INDIAN WELFARE ACT OF 1978



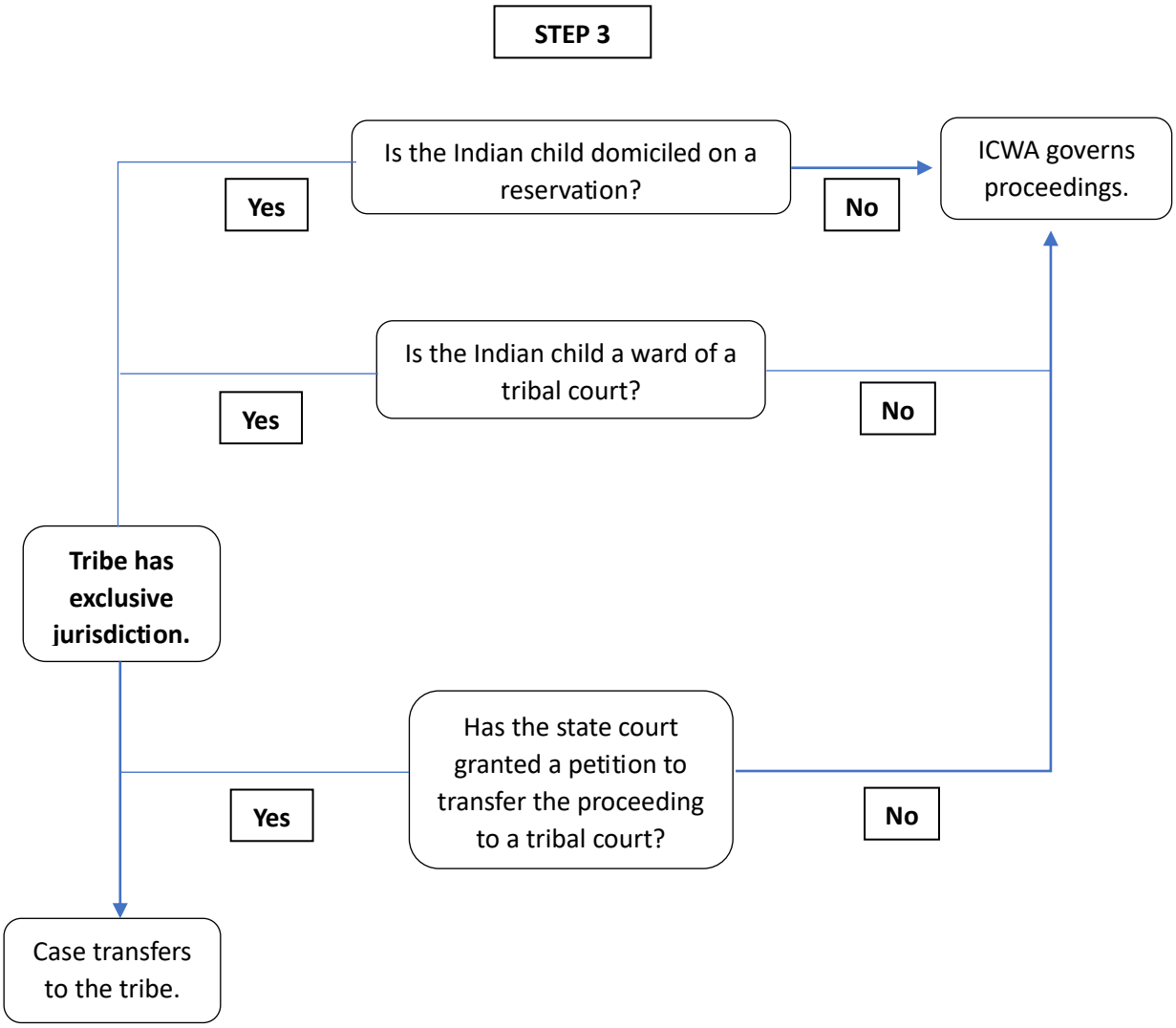

**Note: 34 U.S. Code § 12133 – "Indian tribe" defined**

"Indian tribe" means a tribe, band, pueblo, nation, or other organized group or community of Indians, including Alaskan Native village (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) [1] that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

**ICWA Determination**



**ICWA Determination**



## IV. PROTECTIVE CUSTODY/INTAKE

In cases of suspected child abuse or neglect, the investigator must realize that the priority is protection of the child. If the law enforcement officer believes the conditions under SDCL 26-7A-12(2) or (4) exist, or if the court believes that any of the conditions under SDCL 26-7A-13 exist, it may be necessary to place the child in temporary custody to ensure the child's safety and well-being.

After the initial placement but before the temporary custody (48-Hour) hearing, CPS[1] may still explore a Present Danger Plan option (PDP) with the parents and if a PDP option has been identified CPS may request a dismissal from the State's Attorney's Office and a dismissal may be presented to the court prior to the 48-hour hearing.

### A. WHEN LAW ENFORCEMENT TAKES CUSTODY

A law enforcement officer can lawfully take a child into custody under the following conditions:

1. If the child is abandoned or seriously endangered in the child's surroundings or is seriously endangering others and immediate removal of the child appears to be necessary for the child's protection or for the protection of others. SDCL 26-7A-12(2).
2. If the officer reasonably believes that temporary custody is warranted because there exists an imminent danger to the child's life or safety and there is no time to apply for a court order and the child's parents, guardian, or custodian refuse an oral request for consent to the child's removal from their custody or the child's parents, guardian, or custodian are unavailable. SDCL 26-7A-12(4).

When law enforcement takes custody of the child, the officer must fill out a temporary custody directive and serve it on the parents when possible.

### B. COURT ORDERED PLACEMENT WITH NOTICED HEARING:

The court may order temporary custody of a child within the jurisdiction of the court during any noticed hearing. SDCL 26-7A-13.

### C. AUTHORITY FOR A PICK-UP AND PLACE ORDER WITHOUT NOTICED HEARING:

Without noticed hearing, the court or an intake officer may immediately issue a written temporary custody directive in the following instances on receipt of an affidavit or, in the absence of a written affidavit when circumstances make it reasonable, on receipt of sworn oral testimony communicated by telephone or other appropriate means:

[1] Child Protective Services (CPS)

1. An application by a state's attorney, FSS[1] of DSS[2], or law enforcement officer stating good cause to believe as follows:
    a. the child is abandoned or is seriously endangered by the child's environment; or
    b. there exists an imminent danger to the child's life or safety and immediate removal of the child from the child's parents, guardian, or custodian appears to be necessary for the protection of the child. The court should enter a written order under SDCL 26-7A-13, authorizing the child's placement into the custody of DSS, and that order should be provided to the parents as notice that the child has been placed into the temporary custody of DSS.

**D. CONTACTING AN INTAKE OFFICER**

A law enforcement officer who removes a child from home shall immediately contact an intake officer, who shall hold an intake hearing. SDCL 26-7A-13.1. Intake officers are circuit judges or their designees, but not court services officers, law enforcement officers, or state's attorneys. SDCL 26-7A-1(20) . If possible, the FSS[3] and law enforcement officer should contact the intake officer together, to obtain approval for an out-of-home placement until a temporary custody (48 hour) hearing is held if the child is not released from custody. Available placement options should be prepared by a FSS.

A temporary custody directive form is available to follow along with the intake officer during the hearing. Reviewing the temporary custody directive form ahead of time is recommended. This will help in knowing what the intake officer is looking for and what will be considered in determining whether to continue the removal of the child from the home.

**E. PURPOSE OF AN INTAKE HEARING**

The intake hearing is to decide whether a child should be held in temporary custody following initial removal by a law enforcement officer and pending further hearings by the court. Intake is an independent judicial review of a law enforcement officer's decision to remove the child.

No child may be held in temporary custody longer than **48 hours** excluding Saturdays, Sundays, and court holidays unless a temporary custody petition or other petition has been filed, the child is within the jurisdiction of the court, and the court orders longer custody during a noticed hearing or a telephonic hearing. SDCL 26-7A-14; *Cheyenne River Sioux Tribe v. Davis*, 2012 S.D. 69 ¶¶ 13-14, 822 N.W.2d 62, 66.

**F. PROCEDURES FOR AN INTAKE HEARING**

1. May be telephonic or other appropriate means. SDCL 26-7A-13.

[1] Family Services Specialist (FSS)
[2] Department of Social Services (DSS)
[3] Family Services Specialist (FSS)

2. Rules of evidence do not apply. SDCL 26-7A-56.
3. Rules of procedure do not apply. SDCL 26-7A-56.
4. No record is needed.
5. May immediately issue a written temporary custody directive. SDCL 26-7A-13.

**G. OPTIONS AT AN INTAKE HEARING**

1. The child may be placed in the temporary care of the DSS[1], foster care[2], or shelter care as designated by the court to be the least restrictive alternative. SDCL 26-7A-14, SDCL 26-7A-16.
2. Detention is not an option for abused or neglected children. SDCL 26-7A-26.
3. Jail is not an option for abused or neglected children. SDCL 26-7A-26(¶1).

**H. NOTICE**

1. Immediate notice to parents (custodial and noncustodial), guardian, or custodian of child taken into temporary custody. SDCL 26-7A-15.
2. Notice to the state's attorney at the earliest opportunity. SDCL 26-7A-17.

[1] Department of Social Services (DSS)
[2] Synonymous to "Out-of-Home Placement"

# V. TEMPORARY CUSTODY HEARING (48-HOUR HEARING)

## A. TEMPORARY CUSTODY HEARING (48-HOUR HEARING)

The temporary custody hearing (48-hour hearing) is the initial stage of the formal court process. SDCL 26-7A-15 requires that a hearing be held within **48 hours** of the child being placed in the emergency temporary custody of DSS. The state's attorney's office is required to provide notice, without unnecessary delay, of the date, time, and place of the hearing to the parents, guardian, or custodian. If the temporary custody hearing concerns an apparent abused or neglected Indian child, the state's attorney or DSS shall make reasonable efforts to inform the Indian custodian and the designated tribal agent for the Indian child's tribe, if known, of the date, time, and place of the hearing. Failure to notify the child's parents, guardian, or custodian, or to inform the Indian custodian or the designated tribal agent, of the temporary custody hearing is not cause for delay of the hearing if the child is represented by an attorney. At the temporary custody hearing the court has the following options available:

1. Order the release of the child from temporary custody, either with or without restriction or condition or upon written promise of the child's parents, guardian, or custodian regarding the care and protection of the child, SDCL 26-7A-19;
2. Transfer the case to the child's tribe (either exclusive or concurrent jurisdiction);
3. Transfer the case to another venue (case is proper wherever the child and mother are domiciled), SDCL 26-7A-3; or
4. Continue temporary custody of the child under the terms and conditions for duration and placement that the court requires, including placement of temporary custody of the child with DSS, in foster care, or shelter. The court and DSS shall give placement preference to a relative, custodian, or an individual, not related by birth, adoption, or marriage, but with an emotionally significant relationship with the child, who is available, qualified, and provided that the placement with that relative, custodian, or individual is in the best interest of the child. SDCL 26-7A-19.

If the temporary custody of the child is continued, the court may grant family time[1] to the child's parents, guardian, or family member with the child in order maintain the best interests of the child. If the child is in temporary custody of DSS[2] and has not been adjudicated as an abused or neglected child, the court shall review the child's temporary custody placement at least once **every 60 days**.

At the temporary custody (48 hour) hearing, the court will consider information as to why the children were removed, this information includes police reports, DSS reports, a statement from the state's attorney's office, and any other information necessary for the court

[1] Also known as "Visitation"
[2] Department of Social Services (DSS)

to decide as to which option is in the best for the child. The court may also appoint attorneys at this stage if it's clear the case will move on to the next stage of the proceedings.

Pursuant to SDCL 26-7A-18, at the temporary custody (48-hour) hearing the court shall consider evidence of the need for continued temporary custody of the child in keeping with the best interests of the child. While the burden of proof for the temporary custody hearing is not specifically enumerated in SDCL 26-7A or SDCL 26-8A, pursuant to SDCL 26-7A-18, the court's primary consideration at this stage is not intended to address the merits of the case, but rather to determine whether continued temporary custody outside the home is necessary to protect the child. If ICWA[1] applies, the court must address the question as to whether continued custody is necessary to prevent imminent physical damage or harm to the minor child. SDCL 26-7A-19 gives the options for the court regarding placement of the child following the temporary custody hearing.

1. **HOLD THE HEARING WITHIN 48 HOURS** (excluding Saturdays, Sundays and holidays) SDCL 26-7A-14.
2. **IT IS A CLOSED HEARING** absent a compelling reason to open it. SDCL 26-7A-36.
3. **MAY BE TELEPHONIC.** SDCL 26-7A-18.
4. **BEST INTERESTS OF THE CHILD** At the temporary custody hearing the court shall consider the evidence of the need for continued temporary custody of the child in keeping with the best interests of the child. SDCL 26-7A-18.
5. **RULES OF EVIDENCE DO NOT APPLY** Instead; the court may design its own rules of evidence and procedure to fully inform the court of the exact status of the child. SDCL 26-7A-56.
6. **A VERBATIM RECORD SHALL BE TAKEN OF ALL HEARINGS,** except telephonic temporary custody hearings held pursuant to SDCL 26-7A-13, SDCL 26-7A-35.
7. **CONTINUE (only if necessary)** the hearing for not more than 24 hours if additional information or witnesses are needed but resolve as many issues as possible before continuing the hearing.
8. **ISSUE A TEMPORARY CUSTODY ORDER**
9. **SCHEDULE ADVISORY HEARING**

**B. PROCEDURES FOR THE TCH[2] (48 HOUR HEARING)**

1. PETITION FOR TEMPORARY CUSTODY
2. PETITION FOR ABUSE OR NEGLECT
3. SUMMONS FOR ABUSE OR NEGLECT
4. INDIAN CHILD WELFARE ACT (ICWA) AFFIDAVIT
5. PROOF OF SERVICE OF PETITION AND SUMMONS
6. TEMPORARY CUSTODY HEARING (48 HOUR HEARING) ORDER

[1] Indian Child Welfare Act (ICWA)
[2] Temporary Custody Hearing (TCH)

If a child has been or is to be removed, the court shall determine the removal of the child is or was necessary because continued presence in, or return to the home, would be contrary to the child's welfare and that reasonable efforts have been made by DSS[1] to avoid removal or to return the child to the home. If ICWA[2] applies, the court must inquire and address whether the continued custody of the Indian child is necessary to prevent imminent physical damage or harm to the minor child.

**C. NOTICE**

All parents should be named and given notice with the petition by either personal service or publication.

1. Military Status: Timely notification should be given to parents serving in the armed forces. An Affidavit of Non-Military Status should be on record prior to adjudication. 50 USCS § 3931.
2. ICWA Notice Requirements: *See* ICWA.
3. Lack of Service: Failure of service on one or more parties may require modification or repetition of the time periods as to those parents or custodians who have not been served.
4. All Parties need to be provided with the petition and summons not less than **five days** before the date of the advisory hearing. Proof of service shall be filed with the court before commencement of the hearing on the petition. Notice can be through personal service or by publication. SDCL 26-7A-47, SDCL 26-7A-48.

The action can proceed as to those parties who have been served, even if some other parties have not been served.

[1] Department of Social Services (DSS)
[2] Indian Child Welfare Act (ICWA)

# VI. ADVISORY HEARING

## A. PURPOSE

SDCL 26-7A-54 mandates that an advisory hearing must be held before an adjudicatory hearing. The advisory hearing is oftentimes the first time the parents appear before the court. The court will inquire as to whether the parents have received a copy of the petition and summons (if not, they may be served in court at the advisory hearing).

The court shall do the following:

1. Advise parents:
   a. their right to have an attorney;[1]
   b. their right to continue the proceedings to another date;
   c. the nature of the proceedings;
   d. the allegations in the petition;
   e. the burden of proof that is on the state;
   f. their constitutional and statutory rights; and
   g. the possible consequence of the proceedings (ex. Termination of parental rights).
2. Inquire as to the tribal affiliation of each parent.

The following may occur at the advisory hearing:

1. If the parents request an attorney, the parent may enter a denial to the allegations in the petitions and the matter will be continued to a future date.
2. If a parent has notice and does not appear, the court may enter a default adjudication. The petition is admitted to in its entirety by the parent who does not appear in court. SDCL 26-7A-53.
3. Parents who appear in court for the advisory hearing have the option to admit to the petition, they can admit to a portion of the petition or to the entire petition. SDCL 26-7A-55.
4. After a default ruling or an admission, the court will enter oral findings of fact and conclusions of law for adjudication and make a specific finding that the children are abused or neglected.
5. The tribe can intervene and/or move to transfer the case to tribal court. If neither parent objects to the transfer and the case transfers to tribal court, the case is then closed in state court and state court jurisdiction ends.

[1] Pursuant to SDCL 26-7A-31 and -32, the court's advisement of rights shall include the establishment of a lien against the real or personal property of the parent(s), either jointly or severally, when the parent(s) are appointed an attorney by the court.

**B. NOTICE**

If proper notice was not provided to any party, tribe, BIA[1], or U.S. Department of the Interior the advisory hearing should be continued until all parties are noticed. A party could waive the notice requirement. *Interest Of N.K., Jr. And S.K.*, 2024 S.D. 63.

[1] Bureau of Indian Affairs (BIA)

## VII. ADJUDICATION HEARING

"Adjudication of a child as an abused or neglected child is an adjudication of the status or condition of the child who is the subject of the proceedings and is not necessarily an adjudication against or in favor of any particular parent, guardian, or custodian of the child." SDCL 26-8A-1.

Prior to the adjudicatory hearing the following notices are required:

**IN NON-ICWA CASES:**

1. All parties need to be provided with the notice of hearing **within five working days** of the adjudicatory hearing. Notice can be through personal service or by publication. SDCL 26-7A-47, SDCL 26-7A-48.
2. Notice must also be provided to counsel for the parties.

### A. TIMING AND PURPOSE OF ADJUDICATORY HEARINGS

#### 1. Timing

Speedy adjudication can reduce the length of time a child spends in foster care[1]. The court should reduce delay while using due diligence to protect the rights of the parents and child and to determine the best interests of the child.

a. Criminal Proceedings: In all but extremely special circumstances, the adjudicatory hearing should not be postponed because of criminal proceedings. The order and timing of both criminal and civil proceedings relating to the child can have implications regarding the parent's Fifth Amendment privilege against self-incrimination. *People in the Interest of D.A.J.*, 2008 S.D. 92 ¶ 12, 757 N.W.2d 70, 74.
b. The court should give greater weight to the interest of the child and a court should not grant a continuance if it would be in the detriment of the child.
c. Scheduling Conflicts: Continuances because of scheduling conflicts should only be granted upon a showing that a continuance will not be detrimental to the child and then only for a reasonable time-period.

#### 2. Purpose

The adjudicatory hearing is a hearing to determine whether the allegations of a petition alleging that a child is abused or neglected are supported by clear and convincing evidence. SDCL 26-7A-1(2). In general, the adjudicatory hearing looks to the past, while the primary focus of the dispositional hearing is in the future. *People in Interest of P.M.*, 299 N.W.2d 803, 806 (S.D. 1980).

Findings of facts and conclusions of law: Regardless of the outcome of the case, findings of fact and conclusions of law must be entered as to the result of the case. SDCL 26-7A-86, SDCL 26-7A-87. Even though the adjudication is as to the status of the child,

[1] Synonymous to "Out-of-Home Placement"

the rights of both parents need to be addressed and an order should be entered as to the rights of each parent (i.e., mother has abused or neglected or both; father has abused or neglected or both; or perhaps one has and one has not).

Petition denied: If the petition is not sustained to all parties/respondents or it is dismissed by the State, jurisdiction of the court is terminated. *In the Interest of T.G.*, 2001 S.D. 15, ¶¶ 7-8, 621 N.W.2d 608, 610.

**B. DISCOVERY**

Abuse and neglect cases are civil in nature; therefore, except as otherwise provided in SDCL 26-7A-57 to -81, the Rules of Civil Procedure apply to adjudicatory hearings. All other hearings shall be conducted under rules prescribed by the court to enable the court to determine what is best for the child. SDCL 26-7A-56. Basically, the rules of discovery permit a party, including the state, to inspect and copy certain documents and records which are material to the preparation of the case, which are in the possession and control of another party, or which are intended for use by a party. SDCL 26-7A-60, -61, -68, -69. Certain documents are privileged or confidential and may not be disclosed. SDCL 26-7A-62, -70. The court should set discovery and motion deadlines at the temporary custody (48 hour) hearing or the advisory hearing or at the time that attorneys are appointed. The court may consider entering a scheduling order, like those issued in other civil cases, at the time of the appointment of attorneys, setting forth permitted discovery and incorporating discovery and motion deadlines, to ensure that child abuse and neglect cases proceed efficiently and expeditiously.

**C. ELEMENTS**

SDCL 26-8A-2 defines the term "abused or neglected child." The petition should allege all the subsections that apply to the case and the facts which substantiate the specific allegations, in language that the parent would understand.

At the adjudicatory hearing, the state must prove the alleged elements by clear and convincing evidence. *Matter of S.W.*, 428 N.W.2d 521, 523-24 (S.D. 1988); SDCL 26-7A-86, -87. This includes Indian Child Welfare Act cases. *People in Interest of S.R.*, 323 N.W.2d 885, 886 (S.D. 1982); *Matter of K.A.B.E.*, 325 N.W.2d 840, 843 (S.D. 1982); *People in Interest of P.B.*, 371 N.W.2d 366, 371 (S.D. 1985).

**D. EVIDENCE**

Generally, the evidence at an adjudicatory hearing must relate to the allegations stated in the petition. *Matter of C.J.H.*, 371 N.W.2d 345, 350 (S.D. 1985). The court may, however, consider the circumstances that brought about a previous adjudication of the same child. *In the Interest of S.O.B.*, 2006 S.D. 76, ¶¶ 28-29, 721 N.W.2d 83, 91-92. In an adjudicatory hearing, the court may judicially notice an earlier finding of abuse and neglect with respect to a different child and combine this evidence with the parents' failure to admit that they are perpetrators of child abuse to find that the child who is subject of the petition is abused and neglected, without finding any specific instance of abuse or neglect. *Matter of J.A.H.*, 502 N.W.2d 120, 124 (S.D. 1993). Evidence of

occurrences in the home after the child was removed is admissible as "relevant to the question of [the parents'] continuing behavior and attitudes." *Matter of C.E.*, 283 N.W.2d 554, 556 (S.D. 1979); *Matter of N.J.W.*, 273 N.W.2d 134, 138 (S.D. 1978). If evidence of events after its filing does not relate to the allegations initially alleged in the petition, the petition should be amended to conform to the evidence. "Evidence that child abuse has occurred is prima facie evidence that the child is an abused or neglected child regardless of allegations contained in the petition, and such evidence is sufficient to support an adjudication of the child as an abused or neglected child." SDCL 26-7A-82.

The Rules of Evidence apply to adjudicatory hearings unless otherwise provided in SDCL chapter 26-7A. SDCL 26-7A-34(1), -56. SDCL 26-7A-83 allows "written reports and other material and information relating to the child's mental, physical and social history" to be considered by the court. However, the child or parent may require the person who prepared the report to be present and subject to direct or cross-examination. Reports admissible under the business records exception to the hearsay rule have been allowed at the adjudicatory hearing. *People in Interest of T.L.J.*, 303 N.W.2d 800, 807 (S.D. 1981). Where reports or other materials come from experts, it is recommended that the expert be present at the hearing. Hearsay statements of a child under the age of 13 may be introduced under SDCL 19-19-806.1 and -806.2 upon proper notice and if the court finds that the time, content, and circumstances of the statement and the reliability of the person to whom the statement is made provide sufficient indicia of reliability.

Probable witnesses at the adjudicatory hearing will be FSS[1] involved in the case, police officers, teachers or counselors, medical personnel, or other persons who observed abuse or behaviors leading up to the petition. Children may also be called to testify. *In the Matter of S.A.*, 2005 S.D. 120, ¶ 19, 708 N.W.2d 673, 679-80. However, requiring a child to testify against a parent may retraumatize the child. "The child's interest should be protected throughout the proceedings and the child's attorney is specifically charged with that duty." *In the Interest of T.A.*, 2003 S.D. 56, ¶ 18, 663 N.W.2d 225, 232. The child's attorney should request a motion hearing to state on the record any objection for the child to testify in court.

Because this is a civil proceeding, parties such as parents and children may be called as witnesses; however, the parents may not be forced to testify at the adjudicatory hearing. Interviews of parents by FSS or others may be admitted as evidence as admissions against interest. Hearsay statements made by children may be admitted upon motion to offer hearsay evidence. SDCL 19-19-806.1, 806.2, 26-8A-30, 26-8A-31. Notice of intention to use hearsay statements must be given sufficiently in advance of trial or hearing to provide the adverse party with a fair opportunity to prepare to meet the statement. Evidence obtained by counselors or physicians that relates to abuse and neglect is not privileged and may be admitted. SDCL 26-8A-15.

[1] Family Services Specialist (FSS)

In cases where ICWA[1] applies, qualified expert testimony must establish, by clear and convincing evidence, "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." 25 USC §§ 1912(e), 1912(d). Placement preferences must also be addressed. 25 USC § 1915(b).

**E. DEFENSES**

One potential defense to an allegation of physical abuse of the child is a parents' administration of corporal punishment under SDCL 22-18-5. The court has crafted a two-prong inquiry to assess whether a parents' administration of corporal punishment is not abuse as defined under SDCL 26-8A-2. The first prong of the inquiry requires the trial court to determine whether the restraint or corrective measure utilized was "rendered necessary" by the child's actions. The second prong requires the trial court to determine whether the force used was "reasonable in manner and moderate in degree." *In the Interest of C.F.*, 2005 S.D. 126, ¶ 19, 708 N.W.2d 313, 317.

**F. FINDINGS OF FACT CONCLUSIONS OF LAW**

Whatever the result of the adjudicatory hearing, the court must issue written findings of fact and conclusions of law, and an adjudicatory order. SDCL 26-7A-86, -87.

**G. NOTICE**

Notice of entry of adjudicatory orders is required pursuant to SDCL 26-8A-28. The notice of entry may be served as authorized by the rules of civil procedure to include service on counsel.

If the allegation(s) are found to be supported by clear and convincing evidence, the court shall enter an order of adjudication and list detailed and specific reasons for its decision in the court's adjudicatory findings of fact and conclusions of law. As a standard, the court shall issue its final written findings of fact and conclusions of law and adjudicatory order as soon as possible after the adjudicatory hearing. A review hearing should be set at the close of the adjudicatory hearing while all parties are present to avoid delays in service of notice. SDCL 26-8A-24.

**1. Court Decision — Adjudication**

Courts Should Make the following decisions at the Adjudication:

a. a finding that the child is or is not an Indian child;
b. that proper notice has been given to all parties and the tribes, if applicable;
c. that jurisdiction and venue is proper;
d. a determination of whether there is an agreement among all parties concerning paternity. If there is disagreement or the evidence is unclear, the court may order tests for paternity. It is important to ascertain who

[1] Indian Child Welfare Act (ICWA)

the parents are as soon as possible. When parents are brought into the litigation late, children often remain in foster care longer than necessary;

e. the need to set terms for support, family time[1], or other issues critical to preservation and maintaining relationships during the period of separation if the child is to remain in foster care prior to disposition; and
f. the entry of additional findings and conclusions and a final order if the allegations are not supported by evidence. SDCL 26-7A-86.

**H. NOTICE OF ENTRY**

Notice of entry, certificate of service of an adjudicatory order, and findings of fact and conclusions of law shall be made **within five days** of issuance of the written adjudicatory order and served on the child's attorney and the child's guardian ad litem or special advocate, if any, and on all parties in the same manner as service of the summons. SDCL 26-8A-28. Once the notice of entry of the adjudicatory order is served properly, the time for appeal from the adjudication **expires 10 days** later since it is an intermediate order and subject to intermediate appeal procedure. SDCL 26-7A-87; 15-26A-13. An adjudicatory order may also be appealed **30 days** after entry of the final dispositional order. Appeal time does not begin until notice of entry of adjudication has been served. Therefore, serving notice of entry upon the parties is imperative in eliminating later delays.

[1] Also known as "Visitation"

# VIII. HEARINGS

Hearings are important for case flow management. It's important for each type of hearing order to reflect such in the order title/heading, for example: permanency hearing order or review hearing order.

## A. REVIEW HEARING[1]

Review hearings, sometimes referred to as interim dispositional hearings, which take place after adjudication and before final disposition, provide the court an opportunity to review the progress made by the parties since the prior hearing. Federal law contemplates a routine but thorough review of case progress.

Specifically, review is:

> To determine the safety of the child, the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date by which the child may be returned to and safely maintained in the home or placed for adoption or legal guardianship. 42 USC § 675(5)(B).

Review hearings assist in attaining the goal of permanency for children within **one year** of removal from the care of their parent, guardian, or custodian. Judicial oversight of children in foster care will be achieved through a court review of children for whom an adoptive placement or court sanctioned long term foster care placement has not occurred. Timetables for review hearings are governed by both federal and state statute. Federal and state law specifies that review of children in foster care must occur at least once every **six months.** 42 USC § 675(5)(B); SDCL 26-8A-24.

### 1. Items to be addressed at the review hearing.

Review hearings are the forum for the court, parents, children, attorneys, the agency, and the foster parents to:

1. assess ICWA[2] compliance;
2. determine the appropriateness of the placement;
3. evaluate the extent of cooperation with the case plan;
4. evaluate the extent of progress toward remedying those conditions necessitating the removal of the child;
5. project a date when a child may be returned home, placed for adoption, or placed in long term foster[3] care; and
6. evaluate the status and validity of the concurrent plan.

Reports from the agency, the guardian ad litem, and CASA[4] help inform the court of issues that may need to be addressed at the review hearing. Reports should be

[1] Also known as "Status Hearing"
[2] Indian Child Welfare Act (ICWA)
[3] Synonymous to "Out-of-Home Placement
[4] Court Appointed Special Advocate (CASA)

received prior to each review hearing. Reports should address each of the issues discussed at the review hearing. The reports and attachments should be distributed in accordance with local court practices. Best practice is to have the report to all the parties **at least five days** in advance of the hearing.

2. **Key decisions the court must make at the review hearing:**[1]
    a. Whether there is a need for continued placement of a child.
    b. Whether all options for placement with relatives have been pursued and documented.
    c. Whether the rights of all parents have been addressed in the proceedings.
    d. Whether the permanent plan remains in the child's best interests.
    e. Whether services and responsibilities outlined in the case plan need to be modified or clarified.
    f. Whether the agency is making reasonable efforts to rehabilitate the family and to eliminate the need for placement.
    g. Whether terms of family time[2] or support need to be modified.
    h. Whether the child's current placement is appropriate to meet the child's needs.
    i. Whether additional court orders are required to move the child closer to permanency.

**B. PERMANENCY HEARING – BEFORE FINAL DISPOSITIONAL HEARING**[3]

Permanency hearings are required **every 12 months** until the permanent plan is achieved, and the case is closed. Permanency hearings may be held in conjunction with review hearings.

In cases where parental rights are not terminated, and the child is not returned to the home, the court **must** state **compelling reasons** (1) for not terminating parental rights and (2) for continuing services. SDCL 26-8A-22(2), -26(3)).

The purpose of this permanency hearing is to make sure that there is an appropriate permanency goal for each child, that everyone is doing their part to achieve the goal, that the right steps are being taken to achieve the goal as quickly as possible, and if not, what changes are necessary. The questions asked of the family services specialist at the permanency hearing are designed to maintain a sense of urgency in moving the child towards achieving permanency while at the same time examine whether the needs of the child, and of the family, are being met in a way that will promote permanency. They are also meant to give greater consistency to the process so that everyone knows what to expect at each permanency hearing. The goal in

[1] *See* SDCL 26-8A-25
[2] Also known as "Visitation"
[3] *See* 26-8A-21.2

developing these questions is that every hearing will be substantive as well as efficient. **For sample questions, refer to the form on page 234.**

### C. ADOPTION SAFE FAMILIES ACT (ASFA) HEARING

SDCL 26-8A-21 mandates DSS[1] to provide reasonable efforts to the family for reunification of the children and parents. SDCL 26-8A-21.1 sets forth the exceptions to providing reasonable efforts (this **does not** apply to ICWA cases). The state must provide notice of its intent to seek a ruling under the Adoption Safe Families Act (ASFA).

ASFA[2] allows the State to seek final disposition sooner than the one year allowed in most cases for permanency. Petitioner should:

1. add a paragraph to the petition for abuse or neglect with supporting facts pursuant to SDCL 26-8A-21.1 or file a separate petition for ASFA;
2. provide notice to the parties that the state intends to seek a ruling that ASFA applies;
3. request that a no further reasonable efforts hearing be scheduled after the adjudicatory hearing;
4. present certified copies of supporting documents at the AFSA hearing, those documents could include:
    a. Adjudicatory findings of fact and conclusions of law from a prior abuse and neglect proceeding;
    b. Final dispositional findings of fact and conclusions of law for termination of parental rights in a prior abuse and neglect proceeding; or
    c. Certified copies of a judgement of conviction in a criminal case pursuant to the list of crimes in 26-8A-21.1.
5. request a final dispositional hearing once the court determines that ASFA applies; and
6. Prepare the ASFA findings of fact conclusions of law and order.

The FSS[3] worker should testify as to the following: previous removals of the child or siblings, the efforts DSS has provided in the previous cases, as well as in the open case and why the same conditions exist that should authorize DSS to stop providing efforts for reunification in the open case. Pursuant to SDCL 26-8A-21.2, a permanency hearing must be set within **30 days**.

### D. MOTION/EVIDENTIARY HEARING

If a Motion is filed by any party**,** the court shall hold a hearing to address the motion filed. This can be done at the adjudicatory hearing or in a separate hearing.

[1] Department of Social Services (DSS)
[2] Adoption Safe Families Act (ASFA)
[3] Family Services Specialists (FSS)

# IX. FINAL DISPOSITION

In abuse and neglect proceedings, the dispositional phase is the phase in which the court makes the determination regarding the placement and care of the child both in the short-term and ultimately, on a permanent basis. SDCL 26-7A-34 requires a dispositional hearing to be conducted "to inform the court fully of the exact status of the child and to ascertain the history, environment, past and present physical, mental and moral condition of the child and of the child's parents, guardian, or custodian."

Disposition should occur quickly, particularly when the child is placed out of the home. Dispositional hearings may be held in conjunction with review hearings if the parties and the judge have had sufficient opportunity to review the reports. In addition, both a Final Disposition and Guardianship hearing could coincide in the same proceeding if the court ordered the Guardianship.

Dispositional decisions will be revised during subsequent case reviews; therefore, there is no need to postpone the dispositional hearing to resolve every issue.

Final Disposition **must** occur within **12 months** after the removal and placement of the child into foster[1] care. SDCL 26-8A-22. However, an extension beyond the 12-month period may exist by the showing of good cause.

## A. KEY DECISIONS THE COURT MUST MAKE:

### 1. Placement and Care

The court will make the determination of the placement and care of the child placed out of the home. If the child is to remain at home or returned home, the court may impose specific conditions on the parents. In considering conditions to be imposed, the judge should determine what agency supervision will be needed for the child's protection and what services will be provided.

While termination of parental rights usually begun by a petition to terminate rights filed by the state's attorney, it is not the only way a disposition of termination may occur. *In Re J.H.*, 1999 S.D. 36, ¶ 23, 590 N.W.2d 473, 477. The child's attorney may also ask for termination. *Id*.

In deciding whether a parent's rights should be terminated, the court considers the behavior and condition of the parent. Typical grounds for termination of parental rights include extreme parental disinterest in the child (e.g., desertion or abandonment), parental failure to improve in spite of reasonable efforts by the agency to help, parental inability to care for the child (e.g., mental or emotional incapacity and uncontrollable substance dependency), prolonged imprisonment of the parent, extreme or repeated abuse of the child, and in some cases where return of the child would be harmful because of the special needs or condition of the child.

[1]Synonymous to "Out-of-Home Placement"

In deciding whether termination is in the best interest of the child, the court typically considers what alternatives are available and whether those alternatives can provide a better permanent home for the child. The fact that an adoptive family has not been identified should not deter a court from terminating parental rights when it is in the child's best interests not to be with biological caretakers.

The court must prepare findings of fact and conclusions of law, whether termination of parental rights is granted. The findings must address whether the grounds for termination were satisfied and if so whether termination was in the best interest of the child. Because a large proportion of termination cases are appealed, findings must be sufficient for appellate review. SDCL 26-8A-26, -26.1, -27.

Guardianship of a child in DSS[1] custody or for whom DSS has placement responsibility shall be initiated by a petition on behalf of the person for whom guardianship is sought. Unlike adoption, caregivers assume legal guardianship of a child in out-of-home care without terminating the rights of a parent. The person(s) appointed as guardian of the child has the custody, care, and supervision of the child until the age of majority. The court shall set a date for a hearing and determine how legal noticed is to be assured. The court appoints a guardian by letter of guardianship and the guardian accepts by oath of guardianship.

Another Planned Permanent Living Arrangement (APPLA) is a term created by ASFA[2] to replace the term "Long-term Foster Care". With APPLA, DSS maintains care and custody of the child and arranges a living situation in which the child is expected to remain until the child reaches the age of majority (18 years of age); however, a child who is 16 years of age or older may have APPLA as a permanency plan. SDCL 26-8A-21.2. APPLA **does not** apply to children who are younger than 16 years of age. APPLA is a permanent placement option when reunification, adoption, or legal guardianship has been ruled out.

### 2. Reasonable Efforts[3]

What constitutes "reasonable efforts" varies greatly and depends upon the facts and circumstances of each individual case. "Reasonable" means "reasonable under the circumstances" and not "on exhaustion of every possible form of assistance" as sometimes urged by defense attorneys. *People in Interest of C.L.*, 356 N.W.2d 476, 478 (S.D. 1984). (see also, *Matter of R.Z.F.*, 284 N.W.2d 879, 882 (S.D. 1979) (the best interest of the child trumps the reasonable efforts to aid parents); *Matter of B.E.*, 287 N.W.2d 91, 95 (S.D. 1979) (the best interests of the child remain the paramount consideration in these proceedings).

If the parents are uncooperative or the services do not work, termination of parental rights is justified. *Matter of D.A.B.*, 313 N.W.2d 787, 788 (S.D. 1981); *People in Interest of T.L.J.*, 303 N.W.2d 800, 806-07 (S.D. 1981); *Matter of A.I.*, 289 N.W.2d 247, 249 (S.D. 1980); *Matter of*

[1] Department of Social Services (DSS)
[2] Adoption Safe Families Act (ASFA)
[3] *See* SDCL 26-8A-21

*R.Z.F.*, 284 N.W.2d 879, 882 (S.D. 1979); *Matter of C.E.*, 283 N.W.2d 554, 556 (S.D. 1979); *Matter of M.S.M.*, 320 N.W.2d 795, 799 (S.D. 1982).

Even when the parent has completed or participated in the items identified in the case plan, termination may be justified if the parent has not been open and honest in all areas and has never offered a plausible explanation for how a child's injuries occurred or what could be done to correct the problems. *In the Interest of C.W.*, 2005 S.D. 54, ¶ 20, 697 N.W.2d 18, 23. Terminating a parent's rights may be justified regardless of the parent's participation in the protective capacity assessment case plan if the children remain in danger. *Id*. Terminating a parent's rights may be the least restrictive alternative to ensure the well-being of the child. *In the Matter of S.A.*, 2005 S.D. 120, ¶ 25, 708 N.W.2d 673, 682-83.

The state does not have to exhaust every possible form of assistance. *People in Interest of C.L.*, 356 N.W.2d 476, 478 (S.D. 1984). Parental rights can be terminated upon showing that the services to the family are unavailing. *People in Interest of S.M.M.*, 349 N.W.2d 63, 65 (S.D. 1984); *Matter of S.W.*, 428 N.W.2d 521, 525 (S.D. 1988).

There is no minimum or maximum period**;** a parent must be provided reasonable efforts. *Matter of B.E.*, 287 N.W.2d 91, 97 (S.D. 1979). However, SDCL 26-8A-26 mandates that no child remains in foster care if the court finds compelling reasons not to terminate, but mandates that no child shall remain in foster care for a period in excess of **12 months** without the court setting forth one of the SDCL 26-8A-26 options.

### 3. Guardianship from an A&N Case[1]

If the permanency outcome for children evolves into a guardianship placement, the guardianship can be initiated within the abuse and neglect case. The initial filing in the abuse and neglect case will open a guardianship case and allow the abuse and neglect case to be closed.

The child's attorney or the appointed attorney for the guardianship should file the documents necessary to open a Guardianship File and obtain a GDN file number if that is the outcome selected. The **15-day notice** is typically required of all parties prior to the guardianship being put in place; however, parents can waive the notice. The necessary forms for a guardianship in an abuse and neglect case (to be filed in both case types) are:

a. The Petition for Guardianship
b. The Consent to Guardianship (DSS filing)
c. The Oath of the Guardian
d. Letters of Guardianship

It is recommended for the purpose of best practices, that both a Final Dispositional Hearing and a Guardianship hearing, be scheduled within the same proceeding before the presiding A&N judge. If the Guardianship Hearing coincides in the

[1] **Important:** The proposed guardian and the minor(s), who are ten years or older and are in placement of a guardian, must attend the guardianship hearing unless good cause has been shown. *See* SDCL 29A-5-208.

same proceeding with the Final Disposition, the State should notify the parties involved in both proceedings. The proof of service can be filed in both files.

At the time of the Final Dispositional Hearing, the Judge will inquire of the State as to the Department's recommendations. The State will typically request that the Court accept the recommendations and enter an Order of Guardianship in the Guardianship file and will then request that the A&N file be closed in part or its entirety due to the permanency plan. It will depend, of course, on how many children are involved in the case and whether the permanent plan of guardianship is for one or all of the children.

Subsequent to the State's request for the closure of the A&N file, whether partial or complete closure, it is advised that the state do the following actions:

a. prepare a Findings of Fact and Conclusions of Law reflecting the Guardianship;
b. prepare a Final Dispositional Order reflecting the Guardianship; and
c. file the FFCL and Order in both the A&N file and the Guardianship file.

The State's filing of the FFCL and Order in both the A&N file and the Guardianship file will provide alert to any reviewing Court that a Guardianship was part of an underlying abuse or neglect case.

**4. The Guardianship Order**

In a general guardianship**,** a conservatorship and annual accounting is required; however, per statute that can be waived in abuse and neglect cases. The training that is typically required of guardians can also be waived in abuse and neglect cases.

Guardians can be directed to the UJS[1] website for the necessary forms to fulfill statutory and court-ordered reporting obligations, as well as to meet any requirements related to modifying or terminating the guardianship.

Guardianships, by their very nature, are temporary rather than permanent, consideration of a guardianship needs to be the less restrictive alternative (LRA) from the child's vantage point and in the child's best interests and needs to be considered on a case-by-case basis. This is a concern that has been repeatedly recognized by the South Dakota Supreme Court.

The child's attorney may submit a payment voucher for the guardianship filing in the abuse and neglect case.

**5. Best Interests of the Child.**

All individuals working in any abuse and neglect case, including family services specialists, CASA[2] volunteers, attorneys, and judges, must always look for what is in the child's

[1] Unified Justice System (UJS)
[2] Court Appointed Special Advocate (CASA)

best interest, as the Supreme Court of South Dakota pointed out *in Matter of L.B.*, 416 N.W.2d 598, 599 (S.D. 1987).

The rights of the parents must give way to the best interests of the child. *Matter of Z.Z.*, 494 N.W.2d 608, 609 (S.D. 1992); *People in Interest of E.D.J.*, 499 N.W.2d 130, 135 (S.D. 1993). This principle is followed in every abuse and neglect case. Its importance cannot be over-emphasized or stressed enough by all those involved in an abuse and neglect case. However, the fact that a substitute parent might provide a child with good care or even better care than its natural parent is not an appropriate standard for determining the best interest of the child. *In Interest of J.L.*, 2002 S.D. 144, ¶ 21, 654 N.W.2d 786, 792. Long term foster care[1] is generally not in the best interest of a child. *In the Interests of J.G.R.*, 2004 S.D. 131, ¶ 22, 691 N.W.2d 586, 592.

**6. Conditions for removal still exist.**

To terminate parental rights, SDCL 26-8A-26 requires that the conditions which led to the removal of the child still exist, and there is little likelihood that those conditions will be remedied so the child can be returned to the custody of the child's parents. The court can consider conditions identified after the child is in the state's custody. *In the Interest of T.I.*, 2005 S.D. 125, ¶ 24, 707 N.W.2d 826, 836. The court may consider returning the child if conditions that lead to the removal cease to exist.

**7. Compelling reasons to extend services over 1 year.**

In cases where parental rights are not terminated, and the child is not returned to the home (i.e., APPLA[2] or relative placement), the court must state compelling reasons (1) for not terminating parental rights and (2) for continuing services. SDCL 26-8A-22(2), -26(3).

**B. EVIDENCE**

Witnesses may be required to address dispositional issues. These witnesses are generally different than those needed at the adjudicatory hearing. The rules of evidence that apply at adjudicatory hearings do not apply at dispositional hearings. SDCL 26-7A-56. Written reports containing hearsay generally can be considered by the court. SDCL 26-7A-90. It is important that the reports be distributed to the parties sufficiently in advance to allow the parties time to consider proposals for disposition. Parents may be called to testify at dispositional hearings; however, parents may not be required to testify regarding matters that would be incriminating and would violate the parents' privilege against self-incrimination. *In the Interest of T.I.*, 2005 S.D. 125, ¶ 38, 707 N.W.2d 826, 840.

**C. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

As a matter of practice, the state's attorney submits the findings of fact and conclusions of law and a proposed dispositional order to the court **within 10 days** of the

[1] Synonymous to "Out-of-Home Placement"

[2] Another Planned Permanent Living Arrangement (APPLA)

hearing. SDCL 15-6-52(a). The other party then **has five days** to submit objections and proposed findings. SDCL 15-6-52(a). Final order must address child support arrearages. SDCL 25-5A-18; 26-8A-27.

**D. NOTICE**

Notice of entry of final dispositional orders are required SDCL 26-8A-28. The notice of entry may be served as authorized by the rules of civil procedure to include service on counsel.

## X. POST-DISPOSITION/PERMANENCY HEARING

Permanency hearings are required every **12 months** until the permanent plan is achieved, and the case is closed. SDCL 26-8A-22(3). Permanency hearings may be held in conjunction with review hearings. The purpose of these hearings is to review the child's placement after the final dispositional hearing. The case is not over when parental rights are terminated. Post-dispositional review hearings should be held until adoption or permanency for the child is achieved. Upon termination of parental rights, custody and guardianship of the children mandatorily vests with DSS[1]. SDCL 26-8A-27. It is important for the court who hears the termination of parental rights to continue to be responsible for the case through the adoption or until the jurisdiction is transferred to another court for the finalization of the adoption. SDCL 26-8A-29. There should be periodic reviews to assure that efforts are made to place the child in a permanent placement following termination of parental rights. Many of the previously discussed guidelines in relation to disposition and review hearings also apply to case review hearings after termination of parental rights.

Except under circumstances where placement was with another relative of the child, any relative who has been denied adoptive placement by DSS[2] may request a hearing to determine if the placement was an abuse of discretion. The request shall be filed with the circuit court having jurisdiction pursuant to SDCL 26-8A-29 and shall be filed within **30 days** of written notification from the department by regular mail to the relative's last known address. The hearing shall be held within **30 days** of the filing of the request for hearing and may be continued for not more than **30 days** upon good cause shown. The relative shall be granted limited intervention only for the purpose of the placement Review Hearing. 26-8A-29.1

No intervention may be allowed in a proceeding involving an apparent, alleged, or adjudicated abused or neglected child, including an adoption or guardianship proceeding for a child placed in the custody of DSS pursuant to § 26-8A-27.

[1] Department of Social Services (DSS)

## XI. APPEALS

An appeal from a final order in an abuse or neglect case must be taken within **30 days** after written notice of entry is given to the adverse party. SDCL 15-26A-6. The Supreme Court has also shortened briefing schedules from **45 days to 25 days** for appellant's and appellee's briefs. (Reply briefs are still due within **15 days**.) SDCL 15-26A-75. The notice of appeal and docketing statement is filed directly with the clerk of the South Dakota Supreme Court and served upon counsel for each party SDCL 15-26A-4(3) and the attorney general SDCL 26-7A-112. Documents and briefs in appeals involving juveniles must identify the children and family members by initials only. SDCL 15-26A-4(1); SDCL 15-26A-63.1. The rules of appellate procedure for civil appeals are set forth at SDCL chapter 15-26A. Additionally, the appellant parent must sign the brief pursuant to SDCL 15-26A-60. A parent's attorney may submit a "Korth brief" if the attorney identifies no "arguably meritorious issues for appeal." *In the Interest of A.D.*, 2004 S.D. 39, ¶ 8, 678 N.W.2d 594, 597. Discretionary appeals may be filed intermittently from other orders in abuse and neglect cases, may be sought by filing a petition for permission to appeal, within **10 days** after notice of entry is served upon the party appealing. SDCL 15-26A-13.

# XII. FORMS

**DISCLAIMER:** The forms presented in this document are provided for the purpose of **supplemental use.** It is strongly encouraged that users of any forms included exercise their due diligence and caution. **The included forms may contain facts not related to your case.** However, users may supplement their own relevant specific-fact information of the case. South Dakota Unified Judicial System **does not require any specific example to be used**; users have the discretion to utilize their own forms.

**FORMS**


**TEMPORARY CUSTODY DIRECTIVE** ..... 49
**STATE'S AFFIDAVIT OF ABUSE OR NEGLECT** ..... 50
**TEMPORARY CUSTODY ORDER FOR ABUSE OR NEGLECT** ..... 52
**PETITION FOR TEMPORARY CUSTODY FOR ABUSE OR NEGLECT** ..... 54
**48 HOUR HEARING ORDER FOR ABUSE OR NEGLECT** ..... 61
**INDIAN CHILD WELFARE ACT (ICWA) AFFIDAVIT** ..... 63
**PETITION FOR DECLARATION OF ABUSE OR NEGLECT** ..... 68
**SUMMONS FOR ABUSE AND NEGLECT** ..... 71
**ADVISORY HEARING ORDER (ICWA)** ..... 73
**ADVISORY HEARING ORDER (NON-ICWA)** ..... 75
**STATE'S PROPOSED ADJUDICATORY FINDINGS OF FACT AND CONCLUSIONS OF LAW (ICWA)** ..... 77
**STATE'S PROPOSED ADJUDICATORY ORDER (ICWA)** ..... 83
**STATE'S PROPOSED ADJUDICATORY FINDINGS OF FACT AND CONCLUSIONS OF LAW (NON-ICWA)** ..... 86
**STATE'S PROPOSED ADJUDICATORY ORDER (NON-ICWA)** ..... 90
**STATE'S PROPOSED ADOPTION AND SAFE FAMILIES ACT FINDINGS OF FACT AND CONCLUSIONS OF LAW (NON-ICWA)** ..... 92
**STATE'S PROPOSED ADOPTION AND SAFE FAMILIES ACT ORDER (NON-ICWA)** ..... 97
**REVIEW HEARING ORDER (ICWA)** ..... 99
**REVIEW HEARING ORDER (NON-ICWA)** ..... 101
**PERMANENCY HEARING ORDER (ICWA)** ..... 103
**PERMANENCY HEARING ORDER (NON-ICWA)** ..... 105
**PETITION FOR TERMINATION OF PARENTAL RIGHTS FOR ABUSE OR NEGLECT** ..... 107
**STATE'S PROPOSED FINAL DISPOSITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW (ICWA)** ..... 109
**STATE'S PROPOSED FINAL DISPOSITIONAL ORDER (ICWA)** ..... 118
**STATE'S PROPOSED FINAL DISPOSITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW (NON-ICWA)** ..... 122
**STATE'S PROPOSED FINAL DISPOSITIONAL ORDER (NON-ICWA)** ..... 129

STATE'S PROPOSED FINAL DISPOSITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW (ASFA) ..... 131
STATE'S PROPOSED FINAL DISPOSITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW (RETURN TO PARENTS—ICWA) ..... 138
STATE'S PROPOSED FINAL DISPOSITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW (RETURN TO PARENT—NON-ICWA) ..... 144
STATE'S PROPOSED FINAL DISPOSITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW (COMPELLING REASONS NOT TO TERMINATE PARENTAL RIGHTS—ICWA) ..... 151
STATE'S PROPOSED FINAL DISPOSITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW (GUARDIANSHIP—ICWA) ..... 158
STATE'S PROPOSED FINAL DISPOSITIONAL ORDER (GUARDIANSHIP—ICWA) ..... 164
STATE'S PROPOSED FINAL DISPOSITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW (APPLA—NON-ICWA) ..... 167
STATE'S PROPOSED FINAL DISPOSITIONAL ORDER (APPLA—NON-ICWA) ..... 174

**GUARDIAN FORMS**

ACCEPTANCE OF OFFICE ..... 178
ACKNOWLEDGEMENT OF RIGHT TO COUNSEL ..... 180
ADMISSION OF SERVICE ..... 182
CONSENT TO AND NOMINATION OF GUARDIAN ..... 184
LETTER OF GUARDIANSHIP ..... 186
NOMINATION OF GUARDIAN ..... 187
NOTICE OF ENTRY OF ORDER APPOINTING GUARDIAN ..... 188
NOTICE OF ENTRY OF ORDER FOR HEARING ..... 190
ORDER APPOINTING GUARDIANS ..... 191
ORDER FOR HEARING ..... 193
PETITION FOR APPOINTMENT OF GUARDIAN ..... 194
STATEMENT OF FINANCIAL RESOURCES ..... 199
STATEMENT OF RIGHTS TO SEEK MODIFICATION OR TERMINATION OF GUARDIANSHIP ..... 202
WAIVER OF ACTUAL NOTICE AND TIME REQUIREMENT FOR HEARING OF PETITION ..... 204
MOTION TO DROP AND/OR ADD PARTIES ..... 206

**OTHER POST-DISPOSITIONAL FORMS**

GOOD CAUSE FINDINGS OF FACT AND CONCLUSIONS OF LAW (ICWA) ..... 208
GOOD CAUSE ORDER (ICWA) ..... 216
POST DISPOSITIONAL PERMANENCY HEARING ORDER (PERMANENT CUSTODY GUARDIANSHIP — ICWA) ..... 219

**POST DISPOSITIONAL PERMANENCY HEARING ORDER (PERMANENT CUSTODY FOR GUARDIANSHIP — NON ICWA)**..... **221**
**POST DISPOSITIONAL PERMANENCY HEARING ORDER (ICWA — APPLA)**..... **223**
**POST DISPOSITIONAL PERMANENCY HEARING ORDER (NON-ICWA APPLA PLAN)**..... **225**
**POST DISPOSITIONAL PERMANENCY HEARING ORDER (ADOPTION— ICWA)**..... **228**
**POST DISPOSITIONAL PERMANENCY HEARING ORDER (ADOPTION NON-ICWA)**..... **230**
**FINAL DISPOSITIONAL ORDER RE: CHILD SUPPORT** ..... **232**
**FAMILY SERVICES SPECIALIST SAMPLE QUESTIONS** ..... **234**

**SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM**
**TEMPORARY CUSTODY DIRECTIVE**

NAME: _____

ADDRESS: _____

MOTHER: _____ FATHER: _____

Other custodian or guardian information: _____

AGE: _____ DOB: _____ SEX: ☐ Male ☐ Female RACE: ☐ White ☐ Indian ☐ Other

DATE: _____ TIME: _____ COUNTY: _____

CALLER: _____ AGENCY: _____ TITLE: _____ PHONE: _____

Mother Available: ☐ Yes ☐ No Suitable: ☐ Yes ☐ No

Father Available: ☐ Yes ☐ No Suitable: ☐ Yes ☐ No

ALLEGATION(S): _____

**CONSIDERATIONS (check as appropriate):**
**Apparent, alleged or adjudicated**

**ABUSED OR NEGLECTED CHILD**

☐ Child is abandoned or is seriously endangered by the child's environment, and/or there exists imminent danger to the child's life or safety. Immediate removal of the child from the child's parents, guardian, or custodian appears to be necessary for the child's protection. Continuation in the home would be contrary to the child's welfare.

**CHILD IN NEED OF SUPERVISION – CHINS**

☐ The child has failed to comply with court services or a court-ordered Department of Corrections program;

☐ The child is being held for another jurisdiction as a parole or probation violator, as violator, as a runaway or as a person under court-ordered detention;

☐ The child has a demonstrated propensity to run away from the child's home, from court-ordered placement outside the child's home or from agencies charged with providing temporary care for the child;

☐ The child is under court-ordered home detention in this jurisdiction;

☐ There are specific, articulated circumstances which justify the detention for the protection of the child from potentially immediate harm to the child or others; or

☐ The child is accused of or has been found in violation of a valid court order.

**DELINQUENT CHILD**

☐ The child has failed to comply with court services or a court-ordered Department of Corrections program;

☐ The child is a fugitive from another jurisdiction;

☐ The child is charged with sexual contact (22-22-7), a crime of violence (22-1-2(9)) or a serious property crime (felony); or

☐ The child is already held in detention or on conditional release in connection with another juvenile delinquency proceeding.

**The child has a demonstrable recent record of:**

☐ Willful failures to appear for juvenile court;

☐ Violent conduct;

☐ Adjudications for serious property offenses; or

☐ The child is under the influence and detention is the least restrictive alternative in view of the gravity of the alleged offense and is necessary for the physical safety of the child, public or others.

**DECISION**
**(Least restrictive alternative)**

☐ Released to: _____

☐ Parent: _____

☐ Other: _____

☐ Restrictions: _____

_____

_____

☐ Bond: $ _____

☐ Dept. of Social Services Custody (A&N only)

☐ Foster Care at: _____

_____

☐ Shelter at: _____

_____

_____

**(Abused or neglected children may not be detained or jailed.)**

(CHINS may NOT be held more than 24 hours in secure detention but may be placed in shelter longer than 24 hours. CHINS who have violated a valid court order may be held longer if a temporary custody hearing is held by a circuit judge within 24 hours.)

☐ Detained at: _____

_____

_____

(Jail may ONLY be used for children who have been transferred to adult court and who are 15, 16 or 17 AND if the offense is sexual contact or a crime of violence.)

Comments: _____

SIGNED: _____

INTAKE OFFICER

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| THE PEOPLE OF THE STATE OF SOUTH DAKOTA IN THE INTEREST OF,<br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Child(ren), and concerning<br>Click or tap here to enter text. (DOB: Click or tap to enter a date.)<br>Click or tap here to enter text. (DOB: Click or tap to enter a date.)<br>Respondent(s), | Court File No: Click or tap here to enter text.<br><br>**STATE'S AFFIDAVIT**<br>**ABUSE OR NEGLECT** |

I, Click or tap here to enter text., Choose an option, Click or tap here to enter text. County, having been duly sworn, depose and state that there is good cause to believe that the minor child has been abandoned or there exists an imminent danger to the life or safety of the minor child and immediate removal appears necessary for the protection of the child as follows:

1. Referrals and history of issues presented.
2. Law enforcement contact and other documentation to show the child's environment is injurious to the child's welfare.
3. Address all parents/custodians/guardians responsible for the child's care.

The Department of Social Services has made reasonable efforts to prevent the removal of the child from the home but the removal of the child is necessary as continued placement with the Respondent parents is injurious to the minor child's welfare and the Department cannot assure the safety of the minor child in the current situation and thus believes the child to be in imminent danger. The State prays this Court place the minor child in the legal and physical custody of the Department of Social Services, a hearing to be held as soon as possible.

Dated this Click or tap here to enter text. day of Click or tap here to enter text.,20Click or tap here to enter text.

_____

Choose an item.
(Street Address)
(City), SD (Postal Code)
(123) 456- 7890

Subscribed and sworn to before me this Click or tap here to enter text. day of Click or tap here to enter text. 20Click or tap here to enter text..

_____

Notary Public, South Dakota

My Commission Expires:Click or tap to enter a date.

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OFClick or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| THE PEOPLE OF THE STATE OF SOUTH DAKOTA IN THE INTEREST OF,<br>Click or tap here to enter text. (DOB: Click or tap to enter a date. )<br>Click or tap here to enter text. (DOB: Click or tap to enter a date.)<br>Child(ren), and concerning,<br>Click or tap here to enter text. (DOB: Click or tap to enter a date.)<br>Click or tap here to enter text. (DOB: Click or tap to enter a date.)<br>Respondent(s), | Court File No: Click or tap here to enter text.<br><br>**TEMPORARY CUSTODY ORDER**<br>**ABUSE OR NEGLECT** |

The above-entitled matter having come before this Court by request of the Department of Social Services; the Court having considered the request presented and the Affidavit of the State, and finding that good cause does exist, does now hereby

ORDER, that there exists an emergency that requires the immediate removal of the minor child from the home; and it is further

ORDERED, that it is contrary to the welfare of the minor child to remain in the home; and it is further

ORDERED, that law enforcement shall assist the Department of Social Services by picking up the minor child and placing the minor child in the legal and physical custody of the Department of Social Services using whatever means necessary, this being the least restrictive alternative available and in the best interest of the minor child; and it is further

ORDERED, that the Court shall be immediately notified of the child's placement with the Department of Social Services; and it is further

ORDERED, that the minor children shall be placed in temporary emergency legal and physical custody of the Department of Social Services as soon as the child are located; and it is further

ORDERED, that a 48 Hour Hearing will be held at the Click or tap here to enter text. County Courthouse as set by the Court and the hearing will be before the Honorable in Courtroom Click or tap here to enter text..

The Order is effective the Click or tap here to enter text. day of Click or tap here to enter text.20Click or tap here to enter text..

BY THE COURT:

_____

The Honorable Click or tap here to enter text.
Judge of the Circuit Court

ATTEST:

Clerk of Court
BY: _____
Deputy Click or tap here to enter text.
(SEAL)

| | |
|---|---|
| STATE OF SOUTH DAKOTA: SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br>Choose an item. JUDICIAL CIRCUIT |
| THE PEOPLE OF THE STATE OF SOUTH DAKOTA IN THE INTEREST OF,<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Child(ren), and concerning<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Respondent(s) | Court File No. Click or tap here to enter text.<br><br>**PETITION FOR TEMPORARY CUSTODY ABUSE OR NEGLECT** |

The State of South Dakota, through Choose an item. Attorney, Click or tap here to enter text., hereby petitions the Court for an Order granting temporary custody of the minor child to the South Dakota Department of Social Services and does hereby advise the parents, guardians, and/or custodians of the following:

**REMOVAL**

The minor child was removed from the home on the Click or tap here to enter text. day of Click or tap to enter a date., 20Click or tap to enter a date., pursuant to SDCL 26-7A-12:

The child was placed into the temporary custody of the South Dakota Department of Social Services for the reason that:

☐ the child was abandoned or seriously endangered in the child's surroundings or was seriously endangering others and immediate removal of the child appeared to be necessary for the child's protection or for the protection of others or

☐ the officer reasonably believed that temporary custody was warranted because there existed an imminent danger to the child's life or safety and there was not time to apply for a court order and the child's parents, guardian, or custodian refused an oral request or consent to the child's removal from their custody or the child's parents, guardian or custodian were unavailable. Pursuant to SDCL 26-7A-13 the Court Ordered temporary custody of the child during a noticed hearing; or Pursuant to SDCL 26-7A-13 without a noticed hearing, the Court may immediately issue a written temporary custody directive on receipt of an Affidavit, or on receipt of sworn testimony, stating good cause to believe:

☐ The child is abandoned or is seriously endangered by the child's environment; or

☐ There exists an imminent danger to the child's life or safety and immediate removal of the child from the parent's, guardian, or custodian appears to be necessary for the protection of the child

☐ If the Indian Child Welfare Act applies, removal of the child from the custody of the child's parents, guardian or custodian was necessary to prevent imminent physical damage or harm to the minor child.

## INCORPORATED DOCUMENTS

The following documents are incorporated by reference and copies of said documents are attached to the Petition for Temporary Custody:

☐ Notice of Temporary Custody

☐ Petition for Abuse or Neglect

☐ Summons for Abuse or Neglect Advisory Hearing

☐ Email correspondence as to the facts that led to the child's removal

☐ Court Order authorizing placement

If the Indian Child Welfare Act (ICWA) applies to these proceedings the following documents are also incorporated by reference and copies of said documents are attached to the Petition for Temporary Custody:

☐ ICWA Affidavit (prepared by DSS worker)

## PURPOSE

The purpose of the Petition for Temporary Custody is to seek continued temporary custody of the child with the Department of Social Services. At the Temporary Custody Hearing the Court shall consider the evidence of the need for continued temporary custody of the child in keeping with the best interests of the child. If the Indian Child Welfare Act applies, the Court shall consider the evidence of whether emergency removal is no longer necessary to prevent imminent physical damage or harm to the child and

the State has the burden to prove by a preponderance of the evidence that continued removal of the child is necessary to prevent imminent physical damage or harm to the child.

## POSSIBLE IMMEDIATE CONSEQUENCES

The possible immediate consequences of the Temporary Custody Hearing are as follows:

Pursuant to SDCL 26-7A-19 the Court has the following options available following the Temporary Custody Hearing, if the child is an apparent, alleged, or adjudicated abused or neglected child, after the temporary custody hearing the Court may:

(1) Order the release of the child from temporary custody, either with or without restriction or condition or upon written promise of the child's parent, guardian, or custodian regarding the care and protection of the child; or

(2) Continue the temporary custody of the child under the terms and conditions for duration and placement that the court requires, including placement of temporary custody of the child with the Department of Social Services, in foster care or shelter.

The Court and the Department of Social Services shall give placement preference to a relative or custodian who is available and who has been determined by the Department to be qualified, provided that placement with the relative or custodian is in the best interest of the child. If temporary custody of the child is continued by the Court, the court may provide for visitation of the child by the parents, guardian or custodian, or family members in keeping with the best interests of the child.

If the Indian Child Welfare Act applies, pursuant to 25 USC 1922 any emergency removal or placement of an Indian Child under State law must terminate immediately when the removal or placement is no longer necessary to prevent imminent physical damage or harm to the child. The State Court must (1) make a finding on the record that the emergency removal or placement is necessary to prevent imminent physical damage or harm to the child; (2) promptly hold a hearing on whether the emergency removal or placement continue to be necessary whenever new information indicates that the emergency situation has ended; and (3) at any court hearing during the emergency proceeding, determine whether the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child; and (4) immediately terminate (or ensure that the agency immediately terminates) the emergency

proceeding once the court or agency possesses sufficient evidence to determine that the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child. An emergency proceeding can be terminated by one or more of the following actions:

(1) Initiation of a child custody proceeding subject to the provisions of ICWA;

(2) Transfer of the child to the jurisdiction of the appropriate Indian Tribe; or

(3) Restoring the child to the parent or Indian Custodian.

If the child is in the temporary custody of the Department of Social Services and has not been adjudicated to be an abused or neglected child the Court shall review the child's temporary custody placement at least once every 60 days.

Placement preference shall be given to a relative. If the Department of Social Services is contacted by a family member who desires to be a temporary or permanent placement for alleged or adjudicated abused or neglected child who have been removed from the child's parent, guardian or custodian, the Department shall document the contact in the child's file. The Department shall send information to the relative within five business days informing the relative of the steps required in order for the relative to be considered for placement.

## POSSIBLE ULTIMATE CONSEQUENCES

The possible ultimate consequence of an Abuse or Neglect proceeding are as follows:

Pursuant to SDCL 26-8A-22 and 26-8A-26 and 26-8A-27 at the completion of the dispositional phase of the proceeding, the Court shall enter a final decree of disposition. That Final Decree can include:

(1) The Court may place the child in the custody of one or both of the child's parents, a guardian, a relative of the child, or another suitable person, or a party or agency (with, or without, protective supervision) or the Department of Social Services subject to the conditions and the length of time that the Court deems necessary or appropriate. If the Court returns custody to the parent, guardian, or custodian, such return of custody may be with supervision during which the court may require the parent, guardian, custodian, and any other adult residing in the home, to cooperate with home visits by the Department and may require the parent, guardian, custodian, and any other adult residing in the home to submit, at the request of the Department to tests for alcohol, marijuana, or any controlled drug or substance. If the adjudication of abuse or neglect was related to the use of alcohol, marijuana, or any controlled drug or substance, the parent, guardian, or custodian, and any other adult residing in the home, may be required, in those areas where such testing is available, to submit to regular tests for alcohol, marijuana, or any controlled drug or substance. If

a positive test for alcohol, marijuana, or any controlled drug or substance is obtained, or the person fails to submit to the test as required, the Department may immediately remove the child from the physical custody of the parent, guardian, custodian, or any other adult residing in the home whose test was positive or who failed to submit to the test, without prior Court order subject to a review hearing, which may be held telephonically, within 48-hours excluding weekends and court holidays.

(2) The Court (after determining that compelling reasons exist) may place the child in the permanent custody of the Department of Social Services for purpose of creating a guardianship for the child until the child reaches the age of eighteen.

(3) The Court may order that the child be examined or treated by a physician or by a qualified mental health professional or that the child receives other special care and may place the child in a suitable facility for such purposes under conditions that the court deems necessary or appropriate.

(4) The Court can Order that the parental rights of the parents be terminated and place the child in the adoptive custody of the Department of Social Services.

(5) The Court can continue foster care placement of the child for a specified period of time and order that the child receive independent living services.

## COURT APPOINTED ATTORNEY

Pursuant to SDCL 26-8A-18 the Court shall appoint an attorney to represent any child alleged to be abused or neglected in any judicial proceeding. The attorney for the child shall represent the child's best interests and may not be an attorney for any other party involved in the proceedings. The Court may designate other persons, including a guardian ad litem or special advocate, who may or may not be attorneys licensed to practice law, to assist the attorney of the child in the performance of the attorney's duties.

If a parent, guardian or custodian is indigent and cannot afford an attorney, the Court will appoint counsel to represent the parent, guardian or custodian and counsel may request the 48 Hour Hearing be continued; and the Court will grant a continuance, not to exceed 24 hours, to enable the attorney to become familiar with the facts of the case and to meet and confer with the parent, guardian, or custodian and to permit the parent, custodian and Tribe and counsel to prepare for the Hearing.

## INDIAN CHILD WELFARE ACT

If the child is eligible for membership or enrollment, or is enrolled in or is a member of, a federally recognized Native American Tribe then the Indian Child Welfare Act will apply to these proceedings and the parent, guardian, or custodian has the following rights:

If a parent, guardian, or custodian is indigent and cannot afford an attorney, the Court will appoint counsel to represent the parent, guardian, or custodian and the Court will grant a continuance, not to exceed 24 hours, to enable the attorney to become familiar with the facts of the case and to meet and confer with the parent, guardian, or custodian.

If the Indian Child Welfare Act applies, the parents, guardians or custodians and their attorney and the Tribe have the following rights at the Temporary Custody Hearing:

(1) To contest the allegations in the Petition for Temporary Custody;

(2) To require the State to present evidence in support of the Petition for Temporary Custody;

(3) To cross-examine the State's witnesses and the preparers of any documents presented to the Court; including the DSS Child Protection Services Staff member who signed the ICWA Affidavit as well as all other witnesses whose statements form the factual basis for any document submitted to the Court for consideration during the 48-Hour Hearing;

(4) To subpoena witnesses and present sworn testimony and other evidence; and

(5) To subpoena any person who provided information in support of or in contradiction to the ICWA Affidavit or Petition for Temporary Custody

(6) The parent, guardian or custodian has the right to request that these proceedings be transferred to the Tribal Court.

(7) To an Order based on the evidence presented at the hearing

The parent, guardian, custodian, and Tribe must be given a copy of the ICWA Affidavit (prepared by DSS) and the Petition for Temporary Custody at the earliest practical time but in no event later than the commencement of the 48-Hour Hearing.

WHEREFORE, the State of South Dakota prays that the Court enter an Order granting temporary custody of the above-named child to the South Dakota Department of Social Services.

Dated this Click or tap here to enter text. day of Click or tap to enter a date., 20Click or tap to enter a date..

Choose an item. Attorney
Click or tap here to enter text.
County, South Dakota

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| THE PEOPLE OF THE STATE OF SOUTH DAKOTA IN THE INTEREST OF,<br><br>Click or tap here to enter text.**(**Click or tap to enter a date.**)**<br>Click or tap here to enter text. **(**Click or tap to enter a date.**)**<br>Child(ren), and concerning<br><br>Click or tap here to enter text. **(**Click or tap to enter a date.**)**<br>Click or tap here to enter text.**(**Click or tap to enter a date.**)**<br>Respondent(s), | Court File No: Click or tap here to enter text.<br><br>**48 HOUR HEARING ORDER**<br>**ABUSE OR NEGLECT** |

The above-entitled matter having come before the Court for a 48 Hour Hearing on the Click or tap here to enter text. day of Click or tap here to enter text. 20Click or tap here to enter text., the Honorable Click or tap here to enter text. presiding; the State of South Dakota represented by Deputy State's Attorney, Click or tap here to enter text.; the South Dakota Department of Social Services Choose an item. through Family Services Specialist; the minor's Respondent father Choose an item. in person but Choose an item.; the Respondent mother Choose an item. in person and Choose an item.; the minor children Choose an item. in person but represented by counsel; CASA Choose an item.; the Court, having reviewed the records and files herein and being fully informed in the premises, does now hereby:

ORDER, that the Indian Child Welfare Act does not apply to this case; and it is further

ORDERED, that the minor children shall remain in the Department of Social Services' legal and physical custody through the pendency of the proceedings; and it is further

ORDERED, that the Department of Social Services has made reasonable efforts to prevent the removal of the children from the home but removal of the children from the home was necessary as continued placement in the home was contrary to the welfare of the minor children; and it is further

ORDERED, that returning legal and physical custody of the children to the Respondent parents would be injurious to the welfare of the minor children at this time; and it is further

ORDERED, that the least restrictive alternative available in the children's best interest is continued placement in the legal and physical custody of the Department of Social Services; and it is further

ORDERED, that the Department of Social Services shall begin supervised visitation at their discretion provided that if any Protective Order is in place it can be modified to allow for contact visitation; and it is further

ORDERED, that an Advisory Hearing shall be scheduled for (date) at (time).

ALLEGED ABUSED OR NEGLECTED CHILDREN SHALL NOT BE DETAINED OR JAILED.

Dated this Click or tap here to enter text. day of Click or tap here to enter text. 20Click or tap here to enter text., effective however the Click or tap here to enter text. day of Click or tap here to enter text. 20Click or tap here to enter text., that being the date of the hearing affording judicial basis for this order.

BY THE COURT:

_____

The Honorable Click or tap here to enter text.
Judge of the Circuit Court

ATTEST:

Clerk of Court
BY: _____
Deputy Click or tap here to enter text.
(SEAL)

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| IN THE INTEREST OF,<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Child(ren), and concerning<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Respondent Parents | File No. Click or tap here to enter text.<br><br>**INDIAN CHILD WELFARE ACT (ICWA) AFFIDAVIT** |

Comes now, Click or tap here to enter text. **(Family Services Specialist)**, being first duly sworn upon Oath, and deposes and says:

1. That Affiant is a resident of the State of South Dakota and over the age of 18 years.

2. That Affiant is a Family Services Specialist for Child Protection Services.

3. That in the above capacity, the Affiant was consulted and involved concerning the removal of the child(ren) from the Respondent Parents' care.

4. That Respondent Mother, Click or tap here to enter text., is birth mother to the minor child(ren) and her address is: Click or tap here to enter text.. She is a resident of Click or tap here to enter text. County.

5. That Respondent Father, Click or tap here to enter text., is the birth father to the minor child(ren) and his address is: Click or tap here to enter text.**.** He is a resident of Click or tap here to enter text. County.

6. That Mother Choose an item. enrolled member of the Click or tap here to enter text. Tribe.
   - **According to whom? Call the tribe immediately and ask. Document this here.**

7. That father is an enrolled member of the Click or tap here to enter text. Tribe.
   - **According to whom? Call the tribe immediately and ask. Document this here.**

8. The child(ren) are enrolled/affiliated with Click or tap here to enter text. Tribe. Document this here.

9. That the minor child(ren) were taken into the temporary emergency legal and physical protective custody by Law Enforcement Officer Click or tap here to enter text. on Click or tap here to enter text. and transferred to the care of the Department of Social Services. The minor child(ren) were placed into licensed foster/kinship/fictive kinship/group care on the same date.

10. Prior to the removal of the child(ren), the Department of Social Services made the following active efforts to prevent the removal of the child(ren):
    - **Specialist** Click or tap here to enter text. **assessed the possibility of managing the present danger through implementation of a Present Danger Plan. A present danger plan was determined insufficient to manage the present danger due to:**
        i. **(Regarding the Present Danger Plan, provide information below that was used to determine the plan's insufficient status.)**
            1. **Parent was assessed by the Department of Social Services staff** Click or tap here to enter text. **and Law Enforcement Officer** Click or tap here to enter text. **to be too impaired/intoxicated to consent to a Present Danger Plan.**
            2. **Parent refused to provide names**
            3. **Parent provided names and these individuals were contacted, but not able to be reached.**
            4. **Parent provided names and these individuals refused or were assessed and determined unable to manage the present danger due to….**
            5. **Parent's whereabouts were unknown.**
            6. **Whatever the reason…**
    - **Non-Court Services were in place from** Click or tap here to enter text. **to** Click or tap here to enter text.**.**
    - **Any other services, etc. that were done PRIOR to custody**

11. That temporary custody of the child(ren) by the Department of Social Services is necessary to prevent imminent physical damage or harm to the child(ren); for the reasons stated below:
    - **(Provide Description of Present Danger resulting in custody)**

    In addition to the above-stated facts, the facts that warrant the continued separation of the child(ren) from their parents or custodian to prevent imminent physical damage or harm to the child(ren) are as follows:
    - **Describe why Present Danger Continues**
    - **What other factors influence the present danger (Prior History with related Danger Threats, Pattern, Severity, Vulnerability of Child, Ability to Protect),**

12. The Department has made the following active efforts to comply with ICWA placement preferences:
    - **On** Click or tap to enter a date.**, Specialist** Click or tap here to enter text. **spoke with Mother about relative placement options….**
    - **On** Click or tap to enter a date.**, Specialist** Click or tap here to enter text. **spoke with Father about relative placement options….**

- **On** Click or tap to enter a date.**, Specialist** Click or tap here to enter text. **reviewed the Department of Social Services' records and located** Click or tap here to enter text. **as possible relative(s) and possible contact information for NAME. Specialist** Click or tap here to enter text. **called** Click or tap here to enter text.**; there was no answer and a voicemail was left.**
- **Facebook search? FACIS search? Etc.**
- **On** Click or tap to enter a date.**, Specialist** Click or tap here to enter text. **sent electronic correspondence to the** Click or tap here to enter text. **Tribe Indian Child Welfare Act representative** Click or tap here to enter text. **alerting him/her to the placement of the Indian Child(ren) and requested assistance in locating relatives.**
- **On** Click or tap to enter a date.**, Specialist** Click or tap here to enter text. **sent facsimile to the** Click or tap here to enter text. **Tribe's Indian Child Welfare Act representative** Click or tap here to enter text. **notifying him/her of the placement of the child(ren) into temporary emergency custody and requested assistance in locating relatives.**
- **On** Click or tap to enter a date.**, Specialist** Click or tap here to enter text. **reviewed the emergency list for foster homes available in the area; no Native American foster homes currently have openings for the child(ren). Office/Region has** Click or tap here to enter text. **number of Native American foster homes…. Summary).**
- **On** Click or tap to enter a date.**, Kinship Specialist** Click or tap here to enter text. **was assigned to search for relatives. Kinship search efforts are ongoing for the purposes of placement, maintaining connections, and concurrent planning.**

13. The following active efforts have been made to rehabilitate and reunite the family by the Department of Social Services and to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian Family and these efforts have proved unsuccessful;
    - **(Likely repeat number 10's supporting bullets)**
    - **Law Enforcement Officer** Click or tap here to enter text. **determined emergency protective custody of the minor child(ren) was necessary to ensure their safety after it was determined a Present Danger Plan was insufficient to manage the child(ren)'s safety.**
    - **A voluntary Present Danger Plan was considered, but not approved for the following reasons: (i.e.)**
        - **The Respondent Parents refused to provide relative names and contact information to the Department; this negatively affected the Department's ability to maintain the Indian Family.**
        - **The Mother was assessed by Law Enforcement Officer** Click or tap here to enter text. **and Specialist** Click or tap here to enter text. **and deemed too impaired from alcohol/drugs to meaningfully consent to a voluntary plan; this negatively affected and hindered the Department's ability to maintain the Indian Family.**
    - **Specialist** Click or tap here to enter text. **inquired as to the parent's whereabouts from** Click or tap here to enter text.**. Called last known phone number, sent Facebook message, etc. There was no answer; this negatively affected and hindered the Department's ability to maintain the Indian Family.**

- **Specialist** Click or tap here to enter text. **spoke with the Division of Child Support regarding** Click or tap here to enter text. **address and contact information; a message was left requesting a call back.**
- **Specialist** Click or tap here to enter text. **assessed** Click or tap here to enter text. **for kinship placement; these efforts were unsuccessful.**
- **Specialist** Click or tap here to enter text. **contacted** Click or tap here to enter text. **and requested a urinalysis on** Click or tap here to enter text.**.**
- **Specialist** Click or tap here to enter text. **reviewed** Click or tap here to enter text.**'s Department of Social Services' and local criminal history. The information was assessed and discussed with Supervisor** Click or tap here to enter text.**. Based on the totality of the alcohol-related reports, criminal convictions, and previous placements in the care of the Department of Social Services, it was determined that the completion of the Initial Family Assessment is a service necessary to ensure the safety of child(ren). Specialist** Click or tap here to enter text. **was assigned for completion of the Initial Family Assessment.**
- **Supervisor** Click or tap here to enter text. **and Specialist** Click or tap here to enter text. **discussed the case history, circumstances, and present danger. A Team Decision Making Meeting referral was submitted on** Click or tap here to enter text. **to discuss family strengths, identify needs, and identify relative placements and/or supports.**
- **Family Group Coordinator** Click or tap here to enter text. **was assigned on** Click or tap here to enter text. **to facilitate family meetings and concurrent planning.**

14. The Affiant finds that the ICWA requirements have been met and the least restrictive alternative available in the child(ren)'s best interest is continued placement in **FOSTER/KINSHIP/FICTIVE KINSHIP/GROUP CARE** with the Department of Social Services.

15. In the event a temporary custody order is entered at the conclusion of a 48 Hour Hearing, the South Dakota Department of Social Services shall immediately report to the State Court that the justification for the temporary custody order has ended because returning the child to its parent or custodian will not place the child at imminent risk of physical damage or harm.

Further Affiant sayeth not.

Dated this Click or tap here to enter text. day of Click or tap to enter a date., 20Click or tap to enter a date.

_____
Affiant

STATE OF SOUTH DAKOTA:
SS:
COUNTY OF Click or tap here to enter text.:

Subscribed and sworn to before me on Click or tap here to enter text., 20Click or tap here to enter text..

_____
(Notary Public)

My commission expires on Click or tap to enter a date.

(SEAL)

STATE OF SOUTH DAKOTA: IN CIRCUIT COURT

SS:

COUNTY OF Click or tap here to enter text. Choose an item. JUDICIAL CIRCUIT

| | |
|---|---|
| IN THE INTEREST OF,<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Child(ren), and concerning<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Respondent Parents | File No. Click or tap here to enter text.<br><br>**PETITION**<br>**ABUSE OR NEGLECT** |

The Petition of Click or tap here to enter text. respectfully represents:

1) That she is a resident of the State of South Dakota.

2) That Click or tap here to enter text. is a child under eighteen years of age, being of the age of Click or tap here to enter text. years old and who was residing in Click or tap here to enter text. County at the commencement of these proceedings.

3) That the names and addresses of the parents guardian or custodian of said child are:

| Name | Date of Birth | Address | Relationship |
|---|---|---|---|
| Click or tap here to enter text. | Click or tap to enter a date. | Click or tap here to enter text. | Click or tap here to enter text. |
| Click or tap here to enter text. | Click or tap to enter a date. | Click or tap here to enter text. | Click or tap here to enter text. |

4) That said child is in the legal and physical custody of the Department of Social Services.

5) That this action is brought by the State on behalf of the South Dakota Department of Social Services.

6) The minor child Choose an item. an Indian Child as defined by the Indian Child Welfare Act (ICWA) and thus ICWA would Choose an item. to these proceedings. (TRIBE)

7) That said child is alleged to be ABUSED OR NEGLECTED pursuant to the following:

   A) The parent guardian or custodian has abandoned the minor child or subjected the child to mistreatment or abuse. (26-8A-2(1))

B) The child lacks proper parental care through the actions or omissions of the child's parents, guardian or custodian. (26-8A-2(2))
C) The child's environment is injurious to the child's welfare (26-8A-2(3));

D) The child's parent, guardian, or custodian fails or refuses to provide proper or necessary subsistence, supervision, education, medical care, or any other care necessary for the child's health, guidance or wellbeing (26-8A-2(4));

E) The child is homeless, without proper care, or not domiciled with the child's parent, guardian, or custodian through no fault of the child's parent, guardian or custodian (26-8A-2(5));

F) The child is threatened with substantial harm (26-8A-2(6));

G) The child has sustained emotional harm or mental injury as indicated by an injury to the child's intellectual or psychological capacity evidence by an observable and substantial impairment in the child's ability to function within the child's normal range of performance and behavior, with due regard to the child's culture (26-8A-2(7));

H) The child is subject to sexual abuse, sexual molestation, or sexual exploitation by the child's parent, guardian, or custodian, or any other person responsible for the child's care (26-8A-2(8));

I) The child was subject to prenatal exposure to abusive use of alcohol, marijuana, or any controlled drug or substance not lawfully prescribed by a practitioner (26-8A-2(9));

J) The child's parent, guardian, or custodian knowingly exposes the child to an environment that is being used for the manufacture, use, or distribution of methamphetamine or any other unlawfully manufactured controlled drug or substance (26-8A-2(10)).

8) That the facts which bring said child within the Court's jurisdiction are as follows:

A) FACTS MUST SUPPORT THE SUBSECTION OF THE STATUTE BEING CITED FOR EACH PARENT.
B) FACTS CAN INCLUDE PRIOR CPS INVOLVEMENT, PRIOR REMOVAL AND/OR PRIOR TERMINATIONS.
C) FACTS SHOULD BE SPECIFIC AND CAN INCLUDE MEDICAL DOCUMENTATION AND FACTS IN POLICE REPORTS.
D) FACTS SHOULD IDENTIFY PATERNITY FOR EACH CHILD AND ALLEGATIONS AS TO EACH FATHER IF PATERNITY IS NOT ESTABLISHED JOHN DOE MUST BE INCLUDED.

IF ASFA APPLIES THE FOLLOWING PARAGRAPH IS INCLUDED (NOT IN ICWA CASES):

9) The Adoptions and Safe Families Act applies to this case, as the Respondent mother has had parental rights to another child involuntarily terminated by a prior legal proceeding (26-8A-21.1(6)) and has exposed the child to or demonstrated an inability to protect the child from substantial harm or the risk of substantial harm, and the child or another child has been removed from the parent's custody because the removed child was adjudicated abused and neglected by a

court on at least one previous occasion (26-8A-21.1 (8)); the facts of which are contained in Court file A00-000.

That it is for the interest of said child and this State that the child be declared to be ABUSED OR NEGLECTED child and that the appropriate action be taken pursuant to SDCL 26-7A-55 and Chapter 26-8A.

THEREFORE, petitioner prays that the Court fix a day for hearing on this Petition, that Summons issue to the Respondents requiring them to appear before the Court to answer to the allegations of the Petition, and if the allegations of the Petition are sustained, to make an Order of Adjudication setting forth that the above-named child is ABUSED OR NEGLECTED.

_____
Petitioner

STATE OF SOUTH DAKOTA:
SS:
COUNTY OF Click or tap here to enter text.:

Click or tap here to enter text., being duly sworn says:

That Click or tap here to enter text. is the Petitioner herein and that the contents of the Petition are true to her best knowledge, information and belief.

_____
Petitioner

Subscribed and sworn to before me this Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text..

_____
Notary Public, South Dakota

(SEAL)

My commission expires: Click or tap to enter a date.

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| THE PEOPLE OF THE STATE OF SOUTH DAKOTA IN THE INTEREST OF,<br><br>Click or tap here to enter text. (DOB: Click or tap to enter a date.)<br>Child(ren), and concerning<br><br>Click or tap here to enter text. (DOB: Click or tap to enter a date.)<br>Click or tap here to enter text. (DOB: Click or tap to enter a date.)<br>Respondent(s) | File No. Click or tap here to enter text.<br><br>**SUMMONS**<br>**ABUSE OR NEGLECT** |

TO THE PARENT, GUARDIANS, OR OTHER RESPONDENTS ABOVE-NAMED, GREETINGS:

YOU ARE HEREBY NOTIFIED that a verified Petition has been filed in the above-named Court in which it is represented to the Court that the minor child is ABUSED OR NEGLECTED.

YOU ARE HEREBY NOTIFIED that the permanent termination of your parental/custodial rights is a possible disposition under these proceedings and that you and the child have a right to an attorney at all stages of the proceedings.

YOU ARE HEREBY NOTIFIED that the Court has set an Advisory Hearing on Click or tap here to enter text., the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text. at the hour of Click or tap here to enter text. at the Click or tap here to enter text. County Courthouse, Click or tap here to enter text. South Dakota. You are required to appear at this hearing and respond to the Petition.

YOU ARE HEREBY NOTIFIED that pursuant to SDCL 26-7A-44 and 27-7A-53 that failure to appear, answer, or respond to this Petition will result in a finding that you are in default and shall be deemed by the Court to be an admission to the Petition.

YOU ARE HEREBY NOTIFIED that the Indian Child Welfare Act does apply to these proceedings.

Dated this Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text.

_____

Click or tap here to enter text. County
Choose an item. Attorney

Subscribed and sworn before me this Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text..

_____

Notary Public, South Dakota

(SEAL)

My Commission expires: Click or tap to enter a date.

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| THE PEOPLE OF THE STATE OF SOUTH DAKOTA IN THE INTEREST OF,<br><br>Click or tap here to enter text. (DOB: Click or tap to enter a date.)<br>Child(ren), and concerning<br><br>Click or tap here to enter text. (DOB: Click or tap to enter a date.)<br>Click or tap here to enter text. (DOB: Click or tap to enter a date.)<br>Respondent(s)<br><br>Click or tap here to enter text.<br>Intervenor. | File No. Click or tap here to enter text.<br><br>**ADVISORY HEARING ORDER**<br><br>**(ICWA)** |

The above-entitled matter having come before the Court for an Advisory Hearing on the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text., the Honorable Click or tap here to enter text., presiding; the State of South Dakota being represented by Choose an item., Click or tap here to enter text.; the South Dakota Department of Social Services appearing through Family Services SpecialistClick or tap here to enter text.; the Respondent mother, Choose an item.and Choose an item., Click or tap here to enter text.; the Respondent father, not appearing in person Choose an item. Choose an item., Click or tap here to enter text.; the minor child Choose an item. Choose an item. represented by counsel, Click or tap here to enter text.; CASA Choose an item.; the Tribe Choose an item., Click or tap here to enter text. Choose an item. Choose an item. the Court, having reviewed the records and files herein and being fully informed in the premises, does now hereby:

ORDER, that the minor child shall remain in the Department of Social Services' legal and physical custody; and it is further

ORDERED, that the Department of Social Services has made active efforts to achieve the permanent plan of reunification of the child with the Respondent parents and these efforts have been unsuccessful, and it would be contrary to the child's welfare to be returned home; and it is further

ORDERED, that returning custody of the child to the Respondent parents would likely result in serious emotional and/or physical damage to the minor child at this time; and it is further

ORDERED, 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 proven unsuccessful; and it is further

ORDERED, that the least restrictive alternative available in the child's best interest is continued placement in the legal and physical custody of the Department of Social Services; and it is further

ORDERED, that there is good cause to place the child outside the ICWA Placement preferences.

Dated this Click or tap here to enter text.day of Click or tap here to enter text. effective however, the Click or tap here to enter text.day of Click or tap here to enter text., 20Click or tap here to enter text., that being the date of the hearing affording judicial basis for this order.

BY THE COURT:

_____
The Honorable Click or tap here to enter text.
Judge of the Circuit Court

ATTEST:
Clerk of Courts
BY_____
Deputy
(SEAL)

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| THE PEOPLE OF THE STATE OF SOUTH DAKOTA IN THE INTEREST OF,<br><br>Click or tap here to enter text. (DOB: Click or tap to enter a date.)<br>Child(ren), and concerning<br><br>Click or tap here to enter text. (DOB: Click or tap to enter a date.)<br>Click or tap here to enter text. (DOB: Click or tap to enter a date.)<br>Respondent(s) | File No. Click or tap here to enter text.<br><br>**ADVISORY HEARING ORDER** |

The above-entitled matter having come before the Court for an Advisory Hearing, on the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text., the Honorable Click or tap here to enter text. presiding; the State of South Dakota represented by Choose an item., Click or tap here to enter text.; the South Dakota Department of Social Services appearing through Family Services Specialist Click or tap here to enter text.; the Respondent mother, Choose an item. in person Choose an item. Choose an item. Click or tap here to enter text.; the Respondent father, Choose an item. in person Choose an item. Choose an item., Click or tap here to enter text.; the Respondent father 2 Choose an item. in person Choose an item. Choose an item. Click or tap here to enter text.; the minor children Choose an item.Choose an item. represented by counsel,Click or tap here to enter text.; CASA Choose an item.; the Court, having reviewed the records and files herein and being fully informed in the premises, does now hereby:

ORDER, that the Indian Child Welfare Act does not apply to this case; and it is further

ORDERED, that the minor children shall remain in the Department of Social Services' legal and physical custody through the pendency of the proceedings; and it is further

ORDERED, that the Department of Social Services has made reasonable efforts to achieve the permanent plan of reunification of the children with the Respondent parents and those efforts have been unsuccessful and it would be contrary to the children's welfare to be returned at this time; and it is further

ORDERED, that the least restrictive alternative available commensurate with the best interest of the children is continued custody with the Department of Social Services as return of custody of the minor child to the Respondent parents would be injurious to the minor children's welfare.

Dated this Click or tap here to enter text. day of Click or tap here to enter text.effective, however, the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text., that being the date of the hearing affording judicial basis for this order.

BY THE COURT:

_____

The Honorable Click or tap here to enter text.
Judge of the Circuit Court

ATTEST:

Clerk of Court
BY: _____
Deputy Click or tap here to enter text.
(SEAL)

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| THE PEOPLE OF THE STATE OF SOUTH DAKOTA IN THE INTEREST OF,<br>Click or tap here to enter text.**(**Click or tap to enter a date.**)**<br>Click or tap here to enter text. **(**Click or tap to enter a date.**)**<br>Child(ren), and concerning<br><br>Click or tap here to enter text. (Click or tap to enter a date.)<br>Click or tap here to enter text.**(**Click or tap to enter a date.)<br>Respondent(s),<br><br>Click or tap here to enter text. (Click or tap to enter a date.)<br>Indian Custodian,<br><br>Click or tap here to enter text.<br>Intervenor | Court File No: Click or tap here to enter text.<br><br>**STATE'S PROPOSED ADJUDICATORY FINDINGS OF FACT AND CONCLUSIONS OF LAW**<br><br>**(ICWA)** |

The above-entitled matter having come on for an Adjudicatory Hearing on the Click or tap here to enter text. day of Click or tap here to enter text.; the Honorable Click or tap here to enter text., presiding; the State of South Dakota represented by Choose an item., Click or tap here to enter text.; the South Dakota Department of Social Services appearing through Family Services Specialist, Click or tap here to enter text.; the Respondent mother, Choose an item. Choose an item. Choose an item., Click or tap here to enter text.; the Respondent father, Choose an item. Choose an item. Choose an item., Click or tap here to enter text.; the Indian Custodian, Choose an item. Choose an item. Choose an item.,Click or tap here to enter text.; the minor children Choose an item.in person Choose an item. represented by counsel, Click or tap here to enter text.; the Tribe Choose an item. by counsel, Choose an item. Choose an item.through ICWA Representative; CASA Choose an item.through its designated agent; the Court, having reviewed the records and files herein

and being fully informed in the premises, does now hereby make and enter its Adjudicatory Findings of Fact and Conclusions of Law by clear and convincing evidence as follows:

FINDINGS OF FACT

1.

Proper notice has been given, and the parties have been provided an opportunity to participate.

2.

The Court has jurisdiction over these proceedings, and this is the proper venue.

3.

Click or tap here to enter text. (DOB: Click or tap to enter a date.) and Click or tap here to enter text.(DOB: Click or tap to enter a date.) are minor children who are in the legal and physical custody of the Department of Social Services and who were residents of Click or tap here to enter text. County at the commencement of these proceedings.

4.

The Respondent MOTHER is the biological mother of the minor children. She Choose an item.proceedings and Choose an item.. MOTHER Choose an item. Choose an item. Choose an item. by counsel, Click or tap here to enter text..

5.

The Respondent FATHER is the biological father of the minor children. He Choose an item., but Choose an item.fully apprised of his rights and obligations, including the possibility of termination of his parental rights. FATHER Choose an item. at these proceedings Choose an item. was Choose an item. by counsel, Click or tap here to enter text..

6.

The Respondent Indian CUSTODIAN is the children's Indian Custodian as defined by the Indian Child Welfare Act. Choose an item. Choose an item. of these proceedings, Choose an

item. has been fully apprised of her rights and obligations, including the possibility of termination of her custodial rights. CUSTODIAN Choose an item. at these proceedings Choose an item. was Choose an item. by counsel, Click or tap here to enter text..

7.

The Respondent mother, after an advisement of her rights including the possibility of termination of her parental rights admitted to the portion **(Enter the facts about the case here).**

8.

The Respondent mother's admissions were knowingly and intelligently entered and during these proceedings she has been represented by competent counsel.

9.

The Respondent mother understands the nature of her admissions and the consequences thereof. The reports provide a further factual basis from which to rely that the minor children are adjudicated to be abused or neglected children as defined by SDCL 26-8A-2 due to the actions and/or omissions of the Respondent mother.

10.

The Indian Custodian after an advisement of her rights including the possibility of termination of her custodial rights Click or tap here to enter text. admit to the allegations contained within the Amended Petition for Abuse or Neglect but was unable to provide a factual basis for the Court to determine that the children should be adjudicated to be abused or neglected and therefore the matter went to full hearing.

11.

The State has met its burden by clear and convincing evidence to establish the facts set forth in the Amended Petition for Abuse or Neglect that the minor children are adjudicated to be

abused or neglected children as defined by South Dakota law as a result of the actions and/or omissions of the Indian Custodian.

12.

FACTS AS ESTABLISHED BY THE COURT. The Court adjudicates the minor children to be abused or neglected as defined by SDCL 26-8A-2 in that their environment was injurious to their welfare.

Choose an item.

The Respondent Choose an item. was properly noticed of these proceedings and failed to appear and is in default of these proceedings pursuant to the provisions of SDCL § 26-7A-53 and therefore, the Abuse or Neglect Petition in this matter is hereby taken as admitted to in its entirety by the Respondent Choose an item.

14.

The minor children are adjudicated to be abused or neglected children as defined by SDCL 26-8A-2 due to the actions and/or omissions of the father.

15.

The minor children are an Indian Children as defined by the Indian Child Welfare Act therefore the Indian Child Welfare Act applies to these proceedings.

16.

The minor children are eligible for enrollment or membership in the Tribe.

17.

The Department of the Interior, the Bureau of Indian Affairs, and the Click or tap here to enter text. Tribe and the Click or tap here to enter text.Tribe have been notified of these proceedings in accordance with the Indian Child Welfare Act. The Click or tap here to enter text. Tribe Choose an item. in these proceedings.

18.

The Department of Social Services has made reasonable and active efforts to reunite the minor children with the Respondent parents and Indian Custodian.

19.

The Department of Social Services has made active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family.

20.

Continued custody of the children by the Respondent parents or Indian Custodian would likely result in serious emotional or physical damage to the minor children at this time.

21.

The least restrictive alternative available commensurate with the best interest of the minor children is for physical and legal custody of the minor children to remain with the Department of Social Services during the pendency of these proceedings, it being contrary to the welfare of the minor children to return legal or physical custody to the Respondent parents or Indian Custodian at this time.

Based upon the foregoing Findings of Fact, the Court now makes and enters the following Conclusions of Law

## CONCLUSIONS OF LAW

1.

Any Conclusion of Law deemed to be a Finding of Fact or vice versa shall be appropriately incorporated into the Findings of Fact or Conclusions of Law.

2.

This Court has jurisdiction over the parties and subject matter of this action.

3.

The allegations contained in the Petition for Abuse or Neglect are supported by clear and convincing evidence that the minor children are abused or neglected children as defined by SDCL 26-8A-2 due to the actions and/or omissions of the Respondent mother, the Respondent father, and the Indian Custodian.

Dated this Click or tap here to enter text. day of Click or tap here to enter text., effective however the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text., being the date of the hearing affording judicial basis for this order.

BY THE COURT:

_____
The Honorable Click or tap here to enter text.
Judge of the Circuit Court

ATTEST:
Clerk of Court
By:_____
Deputy
(SEAL)

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| THE PEOPLE OF THE STATE OF SOUTH DAKOTA IN THE INTEREST OF,<br><br>Click or tap here to enter text. **(**Click or tap to enter a date.**)**<br>Click or tap here to enter text. **(**Click or tap to enter a date.**)**<br>Child(ren), and concerning<br><br>Click or tap here to enter text. (Click or tap to enter a date.)<br>Click or tap here to enter text. **(**Click or tap to enter a date.**)**<br>Respondent(s),<br><br>Click or tap here to enter text.Click or tap to enter a date.**)**<br>Indian Custodian,<br><br>Click or tap here to enter text.<br>Intervenor | Court File No: Click or tap here to enter text.<br><br>**STATE'S PROPOSED ADJUDICATORY ORDER**<br><br>**(ICWA)** |

The above-entitled matter having come before the Court for an Adjudicatory Hearing on the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text.; the Honorable Click or tap here to enter text., presiding; the State of South Dakota represented by Choose an item., Click or tap here to enter text.; the South Dakota Department of Social Services appearing through Family Services Specialist, Click or tap here to enter text.; Click or tap here to enter text., the Respondent Choose an item., Choose an item. in person Choose an item. Choose an item., Click or tap here to enter text.; Click or tap here to enter text., the Respondent Choose an item., Choose an item. in person Choose an item. Choose an item., Click or tap here to enter text.; the minor child(ren) Choose an item. in person Choose an item. represented by counsel, Click or tap here to enter text.; the Tribe Choose an item. Choose an item. Choose an item. , Click or tap here to enter text.; CASA Choose an item.; the Court, having reviewed the records and files herein and being fully

informed in the premises, and having made and entered its Adjudicatory Findings of Fact and Conclusions of Law by clear and convincing evidence does now hereby:

ORDER, the minor children are adjudicated to be abused or neglected children as defined by SDCL §26-8A-2 through the actions and/or omissions of the Respondent mother; and it is further

ORDERED, that the minor children are adjudicated to be abused or neglected children as defined by SDCL §26-8A-2(5) through no fault of the Respondent father; and it is further

ORDERED, that the minor children shall remain in the Department of Social Services' legal and physical custody through the pendency of the proceedings; and it is further

ORDERED, that the Department of Social Services has made reasonable and active efforts to achieve the permanent plan of reunification of the children with their parents, and these efforts have been unsuccessful, and it would be contrary to the children's welfare to be returned home; and it is further

ORDERED, that returning custody of the children to the parents would likely result in serious emotional and/or physical damage to the minor children; and it is further

ORDERED, that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and these efforts have proven unsuccessful; and it is further

ORDERED, that the least restrictive alternative available in the child's best interest if continued legal and physical custody with the Department of Social Services; and it is further

ORDERED, that there is good cause to place outside the ICWA placement preference.

Dated this Click or tap here to enter text. day of Click or tap here to enter text., effective however the Click or tap here to enter text. day of Click or tap here to enter text., Click or tap here to enter text., that being the date of the hearing affording judicial basis for this order.

BY THE COURT:

ATTEST:

Clerk of Court
BY: _____
Deputy Click or tap here to enter text.
(SEAL)

_____
The Honorable Click or tap here to enter text.
Judge of the Circuit Court

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| THE PEOPLE OF THE STATE OF SOUTH DAKOTA IN THE INTEREST OF,<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Child(ren), and concerning<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Respondent(s), | File No. Click or tap here to enter text.<br><br>**STATE'S PROPOSED ADJUDICATORY FINDINGS OF FACT AND CONCLUSIONS OF LAW (NON ICWA)** |

The above-entitled matter having come on for an Adjudicatory Hearing on the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text.; the Honorable Click or tap here to enter text., presiding; the State of South Dakota being represented by its Choose an item., Click or tap here to enter text.; the South Dakota Department of Social Services appearing through Family Services Specialist, Click or tap here to enter text.; Click or tap here to enter text., the Respondent mother, Choose an item.Choose an item. Choose an item. Click or tap here to enter text.; Click or tap here to enter text., the Respondent father, Choose an item.Choose an item. Choose an item. Click or tap here to enter text.; Click or tap here to enter text., the minor child , Choose an item.Choose an item. Choose an item., Click or tap here to enter text.; CASA Choose an item.; the Court, having reviewed the records and files herein and being fully informed in the premises, does now hereby make and enter its Findings of Fact and Conclusions of Law for Adjudication by clear and convincing evidence, as follows:

FINDINGS OF FACT

1.

Proper notice has been given and that the parties have been given opportunity to participate.

2.

This Court has jurisdiction and this is the proper venue.

3.

Click or tap here to enter text. is a minor child who is in the legal and physical custody of the Department of Social Services and who was a resident of Click or tap here to enter text. County at the commencement of these proceedings.

4.

Click or tap here to enter text. is the biological mother of the minor child. She Choose an item. received notice of these proceedings, Choose an item. Choose an item. been apprised of her rights and obligations in these proceedings, including the possibility of termination of her parental rights. Click or tap here to enter text. Choose an item. Choose an item. Choose an item..

5.

Click or tap here to enter text. is the Choose an item. of the minor child. He has received notice of these proceedings and has been apprised of his rights and obligations in these proceedings, including the possibility of termination of parental rights. Click or tap here to enter text. Choose an item. Choose an item. Choose an item..

6.

Click or tap here to enter text. is the biological father of the minor child. He Choose an item. received notice of these proceedings through publication and Choose an item.been apprised of his rights and obligations in these proceedings, including the possibility of termination of his parental rights. Click or tap here to enter text. Choose an item. at these proceedings.

Choose an item.

The Respondent mother, Click or tap here to enter text., is in default of these proceedings pursuant to the provisions of SDCL§ 26-7A-53 and therefore, the Petition for Abuse or Neglect filed in this matter is hereby taken as admitted to by the Respondent father, Click or tap here to enter text.. The

minor child is adjudicated to be an abused or neglected child through the actions and/or omissions of the Respondent father.

8.

The minor child is not an Indian Child as defined by the Indian Child Welfare Act therefore the Indian Child Welfare Act does not apply to these proceedings.

9.

The Department of Social Services has made reasonable efforts to reunite the minor child with the Respondent parents and these efforts are on-going.

10.

The least restrictive alternative available commensurate with the best interest of the minor child is for physical and legal custody of the minor child to remain with the Department of Social Services during the pendency of these proceedings, it being contrary to the welfare of the minor child to return legal or physical custody to the Respondent parents at this time.

Based upon the foregoing Findings of Fact, the Court now makes and enters the following Conclusions of Law;

CONCLUSIONS OF LAW

1.

Any Conclusion of Law deemed to be a Finding of Fact or vice versa shall be appropriately incorporated into the Findings of Fact or Conclusions of Law.

2.

This Court has jurisdiction over the parties and subject matter of this action.

3.

The allegations contained in the Petition for Abuse or Neglect are supported by clear and convincing evidence that the minor child is abused or neglected within the meaning of SDCL § 26-8A-2 due to the actions and/or omissions of the Respondent father, Click or tap here to enter text..

Dated this Click or tap here to enter text. day of Click or tap here to enter text., effective however, the Click or tap here to enter text. day of Click or tap here to enter text., that being the date of the hearing affording judicial basis for this order.

BY THE COURT:

ATTEST:

Clerk of Court
BY: _____
Deputy Click or tap here to enter text.
(SEAL)

_____
The Honorable Click or tap here to enter text.
Judge of the Circuit Court

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| THE PEOPLE OF THE STATE OF SOUTH DAKOTA IN THE INTEREST OF,<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Child(ren), and concerning<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Click or tap here to enter text. (DOB:Click or tap to enter a date.<br>Respondent(s), | File No. Click or tap here to enter text.<br><br>**STATE'S PROPOSED ADJUDICATORY ORDER (NON ICWA)** |

The above-entitled matter having come on for an Adjudicatory Hearing on the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text.; the Honorable Click or tap here to enter text., presiding; the State of South Dakota being represented by its Choose an item. Attorney Click or tap here to enter text.; the South Dakota Department of Social Services appearing through Family Services Specialist, Click or tap here to enter text.; Click or tap here to enter text., the Respondent mother, Choose an item. Choose an item. Choose an item. Click or tap here to enter text.; Click or tap here to enter text., the Respondent father, Choose an item. Choose an item. Choose an item. Click or tap here to enter text. , Click or tap here to enter text.; Click or tap here to enter text.; the minor child not appearing in person but represented by counsel, Click or tap here to enter text.; CASA Choose an item.; the Court, having reviewed the records and files herein and being fully informed in the premises, and having made and entered its Findings of Fact and Conclusions of Law for Adjudication by clear and convincing evidence, does now hereby:

ORDER, that the minor child is adjudicated to be an abused or neglected child as defined by SDCL § 26-8A-2 due to the actions and/or omissions of the Respondent parents, and it is further

ORDERED, that the minor child shall remain in the Department of Social Services' legal and physical custody through the pendency of the proceedings; and it is further

ORDERED, that the Department of Social Services has made reasonable efforts to achieve the permanent plan of reunification of the child with his parents and these efforts have been unsuccessful and it would be injurious to the child's welfare to be returned home; and it is further

ORDERED, that the least restrictive alternative available in the child's, best interest is continued legal and physical custody with the Department of Social Services; and it is further

ORDERED, that returning custody of the child to the parents would be injurious to the child's welfare.

Dated this Click or tap here to enter text. day of Click or tap here to enter text., effective, however, the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text., that being the date of the hearing affording judicial basis for this order.

BY THE COURT:

ATTEST:

The Honorable Click or tap here to enter text.
Judge of the Circuit Court

Clerk of Court
BY: _____
Deputy Click or tap here to enter text.
(SEAL)

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| THE PEOPLE OF THE STATE OF SOUTH DAKOTA IN THE INTEREST OF,<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Child(ren), and concerning<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Respondent(s), | File No. Click or tap here to enter text.<br><br>**STATE'S PROPOSED ADOPTION AND SAFE FAMILIES ACT FINDINGS OF FACT AND CONCLUSIONS OF LAW**<br><br>**(NON ICWA)** |

The above-entitled matter having come before the Court for a "No Reasonable Efforts" Hearing pursuant to the Adoption and Safe Families Act on the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text.; the Honorable Click or tap here to enter text. presiding; the State of South Dakota represented by Choose an item.Attorney, Click or tap here to enter text.; the South Dakota Department of Social Services appearing through Family Services Specialist, Click or tap here to enter text.; Click or tap here to enter text., the Respondent mother Choose an item. Choose an item. Choose an item., Click or tap here to enter text.; Click or tap here to enter text.. the Respondent father Choose an item.Choose an item. Choose an item., Click or tap here to enter text.; the minor child Choose an item. in person Choose an item. represented by counsel, Click or tap here to enter text.; CASA Choose an item.; and the Court, having reviewed the records and files herein and being fully informed in the premises does now hereby make and enter its Findings of Fact and Conclusions of Law by clear and convincing evidence as follows:

FINDINGS OF FACT

1.

Proper notice has been given and the parties have been provided an opportunity to participate.

2.

This Court has jurisdiction and this is the proper venue.

3.

Click or tap here to enter text. is a minor child who is in the legal and physical custody of the Department of Social Services, and who was a resident of Click or tap here to enter text. County at the commencement of these proceedings.

4.

Click or tap here to enter text. is the biological mother of the minor child. She received notice of these proceedings and has been fully apprised of her rights and obligations in these proceedings, including the possibility of termination of her parental rights. Click or tap here to enter text. Choose an item. at these proceedings and Choose an item.by counsel, Click or tap here to enter text..

5.

Click or tap here to enter text. is the biological father of the minor child. He received notice of these proceedings and has been fully apprised of his rights and obligations in these proceedings, including the possibility of termination of his parental rights. Click or tap here to enter text. Choose an item. at these proceedings Choose an item. Choose an item.by counsel, Click or tap here to enter text..

6.

The minor child is not an Indian Child as defined by the Indian Child Welfare Act and thus the Indian Child Welfare Act does not apply to these proceedings.

7.

The Court, having received the State's Exhibits of certified copies of the Adjudicatory Findings of Fact and Conclusions of Law, and the Adjudicatory Order from Click or tap here to enter text.

County file Click or tap here to enter text., and having taken judicial notice of both Court Files, finds that the Respondent parents previously had a child removed from their custody because the removed child was adjudicated abused and neglected by a court on at least one previous occasion. As such, the Adoptions and Safe Families Act, specifically as codified at SDCL 26-8A-21.1(8) is applicable to this case as to the Respondent parents.

8.

A number of concerning risk factors exist despite the fact that the Respondent parents have been offered numerous services by the Department of Social Services as part of a prior Abuse and Neglect proceeding.

9.

The Respondent parents were provided services by the Department of Social Services from Click or tap here to enter text. until Click or tap here to enter text.. The child, Click or tap here to enter text. was removed from the home on Click or tap here to enter text. when Choose an item. was Click or tap here to enter text. because Click or tap here to enter text.. The Department worked with the Respondent parents to address the issues. Services provided in Click or tap here to enter text. included Choose an item. (EXAMPLE: Protective Capacities Assessment and Evaluations; Medical Services; Kinship Services; UAs; Psychological Evaluation; Chemical Dependency Evaluation; Transportation; Therapy and Concurrent Planning as well as attempts to engage the Respondent Choose an item. who refused to participate for most of the case). The minor child was adjudicated to be abused or neglected through the actions and/or omissions of the Respondent Click or tap here to enter text..

10.

The minor child came into care again on Click or tap here to enter text. due to concerns of Click or tap here to enter text.. The minor child was Click or tap here to enter text. when he came back into care.

11.

The conditions continue to exist and that the very same issues that existed in Click or tap here to enter text. regarding both parents continue to exist.

12.

The Adoption and Safe Families Act applies to these proceedings and thus further services are not required under the Adoption and Safe Families Act.

13.

The Department of Social Services has made reasonable efforts to prevent the removal of the minor child from the home and to reunite the minor child with the parents, and to achieve the permanent plan of reunification; and those efforts are no longer required.

14.

Return of custody of the minor child to the Respondent parents would be injurious to the minor child's welfare.

15.

The least restrictive alternative available commensurate with the best interest of the minor child is for legal and physical custody of the minor child to remain with the Department of Social Services, it being contrary to the welfare of the minor child to return legal and/or physical custody to the Respondent parents.

Based upon the foregoing Findings of Fact, the Court now makes and enters its Conclusions of Law pursuant to the Adoption and Safe Families Act as follows:

CONCLUSIONS OF LAW

1.

Any Conclusion of Law deemed to be a Finding of Fact or vice versa shall be appropriately incorporated into the Findings of Fact or Conclusions of Law as applicable.

2.

This Court has jurisdiction over the parties and subject matter of this action.

3.

The Court has considered and applied the legal holdings found in Click or tap here to enter text..

4.

The Court finds that it is the best interests of the minor child to apply the Adoption and Safe Families Act, it being the least restrictive alternative available in the minor child's best interests that no further reasonable efforts be required to reunite the minor child with the Respondent parents and to set a Final Dispositional Hearing within thirty days.

Dated this Click or tap here to enter text. day of Click or tap here to enter text., effective, however, the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text., being the date of the hearing affording judicial basis for this order.

BY THE COURT:

_____
The Honorable Click or tap here to enter text.
Judge of the Circuit Court

ATTEST:

Clerk of Court
BY: _____
Deputy Click or tap here to enter text.
(SEAL)

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| THE PEOPLE OF THE STATE OF SOUTH DAKOTA IN THE INTEREST OF,<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Child(ren), and concerning<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Respondent(s), | File No. Click or tap here to enter text.<br><br>**STATE'S PROPOSED ADOPTION AND SAFE FAMILIES ACT ORDER**<br><br>**(NON-ICWA)** |

The above-entitled matter having come before the Court for a "No Reasonable Efforts" Hearing pursuant to the Adoption and Safe Families Act on the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text.; the Honorable Click or tap here to enter text. presiding; the State of South Dakota represented by Choose an item.Attorney Click or tap here to enter text.; the South Dakota Department of Social Services appearing through Family Services Specialist, Click or tap here to enter text.; Click or tap here to enter text., the Respondent mother, Choose an item. in person and Choose an item., Click or tap here to enter text.; Click or tap here to enter text., the Respondent father, Choose an item. in person and Choose an item., Click or tap here to enter text.; the minor children Choose an item. in person Choose an item. represented by counsel, Click or tap here to enter text.; CASA Choose an item.; and the Court, having reviewed the records and files herein and being fully informed in the premises and having made and entered its Findings of Fact and Conclusions of Law by clear and convincing evidence does now hereby:

ORDER, that the Adoption and Safe Families Act is applicable to this case; and it is further ORDERED, that the Department of Social Services has provided reasonable efforts to prevent the removal of the minor child from the home but the removal of the child from the home was necessary because continued presence of the child in the home was injurious to his welfare; and it is further ORDERED, that the least restrictive alternative available in the minor child's best interest is for the legal and physical custody of the minor child to remain with the Department of Social Services, it being contrary to the child's best interests and welfare to return to the legal and physical custody of the child to the Respondent parents; and it is further

ORDERED, that the Department of Social Services is relieved from providing any further efforts towards reunification; and it is further

ORDERED, that a Dispositional Hearing shall be held within 30 days.

Dated this Click or tap here to enter text. day of Click or tap here to enter text., effective, however, the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text., being the date of the hearing affording judicial basis for this order.

BY THE COURT:

_____

The Honorable Click or tap here to enter text.
Judge of the Circuit Court

ATTEST:

Clerk of Court
BY: _____
Deputy Click or tap here to enter text.
(SEAL)

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| THE PEOPLE OF THE STATE OF SOUTH DAKOTA IN THE INTEREST OF,<br><br>Click or tap here to enter text.<br>Child(ren), and concerning<br><br>Click or tap here to enter text.<br>(Respondent and Indian Custodian)<br><br>Click or tap here to enter text.<br>Click or tap here to enter text.<br>Respondent(s),<br><br>Click or tap here to enter text.<br>Intervenor | File No. Click or tap here to enter text.<br><br>**REVIEW HEARING ORDER**<br><br>**(ICWA)** |

The above-entitled matter having come before the Court for a Review Hearing on the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text., the Honorable Click or tap here to enter text., presiding; the State of South Dakota represented by Deputy State's Attorney, Click or tap here to enter text.; the South Dakota Department of Social Services appearing through Family Services Specialist Click or tap here to enter text.; Click or tap here to enter text., the Respondent mother Choose an item. in person Choose an item. Choose an item. by counsel,Click or tap here to enter text.;Click or tap here to enter text., the Respondent father, Choose an item. in person Choose an item. Choose an item. by counsel,Click or tap here to enter text.; the Respondent Indian Custodian, Choose an item. in person Choose an item. Choose an item. by counsel, Click or tap here to enter text.; the minor children Choose an item.in person Choose an item. represented by counsel, Click or tap here to enter text.; CASA Choose an item.; the Tribe Choose an item. by counsel, Click or tap here to enter text.; the Court, having reviewed the records and files herein and being fully informed in the premises and having heard the testimony presented, does now hereby:

ORDER, that the minor child(ren) shall remain in the Department of Social Services' legal and physical custody through the pendency of the proceedings; and it is further

ORDERED, that the Department of Social Services has made active efforts to achieve the permanent plan of reunification of the child(ren) with their parents and Indian Custodian and these efforts have been unsuccessful and it would be contrary to the child's welfare to be returned home; and it is further

ORDERED, that returning legal and physical custody of the child(ren) to the parents or Indian Custodian would likely result in serious emotional and/or physical damage to the minor children at this time; and it is further

ORDERED, that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and these efforts have proven unsuccessful; and it is further

ORDERED, that the least restrictive alternative available in the minor child(ren)'s best interest is continued placement in the legal and physical custody of the Department of Social Services; and it is further

ORDERED, that there is good cause to place outside the ICWA Placement Preferences.

Dated this Click or tap here to enter text. day of Click or tap here to enter text., effective however, the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text., that being the date of the hearing affording judicial basis for this order.

BY THE COURT:

_____
The Honorable Click or tap here to enter text.
Judge of the Circuit Court

ATTEST:

Clerk of Court
BY: _____
Deputy Click or tap here to enter text.
(SEAL)

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| THE PEOPLE OF THE STATE OF SOUTH DAKOTA IN THE INTEREST OF,<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Child(ren), and concerning<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Click or tap here to enter text. (DOB:Click or tap to enter a date.<br>John Doe<br>Respondent(s), | File No. Click or tap here to enter text.<br><br>**REVIEW HEARING ORDER**<br><br>**(NON-ICWA)** |

The above-entitled matter having come before the Court for a Review Hearing, on the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text., the Honorable Click or tap here to enter text. presiding; the State of South Dakota represented by Choose an item., Click or tap here to enter text.; the South Dakota Department of Social Services appearing through Family Services Specialist Click or tap here to enter text.; Click or tap here to enter text., the Respondent Choose an item., Choose an item. Choose an item. Choose an item. Choose an item., Click or tap here to enter text.; Click or tap here to enter text., the Respondent Choose an item., Choose an item. Choose an item. Choose an item. Choose an item., Click or tap here to enter text.; the minor children Choose an item. In person Choose an item. Represented by counsel, Click or tap here to enter text.; CASA Choose an item.; the Court, having reviewed the records and files herein and being fully informed in the premises, does now hereby:

ORDER, that the Indian Child Welfare Act does not apply to this case; and it is further

ORDERED, that the minor children shall remain in the Department of Social Services' legal and physical custody through the pendency of the proceedings; and it is further

ORDERED, that the Department of Social Services has made reasonable efforts to achieve the permanent plan of reunification of the children with the Respondent parents and those efforts have been unsuccessful and it would be contrary to the children's welfare to be returned at this time; and it is further

ORDERED, that the least restrictive alternative available commensurate with the best interest of the children is continued custody with the Department of Social Services as return of custody of the minor child to the Respondent parents would be injurious to the minor children's welfare.

Dated this Click or tap here to enter text. day of Click or tap here to enter text. effective, however, the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text., that being the date of the hearing affording judicial basis for this order.

BY THE COURT:

_____
The Honorable Click or tap here to enter text.
Judge of the Circuit Court

ATTEST:

Clerk of Court
BY: _____
Deputy Click or tap here to enter text.
(SEAL)

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| THE PEOPLE OF THE STATE OF SOUTH DAKOTA IN THE INTEREST OF,<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Child(ren), and concerning<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Respondent(s),<br><br>Click or tap here to enter text.<br>Intervenor | File No. Click or tap here to enter text.<br><br>**PRE-DISPOSITIONAL PERMANENCY HEARING ORDER**<br><br>**(ICWA)** |

The above-entitled matter having come before the Court for an Permanency Hearing on the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text.; the Honorable Click or tap here to enter text. presiding; the State of South Dakota represented by Choose an item., Click or tap here to enter text.; the South Dakota Department of Social Services appearing through Family Services Specialist, Click or tap here to enter text.; the Respondent Choose an item., Choose an item. In person Choose an item. Choose an item., Click or tap here to enter text.; the Respondent Choose an item., Choose an item. In person Choose an item. Choose an item., Click or tap here to enter text.; the minor children Choose an item. In person but represented by counsel, Click or tap here to enter text.; CASA Choose an item.; the Tribe Choose an item. , Click or tap here to enter text.; the Court, having reviewed the records and files herein and being fully informed in the premises, does now hereby

ORDERED, that the minor child shall remain in the Department of Social Services' legal and physical custody through the pendency of the proceedings; and it is further

ORDERED, that the Department of Social Services has made active efforts to achieve the permanent plan of reunification of the child with her parents and these efforts have been unsuccessful and it would be contrary to the children's welfare to be returned home; and it is further

Choose an item. Choose an item.

ORDERED that the least restrictive alternative available in the minor child's best interest is continued legal and physical custody with the Department of Social Services.

ORDERED, that returning custody of the child to the parents would likely result in serious emotional and/or physical damage to the minor child; and it is further

ORDERED, that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and these efforts have proven unsuccessful.

Dated this Click or tap here to enter text. day of Click or tap here to enter text. effective however, the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text., that being the date of the hearing affording judicial basis for this order.

BY THE COURT:

_____

The Honorable Click or tap here to enter text.
Judge of the Circuit Court

ATTEST:

Clerk of Court
BY: _____
Deputy Click or tap here to enter text.
(SEAL)

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| THE PEOPLE OF THE STATE OF SOUTH DAKOTA IN THE INTEREST OF,<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Child(ren), and concerning<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Respondent(s), | File No. Click or tap here to enter text.<br><br>**PRE-DISPOSITIONAL PERMANENCY HEARING ORDER**<br><br>**(NON ICWA)** |

The above-entitled matter having come before the Court for a Permanency Hearing on the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text., the Honorable Click or tap here to enter text. presiding; the State of South Dakota represented by Choose an item., Click or tap here to enter text.; the South Dakota Department of Social Services appearing through Family Services Specialist Click or tap here to enter text.; Click or tap here to enter text.,the Respondent Choose an item., Choose an item. in person Choose an item. Choose an item., Click or tap here to enter text.; Click or tap here to enter text., the Respondent Choose an item., Choose an item. in person Choose an item. Choose an item., Click or tap here to enter text.; the minor children Choose an item. in person Choose an item. represented by counsel, Click or tap here to enter text.; CASA Choose an item.; the Court, having reviewed the records and files herein and being fully informed in the premises; the Court does now hereby:

ORDER; that the minor child shall remain in the Department of Social Services' legal and physical custody through the pendency of the proceedings; and it is further

ORDERED, that the Department of Social Services has made reasonable efforts to achieve the permanent plan of reunification of the child with the Respondent parents and these efforts have been unsuccessful, and it would contrary to the child's welfare to be returned home; and it is further

ORDERED, that the least restrictive alternative available in the child's best interest is continued placement in the legal and physical custody of the Department of Social Services; and it is further

Choose an item. Choose an item.

ORDERED, that the Department of Social Services is authorized to move forward with an In-Home Safety Plan providing that it is safe to do so; and it is further

ORDERED, that all parties are to be notified of the intent to return the child to the home on an In-Home Safety Plan and if any party requests a hearing a hearing shall be set on the calendar as soon as possible; and it is further

ORDERED, that if the child is returned to the Respondent parents with an In-Home Safety Plan in place prior to the next hearing and the In-Home Safety Plan is not successful, the Department has the authority to return the child to the physical custody of the Department and immediately notify all parties.

Dated this Click or tap here to enter text. day of Click or tap here to enter text. effective however the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text., that being the date of the hearing affording judicial basis for this order.

BY THE COURT:

_____
The Honorable Click or tap here to enter text.
Judge of the Circuit Court

ATTEST:

Clerk of Court
BY: _____
Deputy Click or tap here to enter text.
(SEAL)

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| THE PEOPLE OF THE STATE OF SOUTH DAKOTA IN THE INTEREST OF,<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Child(ren), and concerning<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Respondent(s), | File No. Click or tap here to enter text.<br><br>**PETITION FOR TERMINATION OF PARENTAL RIGHTS**<br>**ABUSE OR NEGLECT** |

The Petition of Click or tap here to enter text. respectfully represents:

3) That Choose an item. is a resident of the State of South Dakota.

4) That Click or tap here to enter text. is a child under eighteen years of age, being of the age of Click or tap here to enter text. years old and who was residing in or present in Click or tap here to enter text. County at the commencement of these proceedings.

4) That the names and addresses of the parent(s), guardian or custodian of said child are:

| **Name** | **Address** |
|---|---|
| Click or tap here to enter text. | Click or tap here to enter text. |
| Click or tap here to enter text. | Click or tap here to enter text. |
| Click or tap here to enter text. | Click or tap here to enter text. |
| Click or tap here to enter text. | Click or tap here to enter text. |

10) That said child is in the legal and physical custody of the Department of Social Services.

11) The minor child Choose an item. an Indian Child as defined by the Indian Child Welfare Act (ICWA) and thus ICWA Choose an item.to these proceedings. (TRIBE)

12) That this Petition for Termination action is brought by the State on behalf of the South Dakota Department of Social Services on the following basis:

A) The parent guardian or custodian has abandoned the minor child.
B) The Court has determined that the Adoption and Safe Families Act applies pursuant to SDCL §26-8A-22.
C) The parent, guardian or custodian has agreed to the termination of parental rights.
D) The parents, guardian or custodian have not met the conditions for return and have not made the necessary behavioral changes for the child to be returned.

THEREFORE, petitioner prays that the Court fix a day for hearing on this Petition, that Summons issue to the Respondents requiring them to appear before the Court to answer to the allegations of the Petition, and if the allegations of the Petition are sustained, to make an Order of Final Disposition.

_____
Petitioner
ADDRESS
PHONE NUMBER

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| THE PEOPLE OF THE STATE OF SOUTH DAKOTA IN THE INTEREST OF,<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Child(ren), and concerning<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Respondent(s),<br><br>Click or tap here to enter text.<br>Intervenor | File No. Click or tap here to enter text.<br><br>**STATE'S PROPOSED FINAL DISPOSITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW**<br><br>**(ICWA)** |

The above-entitled matter having come before the Court for a Final Dispositional Hearing on the day of Click or tap here to enter text., 20Click or tap here to enter text.; the HonorableClick or tap here to enter text., presiding; the State of South Dakota represented by Choose an item., Click or tap here to enter text.; the South Dakota Department of Social Services appearing through Family Services Specialist,Click or tap here to enter text.; Click or tap here to enter text., the Respondent Choose an item., Choose an item. in person Choose an item. Choose an item., Click or tap here to enter text.; Click or tap here to enter text., the Respondent Choose an item., Choose an item. in person Choose an item. Choose an item., Click or tap here to enter text.; the minor children Choose an item. in person Choose an item. represented by counsel, Click or tap here to enter text.; CASA Choose an item.; the Tribe Choose an item. , Click or tap here to enter text.; the Court, having reviewed the records and files herein and being fully informed in the premises, does now hereby make and enter its Findings of Fact and Conclusions of Law for Final Disposition, as follows:

THE COURT MAKES THE FOLLOWING FINDINGS OF FACT BY

CLEAR AND CONVINCING EVIDENCE:

1.

Proper notice has been given and all parties have been provided an opportunity to participate.

2.

This Court has jurisdiction and this is the proper venue.

3.

Click or tap here to enter text., Click or tap here to enter text., and Click or tap here to enter text. Choose an item. who Choose an item. in the legal and physical custody of the Department of Social Services and who were residents of Click or tap here to enter text. County at the commencement of these proceedings.

4.

Click or tap here to enter text. is the biological Click or tap here to enter text. of the minor children. Click or tap here to enter text. Choose an item., and has been apprised of Choose an item. rights and obligations in these proceedings, including the possibility of termination of Choose an item. parental rights. Click or tap here to enter text. Choose an item.Choose an item. Choose an item..

5.

Click or tap here to enter text. is the biological Click or tap here to enter text. of the minor children, Click or tap here to enter text.. Click or tap here to enter text. Choose an item., and has been apprised of Choose an item. rights and obligations in these proceedings, including the possibility of termination of Choose an item. parental rights. Click or tap here to enter text. Choose an item.Choose an item. Choose an item..

6.

Click or tap here to enter text. is the biological Click or tap here to enter text. of the minor children, Click or tap here to enter text.. He has received notice of these proceedings, and has been apprised of Choose an item. rights and obligations in these proceedings, including the possibility of termination of Choose an item. parental rights. Click or tap here to enter text. Choose an item.Choose an item. Choose an item..

7.

The Department of Social Services has provided reasonable efforts to prevent or eliminate the need for the removal of the minor children from the home but removal of the minor children from the home was necessary because continued presence of the children in the home was contrary to the welfare of the children and the continued removal of the children from the home was necessary to prevent imminent physical damage or harm to the minor children.

8.

The minor children have been in the legal and physical custody of the Department of Social Services since Click or tap here to enter text..

9.

The children have been adjudicated to be abused or neglected children as defined by SDCL 26-8A-2 through the actions and/or omissions of the Respondent parents.

10.

The Department of Social Services has made reasonable efforts to return the children to the home and those efforts have been appropriate for the children's parents and have been available pursuant to a comprehensive plan of preventive services of the Department; or those services could have been available without undue financial burden on the Department; or those services would have a significant likelihood of protecting the children from substantial danger to the children's physical health or from severe emotional damage while enabling the children to be returned to the home. The Court has considered the assistance, services, and efforts of the Department as well as the good faith efforts or

lack of good faith efforts made by the children's parents to cooperate with the Department and to effectively utilize the assistance or services for the benefit and welfare of the children.

11.

The Department of Social Services has made reasonable efforts to achieve the permanent plan of reunification of the children with their parents and these efforts have been unsuccessful and it would be contrary to the welfare of the minor children to be returned to the legal or physical custody of the parents; those efforts include but are not limited to the following: (EXAMPLE)

- Initial Family Assessment
    - Assignment of IFA Specialist Beard
    - Initial Family Assessment completed
    - Safety Plan Determination Worksheet and Conditions for Return
    - Present Danger Plan considered
    - Interviews with family members
    - Collateral contacts
    - Supervised visitation
    - Visitation at United Families Visitation Center
    - Referral to Family Group Conference
    - Requested Random UAs
    - Transportation
    - Contact with the Tribe
    - Relative Search
- Child Services
    - Kinship Care Services
    - Child Case Plan Assessment and Evaluations
    - Transportation
    - Medicaid for mental health/medical/vision and dental services
    - Contact with Placement for children's needs and updates
    - Safety checks
        - 24 hour checks
        - Weekly checks
        - Monthly home visits
        - Regular contact through email/phone and in person
- Ongoing Services
    - Assignment of Specialist Click or tap here to enter text.
    - Protective Capacity Assessments and Evaluations
    - Safety Plan Determination Worksheet and Conditions for Return
    - Contact with the parents
    - Contact with Kinship Provider
    - Contact with the Resource Provider
    - Contact with the United Families Visitation Center
    - Transportation
    - Supervised Visitation

    - UAs
- Kinship Locator Services
    - Assignment of Resource Specialist
    - Ongoing relative search for placement and connections
    - Home Study request and PRIDE referral
- Family Group Coordinator Services
    - Assignment of Family Group Coordinator
    - Placement Team Meeting
    - Concurrent Planning Meeting
    - Ongoing meetings available for placement stability
- Services provided to the Respondent mother and the Respondent father, Click or tap here to enter text. from Click or tap here to enter text. when case closed with reunification.

12.

All reasonable efforts have been made to rehabilitate the family.

13.

The conditions which led to the children's removal still exist and there is little likelihood that those conditions will be remedied so that the children can be returned to the custody of the Respondent parents.

14.

There is good cause to terminate the parental rights of the Respondent parents.

15.

(Insert Case-Specific Information Here)

16.

Termination of parental rights is final and unconditional.

17.

The minor children have been in the custody of the Department of Social Services for Click or tap here to enter text. year. Prior to this case, the minor children, Click or tap here to enter text. had been in the custody of the Department of Social Services for Click or tap here to enter text. months. The children had only been returned to the Respondent Click or tap here to enter text. for Click or tap here to enter text. months before being removed again. **(Insert Case-Specific Information Here)**

18.

(Insert Case-Specific Information Here)

The Respondent Click or tap here to enter text. is not in a position to have the minor children returned to her custody.

19.

(Insert Case-Specific Information Here)

20.

(Insert Case-Specific Information Here)

21.

The least restrictive alternative commensurate with the best interests of the minor children is to terminate the Respondent parents' parental rights and to vest the Department of Social Services with the custody and guardianship of the person of the children for the purpose of placing the children for adoption and to authorize the appropriate personnel of Department of Social Services to consent to the adoption of the children.

22.

The Court hereby takes judicial notice of the entire court file Click or tap here to enter text., including The Report to the Court entered as Click or tap here to enter text.; as a further factual basis to support these Final Dispositional Findings of Fact and Conclusions of Law.

23.

The minor children need and deserve permanency and a home that can meet their needs. It is clear that the Respondent parents Choose an item. demonstrated a commitment to meet the children's needs.

24.

The Respondent parents are not able to provide proper and necessary care for the minor children; and the children should not be made to wait for the parents to gain the necessary skills needed for them to be able to parent the children.

25.

The minor children are Indian Children as defined by the Indian Child Welfare Act therefore the Indian Child Welfare Act applies to these proceedings.

26.

The minor children are eligible for enrollment with the Tribe.

27.

The Tribe was notified of these proceedings in accordance with the Indian Child Welfare Act. The Tribe Intervened in these proceedings. The Tribe was represented by counsel.

28.

That ICWA EXPERT has more than substantial knowledge, education and experience in the area of social work and delivery of child and family services to Indian families and has extensive knowledge of the prevailing social and cultural standards in the child rearing practices within the Native American community and is therefore a qualified expert under the Indian Child Welfare Act. Furthermore, he has knowledge of the cultural practices of the Tribe.

THE COURT MAKES THE FOLLOWING FINDINGS OF FACT BY

EVIDENCE BEYOND A REASONABLE DOUBT:

1.

The Department of Social Services has made active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and these efforts have proved unsuccessful.

2.

That termination of the Respondent mother's parental rights is supported by the evidence including testimony of the qualified ICWA expert that continued custody or return of custody of the children to the Respondent mother would likely result in serious emotional and/or physical damage to the children.

3.

That termination of the Respondent father, Click or tap here to enter text. parental rights is supported by the evidence including testimony of the qualified ICWA expert that continued custody, or return of custody of the child, Click or tap here to enter text. to the Respondent father would likely result in serious emotional and/or physical damage to the child.

4.

That termination of the Respondent father, Click or tap here to enter text. parental rights is supported by the evidence including testimony of the qualified ICWA expert that continued custody, or return of custody of the children, Click or tap here to enter text. to the Respondent father would likely result in serious emotional and/or physical damage to the children.

Based upon the foregoing Findings of Fact, the Court now makes and enters the following Conclusions of Law;

CONCLUSIONS OF LAW

1.

Any Conclusion of Law deemed to be a Finding of Fact or vice versa shall be appropriately incorporated into the Findings of Fact or Conclusions of Law.

2.

This Court has jurisdiction over the parties and subject matter of this action.

3.

The children have been adjudicated to be abused or neglected children due to the actions and/or omissions of the Respondent parents.

4.

The fundamental rights of the Respondent parents to raise their children have been appropriately balanced with the best interests of the minor children and the public, and the state and the Court finds and concludes that the least restrictive alternative in the children's best interests is for the parental rights of the Respondent parents to be terminated.

Dated this Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text., effective, however, the Click or tap here to enter text., being the date of the hearing affording judicial basis for this order.

BY THE COURT:

_____
The Honorable Click or tap here to enter text.
Judge of the Circuit Court

ATTEST:

Clerk of Court
BY: _____
Deputy Click or tap here to enter text.
(SEAL)

STATE OF SOUTH DAKOTA: IN CIRCUIT COURT

SS:

COUNTY OF Click or tap here to enter text. Choose an item. JUDICIAL CIRCUIT

| | |
|---|---|
| THE PEOPLE OF THE STATE OF SOUTH DAKOTA IN THE INTEREST OF,<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Child(ren), and concerning<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Respondent(s),<br><br>Click or tap here to enter text.<br>Intervenor | File No. Click or tap here to enter text.<br><br>**STATE'S PROPOSED FINAL DISPOSITIONAL ORDER**<br><br>**(ICWA)** |

The above-entitled matter having come before the Court for a Final Dispositional Hearing on the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text.; the Honorable Click or tap here to enter text., presiding; the State of South Dakota represented by Choose an item., Click or tap here to enter text.; the South Dakota Department of Social Services appearing through Family Services Specialist, Click or tap here to enter text.; Click or tap here to enter text., the Respondent Choose an item., Choose an item. in person Choose an item. Choose an item., Click or tap here to enter text.; Click or tap here to enter text., the Respondent Choose an item., Choose an item. in person Choose an item. Choose an item., Click or tap here to enter text.; Click or tap here to enter text., the Respondent Choose an item., Choose an item. in person Choose an item. Choose an item., Click or tap here to enter text.; the minor children Choose an item. in person Choose an item. represented by counsel, Click or tap here to enter text.; CASA Choose an item.; the Tribe Choose an item. , Click or tap here to enter text.; the Court, having reviewed the records and files herein and being

fully informed in the premises, and having made and entered its Findings of Fact and Conclusions of Law for Final Disposition, does now hereby:

ORDER, that the Indian Child Welfare Act applies to this case; and it is further

ORDERED, that the Respondent mother, Click or tap here to enter text., parental rights Choose an item. terminated as to the minor children; and it is further

ORDERED, that the Respondent father, Click or tap here to enter text. parental rights Choose an item. terminated as to the minor child, Click or tap here to enter text.; and it is further

ORDERED, that the Respondent father, Click or tap here to enter text. parental rights Choose an item. terminated as to the minor children, Click or tap here to enter text.; and it is further

ORDERED, that the custody and guardianship of the minor children shall be vested with the Department of Social Services for purpose of placing the minor children for adoption; and it is further

ORDERED, that the least restrictive alternative available in the children's best interest is for the parental rights of the Respondent parents to be terminated and for the children to be placed in the adoptive custody of the Department of Social Services; and it is further

ORDERED, that the Department of Social Services has made reasonable and active efforts to achieve the permanent plan of reunification of the children with the Respondent parents and these efforts have been unsuccessful and it would be contrary to the children's welfare to be returned home and those efforts include but are not limited to the following: (EXAMPLE)

- Initial Family Assessment
    - Assignment of IFA Specialist Beard
    - Initial Family Assessment completed
    - Safety Plan Determination Worksheet and Conditions for Return
    - Present Danger Plan considered
    - Interviews with family members
    - Collateral contacts
    - Supervised visitation
    - Visitation at United Families Visitation Center
    - Referral to Family Group Conference
    - Requested Random UAs
    - Transportation

    - Contact with the Tribe
    - Relative Search
- Child Services
    - Kinship Care Services
    - Child Case Plan Assessment and Evaluations
    - Transportation
    - Medicaid for mental health/medical/vision and dental services
    - Contact with Placement for children's needs and updates
    - Safety checks
        - 24 hour checks
        - Weekly checks
        - Monthly home visits
        - Regular contact through email/phone and in person
- Ongoing Services
    - Assignment of Specialist Click or tap here to enter text.
    - Protective Capacity Assessments and Evaluations
    - Safety Plan Determination Worksheet and Conditions for Return
    - Contact with the parents
    - Contact with Kinship Provider
    - Contact with the Resource Provider
    - Contact with the United Families Visitation Center
    - Transportation
    - Supervised Visitation
    - UAs
- Kinship Locator Services
    - Assignment of Resource Specialist
    - Ongoing relative search for placement and connections
    - Home Study request and PRIDE referral
- Family Group Coordinator Services
    - Assignment of Family Group Coordinator Placement Team Meeting
    - Concurrent Planning Meeting
    - Ongoing meetings available for placement stability
- Services provided to the Respondent mother and the Respondent father, from Click or tap here to enter text. until Click or tap here to enter text. when case closed with reunification.

and it is further

ORDERED, that continued custody of the children by the Respondent parents would likely result in serious emotional and/or physical damage to the minor children; and it is further

ORDERED, that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and these efforts have proven unsuccessful; and it is further

ORDERED, that the Department of Social Services will work towards the permanent plan of adoption for the minor children; and it is further

ORDERED, that there is good cause to place the minor children outside the ICWA Placement Preferences; and it is further

ORDERED, that termination of parental rights is final and unconditional; and it is further

ORDERED, that the Respondent parents have the right to appeal this Court's Final Order pursuant to South Dakota Law.

Dated this Click or tap here to enter text. day of Click or tap here to enter text. effective, however the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text., being the date of the hearing affording judicial basis for this order.

BY THE COURT:

_____
The Honorable Click or tap here to enter text.
Judge of the Circuit Court

ATTEST:

Clerk of Court
BY: _____
Deputy Click or tap here to enter text.
(SEAL)

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| THE PEOPLE OF THE STATE OF SOUTH DAKOTA IN THE INTEREST OF,<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Child(ren), and concerning<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Respondent(s), | File No. Click or tap here to enter text.<br><br>**STATE'S PROPOSED FINAL DISPOSITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW**<br><br>**(NON ICWA)** |

The above-entitled matter having come before the Court for a Final Dispositional Hearing on the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text.; the Honorable Click or tap here to enter text., presiding; the State of South Dakota represented by Choose an item., Click or tap here to enter text.; the South Dakota Department of Social Services appearing through Family Services Specialist, Click or tap here to enter text.; Click or tap here to enter text., the Respondent Choose an item., Choose an item. in person Choose an item. Choose an item., Click or tap here to enter text.; Click or tap here to enter text., the Respondent Choose an item., Choose an item. in person Choose an item. Choose an item., Click or tap here to enter text.; the minor children Choose an item. in person Choose an item. represented by counsel, Click or tap here to enter text.; CASA Choose an item.; the Court, having reviewed the records and files herein and being fully informed in the premises, does now hereby make and enter its Findings of Fact and Conclusions of Law for Final Disposition by clear and convincing evidence, as follows:

FINDINGS OF FACT

1.

Proper notice has been given and the parties have been given the opportunity to participate.

2.

The Court has jurisdiction and this is the proper venue.

3.

Click or tap here to enter text. is a minor child who is in the legal and physical custody of the Department of Social Services and who was a resident of Click or tap here to enter text. County at the commencement of these proceedings.

4.

Click or tap here to enter text. is the biological Click or tap here to enter text. of the minor child. Choose an item. Choose an item., and has been fully apprised of his rights and obligations in these proceedings, including the possibility of termination of Choose an item. parental rights. Click or tap here to enter text. Choose an item. at these proceedings and was Choose an item..

5.

Click or tap here to enter text. is the biological Click or tap here to enter text. of the minor child. Choose an item. Choose an item., and has been fully apprised of Choose an item. rights and obligations in these proceedings, including the possibility of termination of Choose an item. parental rights. Click or tap here to enter text. Choose an item. at these proceedings as Choose an item. is incarcerated and being held on Choose an item. charges, and was Choose an item..

6.

The Department of Social Services has provided reasonable efforts to prevent or eliminate the need for the removal of the minor child from the home. Removal of the minor child from the home was necessary because continued presence of the child in the home was contrary to the welfare of the child.

7.

The minor child has been in the legal and physical custody of the Department of Social Services since Click or tap here to enter text..

8.

The child has been adjudicated to be an abused or neglected child as defined by SDCL §26-8A-2.

9.

The minor child is not an Indian Child as defined by the Indian Child Welfare Act and therefore the Indian Child Welfare Act does not apply to these proceedings.

10.

The Department of Social Services has made reasonable efforts to return the child to the home and those efforts have been appropriate for the child's parents and have been available pursuant to a comprehensive plan of preventive services of the Department; or those services could have been available without undue financial burden on the Department; or those services would have a significant likelihood of protecting the child from substantial danger to the child's physical health or from severe emotional damage while enabling the child to be returned to the home. The Court has considered the assistance, services, and efforts of the Department as well as the good faith efforts or lack of good faith efforts made by the child's parents to cooperate with the Department and to effectively utilize the assistance or services for the benefit and welfare of the child.

11.

The Department of Social Services has made reasonable efforts to achieve the permanent plan of reunification of the child with the parents and these efforts have been Choose an item. and Choose an item. welfare of the minor child Choose an item. returned to the legal and physical custody of the parents; those efforts include but are not limited to the following: (EXAMPLE)

- Initial Family Assessment
    - Assignment of Specialist
    - Initial Family Assessment completed
    - Safety Plan Determination and Conditions for return
    - Safety Checks
        - 24 hour check
        - Weekly checks
        - Monthly home visits
    - Transportation
    - Funding
    - Relative Searches
    - Visitation
    - Referral for Supervised Visitation at the United Families Visitation Center
- Ongoing Services
    - Assignment of Specialist
    - Assignment of Specialist
    - Protective Capacities Assessment and Evaluations
    - Safety Plan Determination and Conditions for Return
    - Transportation
    - Funding
    - Supervised Visitation
    - Urinalysis
    - Referrals
    - Referrals and funding for Mental Health Evaluation
    - Collateral contacts
        - Behavior Management Systems
        - Addiction Recovery Center
        - Hope it Forward (Mindy King)
- Kinship Care Services
    - Contact with the kinship providers
    - Transportation assistance
    - Assistance with TANF
    - Daycare assistance
    - Kinship Home Study
    - PRIDE referral
    - Home Visits
- Child Services
    - Medical Services
        - Medical
        - Dental
        - Vision
        - Mental health
    - Transportation
    - Clothing voucher
    - Child Case Plan and Evaluation
- Family Group Coordinator Services
    - Assignment of Family Group Coordinator
    - Placement Team Meeting

    - Development of Concurrent Plan
    - Team Decision Making Meetings
- Kinship Search Services
    - Assignment of Specialist
    - Ongoing contact with relatives
    - ICPC initiated for paternal grandfather in Missouri
    - PRIDE referral
- Supervisor Consultation and Review

12.

All reasonable efforts have been made to rehabilitate the family.

13.

The conditions that led to the child's removal Choose an item. andChoose an item. that the child can be returned to the custody of the parents.

14.

There is good cause to terminate the parental rights of the Respondent parents.

15.

Termination of parental rights in this case is the least restrictive alternative commensurate with the best interests of the child with due regard for the rights of the parents, the public and the state.

16.

The Court considers the young age of the child and the history of the parents and the mother's relationship with the Respondent father. Those bonds are difficult to separate. It takes time to change. This is a young child who has been subject to horrible torment of a chaotic lifestyle. The Respondent parents have thought of themselves far beyond what they thought was in the best interest of the minor child.

17.

The Respondent mother was making some progress and this Court gave her additional time. She received a Penitentiary sentence that has placed this case on re-set. The Court finds that more time

is not in the child's best interest. The child should not be made to wait any longer for changes that may never come.

17.

The Court has considered the argument for a guardianship; however, the Court finds that option is not the least restrictive alternative commensurate with the best interests of this child. The focus of these cases is what is best for the child. The Court finds that termination of parental rights and permanency for this child is the least restrictive alternative commensurate with the best interest of the child.

19.

The history of this case shows a scope of what the child has been through in her Click or tap here to enter text. years of life and considering where the parents are in their lives. This Court must prevent the opportunity for the parents to cause further harm for this child.

20.

The Department of Social Services is vested with custody and guardianship of child for the purpose of placing the child for adoption and authorizing appropriate personnel of the Department to consent to adoption of the child.

21.

Termination of parental rights is final and unconditional. Based upon the foregoing Findings of Fact, the Court now makes and enters the following Conclusions of Law;

CONCLUSIONS OF LAW

1.

Any Conclusion of Law deemed to be a Finding of Fact or vice versa shall be appropriately incorporated into the Findings of Fact or Conclusions of Law.

2.

This Court has jurisdiction over the parties and subject matter of this action.

3.

The child has been adjudicated to be an abused or neglected child through the actions and/or omissions of the Respondent parents.

4.

The fundamental rights of the Respondent parents to raise their child has been appropriately balanced with the best interests of the minor child and the public, and the Court finds and concludes that it is the least restrictive alternative commensurate with the best interest of the minor child that parental rights of the Respondent parents be terminated and for the child to be placed in the adoptive custody of the Department of Social Services.

Dated this Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text., effective, however, the Click or tap here to enter text. day of Click or tap here to enter text., being the date of the hearing affording judicial basis for this order.

BY THE COURT:

_____
The Honorable Click or tap here to enter text.
Judge of the Circuit Court

ATTEST:

Clerk of Court
BY: _____
Deputy Click or tap here to enter text.
(SEAL)

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| THE PEOPLE OF THE STATE OF SOUTH DAKOTA IN THE INTEREST OF,<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Child(ren), and concerning<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Respondent(s), | File No. Click or tap here to enter text.<br><br>**STATE'S PROPOSED FINAL DISPOSITIONAL ORDER**<br><br>**(NON ICWA)** |

The above-entitled matter having come before the Court for a Final Dispositional Hearing on the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text.; the Honorable Click or tap here to enter text., presiding; the State of South Dakota represented by Choose an item., Click or tap here to enter text.; the South Dakota Department of Social Services appearing through Family Services Specialist, Click or tap here to enter text.; Click or tap here to enter text., the Respondent Choose an item., Choose an item. in person Choose an item. Choose an item., Click or tap here to enter text.; Click or tap here to enter text., the Respondent Choose an item., Choose an item. in person Choose an item. Choose an item., Click or tap here to enter text.; the minor child(ren) Choose an item. in person Choose an item. represented by counsel, Click or tap here to enter text.; CASA Choose an item.; the Court having reviewed the records and files herein and being fully informed in the premises, and having made and entered its Findings of Fact and Conclusions of Law for Final Disposition by clear and convincing evidence does now hereby:

ORDER, that the Indian Child Welfare Act does not apply to these proceedings; and it is further

ORDERED, that the parental rights of the Respondent parents shall not be terminated; and it is further

ORDERED, that the minor child is hereby returned to the full legal and physical custody of the Respondent mother; and it is further

ORDERED, that not terminating the parental rights of the Respondent parents and return of legal and physical custody of the minor child to the Respondent mother is the least restrictive alternative commensurate with the best interests of the minor child; and it is further

ORDERED, that the Department of Social Services has made reasonable efforts to achieve the permanent plan of reunification of the child with his parents and these efforts have been successful with the Respondent mother and unsuccessful with the Respondent father and it would be contrary to the child's welfare to be returned to the legal and physical custody of the Respondent father; and it is further

ORDERED, that Department of Social Services may close its file and involvement with the family may be ended; and it is further

ORDERED, that the Respondent father's contact with the minor child shall be at the discretion of the Respondent mother until a Visitation Order is in place; and it is further

ORDERED, that the Respondent parents have the right to appeal this Courts final Order pursuant to South Dakota Law.

Dated this Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text., effective the Click or tap here to enter text. day of Click or tap here to enter text., that being the date of the hearing affording judicial basis for this order.

BY THE COURT:

_____

The Honorable Click or tap here to enter text.
Judge of the Circuit Court

ATTEST:

Clerk of Court
BY: _____
Deputy Click or tap here to enter text.
(SEAL)

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| THE PEOPLE OF THE STATE OF SOUTH DAKOTA IN THE INTEREST OF,<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Child(ren), and concerning<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Click or tap here to enter text. (DOB:Click or tap to enter a date.<br>Respondent(s), | File No. Click or tap here to enter text.<br><br>**STATE'S PROPOSED FINAL DISPOSITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW**<br><br>**(ASFA)** |

The above-entitled matter having come on for a Final Dispositional Hearing on the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text.; the Honorable Click or tap here to enter text., presiding; the State of South Dakota represented by Choose an item., Click or tap here to enter text.; the South Dakota Department of Social Services appearing through Family Services Specialist, Click or tap here to enter text.; Click or tap here to enter text., the Respondent Choose an item., Choose an item. in person Choose an item. Choose an item., Click or tap here to enter text.; Click or tap here to enter text., the Respondent Choose an item., Choose an item. in person Choose an item. Choose an item., Click or tap here to enter text.; the minor child(ren) Choose an item. in person Choose an item. represented by counsel, Click or tap here to enter text.; CASA Choose an item.; the Court, having reviewed the records and files herein and being fully informed in the premises, does now hereby make and enter its Findings of Fact and Conclusions of Law for Disposition, as follows:

THE COURT MAKES THE FOLLOWING FINDINGS OF FACT

AND CONCLUSIONS OF LAW BY CLEAR AND CONVINCING EVIDENCE

1.

Proper notice has been given and that all parties have been given an opportunity to participate.

2.

This Court has jurisdiction and this is the proper venue.

3.

Click or tap here to enter text. is a minor child who is in the legal and physical custody of the Department of Social Services, and who was a resident of Click or tap here to enter text. County at the commencement of these proceedings.

4.

Click or tap here to enter text. is the biological Choose an item. of the minor child. Choose an item. Choose an item. and has been fully apprised of her rights and obligations in these proceedings, including the possibility of termination of her parental rights. Click or tap here to enter text. appeared at these proceedings and Choose an item. by counsel.

5.

Click or tap here to enter text. is the biological Choose an item. of the minor child. Paternity was established through DNA testing on _____. Choose an item. has received notice of these proceedings and has been fully apprised of his rights and obligations in these proceedings, including the possibility of termination of his parental rights. Click or tap here to enter text. failed to appear at these proceedings.

6.

The minor child is not an Indian Child as defined by the Indian Child Welfare Act and thus the Indian Child Welfare Act does not apply to these proceedings.

7.

The Department of Social Services has provided reasonable efforts to prevent or eliminate the need for the removal of the minor child from the home.

8.

That removal of the minor child from the home was necessary because continued presence of the child in the home would be contrary to the welfare of the child.

9.

The minor child has been in the legal and physical custody of the Department of Social Services since Click or tap here to enter text..

10.

The Court determined that the Adoption and Safe Families Act applies to this case on Click or tap here to enter text. in that the Respondent parents previously had children removed from their custody because the removed children were adjudicated abused and neglected by a court on at least one previous occasion. Furthermore, the Respondent parents have had parental rights to another child or to other children involuntarily terminated by a prior legal proceeding. As such, the Adoptions and Safe Families Act, specifically as codified at SDCL 26-8A-26.1(6) and (8) is applicable to this case as to the Respondent parents. Taking judicial notice of Click or tap here to enter text. County Files Click or tap here to enter text..

11.

The Department of Social Services has made reasonable efforts to return the child to the home and those efforts have been appropriate for the child's parents and have been available pursuant to a

comprehensive plan of preventive services of the Department; or those services could have been available without undue financial burden on the Department; or those services would have a significant likelihood of protecting the child from substantial danger to the child's physical health or from severe emotional damage while enabling the child to be returned to the home. The Court has considered the assistance, services, and efforts of the Department as well as the good faith efforts or lack of good faith efforts made by the child's parents to cooperate with the Department and to effectively utilize the assistance or services for the benefit and welfare of the child.

12.

The child has been adjudicated to be an abused or neglected child as defined by SDCL 26-8A-2 through the actions and/or omissions of the Respondent parents.

13.

The Department of Social Services has made reasonable efforts to achieve the permanent plan of reunification of the child with his parents and these efforts have been unsuccessful and it would be contrary to the welfare of the minor child to be returned to the legal or physical custody of the parents; those efforts include but are not limited to the following: (EXAMPLE)

- Initial Family Assessment
    - Specialist assigned
    - Completed IFA
    - UAs
    - Collateral contacts with family
    - Collateral contacts with law enforcement
    - Attempted contact with the father
- Ongoing Services
    - Specialist assigned
    - Protective Capacity Assessment and Evaluation
    - Attempts to locate father
        - Certified letters with postage paid envelopes
        - Requests for contact
        - Relative contacts
        - Searches through various agencies
        - Social media
        - Phone calls
- Child Services

    - Basic foster care
    - Kinship care
    - Medicaid
    - Birth to Three Evaluation
    - Child Assessment Case Plan and Evaluation
- Family Group Coordinator Services
- Kinship Locator Services

14.

The Department of Social Services provided reasonable efforts toward reunification regarding services for the Respondent Choose an item. in Click or tap here to enter text. regarding the Respondent mother in Click or tap here to enter text.. Reunification was not successful during those cases. Those services are documented in State's Exhibit 1 and were noted during the Hearing regarding the Adoption and Safe Families Act on Click or tap here to enter text..

15.

All reasonable efforts have been made to rehabilitate the family.

16.

The conditions which led to the child's removal still exist and there is little likelihood that those conditions will be remedied so that the child can be returned to the custody of the parents.

17.

Return of custody of the minor child to the Respondent parents would be injurious to the minor child's welfare.

18.

There is good cause to terminate the parental rights of the Respondent parents.

19.

Termination of parental rights in this case is the least restrictive alternative commensurate with the best interests of the child with due regard for the rights of the parents, the public and the state.

20.

The Respondent Choose an item. has failed to appear for any proceeding involving the minor child. Choose an item. has not maintained contact with the Department of Social Services and has not participated in any services that have been offered. The Respondent Choose an item. did not cooperate with efforts to establish paternity and paternity testing had to be completed with a half sibling. The Respondent Choose an item. failed to appear here today.

21.

Click or tap here to enter text. has abandoned the minor child for at least six months and during the period of time this case has been opened he has not manifested to the child a firm intention to resume physical custody of the child and to make suitable arrangements for the care of the child.

22.

The Respondent Choose an item. is incarcerated and has been incarcerated for a majority of the case. Choose an item. is not contesting the involuntary termination of her parental rights and understands that Choose an item. is not in a place where she can provide care for the minor child.

23.

The Department of Social Services is vested with custody and guardianship of child for the purpose of placing the child for adoption and authorizing appropriate personnel of the Department to consent to adoption of the child.

24.

Termination of parental rights is final and unconditional.

Based upon the foregoing Findings of Fact, the Court now makes and enters its Conclusions of Law for Final Disposition as follows:

CONCLUSIONS OF LAW

1.

Any Conclusion of Law deemed to be a Finding of Fact or vice versa shall be appropriately incorporated into the Findings of Fact or Conclusions of Law as applicable.

2.

This Court has jurisdiction over the parties and subject matter of this action.

3.

The child has been adjudicated to be an abused or neglected child through the actions and/or omissions of the Respondent parents.

4.

The fundamental rights of the Respondent parents to raise their child has been appropriately balanced with the best interests of the minor child and the public, and the Court finds and concludes that it is the least restrictive alternative commensurate with the best interests of the minor child that parental rights of the Respondent parents be terminated and for the child to be placed in the adoptive custody of the Department of Social Services.

Dated this Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text., effective the Click or tap here to enter text.day of Click or tap here to enter text., that being the date of the hearing affording judicial basis for this order.

BY THE COURT:

_____
The Honorable Click or tap here to enter text.
Judge of the Circuit Court

ATTEST:

Clerk of Court
BY: _____
Deputy Click or tap here to enter text.
(SEAL)

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| THE PEOPLE OF THE STATE OF SOUTH DAKOTA IN THE INTEREST OF,<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Child(ren), and concerning,<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Respondent(s),<br><br>Click or tap here to enter text.<br>Click or tap here to enter text.<br>Intervenor(s) | File No. Click or tap here to enter text.<br><br>**STATE'S PROPOSED FINAL DISPOSITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW**<br><br>**(Return to Parents-ICWA)** |

The above-entitled matter having come before the Court for a Final Dispositional Hearing on the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text.; the Honorable Click or tap here to enter text., presiding; the State of South Dakota represented by Choose an item., Click or tap here to enter text.; the South Dakota Department of Social Services appearing through Family Services Specialist, Click or tap here to enter text.; Click or tap here to enter text., the Respondent Choose an item., Choose an item. in person Choose an item. Choose an item., Click or tap here to enter text.; Click or tap here to enter text., the Respondent Choose an item., Choose an item. in person Choose an item. Choose an item., Click or tap here to enter text.; the minor child(ren) Choose an item. in person Choose an item. represented by counsel, Click or tap here to enter text.; CASA Choose an item.; the Tribe Choose an item. , Click or tap here to enter text.; the Court, having reviewed the records and files herein and being fully informed in the premises, does now hereby make and enter its Findings of Fact and Conclusions of Law for Final Disposition by clear and convincing evidence; as follows:

FINDINGS OF FACT

1.

Proper notice has been given and all parties have been provided an opportunity to participate.

2.

The Court has jurisdiction and this is the proper venue for these proceedings.

3.

Click or tap here to enter text. is a minor child who is in the legal custody of the Department of Social Services and who was a resident of Click or tap here to enter text. County at the commencement of these proceedings.

4.

Click or tap here to enter text. is the biological Choose an item. of the minor child. Choose an item. Choose an item. and has been fully apprised of her rights and obligations in these proceedings, including the possibility of termination of her parental rights. Click or tap here to enter text. appeared at these proceedings and Choose an item. by counsel.

5.

Click or tap here to enter text. is the biological Choose an item. of the minor child. Choose an item. Choose an item. and has been fully apprised of her rights and obligations in these proceedings, including the possibility of termination of her parental rights. Click or tap here to enter text. appeared at these proceedings and Choose an item. by counsel.

6.

The minor child is an Indian Child as defined by the Indian Child Welfare Act and thus the Indian Child Welfare Act applies to these proceedings.

7.

The minor child is eligible for enrollment in the Tribe as the Respondent Choose an item. is an enrolled member. The minor child Choose an item. for enrollment in the Tribe as the Respondent Choose an item. is an enrolled member. The Tribes were notified of these proceedings in accordance

with the Indian Child Welfare Act. The Tribe Choose an item. by counsel. The Tribes Choose an item. in these proceedings.

8.

The Department of Social Services has provided reasonable efforts to prevent or eliminate the need for the removal of the minor child from the home but removal of the minor child from the home was necessary because continued presence of the child in the home was contrary to the welfare of the child.

9.

The minor child was placed into the legal and physical custody of the Department of Social Services on Click or tap here to enter text. and was returned to the physical custody of the Respondent parents on Click or tap here to enter text..

10.

The Department of Social Services has made reasonable efforts to return the child to the home and those efforts have been appropriate for the child's parents and have been available pursuant to a comprehensive plan of preventive services of the Department; or those services could have been available without undue financial burden on the Department; or those services would have a significant likelihood of protecting the child from substantial danger to the child's physical health or from severe emotional damage while enabling the child to be returned to the home. The Court has considered the assistance, services, and efforts of the Department as well as the good faith efforts or lack of good faith efforts made by the child's parents to cooperate with the Department and to effectively utilize the assistance or services for the benefit and welfare of the child.

11.

The child has been adjudicated to be an abused or neglected child as defined by SDCL 26-8A-2.

12.

The Court takes judicial notice of the reports to the Court and exhibits entered here today, as a further factual basis for making this determination.

13.

The Department of Social Services has made reasonable efforts to achieve the permanent plan of reunification of the child with her parents and these efforts have been successful regarding the Respondent parents and it would not be contrary to the welfare of the minor child to be returned to the legal or physical custody of the Respondent parents; those efforts include but are not limited to the following:

- Ongoing Services
    - Parenting Classes
    - CPR Classes
    - Funding provided for the CPR Classes
    - Protective Capacity Assessment
    - Initial Family Assessment
    - Safety Plan Determination Worksheet and Conditions for Return
- Kinship Care Services
    - Home Visits
    - PRIDE referral
    - Food vouchers
    - Transportation assistance and reimbursement
    - Funding requests
- Visitation
    - Referral to United Families Visitation Center
    - Supervised visitation
- Medical Services
    - Conference calls with Sanford Children's Hospital
    - Reimbursement for travel to medical appointments
    - Funding for hotel in Sioux Falls offered
- Child Services
    - Transportation
    - Referral for services
    - Medical services
- Relative Search
    - Requested names from Oglala and Rosebud Sioux Tribes
    - Assignment of Family Locator
    - Ongoing contact with relatives and the Tribe
- Contacts with the Tribes
    - Rosebud Sioux Tribe

    - Oglala Sioux Tribe
    - Request for enrollment information
    - Ongoing contacts and updates
- Trial Reunification

14.

All efforts have been made to rehabilitate the family.

15.

There is not good cause to terminate the parental rights of the Respondent parents.

16.

The conditions which led to the child's removal no longer exist and the conditions have been remedied so that the child can be returned to the custody of the Respondent parents.

17.

The least restrictive alternative commensurate with the best interest of the minor child is for the child to be returned to the full legal and physical custody of the Respondent parents.

18.

The Court hereby takes judicial notice of the entire court file Click or tap here to enter text., including The Report to the Court entered as States Exhibit 1, as a further factual basis to support these Final Dispositional Findings of Fact and Conclusions of Law.

19.

The Department of Social Services has made active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and these efforts have proved successful.

20.

Continued custody, or return of custody of the child to the Respondent parents would not likely result in serious emotional and/or physical damage to the child.

Based upon the foregoing Findings of Fact, the Court now makes and enters the following Conclusions of Law;

CONCLUSIONS OF LAW

1.

Any Conclusion of Law deemed to be a Finding of Fact or vice versa shall be appropriately incorporated into the Findings of Fact or Conclusions of Law.

2.

This Court has jurisdiction over the parties and subject matter of this action.

3.

The child has been adjudicated to be an abused or neglected child due to the actions and/or omissions of the Respondent father.

4.

The fundamental rights of the Respondent parents to raise their child have been appropriately balanced with the best interests of the minor child and the public, and the state and the Court finds and concludes that the least restrictive alternative in the child's best interest is for the parental rights of the Respondent parents to not be terminated and for the minor child to be returned to the full legal and physical custody of the Respondent parents.

Dated this Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text., effective, however, the Click or tap here to enter text. day of Click or tap here to enter text., being the date of the hearing affording judicial basis for this order.

BY THE COURT:

_____

The Honorable Click or tap here to enter text.
Judge of the Circuit Court

ATTEST:

Clerk of Court
BY: _____
Deputy Click or tap here to enter text.
(SEAL)

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| THE PEOPLE OF THE STATE OF SOUTH DAKOTA IN THE INTEREST OF,<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Child(ren), and concerning<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Respondent(s), | File No. Click or tap here to enter text.<br><br>**STATE'S PROPOSED FINAL DISPOSITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW**<br><br>**(Return to Parent Non-ICWA)** |

The above-entitled matter having come before the Court for a Final Dispositional Hearing on the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text.; the Honorable Click or tap here to enter text. presiding; the State of South Dakota represented by Choose an item., Click or tap here to enter text.; the South Dakota Department of Social Services appearing through Family Services Specialist, Click or tap here to enter text.; Click or tap here to enter text., the Respondent Choose an item., Choose an item. in person Choose an item. Choose an item., Click or tap here to enter text.; Click or tap here to enter text., the Respondent Choose an item., Choose an item. in person Choose an item. Choose an item., Click or tap here to enter text.; the minor child(ren) Choose an item. in person Choose an item. represented by counsel, Click or tap here to enter text.; CASA Choose an item.; the Court having reviewed the records and files herein and being fully informed in the premises, does now hereby make and enter its Findings of Fact and Conclusions of Law for Final Disposition by clear and convincing evidence as follows:

FINDINGS OF FACT

1.

Proper notice has been given and the parties have been provided an opportunity to participate.

2.

The Court has jurisdiction and this is the proper venue.

3.

Click or tap here to enter text. is a minor child who is in the legal custody of the Department of Social Services, and who was a resident of Click or tap here to enter text. County at the commencement of these proceedings.

4.

Click or tap here to enter text. is the biological Choose an item. of the minor child. She Choose an item. and has been fully apprised of her rights and obligations in these proceedings, including the possibility of termination of her parental rights. Click or tap here to enter text. Choose an item. at these proceedings and Choose an item. by counsel.

5.

Click or tap here to enter text. is the biological Choose an item. of the minor child. Choose an item. Choose an item. and has been fully apprised of her rights and obligations in these proceedings, including the possibility of termination of her parental rights. Click or tap here to enter text. appeared at these proceedings and Choose an item. by counsel.

6

The minor child is not an Indian child as defined by the Indian Child Welfare Act and the Indian Child Welfare Act does not apply to this case.

7.

The Department of Social Services has provided reasonable efforts to prevent or eliminate the need for the removal of the minor child from the home but removal of the minor child from the home was necessary because continued presence of the child in the home was contrary to the welfare of the child.

8.

The minor child was placed in the legal and physical custody of the Department of Social Services on Click or tap here to enter text. and was placed in the care of Click or tap here to enter text. and was placed in trial reunification with the Respondent mother on an In-Home Safety Plan on Click or tap here to enter text.. The child has been in the Respondent mother's physical custody since Click or tap to enter a date..

9.

The child has been adjudicated to be an abused or neglected child as defined by SDCL 26-8A-2.

10.

The Department of Social Services has made reasonable efforts to return the child to the home and those efforts have been appropriate for the child's parents and have been available pursuant to a comprehensive plan of preventive services of the Department; or those services could have been available without undue financial burden on the Department; or those services would have a significant likelihood of protecting the child from substantial danger to the child's physical health or from severe emotional damage while enabling the child to be returned to the home. The Court has considered the assistance, services, and efforts of the Department as well as the good faith efforts or lack of good faith efforts made by the child's parents to cooperate with the Department and to effectively utilize the assistance or services for the benefit and welfare of the child.

11.

The Department of Social Services has made reasonable efforts to achieve the permanent plan of reunification of the child with the Respondent parents and these efforts have been unsuccessful with the Respondent father and it would be contrary to the welfare of the minor child to be returned to the

legal and physical custody of the Respondent father; those efforts include but are not limited to the following: (EXAMPLE)

- Initial Family Assessment Services
- Ongoing Family Services
    - Supervisor Consultation and Review
    - Transportation and funding for transportation offered
    - In Home Safety Planning
    - UAs
    - Protective Capacity Assessments and Evaluation
    - Collateral Contacts
        - South Dakota Unified Judicial System
        - Probation
        - Pennington County Inmate Search
        - Family
- Kinship Services
    - Safety checks
- Ongoing Relative Search
- Contact with the mother
    - In person
    - Correspondence
- Contact with the father
    - Attempted to locate
    - Social media
    - Phone
    - In person
- Child Services
    - Medicaid for all medical/dental and optical needs
    - Mental health services
    - Home visits
    - Child Case Plan
- Visitation
    - Weekly visitation offered for father

12.

The conditions which led to the child's removal still exist and there is little likelihood that those conditions will be remedied so that the child can be returned to the custody of the Respondent father.

13.

The conditions which led to the child's removal have been remedied regarding the Respondent mother.

14.

There is not good cause to terminate the parental rights of the Respondent parents.

15.

The State has met its burden of proof by clear and convincing evidence that there exists compelling reasons to not terminate parental rights of the Respondent parents and that this is commensurate with the best interest of the minor child.

16.

The Court must at all times consider what is in the best interests of the minor child.

17.

There is good cause to return full custody of the minor child to the Respondent mother.

18.

The least restrictive alternative available commensurate with the best interest of the minor child is for the minor child to be returned to the custody of the Respondent mother, it no longer being contrary to the welfare of the minor child to return custody to the Respondent mother.

19.

The fundamental rights of the Respondent parents have been appropriately balanced with the best interests of the minor child and the public, and the Court finds and concludes that it is in the best interest of the minor child to not terminate parental rights of the Respondent parents, but rather to return the minor child to the legal and physical custody of the Respondent mother

20.

Return of custody to the Respondent father would be contrary to the welfare of the minor child and would likely be injurious to the child's welfare.

21.

The Court takes judicial notice and incorporates herein by reference the entire abuse and neglect file Click or tap here to enter text. as a further factual basis in support of these Final Dispositional Findings of Fact, Conclusions of Law, and Order.

Based upon the foregoing Findings of Fact, the Court now makes and enters its Conclusions of Law for Final Disposition, as follows:

CONCLUSIONS OF LAW

1.

Any Conclusion of Law deemed to be a Finding of Fact or vice versa shall be appropriately incorporated into the Findings of Fact or Conclusions of Law as applicable.

2.

This Court has jurisdiction over the parties and subject matter of this action.

3.

The minor child involved in these proceedings has been adjudicated to be an abused or neglected child within the meaning of SDCL § 26-8A-2.

4.

The fundamental rights of the Respondent parents to raise their child have been appropriately balanced with the best interest of the minor child and the public, and the Court finds and concludes that it is in the best interest of the minor child to be returned to the legal and physical custody of the Respondent mother.

5.

That it is the least restrictive alternative commensurate with the best interest of the minor children that the parental rights of the Respondent parents not be terminated.

Dated this Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text., effective the Click or tap here to enter text. day of Click or tap here to enter text., that being the date of the hearing affording judicial basis for this order.

BY THE COURT:

_____

The Honorable Click or tap here to enter text.
Judge of the Circuit Court

ATTEST:

Clerk of Court
BY: _____
Deputy Click or tap here to enter text.
(SEAL)

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| THE PEOPLE OF THE STATE OF SOUTH DAKOTA IN THE INTEREST OF,<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Child(ren), and concerning<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Respondent(s),<br><br>Click or tap here to enter text.<br>Intervenor. | File No. Click or tap here to enter text.<br><br>**STATE'S PROPOSED FINAL DISPOSITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW**<br><br>**(Compelling Reasons not to TPR ICWA)** |

The above-entitled matter having come on for a Final Dispositional Hearing on the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text.; the Honorable Click or tap here to enter text., presiding; the State of South Dakota represented by Choose an item., Click or tap here to enter text.; the South Dakota Department of Social Services appearing through Family Services Specialist, Click or tap here to enter text.; Click or tap here to enter text., the Respondent Choose an item., Choose an item. in person Choose an item. Choose an item., Click or tap here to enter text.; Click or tap here to enter text., the Respondent Choose an item., Choose an item. in person Choose an item. Choose an item., Click or tap here to enter text.; the minor child(ren) Choose an item. in person Choose an item. represented by counsel, Click or tap here to enter text.; CASA Choose an item.; the Tribe Choose an item. ICWA Representative and Choose an item. , Click or tap here to enter text.; the Court, having reviewed the records and files herein and being fully informed in the premises, does now hereby make and enter its Findings of Fact and Conclusions of Law for Final Disposition, as follows:

THE COURT MAKES THE FOLLOWING FINDINGS OF FACT BY

CLEAR AND CONVINCING EVIDENCE:

1.

Proper notice has been given and that the parties have been provided an opportunity to participate.

2.

The Court has jurisdiction over these proceedings and this is the proper venue.

3.

Click or tap here to enter text. is a minor child who is in the legal and physical custody of the Department of Social Services and who were residents of Click or tap here to enter text. County at the commencement of these proceedings.

4.

Click or tap here to enter text. is the biological Choose an item. of the minor child. Choose an item. Choose an item. and has been fully apprised of her rights and obligations in these proceedings, including the possibility of termination of her parental rights. Click or tap here to enter text. appeared at these proceedings and Choose an item. by counsel.

5.

Click or tap here to enter text. is the biological Choose an item. of the minor child. Choose an item. Choose an item. and has been fully apprised of her rights and obligations in these proceedings, including the possibility of termination of her parental rights. Click or tap here to enter text. appeared at these proceedings and Choose an item. by counsel.

6.

The Department of Social Services has provided reasonable efforts to prevent or eliminate the need for the removal of the minor child from the home. Removal of the minor child from the home was

necessary because continued presence of the child in the home was contrary to the welfare of the child and the removal was necessary to prevent imminent physical damage or harm to the child.

7.

The minor child has been in the legal and physical custody of the Department of Social Services since Click or tap to enter a date..

8.

The Department of Social Services has made reasonable efforts to return the child to the home and those efforts have been appropriate for the child's parents and have been available pursuant to a comprehensive plan of preventive services of the Department; or those services could have been available without undue financial burden on the Department; or those services would have a significant likelihood of protecting the child from substantial danger to the child's physical health or from severe emotional damage while enabling the child to be returned to the home. The Court has considered the assistance, services, and efforts of the Department as well as the good faith efforts or lack of good faith efforts made by the child's parents to cooperate with the Department and to effectively utilize the assistance or services for the benefit and welfare of the child.

9.

The child has been adjudicated to be an abused or neglected child as defined by SDCL 26-8A-2 through the actions and/or omissions of the Respondent parents.

10.

The Department of Social Services has made reasonable efforts to achieve the permanent plan of reunification of the child with his parents and these efforts have been unsuccessful and it would be contrary to the welfare of the minor child to be returned to the legal or physical custody of the parents; those efforts include but are not limited to the following: (EXAMPLE)

- Initial Family Assessment
- Safety Plan Determination and Conditions for Return

- Protective Capacity Assessment and Evaluation
- Child Case Plan and Evaluations
- Foster Care
    - 24 hour and weekly safety checks
    - Monthly home visits
- Group Care
    - Short term assessment
- Kinship Search
    - Family Locator assigned
    - Correspondence and collateral contacts with family
- Kinship Care
    - PRIDE referral
    - Home Study referral
    - Clothing voucher
- Secondary Worker Assigned from Watertown
- Medical/Vision/Dental services
- Visitation
    - In person visitation at the Department
    - Visitation provided at the Pennington County Jail
    - Letter correspondence with parents
- Transportation
- Family Connections
    - Phone contact with relatives
    - Certified letters
    - Postage paid envelopes for father
- Contact with the Oglala Sioux Tribe
    - Request for enrollment information
    - Request for relative information
    - Case updates
- Parent Locator Search
    - Collateral contact with family
    - Requested assistance from the Tribe
    - Social Media search
- Team Decision Making Meeting
    - Placement Team Meetings
    - Concurrent Planning Meeting

11.

All reasonable efforts have been made to return the adjudicated child to the home of the child's parentsChoose an item.efforts have Choose an item. successful and the child Choose an item.

12.

The conditions which led to the child's removal Choose an item.Choose an item.

13.

There Choose an item. to terminate the parental rights of the Respondent parents.

14.

The least restrictive alternative available commensurate with the best interest of the minor child is for the child to Choose an item.

15.

The Court hereby takes judicial notice of the entire court file Click or tap here to enter text., including The Report to the Court entered as States Exhibit Click or tap here to enter text., as a further factual basis to support these Final Dispositional Findings of Fact and Conclusions of Law.

16.

This Court must at all times consider what is in the best interest of the child.

17.

The fundamental rights of the Respondent parents have been appropriately balanced with the best interests of the minor child and the public, and the Court finds and concludes that it is in the best interest of the minor child to not terminate parental rights of the Respondent parents, but rather to place the minor child in the permanent custody of the Department of Social Services pending a guardianship.

18.

The parents and the Tribe Choose an item. with the placement of the minor child in the permanent custody of the Department of Social Services pending a guardianship.

19.

The Department of Social Services Choose an item. with the minor child being placed in a guardianship as soon as the child has been in his current placement for at least 6 months and the guardianship can be created with the child's relative.

20.

The minor child is an Indian Child as defined by the Indian Child Welfare Act; therefore, the Indian Child Welfare Act applies to these proceedings. The minor child is an enrolled member of the Tribe.

21.

The Tribe was notified of these proceedings in accordance with the Indian Child Welfare Act. The Tribe Choose an item.in these proceedings. The Tribe Choose an item. ICWA Representative and Choose an item. , Click or tap here to enter text..

THE COURT MAKES THE FOLLOWING FINDINGS OF FACT BY EVIDENCE BEYOND A REASONABLE DOUBT:

1.

The Department of Social Services has made active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and those efforts have been Choose an item.

2.

Continued custody of the minor child by the Respondent parents would likely result in serious emotional or physical damage.

Based upon the foregoing Findings of Fact, the Court now makes and enters the following Conclusions of Law;

CONCLUSIONS OF LAW

1.

Any Conclusion of Law deemed to be a Finding of Fact or vice versa shall be appropriately incorporated into the Findings of Fact or Conclusions of Law.

2.

This Court has jurisdiction over the parties and subject matter of this action.

3.

That compelling reason exists to not terminate parental rights of the Respondent parents and good cause has been shown to place the minor child in the permanent custody of the Department of Social Services with the intent of placing the child in a permanent guardianship.

4.

In making this determination the Court has balanced the rights of the parents, the child and the State and finds that this decision is the least restrictive alternative and in the minor child's best interest.

Dated this Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text., effective however the Click or tap here to enter text. day of Click or tap here to enter text. that being date of the hearing affording judicial basis for this order.

BY THE COURT:

ATTEST:

Clerk of Court
BY: _____
Deputy Click or tap here to enter text.
(SEAL)

_____
The Honorable Click or tap here to enter text.
Judge of the Circuit Court

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| THE PEOPLE OF THE STATE OF SOUTH DAKOTA IN THE INTEREST OF,<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Child(ren), and concerning<br><br>**DEPT. of SOCIAL SERVICES**<br>Custodian,<br><br>Click or tap here to enter text.<br>Intervenor | File No. Click or tap here to enter text.<br><br>**STATE'S PROPOSED FINAL DISPOSITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW**<br><br>**(GUARDIANSHIP - ICWA)** |

The above-entitled matter having come on for a Final Dispositional Hearing on the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text.; the Honorable Click or tap here to enter text. presiding; the State of South Dakota represented by Choose an item., Click or tap here to enter text.; the South Dakota Department of Social Services appearing through Family Services Specialist, Click or tap here to enter text.; the minor child(ren) Choose an item. in person Choose an item. represented by counsel, Click or tap here to enter text.; CASA Choose an item.; the Tribe Choose an item. Choose an item. Choose an item., Click or tap here to enter text.; the Court, having reviewed the records and files herein and being fully informed in the premises, does now hereby make and enter its Findings of Fact and Conclusions of Law for Final Disposition, as follows:

1.

Proper notice has been given and that the parties have been provided an opportunity to participate.

2.

The Court has jurisdiction over these proceedings and this is the proper venue.

3.

Click or tap here to enter text. is a minor child who is in the permanent custody of the Department of Social Services and who was a resident of Click or tap here to enter text. County at the commencement of these proceedings.

4.

Click or tap here to enter text. is the biological Choose an item. of the minor child.

5.

Click or tap here to enter text. is the biological Choose an item. of the minor child.

6.

The Department of Social Services has provided reasonable efforts to prevent or eliminate the need for the removal of the minor child from the home. Removal of the minor child from the home was necessary because continued presence of the child in the home was contrary to the welfare of the child and the removal was necessary to prevent imminent physical damage or harm to the child.

7.

The minor child has been in the legal and physical custody of the Department of Social Services since Click or tap here to enter text.. The minor child has been in the permanent custody of the Department of Social Services since Click or tap here to enter text..

8.

The Department of Social Services has made reasonable efforts to return the child to the home and those efforts have been appropriate for the child's parents and have been available pursuant to a comprehensive plan of preventive services of the Department; or those services could have been available without undue financial burden on the Department; or those services would have a significant likelihood of protecting the child from substantial danger to the child's physical health or from severe emotional damage while enabling the child to be returned to the home. The Court has considered the

assistance, services, and efforts of the Department as well as the good faith efforts or lack of good faith efforts made by the child's parents to cooperate with the Department and to effectively utilize the assistance or services for the benefit and welfare of the child.

9.

The child has been adjudicated to be an abused or neglected child as defined by SDCL 26-8A-2.

10.

The Department of Social Services was relieved of providing any further efforts for reunification on Click or tap here to enter text. and the child's permanent plan became guardianship.

11.

All efforts have been made to return the adjudicated child to the home of the child's parents but those efforts have not been successful and the child has been referred for a legal guardianship.

12.

The conditions which led to the child's removal still exist and there is little likelihood that those conditions will be remedied so that the child can be returned to the custody of the Respondent parents.

13.

There is not good cause to terminate the parental rights of the Respondent parents.

14.

The least restrictive alternative available commensurate with the best interest of the minor child is for guardianship of the minor child to be vested with his relative, Click or tap here to enter text., until the minor child reaches the age of majority; it being contrary to the welfare of the minor child to return legal or physical custody to the Respondent parents.

15.

The Court hereby takes judicial notice of the entire court file Click or tap here to enter text., including The Report to the Court entered as States Exhibit 1, as a further factual basis to support these Final Dispositional Findings of Fact and Conclusions of Law.

16.

This Court must at all times consider what is in the best interest of the child.

17.

The least restrictive alternative available, commensurate with the best interest of the minor child is to place the minor child in a legal guardianship with his relative, Click or tap here to enter text..

18.

Click or tap here to enter text. is committed to the minor child's health and wellbeing.

19.

The Tribe agrees with the placement of the minor child in a legal guardianship with Click or tap here to enter text..

20.

The minor child, who is Click or tap here to enter text. years old, agrees and consents to the guardianship with Click or tap here to enter text..

21.

The Department of Social Services as the minor child's custodian, consents and agrees with the guardianship.

22.

The fundamental rights of the Respondent parents have been appropriately balanced with the best interests of the minor child and the public, and the Court finds and concludes that it is in the best interest of the minor child to not terminate parental rights of the Respondent parents, but rather to place the minor child in a guardianship with his relative, Click or tap here to enter text..

23.

The parents agree with the placement of the minor child in a guardianship.

24.

The minor child is an Indian Child as defined by the Indian Child Welfare Act therefore the Indian Child Welfare Act applies to these proceedings.

25.

The minor child is an enrolled member of the Tribe.

26.

The Tribe was notified of today's proceedings in accordance with the Indian Child Welfare Act. The Tribe Intervened in these proceedings. The Tribe was represented by counsel, Click or tap here to enter text..

THE COURT MAKES THE FOLLOWING FINDINGS OF FACT BY

EVIDENCE BEYOND A REASONABLE DOUBT:

1.

The Department of Social Services has made active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and those efforts have been unsuccessful.

2.

Continued custody of the minor child by the Respondent parents would likely result in serious emotional or physical damage.

Based upon the foregoing Findings of Fact, the Court now makes and enters the following Conclusions of Law;

CONCLUSIONS OF LAW

1.

Any Conclusion of Law deemed to be a Finding of Fact or vice versa shall be appropriately incorporated into the Findings of Fact or Conclusions of Law.

2.

This Court has jurisdiction over the parties and subject matter of this action.

3.

That compelling reason exists to not terminate parental rights of the Respondent parents and good cause has been shown to place the minor child in a permanent guardianship with Click or tap here to enter text..

4.

In making this determination the Court has balanced the rights of the parents, the child and the State and finds that this decision is the least restrictive alternative and in the minor child's best interest.

Dated this Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text., effective however the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text. that being date of the hearing affording judicial basis for this order.

BY THE COURT:

_____

The Honorable Click or tap here to enter text.
Judge of the Circuit Court

ATTEST:

Clerk of Court
BY: _____
Deputy Click or tap here to enter text.
(SEAL)

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| THE PEOPLE OF THE STATE OF SOUTH DAKOTA IN THE INTEREST OF,<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Child(ren), and concerning<br><br>**DEPT. of SOCIAL SERVICES**<br>Custodian,<br><br>Click or tap here to enter text.<br>Intervenor | File No. Click or tap here to enter text.<br><br>**STATE'S PROPOSED FINAL DISPOSITIONAL ORDER**<br><br>**(GUARDIANSHIP - ICWA)** |

The above-entitled matter having come on for a Final Dispositional Hearing on the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text.; the Honorable Click or tap here to enter text., presiding; the State of South Dakota represented by Choose an item., Click or tap here to enter text.; the South Dakota Department of Social Services appearing through Family Services Specialist, Click or tap here to enter text.; the minor child(ren) Choose an item. in person Choose an item. represented by counsel, Click or tap here to enter text.; CASA Choose an item.; the Tribe Choose an item. Choose an item. Choose an item.; the Court, having reviewed the records and files herein and being fully informed in the premises, and having made and entered its Findings of Fact and Conclusions of Law for Final Disposition, does now hereby:

ORDER, that the parental rights of the Respondent parents shall not be terminated; and it is further

ORDERED, that there are compelling reasons Choose an item. terminate the parental rights of the Respondent parents in this case; and it is further

ORDERED that the minor child is hereby placed in the permanent guardianship with Click or tap here to enter text.; as it is not and will not be safe to return the child to the Respondent parents; and it is further

ORDERED, Choose an item. terminating the parental rights of the Respondent parents and placement of the minor child in the permanent guardianship with Click or tap here to enter text., is the least restrictive alternative commensurate with the best interests of the minor child; and it is further

ORDERED, that Click or tap here to enter text. is responsible for the personal affairs of the minor child; and it is further

ORDERED, that Click or tap here to enter text. is responsible for making decisions regarding the minor child's support, care, health, education; and it is further

ORDERED, that Click or tap here to enter text. shall at all times act in the minor child's best interest, shall exercise reasonable care, diligence, and prudence; and it is further

ORDERED, that the Department of Social Services has made reasonable and active efforts to reunite the minor child with the Respondent parents; and it is further

ORDERED, that the Department of Social Services has made active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and those efforts have proven unsuccessful; and it is further

ORDERED, that serious emotional or physical damage would likely result if the minor child was placed in the custody of the Respondent parents; and it is further

ORDERED, that the Respondent mother and the Respondent father Choose an item. relieved from their duty to provide support for the minor child; and it is further

ORDERED, that Click or tap here to enter text. is to have full guardianship and rights thereto with the responsibilities of said guardianship under South Dakota law; and it is further

ORDERED, that this guardianship shall remain in effect until the minor child reaches the age of majority or until further Order of this Court; and it is further

ORDERED, that if any party wishes to relinquish or alter the guardianship a hearing shall be set before this Court in Guardianship File Click or tap here to enter text.; and it is further

ORDERED, that the Department of Social Services shall be notified of any proceeding where a change of guardianship status is requested; and it is further

ORDERED, that the Department of Social Services is hereby relieved of its duty to provide active and reasonable efforts and that the case may be closed and their involvement with this family hereby ended; and it is further

ORDERED, that a copy of these Final Dispositional Findings of Fact and Conclusions of Law and Order shall be filed in Click or tap here to enter text.; and it is further

ORDERED, that the Respondent parents have the right to appeal this Court's Final decision pursuant to South Dakota law.

Dated this Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text. but is effective the Click or tap here to enter text. day of Click or tap here to enter text., that being the date of the hearing affording judicial basis for this order.

BY THE COURT:

_____

The Honorable Click or tap here to enter text.
Judge of the Circuit Court

ATTEST:

Clerk of Court
BY: _____
Deputy Click or tap here to enter text.
(SEAL)

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| THE PEOPLE OF THE STATE OF SOUTH DAKOTA IN THE INTEREST OF,<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Child(ren), and concerning<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Respondent(s), | File No. Click or tap here to enter text.<br><br>**STATE'S PROPOSED FINAL DISPOSITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW**<br><br>**(APPLA – Non ICWA)** |

The above-entitled matter having come on for a Final Dispositional Hearing on the Click or tap here to enter text. day of Click or tap here to enter text.; the Honorable Click or tap here to enter text., presiding; the State of South Dakota represented by Choose an item., Click or tap here to enter text.; the South Dakota Department of Social Services appearing through Family Services Specialist, Click or tap here to enter text.; Click or tap here to enter text., the Respondent Choose an item., Choose an item. in person Choose an item. Choose an item., Click or tap here to enter text.; Click or tap here to enter text., the Respondent Choose an item., Choose an item. in person Choose an item. Choose an item., Click or tap here to enter text.; the minor child(ren) Choose an item. in person Choose an item. represented by counsel, Click or tap here to enter text.; CASA Choose an item.; the Court, having reviewed the records and files herein and being fully informed in the premises, does now hereby make and enter its Final Dispositional Findings of Fact and Conclusions of Law by clear and convincing evidence as follows:

FINDINGS OF FACT

1.

Proper notice has been given and the parties have been provided an opportunity to participate.

2.

The Court has jurisdiction over these proceedings and this is the proper venue.

3.

CHILD (DOB:Click or tap to enter a date.) is a minor child who is in the legal and physical custody of the Department of Social Services and who was a resident of Pennington County at the commencement of these proceedings.

4.

Choose an item. is the biological mother of the minor child. Choose an item. received notice of these proceedings and has been apprised of her rights and obligations in these proceedings, including the possibility of termination of her parental rights. Choose an item. Choose an item. proceedings Choose an item. Choose an item..

5.

Choose an item. is the biological mother of the minor child. Choose an item. received notice of these proceedings and has been apprised of her rights and obligations in these proceedings, including the possibility of termination of her parental rights. Choose an item. Choose an item. proceedings Choose an item. Choose an item..

6.

The Department of Social Services has provided reasonable efforts to prevent or eliminate the need for the removal of the minor child from the home but removal of the minor child from the home was necessary because continued presence of the child in the home would be contrary to the welfare of the child.

7.

The minor child has been in the legal and physical custody of the Department of Social Services since Click or tap to enter a date..

8.

The Department of Social Services has made reasonable efforts to return the child to the home and those efforts have been appropriate for the child's parents and have been available pursuant to a comprehensive plan of preventive services of the Department; or those services could have been available without undue financial burden on the Department; or those services would have a significant likelihood of protecting the child from substantial danger to the child's physical health or from severe emotional damage while enabling the child to be returned to the home. The Court has considered the assistance, services, and efforts of the Department as well as the good faith efforts or lack of good faith efforts made by the child's parents to cooperate with the Department and to effectively utilize the assistance or services for the benefit and welfare of the child.

9.

The child has been adjudicated to be an abused or neglected child as defined by SDCL 26-8A-2 through the actions and/or omissions of the Respondent parents.

10.

The Department of Social Services has made reasonable efforts to achieve the permanent plan of reunification of the child with the Respondent parents and these efforts have been unsuccessful and it would be contrary to the welfare of the minor child to be returned to the legal and physical custody of the Respondent parents; those efforts include but are not limited to the following:

- Initial Family Assessment Services
    - Assignment of Specialist Plank
    - Initial Family Assessment completed

    - Safety Plan Determination Worksheet and Conditions for Return
    - Transportation
    - Visitation
- Child Services
    - Basic Foster Care Services
    - Therapeutic Foster Care Services
    - Child Case Plan and Activities and Evaluations
    - Medicaid for medical, dental and vision services
    - Contact with placement resource
    - Transportation
    - Regular Safety Checks
- Ongoing Services
    - Assignment of Specialist Franchetti
    - Protective Capacity Assessment and Activities and Evaluations
    - Safety Plan Determination and Conditions for Return
    - Funding request for gas
    - Transportation
    - Referrals
        - Behavior Management Systems
        - Therapy
        - Parenting Classes
- Supervised Visitation Weekly
    - Letter
    - Pictures
    - In person
    - At church
        - Collateral Contacts
            - CASA
            - Behavior Management
            - Youth and Family Services
            - Victims Assistance
            - State's Attorney
            - Big Brothers/Big Sisters Program
- Kinship Locator Services
    - Assignment of Kinship Locator Specialist Mundt
    - Ongoing relative search for placement and connections
- Family Group Coordinator Services
    - Assignment of Family Group Coordinator Cummings
    - Placement Team Meetings
    - Concurrent Planning Meeting

11.

All reasonable efforts have been made to return the adjudicated child to the home of the child's parents but those efforts have not been successful and the child has been referred for Another Planned Permanent Living Arrangement (APPLA).

12.

The conditions which led to the child's removal still exist and there is little likelihood that those conditions will be remedied in the near future so that the child can be returned to the custody of the Respondent parents.

13.

There is not good cause to terminate the parental rights of the Respondent parents.

14.

The least restrictive alternative available commensurate with the best interest of the minor child is for the child to remain in the legal and physical custody of the Department of Social Services in Another Planned Permanent Living Arrangement (APPLA).

15.

The Court hereby takes judicial notice of the entire court file A&N FILE #Click or tap here to enter text., including The Report to the Court entered as States Exhibit Click or tap here to enter text., as a further factual basis to support these Final Dispositional Findings of Fact and Conclusions of Law.

16.

This Court must at all times consider what is in the best interest of the child.

17.

The fundamental rights of the Respondent mother have been appropriately balanced with the best interests of the minor child and the public, and the Court finds and concludes that it is in the best interest of the minor child to not terminate parental rights of the Respondent Choose an item., but rather to place the minor child in the permanent custody of the Department of Social Services in Another Planned Permanent Living Arrangement (APPLA).

18.

The minor child is not an Indian Child as defined by the Indian Child Welfare Act and therefore the Indian Child Welfare Act does not apply.

19.

Continued custody of the child by the Respondent parents would be injurious to the minor child's welfare.

20.

The least restrictive alternative available commensurate with the best interest of the minor child is to place the minor child in the permanent custody of the Department of Social Services in Another Planned Permanent Living Arrangement (APPLA), it being contrary to the welfare of the minor child to return legal or physical custody to the Respondent parents.

Based upon the foregoing Findings of Fact, the Court now makes and enters the following Conclusions of Law;

CONCLUSIONS OF LAW

1.

Any Conclusion of Law deemed to be a Finding of Fact or vice versa shall be appropriately incorporated into the Findings of Fact or Conclusions of Law.

2.

This Court has jurisdiction over the parties and subject matter of this action.

3.

The minor child has been adjudicated to be an abused or neglected child within the meaning of SDCL 26-8A-2 due to the actions and/or omissions of the Respondent parents.

4.

That compelling reason exists to not terminate parental rights of the Respondent parents and good cause has been shown to place the minor child in the permanent custody of the Department of Social Services in Another Planned Permanent Living Arrangement (APPLA).

5.

In making this determination the Court has balanced the rights of the parent, the child and the State and finds that this decision is the least restrictive alternative and in the minor child's best interest.

Dated this Click or tap here to enter text. day of Click or tap here to enter text. effective however the Click or tap here to enter text. day of Click or tap here to enter text., being the date of the hearing affording judicial basis for this order.

BY THE COURT:

_____

The Honorable Click or tap here to enter text.
Judge of the Circuit Court

ATTEST:

Clerk of Court
BY: _____
Deputy Click or tap here to enter text.
(SEAL)

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| THE PEOPLE OF THE STATE OF SOUTH DAKOTA IN THE INTEREST OF,<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Child(ren), and concerning<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Respondent(s), | File No. Click or tap here to enter text.<br><br>**STATE'S PROPOSED FINAL DISPOSITIONAL ORDER**<br><br>**(APPLA – Non ICWA)** |

The above-entitled matter having come on for a Final Dispositional Hearing on the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text.; the Honorable Click or tap here to enter text., presiding; the State of South Dakota represented by Choose an item., Click or tap here to enter text.; the South Dakota Department of Social Services appearing through Family Services Specialist, Click or tap here to enter text.; Click or tap here to enter text., the Respondent Choose an item., Choose an item. in person Choose an item. Choose an item., Click or tap here to enter text.; Click or tap here to enter text., the Respondent Choose an item., Choose an item. in person Choose an item. Choose an item., Click or tap here to enter text.; the minor child(ren) Choose an item. in person Choose an item. represented by counsel, Click or tap here to enter text.; CASA Choose an item.; the Court, having reviewed the records and files herein and being fully informed in the premises, and having made and entered its Final Dispositional Findings of Fact and Conclusions of Law by clear and convincing evidence does now hereby:

ORDER, that the Indian Child Welfare Act does not apply; and it is further

ORDERED, that the parental rights of the Respondent parents shall not be terminated; and it is further

ORDERED, that there are compelling reasons to not terminate the parental rights of the Respondent parents; and it is further

ORDERED that the minor child is hereby placed in the permanent custody of the Department of Social Services in Another Planned Permanent Living Arrangement (APPLA); as it is not and will not be safe to return the child to the Respondent parents; and it is further

ORDERED, that not terminating the parental rights of the Respondent parents and placement of the minor child in in the permanent custody of the Department of Social Services in Another Planned Permanent Living Arrangement (APPLA), is the least restrictive alternative commensurate with the best interests of the minor child; and it is further

ORDERED, that the Department of Social Services has made reasonable efforts to reunite the minor child with the Respondent parents and these efforts have been unsuccessful, those efforts include but are not limited to the following: (EXAMPLE)

- Initial Family Assessment Services
    - Assignment of Specialist Plank
    - Initial Family Assessment completed
    - Safety Plan Determination Worksheet and Conditions for Return
    - Transportation
    - Visitation
- Child Services
    - Basic Foster Care Services
    - Therapeutic Foster Care Services
    - Child Case Plan and Activities and Evaluations
    - Medicaid for medical, dental and vision services
    - Contact with placement resource
    - Transportation
    - Regular Safety Checks
- Ongoing Services
    - Assignment of Specialist Click or tap here to enter text.
    - Protective Capacity Assessment and Activities and Evaluations
    - Safety Plan Determination and Conditions for Return
    - Funding request for gas
    - Transportation
    - Referrals
        - Behavior Management Systems
        - Therapy
        - Parenting Classes

- Supervised Visitation Weekly
    - Letter
    - Pictures
    - In person
    - At church
        - Collateral Contacts
            - CASA
            - Behavior Management
            - Youth and Family Services
            - Victims Assistance
            - State's Attorney
            - Big Brothers/Big Sisters Program
- Kinship Locator Services
    - Assignment of Kinship Locator Specialist
    - Ongoing relative search for placement and connections
- Family Group Coordinator Services
    - Assignment of Family Group Coordinator Cummings
    - Placement Team Meetings
    - Concurrent Planning Meeting

and it is further

ORDERED, that return of custody of the minor child to the Respondent parents would be injurious to the minor child's welfare; and it is further

ORDERED, that placement of the minor child in permanent custody of the Department of Social Services in Another Planned Permanent Living Arrangement (APPLA) is the least restrictive alternative and in the minor child's best interest; and it is further

ORDERED, that the Respondent parents are not relieved from their duty to provide support for the minor child; and it is further

ORDERED, that the Department of Social Services is hereby relieved of its duty to provide active and reasonable efforts towards reunification regarding the Respondent parents and shall work towards the permanent plan Another Planned Permanent Living Arrangement (APPLA); and it is further

ORDERED, that contact between the minor child and the Respondent parents and extended family shall be at the discretion of the Department of Social Services based on the best interest of the minor child; and it is further

ORDERED, that the Department of Social Services has ensured the stability and safety of the placement; and it is further

ORDERED, that the Respondent parents have the right to appeal this Courts Final Order pursuant to South Dakota Law.

Dated this Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text. effective, however, the Click or tap here to enter text. day of Click or tap here to enter text., that being the date of the hearing affording judicial basis for this order.

BY THE COURT:

_____

The Honorable Click or tap here to enter text.
Judge of the Circuit Court

ATTEST:

Clerk of Court
BY: _____
Deputy Click or tap here to enter text.
(SEAL)

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text.: | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| IN THE MATTER OF THE GUARDIANSHIP OF<br><br>Click or tap here to enter text.<br>Minor Child. | File No. Click or tap here to enter text.<br><br>**ACCEPTANCE OF OFFICE** |

We accept appointment as Guardians of the minor child, Click or tap here to enter text., accept the duties of the office, and submit to the personal jurisdiction of this Court in any proceeding relating to the minor child instituted by any interested person.

Dated this Click or tap here to enter text. day of Click or tap here to enter text., 202 .

PETITIONER:

_____

(Name)
(Street Address)
Click or tap here to enter text., SD 57
(Phone Number)

State of South Dakota:
ss:
County of Click or tap here to enter text.:

On this the Click or tap here to enter text. day of , Click or tap here to enter text., 202_, before me, the undersigned officer, personally appeared, Click or tap here to enter text., known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Notary Public, State of South Dakota
(SEAL)

My Commission Expires:Click or tap to enter a date.

Dated this Click or tap here to enter text. day of Click or tap here to enter text., 202Click or tap here to enter text..

PETITIONER:

Name
(Street Address)
Click or tap here to enter text., SD 57
(Phone)

State of South Dakota:
ss:
County of Click or tap here to enter text.:

On this the Click or tap here to enter text. day ofClick or tap here to enter text., 202Click or tap here to enter text., before me, the undersigned officer, personally appeared, Click or tap here to enter text., known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Notary Public, State of South Dakota
(SEAL)

My Commission Expires:Click or tap to enter a date.

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br>Choose an item. JUDICIAL CIRCUIT |
| IN THE MATTER OF THE GUARDIANSHIP OF<br><br>Click or tap here to enter text.,<br>Minor Child. | File No. Click or tap here to enter text.<br><br>**ACKNOWLEDGMENT OF RIGHT TO COUNSEL** |

State of South Dakota:
ss:
County of Click or tap here to enter text.:

Click or tap here to enter text., having been duly sworn upon oath, state as follows:

1. I have carefully read the contents of the ***Petition for Appointment of Guardians***, the ***Statement of Rights to Seek Modification or Termination of Guardianship***, the ***Consent to and Nomination of Guardian***, and the ***Waiver of Actual Notice and Time Requirement for Hearing on Petition***.

I am aware that I have the right to obtain legal counsel before signing the ***Consent*** and ***Waiver***, that I have the right to have legal counsel represent me at all hearings in this case; that if the Court finds I cannot afford an attorney, and if I wish to have an attorney represent me, I may be entitled to court-appointed counsel as permitted by law; that these are legally-binding documents that must be read carefully before signing; and that, as the biological mother of the minor child, Click or tap here to enter text., I have carefully considered all aspects of this matter and hereby state I knowingly and voluntarily, consent to and petition this Court to appoint Click or tap here to enter text. and Click or tap here to enter text.as Guardians of the minor child, Click or tap here to enter text., because I believe that such action is in the best interest of my minor child and of all concerned at this time. I

understand that Attorney Click or tap here to enter text. does not represent me in this matter and, in signing this document, I am not relying on, or being influenced by, anything that Choose an item. has said to me.

Dated this Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text..

(Name)
(Street Address)
Click or tap here to enter text.,
SD 57
( ) -

State of South Dakota:
ss:
County of Click or tap here to enter text.:

On this the Click or tap here to enter text. day ofClick or tap here to enter text., 20Click or tap here to enter text. before me, the undersigned officer, personally appeared, Click or tap here to enter text., known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that she executed the same for the purposes therein contained.

(Name)
(Street Address)
Click or tap here to enter text., SD 57
( ) -

In witness whereof, I hereunto set my hand and official seal.

Notary Public, State of South Dakota

(SEAL)

My Commission Expires: Click or tap to enter a date.

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |

| | |
|---|---|
| IN THE MATTER OF THE GUARDIANSHIP OF<br><br>Click or tap here to enter text.,<br>Minor Child. | File No. Click or tap here to enter text.<br><br>**ADMISSION OF SERVICE** |

I,Click or tap here to enter text. , as the natural Choose an item. of the above-named minor child, hereby admit personal service of the ***Petition for Appointment of Guardians***, the ***Statement of Financial Resources***, and the ***Statement of Rights to Seek Modification or Termination of Guardianship*** in the above-entitled matter by receipt of copies thereof atClick or tap here to enter text., Click or tap here to enter text. County, South Dakota.

Dated this Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text..

(Name)
(Street Address)
Click or tap here to enter text., SD 57
(Phone)

State of South Dakota:
ss:
County of Click or tap here to enter text.:

On this the Click or tap here to enter text. day ofClick or tap here to enter text., 20Click or tap here to enter text., before me, the undersigned officer, personally appeared, Click or tap here to enter text., known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that she executed the same for the purposes therein contained.

(Name)
(Street Address)
Click or tap here to enter text., SD 57
(Phone)

In witness whereof, I hereunto set my hand and official seal.

Notary Public, State of South Dakota

(SEAL)

My Commission Expires: _____

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |

| | |
|---|---|
| IN THE MATTER OF THE GUARDIANSHIP OF<br><br>Click or tap here to enter text.,<br>Minor Child. | File No. Click or tap here to enter text.<br><br>**CONSENT TO AND NOMINATION OF GUARDIANS** |

I, Click or tap here to enter text., as the natural Choose an item. of the minor child, Click or tap here to enter text., having a sufficient capacity to form a preference, consent to the guardianship and nominate Click or tap here to enter text. and Click or tap here to enter text. as Guardians ofClick or tap here to enter text..

Dated this Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text..

(Name)
(Street Address)
(City), SD 57
(Phone)

State of South Dakota:
ss:
County of Click or tap here to enter text.:

On this the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text., before me, the undersigned officer, personally appeared, Click or tap here to enter text., known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that she executed the same for the purposes therein contained.

(Name)
(Street Address)
(City), SD 57
(Phone)

In witness whereof, I hereunto set my hand and official seal.

Notary Public, State of South Dakota

(SEAL)

My Commission Expires: Click or tap to enter a date.

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| IN THE MATTER OF THE GUARDIANSHIP OF<br><br>Click or tap here to enter text.,<br>Minor Child. | File No. Click or tap here to enter text.<br><br>**LETTERS OF GUARDIANSHIP** |

By the order of this Court, Click or tap here to enter text. and Click or tap here to enter text. are hereby appointed Guardians of the minor child, Click or tap here to enter text..

Dated thisClick or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text..

BY THE COURT:

_____

The Honorable Click or tap here to enter text.
Judge of the Circuit Court

ATTEST:

Clerk of Court
BY: _____
Deputy Click or tap here to enter text.
(SEAL)

STATE OF SOUTH DAKOTA: IN CIRCUIT COURT
SS:
COUNTY OF Click or tap here to enter text.: Choose an item. JUDICIAL CIRCUIT

| | |
|---|---|
| IN THE MATTER OF THE GUARDIANSHIP OF<br><br>Click or tap here to enter text.,<br>Minor Child. | File No. Click or tap here to enter text.<br><br>**NOMINATION OF GUARDIAN** |

I, Click or tap here to enter text. (DOB: Click or tap to enter a date. ), the above-named minor child, do hereby nominate and consent to Click or tap here to enter text. being appointed by the Court to act in the capacity as my permanent guardians pursuant to SDCL 29A-5-202.

DATED This Click or tap here to enter text. day of Click or tap here to enter text., 202Click or tap here to enter text..

_____
(Name)
(Street Address)
(City/State/zip code)

SUBSCRIBED AND SWORN To before me this Click or tap here to enter text. day of Click or tap here to enter text., 202Click or tap here to enter text..

_____
Notary Public, South Dakota

My Commission Expires:

_____

(SEAL)

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| IN THE MATTER OF THE GUARDIANSHIP OF<br><br>Click or tap here to enter text.,<br>Minor Child. | File No. Click or tap here to enter text.<br><br>**NOTICE OF ENTRY OF ORDER APPOINTING GUARDIANS** |

NOTICE IS HEREBY GIVEN that attached hereto is a copy of the ***Order Appointing Guardians*** signed by the Honorable Click or tap here to enter text. on Click or tap here to enter text.Click or tap here to enter text., 20Click or tap here to enter text., in the above-entitled action, the original of which was filed on Click or tap here to enter text.Click or tap here to enter text., 20Click or tap here to enter text., in the office of the Clerk of the Click or tap here to enter text. Judicial Circuit, Click or tap here to enter text. County, at Click or tap here to enter text., South Dakota.

Dated Click or tap here to enter text.Click or tap here to enter text., 20Click or tap here to enter text..

.

By:

_____

Click or tap here to enter text.
Attorneys for Petitioners
(Street Address)
Click or tap here to enter text. SD 57
(Phone)

CERTIFICATE OF SERVICE

I hereby certify that on Click or tap to enter a date., I filed the foregoing **Notice of Entry of Order Appointing Guardians** via eFileSD File & Serve system and sent a true and correct copy of the same to:

*Petitioner*

*Petitioner*

*Biological Mother*

*Biological Father*

by regular US Mail relative to the above-entitled matter.

*/s/*
(Name)

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| IN THE MATTER OF THE GUARDIANSHIP OF<br><br>Click or tap here to enter text.,<br>Minor Child. | File No. Click or tap here to enter text.<br><br>**NOTICE OF ENTRY OF ORDER FOR HEARING** |

NOTICE IS HEREBY GIVEN that attached hereto is a copy of the ***Order for Hearing*** signed by the Honorable Click or tap here to enter text. on Click or tap here to enter text., Click or tap here to enter text., 20Click or tap here to enter text., in the above-entitled action, the original of which was filed on Click or tap here to enter text. Click or tap here to enter text., 20Click or tap here to enter text., in the office of the Clerk of the Click or tap here to enter text. Judicial Circuit, Click or tap here to enter text.County, at Click or tap here to enter text., South Dakota.

Dated Click or tap here to enter text., Click or tap here to enter text., 20Click or tap here to enter text..
.

By:

*/s/*
(Name)
Attorney for Petitioners
(Street address)
(City), SD 57
(Phone)
(Email)

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| IN THE MATTER OF THE GUARDIANSHIP OF<br><br>Click or tap here to enter text.,<br>Minor Child. | File No. Click or tap here to enter text.<br><br>**ORDER APPOINTING GUARDIANS** |

The Petition for Appointment of Guardians for Click or tap here to enter text. (DOB:Click or tap to enter a date.), minor child, being presented to the Court on Click or tap to enter a date. at Click or tap to enter a date. Choose an item.., the Petitioners, Click or tap here to enter text. and Click or tap here to enter text., appearing in person; the minor child appearing in person and represented by his/her attorney, Click or tap here to enter text.; the Court, having reviewed the files and records herein, and being fully informed of the premises, makes the following findings and conclusions of law:

1. Notice has been given as required by law or determined to be waived by this Court in the best interests of the minor child.

2. The guardianship is necessary to provide fully for the minor child.

3. The guardianship is necessary to protect the minor child from neglect or abuse, and there are no less-restrictive alternatives.

4. Click or tap here to enter text. and Click or tap here to enter text. have completed the training curricula prepared and approved by the State Bar of South Dakota and have provided proof of the same to the Court.

5. Click or tap here to enter text. and Click or tap here to enter text. are suitable and qualified persons to serve as Guardians of Click or tap here to enter text., minor child; now, therefore, it is hereby

ORDERED, that pursuant to SDCL 29A-5-201, Click or tap here to enter text. and Click or tap here to enter text. are hereby appointed the Guardians of Click or tap here to enter text., minor child, without bond; it is further ORDERED, that Letters of Guardianship shall be issued to Click or tap here to enter text. and Click or tap here to enter text. as they filed their Acceptance of Office prior to this hearing; it is further

ORDERED, that the Guardians shall have authority to make decisions regarding Click or tap here to enter text. support, care, health, habilitation, therapeutic treatment, and if not inconsistent with an order of commitment or custody, determine the residential placement of the minor child. The Guardians shall maintain sufficient contact with the minor child to know of the minor child's capabilities, limitations, needs, and opportunities. The Guardians shall, to the extent known, consider the express desires and personal values of the minor child when making decisions, and shall otherwise act in the minor child's best interests and exercise reasonable care, diligence, and prudence; it is further

ORDERED, that the Guardians, Click or tap here to enter text. and Click or tap here to enter text., will have full legal and physical custody of Click or tap here to enter text.; it is further

ORDERED, that no annual reporting or accounting is required; and it is further

ORDERED, that a hearing in front of this Court must be held should the Petitioners, Click or tap here to enter text. and Click or tap here to enter text., wish to relinquish their role as Guardians.

Dated this Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text..

BY THE COURT

_____

Honorable Click or tap here to enter text.
Judicial Circuit Court Judge

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| IN THE MATTER OF THE GUARDIANSHIP OF<br><br>Click or tap here to enter text.,<br>Minor Child. | File No. Click or tap here to enter text.<br><br>**ORDER FOR HEARING** |

Click or tap here to enter text., Petitioner, having presented to this Court a Petition for Appointment of Guardian, and having requested that the Court set a time and place for a hearing on said Petition, duly filed herein; now, therefore it is hereby

ORDERED that on Click or tap to enter a date., at __:__ Choose an item.., at the Click or tap here to enter text. County Courthouse (Courtroom Click or tap here to enter text.), Click or tap here to enter text., South Dakota, before the Honorable Click or tap here to enter text., shall be and hereby is set as the time and place for hearing on said Petition.

BY THE COURT:

_____

Honorable Click or tap here to enter text.
Judicial Circuit Court Judge

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| IN THE MATTER OF THE GUARDIANSHIP OF<br><br>Click or tap here to enter text.,<br>Minor Child. | File No. Click or tap here to enter text.<br><br>**PETITION FOR APPOINTMENT OF GUARDIANS** |

Click or tap here to enter text. and Click or tap here to enter text., Petitioners in the above-entitled matter, represent as follows:

1. The Petitioners' names are Click or tap here to enter text. and Click or tap here to enter text.. Petitioners' post office address and place of residence are Click or tap here to enter text., Click or tap here to enter text., SD Click or tap here to enter text.. The relationship to the minor child is that of her maternal grandparents.

2. The minor child's name is Click or tap here to enter text. (DOB:Click or tap to enter a date.). The minor child's post office address and place of residence areClick or tap here to enter text., Click or tap here to enter text., SD Click or tap here to enter text.. The minor child has resided with the Petitioners since approximately Click or tap here to enter text. Click or tap here to enter text., 20Click or tap here to enter text. when the minor child was placed with Petitioners by the South Dakota Department of Social Services through a Present Danger Plan.

3. The names and post office addresses of the spouse, child(ren), parents, and brother(s) and sister(s) of the minor child or, if none, the minor child's nearest known relatives who would be entitled to success by intestate succession of the estate of the minor child is as follows:

| Name | Address | Age | Relationship |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |

4. The name, place of residence or location, and post office address of the individuals or facility that are responsible for or have assumed responsibility for the care or custody of the minor child are:

| Name | Address | Age | Relationship |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |

5. The Guardianship is requested pursuant to SDCL 29A-5 et. al. because the minor child (age Click or tap here to enter text.) is a vulnerable child unable to protect himself from unsafe situations and the Petitioners believe it would be in the best interests of the minor child to have the Petitioners named as the minor child's Guardians, as the natural mother and natural father are unable to care for the minor child and the minor child has been in the exclusive care of the Petitioner's since Click or tap here to enter text., 20Click or tap here to enter text.with no support from the natural mother and natural father. The Petitioners would be appropriate caretakers for the minor child and would serve in the minor child's best interests.

6. The names, post office addresses, age, occupation, and relationship to the minor child of the proposed Guardians are:

| Name | Address | Age | Relationship | Occupation |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |
| | | | | |

7. The minor child has no guardian currently acting in this state or elsewhere.

WHEREFORE, Petitioners pray for the following:

1. That the Court issue an Order setting the time and place for hearing of this Petition; and

2. That the Court issue an Order, pursuant to SDCL 29A-5-201, appointing them as Guardians of the minor child without bond and no annual accounting or reporting.

Dated this Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text..

PETITIONER:

_____

(Name)
(Street Address)
(City), SD 57
(Phone)
(Email)

State of South Dakota:
ss:
County of Click or tap here to enter text.:

On this the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text., before me, the undersigned officer, personally appeared,Click or tap here to enter text., known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

_____
Notary Public, State of South Dakota
(SEAL)

My Commission Expires: Click or tap to enter a date.

Dated this Click or tap here to enter text. day of Click or tap here to enter text., 20.

PETITIONER:

_____
(Name)
(Street Address)
(City), SD 57
(Phone)

State of South Dakota:
ss:
County of Click or tap here to enter text.:

On this the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text., before me, the undersigned officer, personally appeared, Click or tap here to enter text., known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that Click or tap here to enter text. executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

_____
Notary Public, State of South Dakota
(SEAL)

My Commission Expires: Click or tap to enter a date.

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| IN THE MATTER OF THE GUARDIANSHIP OF<br><br>Click or tap here to enter text..,<br>Minor Child. | File No. Click or tap here to enter text.<br><br>**STATEMENT OF FINANCIAL RESOURCES** |

Petitioners, pursuant to SDCL 29A-5-307, submit a statement of financial resources of the minor child to the extent known.

| | | |
|---|---|---|
| Real Property: | Click or tap here to enter text. | $ 0.00 |
| Personal Property: | Clothing and personal effects | $ 0.00 |
| Checking Account(s) Bank: | Click or tap here to enter text. | $ 0.00 |
| Savings Account(s) Bank: | Click or tap here to enter text. | $ 0.00 |
| Other Account(s) Bank: | Click or tap here to enter text. | $ 0.00 |
| SSI benefits: | Click or tap here to enter text. | $ 0.00 |
| Anticipated Gross Annual Income: | Click or tap here to enter text. | $ 0.00 |
| Other Anticipated Receipts: | Click or tap here to enter text. | $ 0.00 |
| | **Annual Grand Total** | **$ 0.00** |

Dated this Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text..

PETITIONER:

_____

(Name)
(Street Address)
(City), SD 57
(Phone)

State of South Dakota:
ss:
County of Click or tap here to enter text. :

On this the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text., before me, the undersigned officer, personally appeared, Click or tap here to enter text., known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Notary Public, State of South Dakota
(SEAL)

My Commission Expires: Click or tap to enter a date.

Dated this Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text..

PETITIONER:

_____

(Name)
(Street Address)
(City), SD 57Click or tap here to enter text.
(Phone)

State of South Dakota:

ss:

County of Click or tap here to enter text.:

On this the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text., before me, the undersigned officer, personally appeared, Click or tap here to enter text., known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Notary Public, State of South Dakota

(SEAL)

My Commission Expires: Click or tap to enter a date.

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| IN THE MATTER OF THE GUARDIANSHIP OF<br><br>Click or tap here to enter text.,<br>Minor Child. | File No. Click or tap here to enter text.<br><br>**STATEMENT OF RIGHTS TO SEEK MODIFICATION OR TERMINATION OF GUARDIANSHIP** |

COMES NOW Click or tap here to enter text., as attorney for the Petitioners, and makes this Statement of Rights to Seek Modification or Termination of Guardianship to all interested parties:

1. Pursuant to SDCL 29A-5-501 and 503, the appointment of a guardian will terminate upon death of the protected person or the guardian, resignation or removal of the guardian, or upon termination by the Court of the guardianship. A guardian may petition the Court for termination, but the Court may not grant permission to allow the termination unless there is a suitable successor willing to act, unless there is a showing of good cause.

2. Pursuant to SDCL 29A-5-504, upon petition by an interested person or on the Court's own motion, the Court may remove a guardian or order other appropriate relief is the guardian:

a. Is acting under letters secured by material misrepresentation or mistake, whether fraudulent or innocent;

b. Has an incapacity or illness, including substance abuse, which affects fitness for office, or is adjudged to be a protected person in this or in any other jurisdiction;

c. Is convicted of a crime which reflects on fitness for office;

d. Wastes or mismanages the estate, unreasonably withholds distributions, or makes distributions in a negligent or profligate manner, or otherwise abuses power or fails to discharge duties;

e. Neglects the care and custody of the minor, the protected person, or legal dependents;

f. Has an interest adverse to the faithful performance of duties, such that is a substantial risk that the guardian or conservator will fail to properly perform those duties;

g. Fails to file reports or accountings when required, or fails to comply with any order of the Court.

h. Acts in a manner that threatens the personal or financial security of a co-guardian or co-conservator, or endangers the surety on the bond;

i. Fails to file sufficient bond after being ordered by the Court to do so;

j. Avoids service of process or notice;

k. Becomes incapable of or unsuitable for the discharge of duties;

l. Is not acting in the best interests of the minor child, the protected person, or the estate, even though without fault; or

m. Fails to complete or timely complete the training curricula required pursuant to SDCL 29A-5-119.

3. Pursuant to SDCL 29A-5-508, upon petition by the protected person, by the guardian, by any other interested person, or upon the Court's own motion, the Court may terminate a guardianship or modify the type of appointment or areas of protection, management or assistance previously granted to a limited guardian if:

a. The protected person is no longer in need of assistance or protection of a guardian or conservator;

b. The extent of protection, management or assistance previously granted is either excessive or insufficient, considering the current need therefor;

c. The protected person's understanding or capacity to manage the estate and financial affairs or to provide for health, care, or safety has so changed to warrant such action; or

d. No suitable guardian or conservator can be secured who is willing to exercise the assigned duties.

Dated Click or tap to enter a date.

By:

_____

(Name)
Attorney for Petitioners
(Street Address)
(City), SD 57Click or tap here to enter text.
(Phone)
(Email)

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| IN THE MATTER OF THE GUARDIANSHIP OF<br><br>Click or tap here to enter text.,<br><br>Minor Child. | File No. Click or tap here to enter text.<br><br>**WAIVER OF ACTUAL NOTICE AND TIME REQUIREMENT FOR HEARING ON PETITION** |

I, Click or tap here to enter text., as the natural Click or tap here to enter text. of the above-named minor child, hereby waive any actual notice and time requirements for the hearing on the Guardianship in the above-entitled matter.

Dated this Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text..

_____

(Name)
(Street Address)
(City), SD 57
(Phone)

State of South Dakota :
ss
County of Click or tap here to enter text. :

On this the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text., before me, the undersigned officer, personally appeared, Click or tap here to enter text., known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that she executed the same for the purposes therein contained.

_____
(Name)
(Street Address)
(City), SD 57
(Phone)

In witness whereof, I hereunto set my hand and official seal.

_____
Notary Public, State of South Dakota
(SEAL)

My Commission Expires: Click or tap to enter a date.

| STATE OF SOUTH DAKOTA: SS: COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT Choose an item. JUDICIAL CIRCUIT |
|---|---|
| THE PEOPLE OF THE STATE OF SOUTH DAKOTA IN THE INTEREST OF,<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Child(ren), and concerning<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Respondent(s)Choose an item. | File No. Click or tap here to enter text.<br><br>**MOTION TO DROP AND/OR ADD PARTIES** |

COMES NOW, the State of South Dakota, by and through Deputy State's Attorney and respectfully moves this Court pursuant to SDCL 15-6-21 and 15

-6-25.1 to enter an Order Choose an item. for the following reasons:

☐: The Respondent parent is deceased.
☐: Parental rights were terminated on DATE.
☐: Permanent custody was granted to the Department on DATE.
☐: The appeal time has lapsed.
☐: Paternity has been established.
☐: Other: ___.

Choose an item.

Choose an item.

The purpose of this Motion is to include only those who should be and are a party to this action.

Dated this Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text..

_____

Choose an item.
Click or tap here to enter text. County State's Attorney's Office
(Address)
Click or tap here to enter text., SD Click or tap here to enter text.
Phone Number

| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
|---|---|
| THE PEOPLE OF THE STATE OF SOUTH DAKOTA IN THE INTEREST OF,<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Child(ren), and concerning<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Click or tap here to enter text. (DOB:Click or tap to enter a date.<br>Respondent(s)Choose an item. | File No. Click or tap here to enter text.<br><br>**MOTION TO DROP AND/OR ADD PARTIES** |

The Court, having received the State's Motion to Drop and/or Add Parties and good cause appearing, hereby000

ORDERS, that Click or tap here to enter text. Choose an item. hereby dropped Choose an item. from these proceedings. and further

ORDERS, that Click or tap here to enter text. shall be added to the caption of these proceedings.

BY THE COURT:

_____

The Honorable Click or tap here to enter text.
Circuit Court Judge

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| THE PEOPLE OF THE STATE OF SOUTH DAKOTA IN THE INTEREST OF,<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Child(ren), and concerning<br><br>**DEPT OF SOCIAL SERVICES**<br>Custodian,<br><br>Click or tap here to enter text.<br>Intervenor | File No. Click or tap here to enter text.<br><br>**GOOD CAUSE FINDINGS OF FACT AND CONCLUSIONS OF LAW (ICWA)** |

The above-entitled matter having come on for a Good Cause Hearing on the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text.; the Honorable Click or tap here to enter text., presiding; the State of South Dakota represented by Choose an item., Click or tap here to enter text.; the South Dakota Department of Social Services appearing through Children's Specialist Click or tap here to enter text.; the minor child(ren) Choose an item. in person Choose an item. represented by counsel, Click or tap here to enter text.; the Tribe Choose an item. Choose an item. Choose an item. , Click or tap here to enter text.; CASA Choose an item.; the Court, having reviewed the records and files herein and being fully informed in the premises, does now hereby make and enter its Findings of Fact and Conclusions of Law for Good Cause regarding the placement of the minor child outside the ICWA Placement Preferences for purpose of adoption as follows:

THE COURT MAKES THE FOLLOWING FINDINGS OF FACT BY CLEAR AND CONVINCING EVIDENCE:

1.

Proper notice has been given.

2.

The Court has jurisdiction over these proceedings and that this is the proper venue.

3.

Click or tap here to enter text. is a minor child currently in the adoptive custody of the Department of Social Services, and who was a resident of Click or tap here to enter text. County at the commencement of these proceedings

4.

Click or tap here to enter text. is the biological mother of the minor child. Her parental rights were terminated on Click or tap here to enter text..

5.

Click or tap here to enter text. is the biological father of the minor child. His parental rights were terminated on Click or tap here to enter text..

6.

The minor child is an Indian Child as defined by the Indian Child Welfare Act and therefore the Indian Child Welfare Act applies to these proceedings.

7.

The minor child is eligible for enrollment in the Tribe. The Tribe was represented by counsel.

8.

The Tribe was notified of today's proceedings in accordance with the Indian Child Welfare Act. The Tribe has Intervened in these proceedings.

9.

The minor child was adjudicated to be an abused or neglected child on Click or tap here to enter text..

10.

The minor child has been in the Department of Social Services' legal and physical custody since Click or tap here to enter text., and that the minor child has been in the adoptive custody of the Department of Social Services since Click or tap here to enter text..

11.

The minor child was initially placed in her current foster home on _____. An ICWA Placement Preference adoptive resource was identified for the minor child and she was placed with the family in Missouri on _____. The family asked that the minor child be removed from their home on _____. The child was returned to the current foster home on _____.

12.

The minor child's current placement is a Non-Native American foster care placement.

13.

The Court admits and incorporates herein by reference and takes judicial notice of the entire Abuse and Neglect file A-Click or tap here to enter text. as a further factual basis in support of these Findings of Fact and Conclusions of Law and Order.

14.

The Court admits and incorporates herein by reference and takes judicial notice of the Court Report and attachments as further basis in support of these Findings of Fact and Conclusions of Law and Order.

15.

25 U.S.C. §1915(a) and (b) provides that for adoptive placements of Indian Children the children must be placed in the least restrictive setting which most approximates a family in which his or her special needs may be met; and which is in reasonable proximity to his or her home and that preference must be given in the following order, absent good cause to the contrary, to placement with (1) a member of the Indian Child's extended family; (2) a foster home, license, approved or specified by the Indian Child's tribe, whether on or off the reservation; (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.

16.

25 U.S.C. §1915 also provides that in any adoptive placement of an Indian Child under state law preference must be given absent good cause to the contrary, to placement of the child with a member of the Indian child's extended family, other members of the Indian child's tribe or other Indian families, including families of single parents.

17.

Other than the minor child's placement in Missouri from _____ until _____, the minor child has been placed in the same basic foster home since _____. That home has proven to be a nurturing, loving, and stable home able to meet the minor child's needs.

18.

The minor child is Click or tap here to enter text. years old. She has been in the custody of the Department of Social Services since Click or tap here to enter text.. She came into care at Click or tap here to enter text..

19.

The minor child's biological father, has stated in writing that he has reviewed the placement options and his preference is that the child be adopted by the current foster care providers.

20.

The Tribe is in agreement with the minor child being adopted by her current foster care providers given that the placement that was within the ICWA Placement Preferences disrupted.

21.

There is good cause in this case to not follow the order of preference set forth in the Indian Child Welfare Act due to the unavailability of suitable families for placement after a diligent search has been completed for families meeting the preference criteria, but none have been located.

22.

The child's current placement meets the physical, mental and emotional needs of the child.

23.

The Department of Social Services has made a diligent search to locate family members and/or other Native American placements for the minor child. Specifically, the Court finds that the Department has researched Click or tap here to enter text. relatives. Native American placement resources were requested from the Tribe. The minor child was listed nationwide on AdoptUSKids.org to seek out placements within the ICWA Placement Preferences. The minor child was placed in an ICWA Placement Preference for purpose of adoption from Click or tap here to enter text. until Click or tap here to enter text. and that placement was unsuccessful.

24.

There is good cause to deviate from the placement preferences and that there is good cause to approve the plan for adoption that has been presented.

25.

To move the child again would be highly disruptive. To allow her to remain in her current placement would be the most beneficial and would keep her in close proximity to her extended family and to her Tribe.

26.

The Court finds that reasonable and active efforts have been made to effectuate a permanent plan for the minor child.

27.

The permanent plan presented today is the least restrictive alternative and, in the child's, best interest in light of the child's special needs and the diligent search that has been conducted.

28.

Good cause exists to place the child outside the ICWA placement preferences because there are no Native American foster care homes available, relative searches have been exhausted and appropriate relatives have not been located, and Tribal resources have not resulted in the identification of an appropriate placement. The Court finds a diligent search has been completed by the Department of Social Services and there is good cause to deviate from the placement preferences.

29.

The Department of Social Services has made active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family but that those efforts have proven unsuccessful.

30.

Leaving the child in the adoptive custody of the Department of Social Services and vesting the Department of Social Services with the full custody and guardianship of the child, with the appropriate

personnel of the Department of Social Services to have the ability to consent to her adoption, is the least restrictive alternative and in the minor child's best interest.

31.

The Court hereby incorporates through judicial notice the Reports to the Court, and all files and records in this case as a further factual basis to support these Findings of Fact and Conclusions of Law.

Based upon the foregoing Findings of Fact, the Court now makes and enters the following Conclusions of Law:

CONCLUSIONS OF LAW

1.

Any Conclusion of Law deemed to be a Finding of Fact or vice versa shall be appropriately incorporated into the Findings of Fact or Conclusions of Law.

2.

This Court has jurisdiction over the parties and subject matter of this action.

3.

That good cause exists for DSS to cease relative searches at this time and to move forward with the permanent plan for the minor child, said permanent plan being placement in a home and with a family suitable for adoption.

4.

That it is in the least restrictive alternative and in the minor child's best interest that the Department of Social Services deviate from the ICWA placement preferences in regards to the adoptive placement of the minor child.

5.

In making this determination the Court has balanced the rights of the Tribe, the child and the State and finds that this decision is the least restrictive alternative and in the minor child's best interest.

6.

That DSS has made active efforts to effectuate the permanency plan that is in place.

Dated this Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text., effective, however, the Click or tap here to enter text. day of Click or tap here to enter text. being the date of the hearing affording judicial basis for this order.

BY THE COURT:

_____

The Honorable Click or tap here to enter text.
Judge of the Circuit Court

ATTEST:

Clerk of Court
BY: _____
Deputy Click or tap here to enter text.
(SEAL)

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| THE PEOPLE OF THE STATE OF SOUTH DAKOTA IN THE INTEREST OF,<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Child(ren), and concerning<br><br>**DEPT OF SOCIAL SERVICES**<br>Custodian/guardian,<br><br>Click or tap here to enter text.<br>Intervenor | File No. Click or tap here to enter text.<br><br>**GOOD CAUSE ORDER**<br><br>**(ICWA)** |

The above-entitled matter having come before the Court for a Good Cause Hearing on the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text.; the Honorable Click or tap here to enter text., presiding; the State of South Dakota represented by Choose an item., Click or tap here to enter text.; the South Dakota Department of Social Services appearing through Children's Specialist Click or tap here to enter text.; the minor child(ren) Choose an item. in person Choose an item. represented by counsel, Click or tap here to enter text.; the Tribe Choose an item. Choose an item. Choose an item. , Click or tap here to enter text.; CASA Choose an item. the Court, having reviewed the records and files herein and being fully informed in the premises, and having made and entered its Findings of Fact and Conclusions of Law for Good Cause regarding the placement of the minor children outside the ICWA Placement Preferences does now hereby:

ORDER, that the minor children shall remain in the adoptive custody of the Department of Social Services with continued placement in foster care, this being the least restrictive alternative in the best interests of the children; and it is further

ORDERED, that the Indian Child Welfare Act applies to this case; and it is further

ORDERED, that the Department of Social Services has made reasonable and active efforts and has conducted a diligent search to place the minor children, with an individual or family within the order of preference set forth in 25 U.S.C. § 1915, such efforts have been unsuccessful and good cause exists for placement outside the order of preference set forth in 25 U.S.C. § 1915; and it is further

ORDERED, that a placement of the minor children within the order of preference of the Indian Child Welfare Act is not available and that good cause exists for placement of the children with a family outside of the order of preference; and it is further

ORDERED, that active efforts are no longer necessary for continued search of a family that fits within the placement preference guidelines of the Indian Child Welfare Act as a continued search would be fruitless; and it is further

ORDERED, that the least restrictive alternative in the best interests of this children requires that, if a placement cannot be located within the order of preference, attempts should be made to locate a placement with an individual or family outside the order of preference so as to provide permanency for the children; and it is further

ORDERED, that there was a previous finding of this Court that active efforts had been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and these efforts were proven unsuccessful; and it is further

ORDERED, that the appropriate long-term plan for the children is placement in a home with a family suitable for adoption, and that the Department of Social Services will work toward achievement of the permanent plan of adoption.

ORDERED, that the Department of Social Services has made reasonable and active efforts and has conducted a diligent search to place the minor children, with an individual or family within the order of preference set forth in 25 U.S.C. § 1915, such efforts have been unsuccessful and good cause exists for placement outside the order of preference set forth in 25 U.S.C. § 1915; and it is further

ORDERED, that a placement of the minor children within the order of preference of the Indian Child Welfare Act is not available and that good cause exists for placement of the children with a family outside of the order of preference; and it is further

ORDERED, that active efforts are no longer necessary for continued search of a family that fits within the placement preference guidelines of the Indian Child Welfare Act as a continued search would be fruitless; and it is further

ORDERED, that the least restrictive alternative in the best interests of this children requires that, if a placement cannot be located within the order of preference, attempts should be made to locate a placement with an individual or family outside the order of preference so as to provide permanency for the children; and it is further

ORDERED, that there was a previous finding of this Court that active efforts had been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and these efforts were proven unsuccessful; and it is further

ORDERED, that the appropriate long-term plan for the children is placement in a home with a family suitable for adoption, and that the Department of Social Services will work toward achievement of the permanent plan of adoption.

Dated this Click or tap here to enter text. day of Click or tap here to enter text., Click or tap here to enter text., effective, however, the Click or tap here to enter text. day of Click or tap here to enter text., being the date of the hearing affording judicial basis for this order.

BY THE COURT:

_____

The Honorable Click or tap here to enter text.
Judge of the Circuit Court

ATTEST:

Clerk of Court
BY: _____
Deputy Click or tap here to enter text.
(SEAL)

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| THE PEOPLE OF THE STATE OF SOUTH DAKOTA IN THE INTEREST OF,<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Child(ren), and concerning<br><br>**DEPT. OF SOCIAL SERVICES**<br>Guardian/Custodians(s),<br><br>**(TRIBE)**<br>Intervenor. | File No. Click or tap here to enter text.<br><br>**POST DISPOSITIONAL PERMANENCY HEARING ORDER**<br><br>**(PERMANENT CUSTODY GUARDIANSHIP — ICWA)** |

The above-entitled matter having come before the Court for a Permanency Hearing on the Click or tap here to enter text. day of Click or tap here to enter text., 202Click or tap here to enter text.; the Honorable Click or tap here to enter text., presiding; the State of South Dakota represented by Choose an item., Click or tap here to enter text.; the South Dakota Department of Social Services appearing through Family Services Specialist, Click or tap here to enter text.; the minor child(ren) Choose an item. in person Choose an item. represented by counsel, Click or tap here to enter text.; the Tribe Choose an item. Choose an item. Choose an item. , Click or tap here to enter text.; CASA Choose an item.; the Court, having reviewed the records and files herein and being fully informed in the premises, does now hereby

ORDER, that the minor child shall remain in the Department of Social Services' legal and physical custody with the plan of Guardianship until a Guardianship can be accomplished or until he reaches the age of majority; and it is further

ORDERED, that the Department of Social Services has made active efforts toward the achievement of the permanent plan of Guardianship; and it is further

ORDERED, that ongoing contact between the minor child, and the Respondent parents, and extended family be at the Department of Social Services' discretion based on the recommendations of the minor child's medical treatment team; and it is further

ORDERED, that there is good cause to place outside the ICWA placement preference.

This Order is effective the Click or tap here to enter text. day of Click or tap here to enter text., 202Click or tap here to enter text., that being the date of the hearing affording judicial basis for this order.

BY THE COURT:

_____

The Honorable Click or tap here to enter text.
Judge of the Circuit Court

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| THE PEOPLE OF THE STATE OF SOUTH DAKOTA IN THE INTEREST OF,<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Child(ren), and concerning<br><br>**DEPT. OF SOCIAL SERVICES**<br>Guardian/Custodians(s),<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Click or tap here to enter text. (DOB:Click or tap to enter a date.<br>Respondent(s). | File No. Click or tap here to enter text.<br><br>**POST DISPOSITIONAL PERMANENCY HEARING ORDER**<br><br>**(PERMANENT CUSTODY FOR GUARDIANSHIP — NON ICWA)** |

The above-entitled matter having come before the Court for a Permanency Hearing on the Click or tap here to enter text. day of Click or tap here to enter text., 202Click or tap here to enter text.; the Honorable Click or tap here to enter text., presiding; the State of South Dakota represented by Choose an item., Click or tap here to enter text.; the South Dakota Department of Social Services appearing through Family Services Specialist, Click or tap here to enter text.; Click or tap here to enter text., the Respondent Choose an item., Choose an item. in person Choose an item. Choose an item., Click or tap here to enter text.; Click or tap here to enter text., the Respondent Choose an item., Choose an item. in person Choose an item. Choose an item., Click or tap here to enter text.; the minor child(ren) Choose an item. in person Choose an item. represented by counsel, Click or tap here to enter text. ; CASA Choose an item.; the Court, having reviewed the records and files herein and being fully informed in the premises, does now hereby:

ORDER, that the minor child remain in the Department of Social Services continued custody; and it is further

ORDERED, that the Department of Social Services has made reasonable efforts toward achievement of the permanent plan of guardianship by a relative and will continue to do so; and it is further

ORDERED, that the least restrictive alternative available in the minor child's best interest is continued legal and physical custody with the Department of Social Services; and it is further

ORDERED, that out of State placement of the minor child with a relative in the STATE continues to be appropriate and in the best interest of the minor child; and it is further

ORDERED, that ongoing contact between the minor child and the Respondent parents shall be at the Department of Social Services' discretion.

The Permanency Hearing Order is effective the Click or tap here to enter text. day of Click or tap here to enter text..

BY THE COURT:

_____

The Honorable Click or tap here to enter text.
Judge of the Circuit Court

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| THE PEOPLE OF THE STATE OF SOUTH DAKOTA IN THE INTEREST OF,<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Child(ren), and concerning<br><br>**DEPT. OF SOCIAL SERVICES**<br>Guardian/Custodians(s),<br><br>(TRIBE)<br>Intervenor. | File No. Click or tap here to enter text.<br><br>**POST DISPOSITIONAL PERMANENCY HEARING ORDER**<br><br>**(ICWA — APPLA)** |

The above-entitled matter having come before the Court for a Permanency Hearing on the Click or tap here to enter text. day of Click or tap here to enter text., 202Click or tap here to enter text., the Honorable Click or tap here to enter text., presiding; the State of South Dakota represented by Choose an item., Click or tap here to enter text.; the South Dakota Department of Social Services appearing through Lead Family Services Specialist Click or tap here to enter text.; the minor child represented by counsel, Click or tap here to enter text.; the Click or tap here to enter text. Tribe Choose an item. CASA Choose an item.; the Court, having reviewed the records and files herein and being fully informed in the premises, does now hereby:

ORDER, that the minor child shall remain in the Department of Social Services' permanent legal custody in Another Planned Permanent Living Arrangement (APPLA) until the child reaches the age of majority; and it is further

ORDERED, that compelling reasons still exist for the permanent plan of Another Planned Permanent Living Arrangement (APPLA) as all less restrictive permanency options have been ruled out and are not in the best interest of the minor child; and it is further

ORDERED, that the Department of Social Services has made active efforts toward achievement of the permanent plan of Another Planned Permanent Living Arrangement (APPLA); and it is further

ORDERED, that the least restrictive alternative available in the child's best interest is continued legal and physical custody with the Department of Social Services; and it is further

ORDERED, that there is good cause to place the child outside the ICWA placement preferences; and it is further

ORDERED, that the minor child, who is Click or tap here to enter text. years of age and current receiving Independent Living Services, shall continue receiving these services while in Another Planned Permanent Living Arrangement; and it is further

ORDERED, that the Department of Social Services will work with the child and the child's treatment team to develop a plan and prepare the child to live in the least restrictive possible setting at the earliest appropriate time.

This Order is effective the Click or tap here to enter text. day of Click or tap here to enter text., 202Click or tap here to enter text., that being the date of the hearing affording judicial basis for this order.

BY THE COURT:

_____

The Honorable Click or tap here to enter text.
Judge of the Circuit Court

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| THE PEOPLE OF THE STATE OF SOUTH DAKOTA IN THE INTEREST OF,<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Child(ren), and concerning<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Click or tap here to enter text. (DOB:Click or tap to enter a date.<br>Respondent(s),<br><br>**DEPT. OF SOCIAL SERVICES**<br>Guardian/Custodian(s). | File No. Click or tap here to enter text.<br><br>**POST DISPOSITIONAL PERMANENCY HEARING ORDER (NON-ICWA APPLA PLAN)** |

The above-entitled matter having come before the Court for a Permanency Hearing on the Click or tap here to enter text. day of Click or tap here to enter text., 202Click or tap here to enter text.; the Honorable Click or tap here to enter text., presiding; the State of South Dakota represented by Choose an item., Click or tap here to enter text.; the South Dakota Department of Social Services appearing through Family Services Specialist, Click or tap here to enter text.; Click or tap here to enter text., the Respondent Choose an item., Choose an item. in person Choose an item. Choose an item., Click or tap here to enter text.; Click or tap here to enter text., the Respondent Choose an item., Choose an item. in person Choose an item. Choose an item., Click or tap here to enter text.; the minor child(ren) Choose an item. in person Choose an item. represented by counsel, Click or tap here to enter text.; CASA Choose an item.; the Court, having reviewed the records and files herein and being fully informed in the premises, does now hereby:

ORDER, that the minor child shall remain in the Department of Social Services' permanent legal custody in Another Planned Permanent Living Arrangement (APPLA) until the child reaches the age of majority; and it is further

ORDERED, that compelling reasons still exist for the permanent plan of Another Planned Permanent Living Arrangement (APPLA) as all less restrictive permanency options have been ruled out and are not in the best interest of the child.; and it is further

ORDERED, that the Department of Social Services has made reasonable efforts toward achievement of the permanent plan of Another Planned Permanent Living Arrangement (APPLA). These efforts include:

and it is further

ORDERED, that ongoing contact between the child and the child's mother, siblings, and extended family be at the Department of Social Services' discretion based on the recommendation of the child's treatment team; and it is further

ORDERED, that the least restrictive alternative available in the child's best interest is continued legal and physical custody with the Department of Social Services; and it is further

ORDERED, that the minor child, who is Click or tap here to enter text. years of age, is currently receiving Independent Living Services, and these services shall continue while in Another Planned Permanent Living Arrangement; and it is further

ORDERED, that the minor child continue placement in a treatment foster care setting until further notice, as the child cannot and will not be able to adjust or function in a family setting; and it is further

ORDERED, the Department of Social Services' plan to ensure the stability and safety of the placement; and it is further

ORDERED, that the Department of Social Services will work with the child and the minor child's treatment team to develop a plan and to prepare the child to live in the least restrictive possible setting at the earliest appropriate time.

This Order is effective the Click or tap here to enter text. day of Click or tap here to enter text., 202Click or tap here to enter text., that being the date of the hearing affording judicial basis for this order

BY THE COURT:

_____

The Honorable Click or tap here to enter text.
Judge of the Circuit Court

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| THE PEOPLE OF THE STATE OF SOUTH DAKOTA IN THE INTEREST OF,<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Child(ren), and concerning<br><br>**DEPT. OF SOCIAL SERVICES**<br>Guardian/Custodians(s),<br><br>**(TRIBE)**<br>**(TRIBE)**<br>Intervenor. | File No. Click or tap here to enter text.<br><br>**POST DISPOSITIONAL PERMANENCY HEARING ORDER**<br><br>**(ADOPTION— ICWA)** |

The above-entitled matter having come before the Court for a Permanency Hearing on the Click or tap here to enter text. day of Click or tap here to enter text., 202Click or tap here to enter text.; the Honorable Click or tap here to enter text., presiding; the State of South Dakota represented by Choose an item., Click or tap here to enter text.; the South Dakota Department of Social Services appearing through Family Services Specialist, Click or tap here to enter text.; the minor child(ren) Choose an item. in person Choose an item. represented by counsel, Click or tap here to enter text.; the Tribe Choose an item. Choose an item. Choose an item. , Click or tap here to enter text.; CASA Choose an item.; the Court, having reviewed the records and files herein and being fully informed in the premises, does now hereby:

ORDER, that the minor child is an enrolled member of the Click or tap here to enter text. Tribe and the Click or tap here to enter text. Tribe is the minor child's Indian tribe; and it is further

ORDERED, that the minor child, shall remain in the adoptive custody of the Department of Social Services; and it is further

ORDERED, that the Department of Social Services has made active efforts to achieve the permanent plan of adoption and will continue to do so; and it is further

ORDERED, that the least restrictive alternative available in the minor child's best interest is for legal and physical custody of the minor children to remain with the Department of Social Services; and it is further

ORDERED, that there is good cause to place the minor child outside the ICWA placement preferences; and it is further

ORDERED, the Department of Services' plan to ensure the stability and safety of the minor child's placements.

This Order is effective the Click or tap here to enter text. day of Click or tap here to enter text. 202Click or tap here to enter text..

BY THE COURT:

_____

The Honorable Click or tap here to enter text.
Judge of the Circuit Court

| | |
|---|---|
| STATE OF SOUTH DAKOTA:<br>SS:<br>COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT<br><br>Choose an item. JUDICIAL CIRCUIT |
| THE PEOPLE OF THE STATE OF SOUTH DAKOTA IN THE INTEREST OF,<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Child(ren), and concerning<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Click or tap here to enter text. (DOB:Click or tap to enter a date.<br>Respondent(s),<br><br>**DEPT. OF SOCIAL SERVICES**<br>Guardian/Custodian(s). | File No. Click or tap here to enter text.<br><br>**POST DISPOSITIONAL PERMANENCY HEARING ORDER (ADOPTION NON-ICWA)** |

The above-entitled matter having come before the Court for a Permanency Hearing on the Click or tap here to enter text. day of Click or tap here to enter text., 202Click or tap here to enter text.; the Honorable Click or tap here to enter text., presiding; the State of South Dakota represented by Choose an item., Click or tap here to enter text.; the South Dakota Department of Social Services appearing through Choose an item., Click or tap here to enter text.; the minor child(ren) Choose an item. in person Choose an item. represented by counsel, Click or tap here to enter text.; CASA Choose an item.; the Court, having reviewed the records and files herein and being fully informed in the premises, does now hereby:

ORDER, that the continued adoptive custody of the minor children remain with the Department of Social Services; and it is further

ORDERED, that the Department of Social Services has made reasonable efforts toward achievement of the permanency plan of adoption and will continue to do so; and it is further

ORDERED, that the least restrictive alternative available in the minor children's best interest is that continued legal and physical custody remain with the Department of Social Services.

This Order is effective the Click or tap here to enter text. day of Click or tap here to enter text., 202Click or tap here to enter text., that being the date of the hearing affording judicial basis for this order.

BY THE COURT:

_____

The Honorable Click or tap here to enter text.
Judge of the Circuit Court

| STATE OF SOUTH DAKOTA: SS: COUNTY OF Click or tap here to enter text. | IN CIRCUIT COURT Choose an item. JUDICIAL CIRCUIT |
|---|---|
| THE PEOPLE OF THE STATE OF SOUTH DAKOTA IN THE INTEREST OF,<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Child(ren), and concerning<br><br>Click or tap here to enter text. (DOB:Click or tap to enter a date.)<br>Click or tap here to enter text. (DOB:Click or tap to enter a date.<br>Respondent(s),<br><br>Click or tap here to enter text.<br>Intervenor | File No. Click or tap here to enter text.<br><br>**FINAL DISPOSITIONAL ORDER RE: CHILD SUPPORT** |

The above-entitled matter having come before the Court for a Final Dispositional Hearing on the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text.; the Honorable Click or tap here to enter text., presiding; the State of South Dakota represented by Choose an item., Click or tap here to enter text.; the South Dakota Department of Social Services appearing through Family Services Specialist, Click or tap here to enter text.; Click or tap here to enter text., the Respondent Choose an item., Choose an item. in person Choose an item. Choose an item., Click or tap here to enter text.; Click or tap here to enter text., the Respondent Choose an item., Choose an item. in person Choose an item. Choose an item., Click or tap here to enter text.; the minor child(ren) Choose an item. in person Choose an item. represented by counsel, Click or tap here to enter text.; the Tribe Choose an item. Choose an item. Choose an item., Click or tap here to enter text.; CASA Choose an item.; Pursuant to SDCL §§ 26-8A-27 and 25-5A-18; the Court does now hereby:

ORDER, that child support arrearages are to be paid in full by the Respondent mother in the amount of $Click or tap here to enter text.; and it is further

ORDERED, that child support arrearages are to be paid in full by the Respondent father in the amount of $Click or tap here to enter text.; and it is further

ORDERED, that child support obligations shall end for the Respondent Mother, Click or tap here to enter text. and the Respondent father, Click or tap here to enter text. effective the FINAL DISPOSITIONAL HEARING DATE and shall not be calculated after said date.

Dated this Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text., effective however, the Click or tap here to enter text. day of Click or tap here to enter text., being the date of the hearing affording judicial basis for this order.

BY THE COURT:

_____

The Honorable Click or tap here to enter text.
Judge of the Circuit Court

**Disclaimer:** The questions herein this document is **supplemental material**. It is highly encouraged that practitioners utilize the questions provided. Practitioners should exercise their discretion when using the questions below as some questions may not pertain to their fact-specific case.

QUESTIONS FOR PERMANENCY HEARING (Family Services Specialist)

**GOAL IS REUNIFICATION – Pre-Dispositional**

1. Name
2. How employed (Full-time, Part-time, Contractor)
3. Official Title at DSS
4. How long with DSS
5. Are you the worker currently assigned to the case involving the ____ child/ren?
6. How long has the case been assigned to you?
7. What was the date the children were removed?
8. Have they been removed from the home before? How many times?
9. Where are the children placed?
10. Is that placement appropriate in your opinion?
11. Why?
12. What efforts have been made by the Department to place the children in the least restrictive setting?
13. Have there been changes in the children's placements since they first came into care?
14. What changes?
15. How were the parents and parties notified of the change in placement?
16. How are the children doing in their current placement?
17. What is the feedback you are getting from the child(ren's) current caretaker concerning how the child(ren) is managing in their home?
18. Was a Protective Capacities Assessment developed with the parent/caretaker? Who was the PCA created for? (each parent individually or as a family unit) Was the PCA signed? When?
19. Did you meet with the mother/father to discuss the impending danger threats that were identified at the completion of the Initial Family Assessment?
20. Were those impending danger threats reflected in the PCA?
21. What impending danger threats continue to exist that prevent the children from returning home?
22. Has Conditions for Return been established for these children?
23. What if any is the progress made by the parent(s) towards meeting the Conditions for Return?
24. What Conditions for Return still need to be met?
25. Once the Conditions for Return are met, will an In-home Safety plan be developed? If so, what safety services will be will be needed?
26. How would returning today be injurious to the children's welfare?
27. What is the child's permanent plan?
28. What progress is being made toward that permanent plan?
29. What are the barriers preventing reaching that permanent plan at this time?
30. What efforts are being made towards that permanent plan?
31. What is the child's concurrent plan?
32. What is the status of the children's physical health? Mental health? And education?

33. Are the siblings separated? What efforts are being made to maintain the sibling connection?
34. If the children are not placed in kinship care: What needs to occur for family members to be considered for placement?
35. What is being done to maintain the child's cultural connections?
36. What efforts are being made at this time for relative searches?
37. (Non-resident parents) what efforts are being made to engage the out of state parent?
38. (Child over 16) what Independent Living services are being provided?

Anticipate questions as to "how long" do you think it will take to get the children home.

If sobriety is not the only issue be prepared to articulate how the children are in impending danger if returned when parent has completed treatment, been sober for a month, has a job, is on 24/7, is in aftercare…etc…. if it appears that the parent is doing everything we've asked, you have to be able to identify how the child is still at risk of harm.

QUESTIONS FOR PERMANENCY HEARING (Family Services Specialist)

**Child in Trial Reunification – Pre-Dispositional**

1. Name
2. How employed (Full-time, Part-time, Contractor)
3. Official Title at DSS
4. How long with DSS
5. Are you the worker currently assigned to the case involving the ____ child/ren?
6. How long has the case been assigned to you?
7. What was the date the child(ren) were originally removed?
8. What was the date the child(ren) were returned to their parent/caretaker for trial reunification?
9. Please describe the intensity or status of the in-home safety plan.
10. Since the last court hearing have there been any additional danger threats identified? If so what are they?
11. Is trial reunification still appropriate in your opinion?
12. Why?
13. What is the feedback you are getting from the child(ren's) parent/caretaker concerning how the child(ren) is managing in their home?
14. Are the parents/caretaker continuing to work towards their outcomes on the Protective Capacity Assessment?
15. What is the parent's progress towards reaching their outcomes?
16. What is the status of the children's physical health? Mental health? And education?
17. (Non-resident parents) what efforts are being made to engage the out of state parent?
18. (Child over 16) what Independent Living services are being provided?

Anticipate questions as to "how long" do you think it will take for reunification and case dismissal.

QUESTIONS FOR PERMANENCY HEARING (Family Services Specialist)

**Termination of Parental Rights – Final Dispositional Hearing**

It is highly encouraged that practitioners use the following questions during a Final Dispositional Hearing; however, practitioners should exercise discretion, as some questions may not pertain to their fact-specific case. The questions below are specific to permanency and assessing the needs of the child(ren) involved in the proceeding.

1. What was the date the children were removed?
2. Have they been removed from the home before? How many times?
3. Where are the children placed?
4. Is that placement appropriate in your opinion?
5. Why?
6. What efforts have been made by the Department to place the children in the least restrictive setting?
7. Have there been changes in the children's placements since they first came into care?
8. What changes?
9. How were the parents and parties notified of the change in placement?
10. How are the children doing in their current placement?
11. What is the feedback you are getting from the child(ren's) current caretaker concerning how the child(ren) is managing in their home?
12. What is the status of the children's physical health? Mental health? And education?
13. Are the siblings separated? What efforts are being made to maintain the sibling connection?
14. If the children are not placed in kinship care: What needs to occur for family members to be considered for placement?
15. What is being done to maintain the child's cultural connections?
16. What efforts are being made at this time for relative searches?
17. (Child over 16) what Independent Living services are being provided?

QUESTIONS FOR PERMANENCY HEARING (Family Services Specialist)

**Post Dispositional**

**Adoptive Custody** or **APPLA**

1. Name
2. How employed (Full-time, Part-time, Contractor)
3. Official Title at DSS
4. How long with DSS
5. Are you the worker currently assigned to the case involving the ____ child/ren?
6. How long has the case been assigned to you?
7. What was the date the children were removed?
8. Have they been removed from the home before? How many times?
9. Where are the children placed?
10. Is that placement appropriate in your opinion?
11. Why?
12. What efforts have been made by the Department to place the children in the least restrictive setting?
13. Have there been changes in the children's placements since they first came into care?
14. What changes?
15. How are the children doing in their current placement?
16. What is the feedback you are getting from the child(ren's) current caretaker concerning how the child(ren) is managing in their home?
17. What is the permanency plan for the child(ren)?
18. What progress is being made toward that permanent plan?
19. What are the barriers preventing reaching that permanent plan at this time? (is one of the barriers an appeal?)
20. What efforts are being made towards that permanent plan?
21. What is the status of the children's physical health? Mental health? And education?
22. Are the siblings separated? What efforts are being made to maintain the sibling connection?
23. If the children are not placed in kinship care: What needs to occur for family members to be considered for placement?
24. What is being done to maintain the child's cultural connections?
25. What efforts are being made at this time for relative searches?
26. (Child over 16) what Independent Living services are being provided.