

# Plea Hearing Checklist - CHIPS

- Review petition for reliable and credible information.
- Determine whether all necessary parties have been given proper notice, and:
  1. Notice to tribe(s), if WICWA?
  2. Any alleged fathers?
  3. Is anyone incarcerated?
  4. Diligent search for and notice to relatives completed?
  5. Any language or cognitive challenges?
- Advise the parties:
  1. Allegations in the petition; possible consequences; right to contest the proceedings.
  2. Right to remain silent and a negative inference can be made from the silence.
  3. Right to jury trial and substitution of judge (both requests must be made prior to the end of the hearing or waived, except non-petitioning parties shall be granted continuance if want to consult an attorney about jury trial or substitution).
  4. Right to confront and cross examine witnesses.
  5. Right to present and subpoena witnesses.
  6. Right to counsel, if not already appointed.
    - Refer to State Public Defender if WICWA case or consider appointing counsel (see *Joni B.* factors).
  7. Right to have the allegations proved by clear and convincing evidence.
- Explain to alleged father's limitations on participation but opportunity to be adjudicated.
- If child placed out of the home:
  1. If not done previously, ask the parties to provide the names of three relatives or adults they want considered for placement.
  2. Have reasonable efforts been made to place the child in a placement that enables the sibling group to remain together? OR *if a joint placement is contrary to the safety or well-being of the child or any of the siblings*, has the agency made reasonable efforts to provide frequent visitation?

3. Is family interaction occurring and/or is there a need for the court to address current arrangements?
4. What are the safety issues preventing the child from returning home?
5. Any caregivers present who wish to be heard?

ASK PARTIES FOR THEIR PLEA: IF ONE OR MORE OF THE PARTIES WISHES TO ADMIT TO THE FACTS IN THE PETITION OR PLEADS NO CONTEST

1. Obtain parties stipulation to jurisdiction.

**SEE “STIPULATED PLEA CHECKLIST” BELOW.**

2. Set dispositional hearing within 30 days (10 days for a child held in secure custody) OR, if all parties consent and court report prepared, proceed to disposition.

ASK PARTIES FOR THEIR PLEA: IF PETITION IS CONTESTED

1. Set a fact-finding hearing no more than 30 days after the plea hearing for a child not held in secure custody (20 days for a child held in secure custody).

Extending time limits – there are statutory provisions for delays, continuances and extension of time limits. Some examples of why prescribed time periods may be extended:

1. Other pending legal actions or evaluations (psychological, mental, health, physical) related to or ordered pursuant to the case.
2. The request of the child/parent to conduct discovery.
3. Delay caused by disqualification of judge.
4. Delay resulting from the absence or unavailability of the child or expectant mother.
5. Delay resulting from a settlement conference.

**\*\*MUST MAKE GOOD CAUSE FINDING ON RECORD WHY TIME LIMITS ARE EXTENDED.\*\***

# Stipulated Plea Checklist - CHIPS

- ❑ **LEGAL REPRESENTATION:** Is the parent(s) proceeding without an attorney?
  - Consider Waiver of Right to Attorney (JD-1736) for waiver colloquy with unrepresented party.
  - Should court appoint counsel for the parent pursuant to the factors set forth in *Joni B.* or refer the parent to the State Public Defender's Office if WICWA case?

- ❑ **JURISDICTION:** When taking a plea to jurisdiction (§ 48.30), the court shall address the parties present. Use the Plea Questionnaire/Waiver of Rights for CHIPS and JIPS (JD-1735). *After full colloquy establishing a knowing and voluntary waiver of trial rights, ask the following questions:*

- Do you have any questions that you want to ask me or your attorney before I go through questions I need to ask you?
- Have you had enough time to discuss this with your attorney? Are you satisfied with the representation provided by your attorney?
- Do you understand that the petitioner must prove that your child is in need of protection or of services that can be ordered by the court because (read the jurisdictional statute alleged under § 48.13)?
- Have you read the Petition or has someone read the Petition to you?
- Are you admitting to the allegations in the Petition?

-OR-

Do you understand that a plea of no contest means that you are saying that the petitioner does **not** have to prove the facts in the Petition? Do you also understand that if you enter a plea of no contest, the court will find that the allegations in the Petition are true?

- Did anyone promise you anything or threaten you to admit or plead no contest?
- Have you had any drugs or alcohol in the past 24 hours?
- Are you using any prescription medication?
- Do you understand that you still have the right to a hearing on what the order should contain as to where your child is placed, who has custody of the child, what you have to do to get your child back if they are not placed with you, what you have to do to keep your child if placed with you, and what services the agency must provide for you and your child?
- Counsel, have you had a chance to go over the allegations in the Petition with your client? Are you satisfied that your client understands the nature of the allegations? Are you satisfied that your client's plea is knowingly, voluntarily, and intelligently made?
- Can the court use the facts alleged in the Petition to make a finding that there are sufficient facts to find that the child is in need of protection or services?

☐ **Make the following findings:**

- The court finds that the parties are entering their pleas knowingly, voluntarily and intelligently with full understanding of the nature of the acts alleged in the Petition as well as the potential dispositions. The court further finds, based upon the statements and the facts alleged in the Petition that there is a factual basis for the acceptance of the plea and the court, therefore, accepts the plea. § 48.30(8).
- Based upon the plea and the factual basis for the plea, the court declares the child in need of protection or of services because [read the jurisdictional statute/ground alleged under § 48.13].