

Permanency Hearing Checklist (CINA Rule 17.2)

Purpose of hearing:. To establish the permanent plan for a child in state custody and to determine the future direction of the case.

PERSONS ENTITLED TO NOTICE AND PARTICIPATION AT HEARING CINA R. 7(b) AND 2(l)

- Parents whose rights have not been terminated. “Parent” includes Indian child’s putative father who has acknowledged paternity, even if paternity not established [25 USC § 1903(9)]
- Legal guardian
- Indian custodian
- Indian child’s tribe, whether or not it has intervened [CINA R. 17.2(b)]
- OCS social worker
- Guardian ad litem/Court Appointed Special Advocate
- Out-of-home care providers and grandparents (unless presence limited pursuant to AS 47.10.070(e))
- Intervenor
- Parties’ attorneys
- Child

PRE-HEARING PREPARATION

Check for Report. OCS permanency report must be filed 10 days before hearing. CINA R. 17.2(c).

Open/Closed. Hearing can be open or closed. See AS 47.10.070(c)(1), (2) & (3).

EVIDENCE

Persons Entitled to be Heard. The parties (including child), foster parents, other out-of-home care providers, and grandparents are entitled to be heard. AS 47.10.080(f).

Hearsay. Otherwise inadmissible hearsay is admissible if probative, reliable, trustworthy and parties have fair opportunity to meet it. CINA R. 17.2(d).

ORDER TO MEMBERS OF PUBLIC

Order members of the public not to disclose identity of child. AS 47.10.070(f).

REQUIRED, SUBSTANTIVE FINDINGS

- **CINA Determination.** Determine if child continues to be in need of aid, and specify which subsection(s) of AS 47.10.011 apply. CINA R. 17.2(e)(1).
 - **Permanent Plan Finding.** Establish a written permanent plan for the child [AS 47.10.080(l), AS 47.14.100, and see CINA R. 17.2(a)], including written findings related to:
 - ✓ whether and when the child should return to a parent, guardian, or Indian custodian. CINA R. 17.2(e)(2);
 - ✓ whether the child should be placed for adoption or legal guardianship;
 - ✓ whether OCS is in compliance with AS 47.10.088(d) [requiring OCS to file a TPR or a compelling reason not to file TPR when child has been in out-of-home care for 15 of the last 22 months]. CINA R. 17.2(e)(3);
 - ✓ whether there is a compelling reason that the most appropriate placement is another planned, permanent living arrangement and, if so, whether OCS recommended the arrangement, and the child’s position on permanency. P.L. 113-183;
- Note: OCS may recommend APPLA only if the child is 16 or older, OCS has unsuccessfully made “intensive efforts” to find a permanent placement, and OCS documents a “compelling reason” for this plan. AS 47.14.100(p). “Compelling reason” may include circumstances in which the child requests emancipation or the parent and child have a “significant bond” and the foster parents have committed to raising the child and facilitating visitation with the parent. AS 47.14.100(t).
- ✓ What steps are necessary to achieve the new arrangement. CINA R. 17.2(e)(4); and

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- **Reasonable/Active Efforts Findings.** Court must determine by preponderance of the evidence:

Whether OCS made timely, reasonable efforts to provide family support services to the child and to the parents to enable the safe return of the child to the family home. CINA R. 17.2(f)(1); AS 47.10.086(a);

and

For an Indian child, whether active efforts were made to provide remedial services and rehabilitative programs to prevent the breakup of the Indian family, and whether they were successful. CINA R. 17.2(f)(1); 25 USC §1912(d).

- **Petition for Termination of Parental Rights Finding.** Determine whether OCS is required to file a petition to terminate parental rights. AS 47.10.080(1)(2)(B).

OCS must file a petition to terminate parental rights if the child has been in foster care for at least 15 of the most recent 22 months; the child is younger than six and has been abandoned; the court found that the best interests of the child do not require further reasonable efforts; the parent has made three or more unsuccessful attempts within a 15-month period to improve; the parent made no effort to remedy the offending conduct or home conditions by the time of the hearing. AS 47.10.088(d).

Exceptions to the termination petition filing requirement are listed at AS 47.10.088(e):

OCS has documented a compelling reason that filing would not be in child's best interest, including care by a relative; or

OCS is required to make reasonable efforts under AS 47.10.086 but has not done so consistent with the case plan.

- **Parental Conduct Finding.** Determine whether parent or guardian made substantial progress to remedy the conduct or conditions in the home that made the child a CINA. CINA R. 17.2(f)(2), AS 47.10.080(1)(4)(B).
- **Custody/Placement Finding.** If the child will remain out of the home, determine whether child's placement is appropriate and in the child's best interests. CINA R. 17.2(f)(3), AS 47.10.080(1)(4)(C).
- **ICWA Placement Preference Findings.** For an Indian child, determine what efforts OCS made to comply with ICWA placement preferences, or whether there is good cause to deviate from those preferences. 25 U.S.C. § 1915(b).

- **Finding of Reasonable Efforts to Achieve and Finalize Permanency Plan.** Has OCS made reasonable efforts to finalize the permanent plan for the child? AS 47.10.080(1)(4)(D); CINA R. 17.2(f)(4).

RESCHEDULE IF INFORMATION INADEQUATE

If court cannot make a finding required at this hearing, schedule and hold another permanency hearing within a "reasonable period of time." CINA R. 17.2(e)(5), AS 47.10.080(1)(3). Refer to AS 47.10.990(23) for definition of "reasonable period of time."

ADDITIONAL ORDERS, FINDINGS, AND SCHEDULING

- **Children 14 and Older.** The court shall enter a finding regarding the services being made by OCS to assist the child in transitioning from foster care to successful adulthood.
- **Implementation Orders.** The court may enter orders to ensure timely implementation of the permanency plan. CINA R. 17.2(g). Court can set a deadline for filing a termination petition if OCS has indicated its intent to file.
- **Set Annual Permanency Review Hearing.** Before the end of this permanency hearing, set the date for the next permanency review hearing. Permanency review hearings must occur at least annually until the permanent plan is successfully implemented. AS 47.10.080(1)(5).

ONGOING RESPONSIBILITIES

Annual Permanency Review Hearing. The court shall hold a hearing to review the permanent plan at least annually until the plan is successfully implemented. AS 47.10.080(1)(5); CINA R. 17.2(i). Set next permanency review hearing.

Change in Permanency Plan. If the permanency plan approved by the court changes after the permanency hearing, OCS shall "promptly" apply for another permanency hearing, and the court shall conduct the hearing within 30 days after application. CINA R. 17.2(h); AS 47.10.080(1)(5).

If the permanent plan is adoption: When OCS files a termination petition, it "shall attempt to locate all living adult family members of the child" and "shall concurrently identify, recruit, process and approve a qualified person or family for an adoption." AS 47.10.088(i).

Psychiatric Treatment Center. If the child is placed in a secure residential psychiatric treatment center, the court must review placement order and make new findings every 90 days. AS 47.10.087(b).