

JUVENILE COURT GUIDE

South Central Judicial District

Updated October 2019 by District Court Judge Pamela Nesvig and Judicial Referee Lindsey Nieuwsma

Basic Guide to
terminology and
procedures in Juvenile
Court

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Brief Overview

Juvenile Court is a subset of North Dakota's District Courts. Juvenile Court has jurisdiction over all delinquent, unruly, and deprivation cases involving youth. The Juvenile Court Act can be located in North Dakota Century Code Chapter 27-20, and Juvenile Court follows its own procedural rules called the Rules of Juvenile Procedure. This reference is a starting point to provide the reader with a basic understanding of the proceedings in juvenile court.

Definition of Terms Frequently Used:

Active efforts – ICWA requires that any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under state law, shall satisfy the Court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and that these efforts have proved unsuccessful.

Adjudication – This occurs if the respondent(s) admit the allegation(s) on the Petition or the Court can find, based on evidence presented at a trial, the allegation(s) have been proven.

APPLA (Another Planned Permanent Living Arrangement) – a term created to replace “long-term foster care.” Applicable to a child age 16+ who has not been returned home, placed for adoption, placed with a fit and willing relative, or placed with a legal guardian. Specific findings must be made to place the child in APPLA in a permanency hearing.

Delinquent child – A child who has committed an act designated as a crime under law, including local ordinances or resolutions of this state, or of another state if the act occurred in that state, or under federal law, and the child is in need of rehabilitation and treatment. These are children who have committed acts that are unlawful regardless of age.

Deprived child – A child who is:

- without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals, and the deprivation is not due primarily to the lack of financial means of the child's parents, guardian, or other custodian;
- has been placed for care or adoption in violation of law;
- has been abandoned by the child's parents, guardian, or other custodian;
- is without proper parental care, control, or education as required by law, or other care and control necessary for the child's well-being because of the physical, mental, emotional, or other illness or disability of the child's parent or parents, and that such lack of care is not due to a willful act of commission or act of omission by the child's parents, and care is requested by a parent;
- is in need of treatment and whose parents, guardian, or other custodian have refused to participate in treatment as ordered by the juvenile court;
- was subject to prenatal exposure to chronic or severe use of alcohol or any controlled substance as defined in chapter 19-03.1 in a manner not lawfully prescribed by a practitioner;
- is present in an environment subjecting the child to exposure to a controlled substance, chemical substance, or drug paraphernalia as prohibited by section 19-03.1-22.2.;

- is a victim of human trafficking as defined in title 12.1.

In other states, these are children in need of protection, abused and neglected children, or child welfare cases.

Detention – Temporary placement of a child in a physically secure facility with locked doors and does not include shelter care, attendant care, or home detention; typically the Youth Correctional Center.

Disposition - Order of the Court after an adjudication. Disposition could include an order of supervision or placement of the child outside of the home.

Dual Status Youth – Youth involved in the child welfare and juvenile justice systems.

Guardian ad Litem (GAL) – Trained and certified lay individual appointed to advocate for the best interests of the child in juvenile proceedings. A GAL is appointed for the child in each deprivation case.

Home detention - Also referred to as “house arrest.” Placement of the child with parental or other responsible adult supervision 24/7. This can include other conditions including no contact with an alleged victim, no internet use, and the child may be prohibited from leaving the house outside of attendance at school or work.

ICWA – Indian Child Welfare Act - Federal Law that governs removal and placement of Native American children from their families. If a child is enrolled or enrollable in a Native American tribe, the Court must make additional findings under ICWA. Applicable to unruly and deprived children.

Parties - The parties include the petitioner, the child, parents, guardian, or custodian of the child, if any, and any person that the Court allows to intervene as a party. If the child's parents, guardian, or custodian do not reside or cannot be found within the state, or if their places of residence are unknown, the name of any known adult relative residing within the county, or, if there be none, the known adult relative residing nearest to the location of the court must be included in the petition.

Petitioner(s) - Who files the case? This could be the State, an individual or individuals.

Pick Up and Hold - Equivalent to an “arrest warrant” in adult court. The order will specify whether the child should be placed in detention (secure placement) or shelter care (non-secure placement) upon locating the child.

Placement preferences – ICWA requires in any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with

- (i) a member of the Indian child’s extended family;
 - (ii) a foster home licensed, approved, or specified by the Indian child’s tribe;
 - (iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority;
- or

(iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

Qualified Expert Witness (QEW) – In involuntary ICWA cases, prior to entering an order placing a child in foster care or terminating parental rights, a qualified expert witness must testify regarding whether the child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child and should be qualified to testify as to the prevailing social and cultural standards of the Indian child's tribe. A person may be designated by the Indian child's tribe as being qualified to testify to the prevailing social and cultural standards of the Indian child's tribe.

Respondent(s) - Those responding to the petition. Respondents in a case are typically the child and parents, but may also include a custodian or guardian for the child.

Shelter Care – Temporary care of a child in a physically unrestricted facilities.

Unruly child – A child who:

- is habitually and without justification truant from school;
- is habitually disobedient of the reasonable and lawful commands of the child's parent, guardian, or other custodian and is ungovernable or who is willfully in a situation dangerous or injurious to the health, safety or morals of the child or others;
- has committed an offense applicable only to a child, except for an offense committed by a minor fourteen years of age or older under subsection 2 of section 12.1-31-03 or an equivalent local ordinance or resolution;
- has committed an offense in violation of section 5-01-08;
- or is under the age of fourteen years and has purchased, possessed, smoked, or used tobacco, tobacco-related products, electronic smoking devices, or alternative nicotine products in violation of subsection 2 of section 12.1-31-03;
- and in any of these instances is in need of treatment or rehabilitation.

These are commonly called status offenses and are offenses only applicable to a child.

Emergency Hearings

Detention Hearings

- May be used for delinquent children (not unruly or deprived).
- Typically occur prior to the filing of a petition, but can be requested during pendency of case.
- Reasonable notice, oral or written, must be given to the child, parents, guardian(s), or custodian prior to the hearing. The Court will ask about the Petitioner's efforts to notify all parties prior to the hearing.
- Hearing must be held within 24 hours of the time the child is placed in detention.
- The State must prove there is probable cause the child committed a delinquent act and that continued detention is required: to protect the person or property of others or of the child; because the child may abscond or be removed from the jurisdiction of the court; because the child has no parent, guardian, or custodian or other person able to provide supervision and care for the child and return the child to the court when required; or an order for the child's detention has been made by the court pursuant to the Juvenile Court Act.
- The child and parents each have the right to be represented by legal counsel. The child must be represented by a parent, guardian, or attorney if the child is not 18 years of age. The child must be represented by an attorney if there is a conflict with parental or guardian representation, e.g. the parent or guardian is the alleged victim.
- The child has the right to remain silent but may also present evidence at the hearing.
- The Rules of Evidence do not apply.
- If the child remains in detention a petition hearing must be held within 14 days after the child has been taken into custody.
- The child can be placed home on an order of home detention instead of secured detention.
- Typical placement is at the Youth Correctional Center, at a psychiatric residential treatment facility ("PRTF"), or other secure locations for juveniles.
- ICWA does not apply to delinquent children.
- See attached detention hearing findings and order.

FORM TEMPLATE:

FINDINGS OF FACT AND ORDER ON DETENTION

**IN THE INTEREST OF _____, A CHILD
IN _____ COUNTY, SOUTH CENTRAL JUDICIAL DISTRICT
FILE NUMBER: _____**

1. In addition to any findings made on the record, the Court makes these FINDINGS OF FACT AND CONCLUSIONS OF LAW:
2. The Court has jurisdiction over the parties and the subject matter of this action.
3. The name and birth date of the child is _____, DOB: _____.
4. The child was taken into Detention on _____.
5. The delinquent/unruly acts alleged are _____.
6. The child acknowledges, through the parent or attorney, Court finds, Court does not find that there is probable cause to believe the child has committed the delinquent/unruly acts alleged.
7. The child acknowledges, through the parent or attorney, Court finds, Court does not find that continued Detention of the child is required, to protect the person or property of the child or others, because the child may abscond or be removed from the jurisdiction of the Court, because there is no parent, guardian, or custodian or other person willing or able to provide supervision and care for the child and return the child to the Court when required, because an order for the child's detention has been made by the Court.
8. It is contrary to the welfare of the child to return to the parental home at this time.
9. It is in the best interests of the child to remain in secure Detention for 14 days beginning _____ OR be placed on house arrest, under the attached conditions, for 60 days beginning _____.
10. Based upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED:
11. The request for Detention is GRANTED OR DENIED.
12. The child is hereby placed into Detention at the North Dakota Youth Correctional Center for 14 days beginning _____. If a petition is filed in a Detention matter, it must be filed within 5 days from _____ and an initial hearing held within 14 days from _____.
13. The child is placed under house arrest, under the attached conditions, for 60 days beginning _____. If a petition is filed in a house arrest Detention matter, it must be filed within 30 days from _____ and an initial hearing held within 30 days of the filing of the petition.

Dated October 25, 2019

BY THE COURT:

Judicial Referee

NOTICE OF RIGHT TO REVIEW/APPEAL

- 14. If a Judicial Referee is presiding over this hearing, you have the right to have the Referee’s decision reviewed by a District Court Judge. After the hearing, you were given a copy of the Order, as evidenced by your signature below. If you disagree with the Referee’s decision, you may make a written request for a review. The written request must be given to the Clerk of District Court. The county where you file the request for review is listed below. The request for review must contain the reasons you are requesting the review. The request must be filed within seven (7) days from today. Also, a copy must be provided to the state’s attorney and the Juvenile Court Office.
- 15. If you request a review, you must obey this Order until such time as the District Court Judge changes it in writing. Should you have any questions about this procedure, contact your attorney. If you do not have an attorney, contact the Clerk of District Court.

I certify that I have received a copy of the attached Findings & Order of Detention on October 25, 2019.

Child

Counsel/GAL (BAR ID #)

Parent/Guardian

Counsel (BAR ID #)

Parent/Guardian

Counsel (BAR ID #)

Emergency Hearings

Shelter Care

- May be utilized for delinquent, unruly and deprived children.
- Typically occurs before a petition has been filed, but can be requested during pendency of a case.
- Reasonable notice, oral or written, must be given to the child, parents, guardian(s) or custodian prior to the hearing. The Court will inquire about the Petitioner's efforts to notify all parties prior to the hearing.
- The hearing must be held within 96 hours of the time a child is placed in shelter care.
- The State must prove there is probable cause to believe the child is deprived, delinquent or unruly and that continued shelter care is required: to protect the person or property of others or of the child; because the child may abscond or be removed from the jurisdiction of the court; because the child has no parent, guardian, or custodian or other person able to provide supervision and care for the child and return the child to the court when required; or an order for the child's shelter care has been made by the Court pursuant to the Juvenile Court Act.
- The parents have the right to be represented by an attorney. The child has the right to remain silent and be represented by an attorney in delinquency and unruly cases.
- In a deprivation hearing, a Guardian ad Litem will be appointed for the child.
- The parents and child have the right to present evidence at the hearing.
- The Rules of Evidence do not apply.
- If the child remains in shelter care, the hearing on the petition must be held within 30 days after the filing of the petition. The Court can issue a temporary custody order for up to 60 days from the date of removal.
- The child may be placed with a relative as an alternative to shelter care.
- See attached shelter care findings and order.

ICWA in shelter care proceedings

- The Court must determine if ICWA applies in unruly and deprivation cases. If ICWA applies, the State must present information to support findings on the Appendix A for shelter care hearings (see attached).

- Tribe(s) & Bureau of Indian Affairs (BIA) must be notified.
- A parent can request transfer of the case to tribal court or object to a transfer to tribal court.
- A parent can request additional time to prepare.
- The Court must determine if the child is subject to a tribal court order, ward of tribal court, or resides/is domiciled on the reservation of their tribe.
- The State must prove removal from the parental home is necessary to prevent imminent physical damage or harm to the child.
- The State must show active efforts have been made to prevent removal prior to the child being removed from the home and that those active efforts are continuing to reunite the child and family.
- The State must follow placement preferences (family/Native American foster home) or provide good cause for a deviation.
- The Court can issue a temporary custody order for up to 30 days from the date of removal.

FORM TEMPLATES:

FINDINGS OF FACT AND ORDER ON SHELTER CARE

IN THE INTEREST OF _____, A CHILD
IN _____ COUNTY, SOUTH CENTRAL JUDICIAL DISTRICT
FILE NUMBER: _____

1. In addition to any findings made on the record, the Court makes these **FINDINGS OF FACT AND CONCLUSIONS OF LAW:**
2. The Court has jurisdiction over the parties and the subject matter of this action.
3. The name and birth date of the child is _____.
4. The child was taken into Shelter Care on _____.
5. The **deprivation OR delinquent/unruly acts** alleged is **OR are:**
Said child may be in immediate danger and in need of protection, that leaving said child in the present environment may be injurious to the child.
Removal or placement is necessary to prevent imminent physical damage or harm to the child.
Shelter care is required because the child has no parent, guardian, or custodian or other person able to provide supervision and care of said child.
The child requests removal from the home.
6. The **child acknowledges, through the parent or attorney, the Court finds, the Court does not find** that there is probable cause to believe the child has committed the **delinquent unruly** acts alleged.
7. The **parent acknowledges, Guardian ad Litem acknowledges, the Court finds, the Court does not find** that there is probable cause to believe that the child is deprived.
8. The **child acknowledges, through the parent or attorney, parent acknowledges, Guardian ad Litem acknowledges, the Court finds, the Court does not find** that continued Shelter Care of the child is required.
9. The Indian Child Welfare Act does not apply OR does apply (see attached Appendix A).
10. Continuation in the parental home **would OR would not** be contrary to the welfare of the child.
11. Reasonable efforts **have OR have not** been made to maintain in and/or return the child to the parental home and are set forth in the affidavit which is hereby incorporated. Health and safety concerns for the child are paramount at this time.
12. It was contrary to the welfare of the child to remain in the parental home at time of removal.
13. Reasonable efforts have been made to place the siblings into the same foster care, relative, guardianship or adoptive placement as set forth in the affidavit which is hereby incorporated.
14. Reasonable efforts have been made to provide for frequent visitation or interaction between the siblings as set forth in the affidavit which is hereby incorporated.
15. It is in the best interests of the child that **care, custody, and control be removed from the parents and that custody be placed with** _____ County Social Services for **30/60 days beginning** _____ **OR the child is returned home, subject to any attached conditions, for 60 days beginning** _____.
16. Based upon the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED:**

17. The request for Shelter Care is GRANTED OR DENIED, as continuation in the parental home is no longer contrary to the welfare of the child.
18. Custody of the child is temporarily placed with _____ County Social Services for 30/60 days beginning _____. If a petition is filed in a Shelter Care matter, it must be filed within 15 days from _____ and an initial hearing held within 15 days after the filing of a petition.
19. The child is returned home, subject to any attached conditions, for 60 days beginning _____. If a petition is filed, it must be filed within 30 days from _____ and an initial hearing held within 30 days after the filing of a petition.
20. The custodian shall use reasonable efforts to reunite the child and parents as soon as possible.
21. The custodian shall place the child pursuant to the ICWA and use active efforts to reunite the family.
22. The school district of the child is responsible for any tuition charges.

Dated October 25, 2019.

BY THE COURT:

Judicial Referee

NOTICE OF RIGHT TO REVIEW/APPEAL

23. If a Judicial Referee is presiding over this hearing, you have the right to have the Referee's decision reviewed by a District Court Judge. After the hearing, you were given a copy of the Order, as evidenced by your signature below. If you disagree with the Referee's decision, you may make a written request for a review. The written request must be given to the Clerk of District Court. The county where you file the request for review is listed below. The request for review must contain the reasons you are requesting the review. The request must be filed within **seven (7)** days from today. Also, a copy must be provided to the state's attorney and the Juvenile Court Office.
24. If you request a review, you must obey this Order until such time as the District Court Judge changes it in writing. Should you have any questions about this procedure, contact your attorney. If you do not have an attorney, contact the Clerk of District Court.

I certify that I have received a copy of the attached Findings & Order of Shelter Care on October 25, 2019.

Child

Counsel/GAL (BAR ID #)

Parent/Guardian

Counsel (BAR ID #)

ICWA Appendix A
(Shelter Care Orders)

IN THE INTEREST OF _____, A CHILD
FILE NUMBER: _____

- 1) Standing Rock Sioux Turtle Mountain Three Affiliated Spirit Lake
 _____ Tribe(s) BIA were notified of the proceeding.

- 2) How the child's Native American status is known to the Court:

- 3) The child resides or is **domiciled on the reservation of their Tribe**, **is a ward of Tribal court**, **is under an existing Tribal order**, or **is Not Applicable**

- 4) Active efforts to keep the child in a Native American home **have** **have not** been made and include:

- 5) Health and Safety Concerns for the child are paramount at this time.

- 6) Emergency removal or placement **was** **was not** necessary to prevent imminent physical damage or harm to the child.

- 7) Emergency removal or placement was necessary to prevent imminent physical damage to the child based upon:

- 8) Placement preferences for a Native American Child have been followed **OR** Placement preferences have not been met. However, the Court finds by clear and convincing evidence that a diligent search was conducted regarding placement options AND the Court finds good cause to depart from placement preferences based upon:

Dated October 25, 2019

BY THE COURT:

Child

District Judge/Judicial Referee

Parent/Guardian

Parent/Guardian

Delinquency & Unruly Cases

Initial Appearance

- All parties must have knowledge of the hearing. The Court will ask about the Petitioner's efforts to notify and serve all parties prior to the hearing. Both the parents and the child must be personally served with a copy of the summons and petition. A failure to appear by the child after service may result in a pick-up and hold order. A failure to appear by a parent after service will result in a default finding.
- This is the first hearing to review the petition filed by the State and inform the child of their rights.
- The child has the following rights: to be represented by an attorney (a child younger than 18 years old must be represented by a parent, guardian, or attorney); against self-incrimination; to a trial; to have the allegations on the petition explained; to introduce evidence; to cross-examine witnesses; and to be heard.
- The Court will ask the child or the child's counsel whether they admit or deny the allegation(s) in the petition.
- The case can be resolved at this hearing if the child admits to the allegation(s) and the parties are ready to proceed to disposition.
- A trial date is pre-set. If the child enters a denial, the case will move forward with a trial.
- If the parties believe a pretrial conference is necessary, one can be requested at the initial appearance. A pretrial conference is intended to address: potential resolution; motions filed by the parties; or resolve any other issues prior to trial.
- ICWA applies to unruly cases. The family has the same rights and the State must follow the same ICWA requirements as in a deprivation case. See pg. 26 for ICWA rights and required notices at an initial appearance.

Delinquency & Unruly Cases

Trial

- All parties must appear for the trial. If the child fails to appear after service, a pick-up and hold order may be issued. If a parent fails to appear after service, the parent will be found in default.
- The parties may request witnesses be sequestered (remain outside the courtroom until they testify).
- The parties may make an opening statement.
- The State is required to present evidence to prove the allegation(s) in the petition. The child is not required to present any evidence, but has the right to cross-examine the State's witnesses, present evidence on behalf of the child, and the child may testify.
- The parties may make a closing argument.
- The Court decides whether the State has proven the allegations beyond a reasonable doubt. If proven, the child is adjudicated delinquent and/or unruly.
- If none of the allegations have been proven, the case is dismissed.
- If one or more of the allegations have been proven, the Court must also determine if the child needs rehabilitation or treatment.
- If the child needs rehabilitation or treatment, the Court may proceed to decide disposition immediately or on a different hearing date.

FORM TEMPLATES:

FINDINGS AND INTERIM ORDER

**IN THE INTEREST OF _____, A CHILD
IN _____ COUNTY, SOUTH CENTRAL JUDICIAL DISTRICT
FILE NUMBER: _____**

1. The Court, after fully advising the child of all rights, and after having heard all interested parties, makes the following findings with respect to the allegations contained within the petition(s):
2. The child is adjudicated **deprived unruly delinquent** as defined by N.D.C.C. § 27-20-02 and comes within the jurisdiction of the Uniform Juvenile Court Act. The child is adjudicated _____ on _____ the _____ allegation(s)
3. In addition to any findings already made on the record, the Court finds that it is in the best interest of the child to:
4. Postpone disposition in this matter to allow the Court to receive reports and other evidence bearing on disposition or the need for treatment and rehabilitation.
5. Transfer disposition of this matter to another jurisdiction.
6. Keep custody with the parents, guardian(s), or custodian(s) subject to supervision by Social Services.
7. Remove custody from the parents, guardian(s), or custodian(s) and place it with Social Services or the North Dakota Division of Juvenile Services.
8. Continue this matter to allow the **child mother father guardian custodian** time to obtain legal counsel.
9. Set aside additional time to allow the parties to present evidence and arguments with regard to disposition of this matter.
10. Postpone disposition in this matter until such time that said child appears on another petition or motion that is pending or soon to be pending before the Court.
11. Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED:
12. That a disposition hearing in this matter shall be held within ____ days of this order.
13. That the child shall complete a **(sex offender)(psychological/psychiatric)** evaluation within ___ days. The child and parents shall be responsible for making the necessary arrangements for the evaluation and for all costs associated with the evaluation. The child and parents shall sign a release of information authorizing the exchange of information between the Juvenile Court Office and the evaluator at least five (5) days prior to any scheduled evaluation and that, upon completion of the evaluation, the Juvenile Court Office shall be responsible for filing the evaluation results with the Clerk of Court's Office and for providing all parties access to the evaluation results.
14. That disposition of this matter shall be transferred to _____.
15. That, pending transfer, said child shall be detained in a secure facility (including the North Dakota Youth Correctional Center), for a period not to exceed _____ days.
16. The child shall remain in return to the custody of the parents, guardian(s), or custodian(s) subject to an order of supervision by _____ Social Services. **Full**

Findings and Order shall be issued by the Court at a later date and shall be provided to all parties.

17. That the child has been placed under legal care, custody, and control of _____ Social Services and the Court has authorized out-of-home placement. **Full Findings and Order shall be issued by the Court at a later date and shall be provided to all parties.**
18. That the child has been placed under legal care, custody, and control of the Division of Juvenile Services and the Court has authorized out-of-home placement, including the authority to place the child at the North Dakota Youth Correctional Center. **Full Findings and Order shall be issued by the Court at a later date and shall be provided to all parties.**
19. That, if a party wishes to request court-appointed counsel on behalf of their child or on their own behalf, an application must be completed and returned to the Juvenile Court Office **before leaving today within ___ days.** If a party does not apply or qualify for court-appointed counsel, they shall be responsible for hiring an attorney for themselves or their child.
20. That the current Order dated _____, shall continue in effect, not to exceed _____ days from _____.
21. That _____ hour(s) or _____ day(s) be set aside for hearing time in this matter.
22. The appointment of the Guardian ad Litem terminates as of the date of this Order.
23. The order is interlocutory pending service on _____.

Dated October 25, 2019.

BY THE COURT:

Judicial Referee

I certify that I have received a copy of the attached Findings & Interim Order on October 25, 2019.

Child

Counsel/GAL (BAR ID #)

Parent/Guardian

Counsel (BAR ID #)

Delinquency & Unruly cases

Disposition

- All parties must appear for disposition. If the child fails to appear after service, a pick-up and hold order may be issued. If a parent fails to appear after service, the parent will be found in default.
- The parent have the right to be represented by legal counsel at this hearing. Each parent has the right to individually apply for court-appointed counsel. If they are ineligible for an attorney, they must either represent themselves or hire an attorney.
- The State makes a recommendation to the Court for disposition. The State can present evidence to support their recommendation, and if an allegation involves a victim, that victim has the right to be heard.
- The child and parents have a right to request a disposition they believe to be appropriate.
- Dispositions can include: Nothing; placement on probation with certain conditions the child must follow (this typically includes requirements that the child not violate the law, not use controlled substances, meet with a probation officer regularly, complete any treatment recommendations); restitution; placement in Social Services' custody; or placement in the custody of the Division of Juvenile Services. The orders can last for a period of up to 12 months from the date of the hearing.
- If the child/parents do not agree on an order of restitution, a separate hearing may be held.
- ICWA applies to unruly cases. See pg. 28 for additional ICWA requirements at disposition.

FORM TEMPLATES:

FINDINGS OF FACT AND ORDER OF DISPOSITION

**IN THE INTEREST OF _____, A CHILD
IN _____ COUNTY, SOUTH CENTRAL JUDICIAL DISTRICT
FILE NUMBER: _____**

1. The Court, after fully advising the child of all rights, and after having heard all interested parties, makes the following findings with respect to the allegation(s) contained within the petition: _____
2. In addition to any findings made on the record, the child shall be adjudicated **unruly delinquent** as defined by N.D.C.C. § 27-20-02. The child comes within the jurisdiction of the Uniform Juvenile Court Act and is in need of treatment and rehabilitation. Considering all factors, Formal Probation is ordered for a period of _____ months expires: _____/_____/_____) Probation is the least restrictive disposition available and is hereby ordered. The following disposition and conditions are necessary to ensure the safety of the community, that the child receives the most appropriate treatment or rehabilitation, and that the child is accountable to the victim(s). The child shall comply with and/or complete the following conditions:
 3. Abide by all federal, state, and local laws and ordinances, including educational requirements and follow through with recommendations from YASI assessment.
 4. Not consume, possess, or purchase alcohol, or drugs, including any and all synthetic cannabinoids, and designer stimulants or bath salts, sold or marketed under false pretenses with the warning "Not for Human Consumption."
 5. Child and parent shall sign releases of information as requested by the Juvenile Court Officer.
 6. Report to the Juvenile Court Officer (JCO)/Juvenile Drug Court (JDC) as required, and abide by all rules and conditions set by the JCO/JDC. Child and parents shall inform the JCO of any change in address or phone number within forty-eight (48) hours.
 7. The JCO may implement an Intensive Supervision Program with Services (ISP). The Child must comply with all conditions of the ISP as listed on the agreement.
 8. Prior to leaving the state, the child shall obtain a travel permit if required by the Interstate Compact of Juveniles. If moving out of state, the child and family shall cooperate with JCO, complete all required forms, and await Interstate Compact approval.
 9. Complete all counseling and programs required by the JCO/JDC to include risk assessment and mental health screening.
 10. Complete (psychological/psychiatric)(sex offender) evaluation within thirty (30) days and follow any recommendations resulting from the evaluation. The child and parent shall sign a release of information authorizing the exchange of information between the Juvenile Court Office and the evaluator at least five (5) days prior to any scheduled evaluation.
 11. Complete drug and alcohol evaluation/treatment/programming as determined to be appropriate by the JCO/JDC. At a minimum, a drug/alcohol education program shall be completed.
 12. Submit to random drug and alcohol screens.
 13. Make restitution (joint and several) to the victim(s) in the amount of _____

- to be completed sixty (60) days prior to termination of this Order.
14. Petitioner is to provide the amount of restitution within ____ days. The respondent shall have ____ days from the date of receipt of the restitution amount to file a written request for a hearing with the Clerk of District Court. If no hearing is requested, then child shall pay the requested amount of restitution (joint and several) to be completed sixty (60) days prior to termination of this Order.
 15. Make an apology to the victim(s) in a manner required by the JCO/JDC.
 16. No contact with the victim(s). The child cannot call, write, have messages delivered or have contact directly or indirectly with the victim(s). The child cannot contact the victim through an electronic device. The child cannot come within ____ feet of the victim(s).
 17. Complete _____hours of community service by (____/____/____)(60 days prior to expiration of this order).
 18. Complete accountability conferencing and complete all conditions of any accountability agreement. If no agreement can be reached, the matter may be set for further hearing.
 19. Not operate a motor vehicle (for the period of this Order) (except as allowed by JCO/JDC).
 20. Notice of any adjudicated offense(s) involving the operation of a motor vehicle shall be sent to the ND Dept. of Transportation pursuant to NDCC 27-20-51(3) and 39-06-01.1(1)(a) & (b).
 21. Not own or possess a firearm or other dangerous weapon (for the period of this Order) (except as allowed by the JCO/JDC).
 22. Law enforcement shall have the authority to search the person or premises of said child without probable cause and without notice, including all areas to which said child has the right of access, including electronic devices and phones.
 23. Complete (Victim Empathy Seminar) (Anger Management) (Alive at 25)
 24. Participate in and successfully complete all requirements of the Juvenile Drug Court Program.
 25. This order is interlocutory pending service on _____.
 26. It is further ordered that, pursuant to N.D.C.C. Section 27-20-27.1, the child's parents or guardian(s) shall participate in the treatment and rehabilitation of the child. Any parent or guardian who willfully fails to participate may be held in contempt by the Court.

Dated October 25, 2019.

BY THE COURT:

Judicial Referee

NOTICE OF RIGHT TO REVIEW/APPEAL

27. If a Judicial Referee is presiding over this hearing, you have the right to have the Referee’s decision reviewed by a District Court Judge. After the hearing, you were given a copy of the Order, as evidenced by your signature below. If you disagree with the Referee’s decision, you may make a written request for a review. The written request must be given to the Clerk of District Court. The county where you file the request for review is listed below. The request for review must contain the reasons you are requesting the review. The request must be filed within seven (7) days from today. Also, a copy must be provided to the state’s attorney and the Juvenile Court Office.
28. If you request a review, you must obey this Order until such time as the District Court Judge changes it in writing. Should you have any questions about this procedure, contact your attorney. If you do not have an attorney, contact the Clerk of District Court.

I certify that I have received a copy of the attached Findings and Order of Disposition on October 25, 2019.

Child

Counsel/GAL (BAR ID #)

Parent/Guardian

Counsel (BAR ID #)

Parent/Guardian

Counsel (BAR ID #)

Delinquency & Unruly cases

Review Hearing

- This is a hearing to review the prior order of the Court to change or extend the current disposition in the case.
- The State alleges violations of the prior court order. The State must prove the child failed to complete conditions of the prior order or violated conditions of the prior order.
- The child continues to have the same rights of representation by either a parent or an attorney.
- The child has the right to deny and require the State to prove the alleged violations.
- If the State fails to prove the alleged violations, the original order remains in effect until the expiration date.
- If the State proves the conditions of the prior order has been violated, the parties proceed to disposition. Disposition proceeds as stated on pg. 18. This hearing can occur on the same date of the review hearing or on a separate date.

Delinquency & Unruly cases

Permanency Hearing

- When a child has been placed in Social Services custody or with the Division of Juvenile Services, and the goals of the prior order have not been met, the State can request an extension or modification of the prior order through a “Motion for Permanency.”
- It is the State’s burden to prove the goals of the prior order for treatment and rehabilitation have not been met.
- The child continues to have the same rights of representation by either a parent or an attorney.
- The parties have the right to deny and require the State to prove by clear and convincing evidence the goals of the prior order have not been met.
- If the State fails to prove the need for permanency, the original order remains in effect until expiration.
- If the State proves the goals of the prior order have not been met and other permanency requirements, the parties proceed to disposition. Disposition proceeds as stated on pg. 18. This hearing can occur on the same date as the permanency hearing or on a separate date.
- Permanency cases carry additional findings. These findings include: reasonable efforts for reunification, identifying a permanent plan, whether termination of parental rights should be considered, and the best interests of the child, sibling contact and sibling placement.
- ICWA applies to unruly cases at a permanency hearing. See pg. 31 for ICWA permanency hearing findings.

FORM TEMPLATE:

FINDINGS OF FACT AND ORDER OF PERMANENCY

**IN THE INTEREST OF _____, A CHILD
IN _____ COUNTY, SOUTH CENTRAL JUDICIAL DISTRICT
FILE NUMBER: _____**

In addition to any findings made on the record, the Court makes the following findings:

1. The Court has jurisdiction over the parties and the subject matter of this action.
2. The name and birth date of the child is: _____.
3. The child was adjudicated delinquent unruly deprived on _____. Custody of the child was placed with _____ County Social Services OR North Dakota Division of Juvenile Services, as amended until _____.
4. Reasonable efforts have been made to maintain the child in or return the child to the parental home. Those reasonable efforts are set forth in the affidavit which is hereby incorporated.
5. The permanent plan for the child provides for reunification with the parent/parents, guardianship, termination of parental rights, another planned permanent living arrangement, trial home visits. Reasonable efforts have been made to finalize the permanent plan for the child.
6. Compelling reasons exist as to why termination of parental rights are not in the best interest of the child. Those reasons are set forth in the affidavit which is hereby incorporated.
7. It is contrary to the best interests of the child to be returned to the parental home at this time.
8. The goals of the prior Order have not been accomplished.
9. It is in the best interests of the child that custody remain with the current custodial agency.
10. Reasonable efforts have been made to place the siblings into the same foster care, relative, guardianship or adoptive placement as set forth in the affidavit which is hereby incorporated.
11. Reasonable efforts have been made to provide for frequent visitation or interaction between the siblings as set forth in the affidavit which is hereby incorporated.
12. The Indian Child Welfare Act does not apply OR does apply see Attached Appendix A.
13. Continued out of state placement is OR is not appropriate and is OR is not in the best interests of the child. (N/A)
14. Based upon the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED:**
15. The care, custody, and control of the child is hereby placed with _____ County Social Services OR North Dakota Division of Juvenile Services until _____. Custody to the Division of Juvenile Services shall OR shall not include the authority to place at the North Dakota Youth Correctional Center.
16. The child shall, upon attaining the age of 14, be offered a program of independent living.
17. All the terms and conditions of the prior findings and orders with respect to the child shall remain in full force and effect unless inconsistent with this Order.
18. This Order shall have interlocutory effect until service is accomplished and due process is given. (N/A)
19. The appointment of the Guardian ad Litem terminates as of the date of this Order. (N/A)

Dated October 25, 2019

BY THE COURT:

Judicial Referee

NOTICE OF RIGHT TO REVIEW/APPEAL

20. If a Judicial Referee is presiding over this hearing, you have the right to have the Referee's decision reviewed by a District Court Judge. After the hearing, you were given a copy of the Order, as evidenced by your signature below. If you disagree with the Referee's decision, you may make a written request for a review. The written request must be given to the Clerk of District Court. The county where you file the request for review is listed below. The request for review must contain the reasons you are requesting the review. The request must be filed within **seven (7)** days from today. Also, a copy must be provided to the state's attorney and the Juvenile Court Office.
21. If you request a review, you must obey this Order until such time as the District Court Judge changes it in writing. Should you have any questions about this procedure, contact your attorney. If you do not have an attorney, contact the Clerk of District Court.

I certify that I have received a copy of the attached Findings & Order of Permanency on October 25, 2019.

Child

Counsel/GAL (BAR ID #)

Parent/Guardian

Counsel (BAR ID #)

Parent/Guardian

Counsel (BAR ID #)

Parent/Guardian

Counsel (BAR ID #)

Deprivation Cases

Initial Appearance

- All parties must have knowledge of this hearing. The Court will ask about the Petitioner's efforts to notify and serve parties prior to the hearing. The parents (and a child 14 or older) must be personally served with a copy of the summons and petition. A failure to appear by a parent after service will result in a default finding. The child is not required to appear. The Guardian ad Litem must appear unless excused by the Court.
- This is the first hearing to review the petition filed by the State and to inform the parents of their rights.
- The parents have the following rights: to be represented by an attorney; to a trial; to introduce evidence; to cross-examine witnesses; and to be heard.
- The Court will ask the parents if they admit or deny the allegations in the petition and agree or disagree with the requested relief by the State.
- The case can be resolved at this hearing if the parents admit to deprivation and the parties are ready to proceed to disposition.
- A trial date is pre-set. If a parent enters a denial, the case will move forward with a trial.
- If the parties believe a pretrial conference is necessary, one can be requested at the initial appearance. A pretrial conference is intended to address: potential resolution; motions filed by the parties; or resolve any other issues prior to trial.
- Note: There are additional/different requirements at each stage for a private guardianship proceeding, which are not addressed in this guide.

ICWA Cases

- Notice is required to each Tribe where the child may be a member and to the BIA (Bureau of Indian Affairs).
- Each parent has the right to request a transfer to tribal court, object to the transfer to tribal court, and request additional time to prepare.

Deprivation Cases

Trial

- The parents must appear for the trial. If a parent fails to appear after service, the parent will be found in default. The child is not required to appear.
- The parties may request witnesses be sequestered (remain outside the courtroom until they testify).
- The parties may make an opening statement.
- The State is required to present evidence to prove deprivation. The parents are not required to present any evidence, but have the right to cross-examine witnesses, present evidence, and they may testify. The Court calls upon the GAL regarding their recommendation.
- The parties may make a closing argument.
- The Court decides whether the State has proven deprivation by clear and convincing evidence.
- If deprivation has not been proven, the case is dismissed.
- If deprivation has been proven, the Court may proceed to decide disposition immediately or on a different hearing date.

ICWA Cases

- The State must additionally prove jurisdiction over the child.

Deprivation Cases

Disposition

- The parents must appear for disposition. If a parent fails to appear after service, the parent will be found in default. The child is not required to appear.
- The parents continue to have the right to be represented by legal counsel.
- The State makes a recommendation to the Court for disposition. The State can present evidence to support their recommendation.
- The parents have a right to request a disposition they believe to be appropriate.
- Dispositions must be best suited to the protection, and physical, mental and moral welfare of the child and can include: nothing; return/remain in the parental home under an order of supervision (parents must participate in court-ordered services provided by Social Services); placement in Social Services' custody; placement in a guardianship; or placement with a relative. The orders can last for a period of up to 12 months.
- If the child is placed outside of the home, the State must show: reasonable efforts have been made to prevent the removal of the child from the parental home; that it is contrary to the welfare of the child to remain in the parental home; that it is in the best interest of the child to remove custody and be placed outside the home; and the State's efforts to place siblings together (maintain connections and contact).

ICWA Cases

- The State must present proof beyond a reasonable doubt that continued custody of the child by the parent or Indian custodian would result in serious emotional or physical damage to the child; active efforts prior to the removal of the child to prevent the breakup of the family and whether they were successful; reasonable and active efforts to reunite; and placement preferences – whether they were followed or is there good cause to deviate.
- In an involuntary proceeding, the State must present testimony from a qualified expert witness (QEW). The witness must be qualified to testify to the prevailing social and cultural standards of the Tribe & whether continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

FORM TEMPLATE:

FINDINGS AND INTERIM ORDER

**IN THE INTEREST OF _____, A CHILD
IN _____ COUNTY, SOUTH CENTRAL JUDICIAL DISTRICT
FILE NUMBER: _____**

1. The Court, after fully advising the child of all rights, and after having heard all interested parties, makes the following findings with respect to the allegations contained within the petition(s):
2. The child is adjudicated **deprived unruly delinquent** as defined by N.D.C.C. § 27-20-02 and comes within the jurisdiction of the Uniform Juvenile Court Act. The child is adjudicated _____ on _____ the _____ allegation(s)
3. In addition to any findings already made on the record, the Court finds that it is in the best interest of the child to:
4. Postpone disposition in this matter to allow the Court to receive reports and other evidence bearing on disposition or the need for treatment and rehabilitation.
5. Transfer disposition of this matter to another jurisdiction.
6. Keep custody with the parents, guardian(s), or custodian(s) subject to supervision by Social Services.
7. Remove custody from the parents, guardian(s), or custodian(s) and place it with Social Services or the North Dakota Division of Juvenile Services.
8. Continue this matter to allow the **child mother father guardian custodian** time to obtain legal counsel.
9. Set aside additional time to allow the parties to present evidence and arguments with regard to disposition of this matter.
10. Postpone disposition in this matter until such time that said child appears on another petition or motion that is pending or soon to be pending before the Court.
11. Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED**:
12. That a disposition hearing in this matter shall be held within ____ days of this order.
13. That the child shall complete a (**sex offender**)(**psychological/psychiatric**) evaluation within ____ days. The child and parents shall be responsible for making the necessary arrangements for the evaluation and for all costs associated with the evaluation. The child and parents shall sign a release of information authorizing the exchange of information between the Juvenile Court Office and the evaluator at least five (5) days prior to any scheduled evaluation and that, upon completion of the evaluation, the Juvenile Court Office shall be responsible for filing the evaluation results with the Clerk of Court's Office and for providing all parties access to the evaluation results.
14. That disposition of this matter shall be transferred to _____.
15. That, pending transfer, said child shall be detained in a secure facility (including the North Dakota Youth Correctional Center), for a period not to exceed _____ days.
16. The child shall remain in return to the custody of the parents, guardian(s), or custodian(s) subject to an order of supervision by _____ Social Services. **Full Findings and Order shall be issued by the Court at a later date and shall be provided**

to all parties.

17. That the child has been placed under legal care, custody, and control of _____ Social Services and the Court has authorized out-of-home placement. **Full Findings and Order shall be issued by the Court at a later date and shall be provided to all parties.**
18. That the child has been placed under legal care, custody, and control of the Division of Juvenile Services and the Court has authorized out-of-home placement, including the authority to place the child at the North Dakota Youth Correctional Center. **Full Findings and Order shall be issued by the Court at a later date and shall be provided to all parties.**
19. That, if a party wishes to request court-appointed counsel on behalf of their child or on their own behalf, an application must be completed and returned to the Juvenile Court Office **before leaving today within ___ days.** If a party does not apply or qualify for court-appointed counsel, they shall be responsible for hiring an attorney for themselves or their child.
20. That the current Order dated _____, shall continue in effect, not to exceed _____ days from _____.
21. That _____ hour(s) or _____ day(s) be set aside for hearing time in this matter.
22. The appointment of the Guardian ad Litem terminates as of the date of this Order.
23. The order is interlocutory pending service on _____.

Dated October 25, 2019.

BY THE COURT:

Judicial Referee

I certify that I have received a copy of the attached Findings & Interim Order on October 25, 2019.

Child

Counsel/GAL (BAR ID #)

Parent/Guardian

Counsel (BAR ID #)

Deprivation Cases

Permanency Hearings

- When a child has been placed in Social Services custody, and the goals of the prior order have not been met, the State can request an extension or modification of the prior custody order through a “Motion for Permanency.”
- It is the State’s burden to prove the goals of the prior order have not been met (deprivation continues). The State also has to determine a permanency plan for the child which could be reunification, termination of parental rights/adoption, or a guardianship.
- Permanency cases carry additional findings the State must present. These findings include reasonable efforts for reunification, identifying a permanent plan, whether termination of parental rights should be considered, the best interests of the child, sibling contact and sibling placement.
- The parents continue to have the same rights of representation by an attorney.
- The parents have the right to deny and require the State to prove by clear and convincing evidence the goals of the prior order have not been met.
- If the State fails to prove the need for permanency, the original order remains in effect until expiration.
- If the State proves the goals of the prior order have not been met and other permanency requirements, the parties proceed to disposition. Disposition proceeds as stated on pg. 28. This hearing can occur on the same date as the permanency hearing or on a separate date.

APPLA

- If the child is 16 years old or older, the child must be present in court to address APPLA (Another Planned Permanent Living Arrangement). The Court must speak with the child and make findings including: what is the permanent plan for the child; whether the child wants the permanent plan to be APPLA; why APPLA may be the best plan for the child; why it is not in the best interest of the child to be returned home, placed in a guardianship, or placed for adoption.

ICWA Cases

- Notification required to the Tribe(s) and the BIA.
- The State must show that active efforts were made to place the child in a Native American home.

- That custody of the child by the parents would continue to result in serious emotional and/or physical damage to the child.
- Whether placements preferences were met or if there has been a deviation.

FORM TEMPLATES:

FINDINGS OF FACT AND ORDER OF PERMANENCY

**IN THE INTEREST OF _____, A CHILD
IN _____ COUNTY, SOUTH CENTRAL JUDICIAL DISTRICT
FILE NUMBER: _____**

In addition to any findings made on the record, the Court makes the following findings:

1. The Court has jurisdiction over the parties and the subject matter of this action.
2. The name and birth date of the child is: _____.
3. The child was adjudicated delinquent unruly deprived on _____. Custody of the child was placed with _____ County Social Services OR North Dakota Division of Juvenile Services, as amended until _____.
4. Reasonable efforts have been made to maintain the child in or return the child to the parental home. Those reasonable efforts are set forth in the affidavit which is hereby incorporated.
5. The permanent plan for the child provides for reunification with the parent/parents, guardianship, termination of parental rights, another planned permanent living arrangement, trial home visits. Reasonable efforts have been made to finalize the permanent plan for the child.
6. Compelling reasons exist as to why termination of parental rights are not in the best interest of the child. Those reasons are set forth in the affidavit which is hereby incorporated.
7. It is contrary to the best interests of the child to be returned to the parental home at this time.
8. The goals of the prior Order have not been accomplished.
9. It is in the best interests of the child that custody remain with the current custodial agency.
10. Reasonable efforts have been made to place the siblings into the same foster care, relative, guardianship or adoptive placement as set forth in the affidavit which is hereby incorporated.
11. Reasonable efforts have been made to provide for frequent visitation or interaction between the siblings as set forth in the affidavit which is hereby incorporated.
12. The Indian Child Welfare Act does not apply OR does apply see Attached Appendix A.
13. Continued out of state placement is OR is not appropriate and is OR is not in the best interests of the child. (N/A)
14. Based upon the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED:**
15. The care, custody, and control of the child is hereby placed with _____ County Social Services OR North Dakota Division of Juvenile Services until _____. Custody to the Division of Juvenile Services shall OR shall not include the authority to place at the North Dakota Youth Correctional Center.
16. The child shall, upon attaining the age of 14, be offered a program of independent living.
17. All the terms and conditions of the prior findings and orders with respect to the child shall remain in full force and effect unless inconsistent with this Order.
18. This Order shall have interlocutory effect until service is accomplished and due process is given. (N/A)
19. The appointment of the Guardian ad Litem terminates as of the date of this Order. (N/A)

Dated October 25, 2019

BY THE COURT:

Judicial Referee

NOTICE OF RIGHT TO REVIEW/APPEAL

20. If a Judicial Referee is presiding over this hearing, you have the right to have the Referee's decision reviewed by a District Court Judge. After the hearing, you were given a copy of the Order, as evidenced by your signature below. If you disagree with the Referee's decision, you may make a written request for a review. The written request must be given to the Clerk of District Court. The county where you file the request for review is listed below. The request for review must contain the reasons you are requesting the review. The request must be filed within **seven (7)** days from today. Also, a copy must be provided to the state's attorney and the Juvenile Court Office.
21. If you request a review, you must obey this Order until such time as the District Court Judge changes it in writing. Should you have any questions about this procedure, contact your attorney. If you do not have an attorney, contact the Clerk of District Court.

I certify that I have received a copy of the attached Findings & Order of Permanency on October 25, 2019.

Child

Counsel/GAL (BAR ID #)

Parent/Guardian

Counsel (BAR ID #)

Parent/Guardian

Counsel (BAR ID #)

Parent/Guardian

Counsel (BAR ID #)

**FINDINGS OF FACT AND ORDER OF PERMANENCY (APPLA: ANOTHER
PLANNED PERMANENT LIVING ARRANGEMENT)**

**IN THE INTEREST OF _____, A CHILD
IN _____ COUNTY, SOUTH CENTRAL JUDICIAL DISTRICT
FILE NUMBER: _____**

In addition to any findings made on the record, the Court makes the following findings:

1. The Court has jurisdiction over the parties and the subject matter of this action.
2. The name and birth date of the child is: _____.
3. The child was adjudicated delinquent unruly deprived on _____.
Custody of the child was placed with (_____ County Social Services)
(North Dakota Division of Juvenile Services), (as amended) until _____.
4. Reasonable efforts have been made to maintain the child in or return the child to the parental home. Those reasonable efforts are set forth in the affidavit which is hereby incorporated.
5. The permanent plan for the child provides for reunification with the parent/parents, guardianship, termination of parental rights, another planned permanent living arrangement – APPLA, trial home visits. Reasonable efforts have been made to finalize the permanent plan for the child.
6. The child is sixteen (16) years of age or older.
7. The Court has inquired of the child whether the child has a desired permanency outcome of APPLA.
8. APPLA is the best permanency plan for the child based upon _____.
9. Compelling reasons exist as to why termination of parental rights are not in the best interest of the child. Those reasons are set forth in the affidavit which is hereby incorporated.
10. There are compelling reasons that it is not in the best interests of the child to be returned to the parental home at this time, be placed for adoption, be placed with a legal guardian, or placed with a fit and willing relative. The reasons are as follows:
11. The goals of the prior Order have not been accomplished.
12. It is in the best interests of the child that custody remain with the current custodial agency.
13. Reasonable efforts have been made to place the siblings into the same foster care, relative, guardianship or adoptive placement as set forth in the affidavit which is hereby incorporated.
14. Reasonable efforts have been made to provide for frequent visitation or interaction between the siblings as set forth in the affidavit which is hereby incorporated.
15. The Indian Child Welfare Act does not apply OR does apply see Attached Appendix A.
16. Continued out of state placement is OR is not appropriate and is OR is not in the best interests of the child. (N/A)
17. Based upon the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED**:
18. The care, custody, and control of the child is hereby placed with _____
County Social Services OR North Dakota Division of Juvenile Services until
_____. Custody to the Division of Juvenile Services shall OR shall
not include the authority to place at the North Dakota Youth Correctional Center.
19. The child shall, upon attaining the age of 14, be offered a program of independent living.
20. All the terms and conditions of the prior findings and orders with respect to the child shall

remain in full force and effect unless inconsistent with this Order.

21. This Order shall have interlocutory effect until service is accomplished and due process is given. (N/A)

22. The appointment of the Guardian ad Litem terminates as of the date of this Order. (N/A)

Dated October 25, 2019

BY THE COURT:

Judicial Referee

NOTICE OF RIGHT TO REVIEW/APPEAL

23. If a Judicial Referee is presiding over this hearing, you have the right to have the Referee's decision reviewed by a District Court Judge. After the hearing, you were given a copy of the Order, as evidenced by your signature below. If you disagree with the Referee's decision, you may make a written request for a review. The written request must be given to the Clerk of District Court. The county where you file the request for review is listed below. The request for review must contain the reasons you are requesting the review. The request must be filed within **seven (7)** days from today. Also, a copy must be provided to the state's attorney and the Juvenile Court Office.

24. If you request a review, you must obey this Order until such time as the District Court Judge changes it in writing. Should you have any questions about this procedure, contact your attorney. If you do not have an attorney, contact the Clerk of District Court.

I certify that I have received a copy of the attached Findings & Order of Permanency on October 25, 2019.

Child

Counsel/GAL (BAR ID #)

Parent/Guardian

Counsel (BAR ID #)

Parent/Guardian

Counsel (BAR ID #)

Parent/Guardian

Counsel (BAR ID #)

ICWA Appendix A
(Permanency Orders)

IN THE INTEREST OF _____, A CHILD
FILE NUMBER: _____

1) Standing Rock Sioux Turtle Mountain Three Affiliated Spirit Lake
 _____ Tribe(s) BIA were notified of the
proceeding

2) Active efforts to keep the child in a Native American home **have** **have not** been
made and include:

3) The Court finds by clear and convincing evidence that a causal relationship exists
between the existence of particular conditions in the home and the likelihood that
continued custody of the child will result in serious emotional/physical damage to the
child.

4) Placement preferences for a Native American Child have been followed **OR**
Placement preferences have not been met. However, the Court finds by clear and
convincing evidence that a diligent search was conducted regarding placement options
AND the Court finds good cause to depart from placement preferences based upon:

Dated October 25, 2019

BY THE COURT:

Child

District Judge/Judicial Referee

Parent/Guardian

Parent/Guardian

Termination of Parental Rights

Initial Appearance

- All parties must have knowledge of this hearing. The Department of Human Services Director of the County Social Services must be provided a copy of the petition and summons. The parents (and a child 14 or older) must be personally served with a copy of the summons and petition. A failure to appear by a parent after service will result in a default finding. The child is not required to appear. The Guardian ad Litem must appear unless excused by the Court.
- This is the first hearing to review the petition filed by the State and inform the parents of their rights.
- The parents have the following rights: to be represented by an attorney; to a trial; to introduce evidence; to cross-examine witnesses; and to be heard.
- A trial date is pre-set and served upon the parties with the summons and petition.
- If the parties believe a pretrial conference is necessary, one can be requested at the initial appearance. A pretrial conference is intended to address: potential resolution; motions filed by the parties; or resolve any other issues prior to trial.
- The State can allege termination is necessary based on the following:
 - The parent has abandoned the child;
 - Aggravated circumstances exist under subsection 3 of section 27-20-02;
 - The parent has pled guilty or nolo contendere to, or has been found guilty of engaging in a sexual act under section 12.1-20-03 or 12.1-20-04, the sexual act led to the birth of the parent's child, and termination of the parental rights of the parents is in the best interests of the child;
 - Or the child is a deprived child and the Court finds:
 1. The conditions and causes of the deprivation are likely to continue or will not be remedied and that by reason thereof the child is suffering or will probably suffer serious physical, mental, moral, or emotional harm; or
 2. The child has been in foster care, in the care, custody, and control of the department, or a county social service board, or, in cases arising out of an adjudication by the juvenile court that a child is an unruly child, the Division of Juvenile Services, for at least four hundred fifty out of the previous six hundred sixty nights.
 - A parent may voluntarily terminate his or her parental rights to the child by executing a written consent to termination, witnessed and acknowledged by the Court. The parent is not required to admit to deprivation of the child if he or she wishes to voluntarily terminate parental rights.

ICWA Cases

- Notice is required to each tribe where the child may be a member and the BIA.

- The parents have the right to request a transfer to tribal court, object to transfer to tribal court, and request additional time to prepare.

Termination of Parental Rights

Trial

- The parents must appear for the trial. If a parent fails to appear, the parent will be found in default. The child is not required to appear. The Guardian ad Litem must appear unless excused by the Court.
- The parties may request witnesses be sequestered (remain outside the courtroom until they testify).
- The parties may make an opening statement.
- The State is required to present evidence to prove termination of parental rights is necessary. The parents are not required to present any evidence, but have the right to cross-examine witnesses, present evidence, and they may testify. The Court calls upon the GAL regarding their recommendation.
- The parties may make a closing argument.
- The Court decides whether the State has proven termination by clear and convincing evidence.
- If termination has not been proven, the case is dismissed.

ICWA Cases

- The State must present evidence to show the child does not reside or is not domiciled on the reservation of their tribe nor a ward of the tribal court or under an existing tribal court order.
- The State must present proof beyond a reasonable doubt that continued custody of the child by the parents or Indian custodian would result in serious emotional or physical damage to the child; active efforts prior to the removal of the child to prevent the breakup of the family and whether they were successful; reasonable and active efforts to reunite; and placement preferences – whether they were followed or is there good cause to deviate.
- For an involuntary termination, the State must present testimony from a Qualified Expert Witness (QEW). The witness must be qualified to testify to the prevailing social and cultural standards of the Tribe and whether continued custody by the parents or Indian custodian is likely to result in serious emotional or physical damage to the child.

Termination of Parental Rights

Permanency Hearings

- When the parental rights have been terminated, and the goals of the prior order have not been met, typically completion of an adoption or guardianship, the State can request an extension or modification of the prior custody order through a “Motion for Permanency.”
- It is the State’s burden to prove the goals of the prior order have not been. The State also has to determine a permanency plan for the child which could be adoption, a guardianship, or another planned permanent living arrangement.
- Permanency cases carry additional findings the State must present. These findings include identifying a permanent plan, show reasonable efforts to finalize the permanent plan, the best interests of the child, sibling contact and sibling placement.
- If the State fails to prove the need for permanency, the original order remains in effect until expiration.
- If the State proves the goals of the prior order have not been met and other permanency requirements, the parties proceed to disposition. Disposition proceeds as stated on pg. 31. This hearing can occur on the same date as the permanency hearing or on a separate date.

APPLA

- If the child is 16 years old or older, the child must be present in court to address APPLA (Another Planned Permanent Living Arrangement). The Court must speak with the child and make findings including: what is the permanent plan for the child; whether the child wants the permanent plan to be APPLA; why APPLA may be the best plan for the child; why it is not in the best interest of the child to be returned home, placed in a guardianship, or placed for adoption.

FORM TEMPLATE:

**FINDINGS OF FACT AND ORDER OF PERMANENCY
FOLLOWING TERMINATION OF PARENTAL RIGHTS**

**IN THE INTEREST OF _____, A CHILD
IN _____ COUNTY, SOUTH CENTRAL JUDICIAL DISTRICT
FILE NUMBER: _____**

In addition to any findings made on the record, the Court makes these **FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

1. The Court has jurisdiction over the parties and the subject matter of this action.
2. The name and birth date(s) of the child is _____.
3. Parental rights were terminated in this case by Order dated _____.
4. The permanent plan is **adoption OR as follows:** _____
5. Reasonable efforts have been made to finalize the permanent plan. Those reasonable efforts **are set forth in the affidavit which is hereby incorporated OR include** _____.
6. Reasonable efforts have been made to place the siblings into the same foster care, relative, guardianship or adoptive placement as set forth in the affidavit which is hereby incorporated.
7. Reasonable efforts have been made to provide for frequent visitation or interaction between the siblings as set forth in the affidavit which is hereby incorporated.
8. The goals of the prior Order **have OR have not** been accomplished.
9. It is **OR is not** in the best interests of the child that custody remain with the **Licensed Placement Agency** _____ until _____.
10. Based upon the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED:**
11. That _____ County Social Services Director shall be appointed to have the continued care, custody, and control of the above-named child through December 31, 2019. The Director of the Human Service Zone that contains _____ County shall be appointed to have the continued care, custody, and control of the child until _____, 2020. The custodian may (1) utilize foster care pending adoption; (2) utilize the services of a licensed placement agency; and (3) give or withhold consent to adoption. These changes in custody are pursuant to 2019 Senate Bill 2124 and changes to N.D.C.C. § 27-20-47.
12. The custodian shall use reasonable efforts to finalize the permanent plan.
13. The child shall, upon attaining the age of 14, be offered a program of independent living.
14. All the terms and conditions of the prior findings and orders with respect to the child shall remain in full force and effect unless inconsistent with this Order.
15. The request for continuation of custody is denied.
16. The appointment of the Guardian ad Litem terminates as of the date of this Order.

Dated October 25, 2019

BY THE COURT:

Judicial Referee

Child

FORM JD REVISED 1/2017

Counsel/GAL (BAR ID #)

OTHER COMMONLY USED FORMS:

PICK UP AND HOLD ORDER (On Affidavit)

IN THE INTEREST OF _____, A CHILD
IN _____ COUNTY, SOUTH CENTRAL JUDICIAL DISTRICT
FILE NUMBER: _____

1. An affidavit requesting a Pick Up and Hold Order comes before the Juvenile Court for consideration.
2. The Court hereby makes these FINDINGS OF FACT AND CONCLUSIONS OF LAW:
3. The name and birth date of the child is: _____.
4. The child was adjudicated delinquent unruly deprived on _____ by order dated _____, and that said child has disobeyed the conditions of that order by reasons set forth in the attached affidavit. The charges for which the child has been adjudicated are:
5. Felony: _____
6. Misdemeanor: _____
7. Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED:
8. That any law enforcement agency or jurisdiction having the authority to do so shall apprehend and detain said delinquent child at an appropriate place of secure juvenile detention facility until such time that a hearing can be held.
9. That any law enforcement agency or jurisdiction having the authority to do so shall apprehend and place said unruly child in an appropriate non-secure facility.
10. That a hearing shall be held within _____ hours from the time that the child is placed at an appropriate facility.
11. That the current order dated _____ shall be extended until further order of the Juvenile Court.

Dated October 25, 2019

BY THE COURT:

Judicial Referee

PICK UP AND HOLD ORDER (Failure To Appear)

**IN THE INTEREST OF _____, A CHILD
IN _____ COUNTY, SOUTH CENTRAL JUDICIAL DISTRICT
FILE NUMBER: _____**

1. A hearing was held before the Juvenile Court at the _____ County Courthouse, _____, North Dakota. The child failed to appear for the hearing.
2. The Court hereby makes these **FINDINGS OF FACT AND CONCLUSIONS OF LAW:**
3. The name and birth date of the child is: _____.
4. The child was properly served a summons and has failed to appear on a petition alleging the following charges:
 - a. Felony: _____
 - Misdemeanor: _____
5. The child was adjudicated delinquent unruly on _____ by order dated _____. The charges for which the child has been adjudicated are:
 - a. Felony: _____
 - b. Misdemeanor: _____
6. The child's mother was present and represented by counsel _____ OR was present and waived the right to counsel OR was present and requested counsel OR did not appear and is in default.
7. The child's father was present and represented by counsel _____ OR was present and waived the right to counsel OR was present and requested counsel OR did not appear and is in default.
8. Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED:**
9. That any law enforcement agency or jurisdiction having the authority to do so shall apprehend and detain said **delinquent** child at an appropriate place of secure juvenile detention facility until such time that a hearing can be held.
10. That any law enforcement agency or jurisdiction having the authority to do so shall apprehend and place said **unruly** child in an appropriate non-secure facility.
11. That a hearing shall be held within _____ hours from the time that the child is placed at an appropriate facility.
12. That the current order dated _____ shall be extended until further order of the Juvenile Court.

Dated October 25, 2019

BY THE COURT:

Judicial Referee

PRETRIAL CONFERENCE ORDER

**IN THE INTEREST OF _____, A CHILD
IN _____ COUNTY, SOUTH CENTRAL JUDICIAL DISTRICT
FILE NUMBER: _____**

1. The pretrial conference is scheduled for _____, at _____ .m. Counsel and the parties must appear in person at the _____ County Courthouse, _____, ND. At the pretrial conference, disposition of this case will be considered or the need for trial.
2. Prior to the pretrial conference, the following must be completed:
 - a. **All pretrial motions shall be served and filed with the Court in such time that they may be heard no later than the date for the pretrial conference.**
 - b. **Prior to the pretrial conference, the Respondents shall be provided with the Petitioner’s recommendations.**
 - c. **Discovery must be completed prior to the pretrial conference.**
3. Counsel and the parties must be present at the pretrial conference. A party’s failure to appear at the pretrial conference without being excused by the Court may result in a waiver of that Party’s rights. The Court further finds and/or Orders:
4. The child mother father legal guardian waived the right to be represented by an attorney.
5. The child mother father legal guardian requested to be represented by an attorney.
6. The mother father legal guardian is in default.
7. The mother father legal guardian Native American Tribe has not been properly served. The Court will proceed interlocutory until proper service is accomplished.
8. That the current Order dated _____ continue in effect, not to exceed ____ days from _____.
9. The child must be represented by an attorney due to a conflict of interest or because no parent/guardian appears.
10. That, if a party wishes to request court-appointed counsel on behalf of their child or on their own behalf, an application must be completed and returned to the Juvenile Court Office before leaving today. If a party does not apply or qualify for court-appointed counsel, they shall be responsible for hiring an attorney for themselves or their child.

Dated October 25, 2019.

BY THE COURT:

Judicial Referee

Child

Counsel/GAL (BAR ID #)

Parent/Guardian

Counsel (BAR ID #)

Parent/Guardian

Counsel (BAR ID #)

SCHEDULING ORDER

**IN THE INTEREST OF _____, A CHILD
IN _____ COUNTY, SOUTH CENTRAL JUDICIAL DISTRICT
FILE NUMBER: _____**

The Court, after having heard all interested parties, makes the following findings:

1. The child mother father legal guardian waived the right to an attorney.
2. The child mother father legal guardian requested an attorney.
3. The child must be represented by an attorney due to a conflict of interest.
4. The mother father legal guardian is in default.
5. The mother father legal guardian Native American Tribe has not been properly served. The Court will proceed interlocutory until proper service is accomplished.
6. The _____ Tribe was notified, and did OR did not send a representative.
7. The matter is contested.
8. Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED:
9. That the current Juvenile Temporary Custody Order dated _____ shall remain in effect and the said child shall continue in detention OR shelter care for a time not to exceed ____ days from _____.
10. That the current detention shelter care Social Services Custody DJS Custody Order dated _____, shall continue in effect, not to exceed ____ days from _____.
11. That _____ hour(s) or _____ day(s) be set aside for hearing.
12. That, if a party wishes to request court-appointed counsel on behalf of their child or on their own behalf, an application must be completed and returned to the Juvenile Court Office before leaving today within ____ days. If a party does not apply or qualify for court-appointed counsel, they shall be responsible for hiring an attorney to represent themselves or their child.
13. That all discovery, recommendations, and witness lists shall be provided at least _____ days prior to trial.
14. That all pretrial motions shall be served and filed with the Court at least _____ days prior to trial.

Dated October 25, 2019.

BY THE COURT:

Judicial Referee

Child

Counsel/GAL (BAR ID #)

Parent/Guardian

Counsel (BAR ID #)

Parent/Guardian

Counsel (BAR ID #)