

Plea Hearing Checklist - CHIPS

This checklist is designed to highlight key questions that the court should ask at a Plea Hearing in a Child in Need of Protection or Services (CHIPS) case. It is not necessarily an exhaustive list and may need to be modified based on the specific circumstances of the case.

- 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 (child, parents, guardian, legal custodian, and Indian custodian):
 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 represented.
 - 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 each non-petitioning party for their plea.

This includes the child, if 12 years or older or otherwise competent to enter a plea.

If one or more of the parties wish to enter an admission or no contest plea:

1. Obtain parties stipulation to jurisdiction.

SEE “STIPULATED PLEA CHECKLIST” BELOW.

2. If no one is contesting the petition, schedule 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.

If the petition is contested by any of the parties:

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).
2. Order parties to attend all court hearings and to comply with other relevant activities (e.g., discovery, communicate with their attorney, etc.) and warn them that failure to do so could result in a default finding.

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 party proceeding without an attorney?
 - Consider Waiver of Right to Attorney (JD-1736) for waiver colloquy with an unrepresented child (12 and older).
 - 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). Ask the following questions (performing additional inquiry, as needed):
 - Do you have any questions that you want to ask me (or your attorney, *if applicable*) before I go through questions I need to ask you?
 - How old are you?
 - What is the highest grade you completed in school?
 - Do you read, write, and understand the English language?
 - Are you currently receiving any treatment for a mental illness or disorder?
 - Have you had any drugs or alcohol in the past 24 hours?
 - Are you using any prescription medication? If so, which medications? Have you taken them as prescribed and in the correct dosage?
 - Are you experiencing anything today that prevents you from understanding or participating in today's proceeding?
 - If represented:** Have you had enough time to discuss this case with your attorney? Are you satisfied with the representation provided by your attorney?
 - If NOT represented:** Do you understand that you are not represented by an attorney, and if you were represented, an attorney could discover defenses or mitigating circumstances that may not be apparent to you?
 - Have you read the Petition or has someone read the Petition to you?
 - Do you understand the nature of the allegations stated in the Petition? Do you also understand the potential dispositions that the court may order, should the child be found to be in need of protection or services?
 - Do you understand that the petitioner must prove by clear and convincing evidence that the 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)? Do you understand that by admitting or pleading no contest to the allegations in the Petition you are giving up your right to have the petitioner prove those allegations at a Fact-Finding Hearing? A Fact-Finding Hearing is a trial to the court, meaning the judge (or to a jury, *if right has not been waived*).

- Do you understand that you are giving up your right to remain silent and that the silence of any party may be considered relevant?
- Do you understand that you are giving up your right to present evidence at trial, to use subpoenas to require witnesses to come to court and testify, and to confront in court and cross-examine anyone who would testify against you?
- Do you give up these rights of your own free will?
- Do you understand that the court is not required to follow any plea agreement or recommendation?
- Do you understand that if the court accepts your plea, the child will be found to be in need of protection or services based upon the facts in the petition or as stated in court?
- To the allegations contained in the Petition, how do you plead?
 - **Admit:** Do you understand that by entering an admission you are stating that the facts in the Petition are true?
- OR -
 - **No Contest:** Do you understand that a plea of no contest means that you are neither admitting nor denying the allegations contained in the Petition, but that you are giving up the right to make the petitioner prove the allegations in the petition to a reasonable certainty by clear, satisfactory and convincing evidence, and the court will accept the allegations in the petition as true?
- Did anyone promise you anything or threaten you to admit/plead no contest? Do you enter this plea of your own free will?
- Do you understand that you still have the right to a hearing on what the order should contain as to where the child is placed, who has custody of the child, what you have to do to get the child back if they are not placed with you, what you have to do to keep the child placed with you, and what services the agency must provide for you and the child?
- 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?
- If represented:** 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?
- 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].