STATE OF INDIANA

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_COURT

In The Matter Of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ CASE NO.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

A Child Alleged to be a Child in Need of Services

 **ORDER ON INITIAL/ DETENTION HEARING**

(ICWA CHILD)

The Indiana Department of Child Services (DCS), appears by counsel, \_\_\_\_\_\_\_\_\_\_\_\_\_, and by (Family Case Manager)(Intake Officer) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and the Child \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (appears in person) (is excluded for good cause shown upon the record). The parent(s) (guardian) (custodian), \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, appear in person.

Actual notice of the time, place and purpose of Initial/Detention Hearing has been given to the Child and\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, or

(parent) (guardian) (custodian)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_cannot be located.

(parent) (guardian) (custodian)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Foster/Resource Parent/Caretaker

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 EMS Provider (for abandoned infant under IC 31-34-2.5)

Failing to appear despite proper notice of the time, place and purposed of this Hearing are: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(name, relationship to case as appropriate for parent, guardian, custodian, foster/resource parent, caretaker, EMS provider for abandoned infant under IC 31-34-2.5, and others).

Pursuant to IC 31-34-10, a Guardian Ad Litem, Court Appointed Special Advocate or both is appointed.

[ ] Under IC 31-32-6-2, the public is excluded from all proceedings in this case.

The Court has received notice or has reason to believe that the Child is a member or is eligible for membership in the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Tribe/Alaska Native Village. The DCS is directed to provide the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Tribe/Alaska Native Village with notice of these proceedings pursuant to 25 U.S.C. 1912.

**The Court now proceeds to an Initial Hearing.**

The Court advises the parent(s) (Child) (guardian) (custodian) of the material allegations of the petition, the rights of the parent(s) and Child, the right to be represented by counsel, the dispositional alternatives available to the Court if the Child is adjudicated to be in need of services, the potential for parental participation, consequences for failure to comply, and financial responsibility.

[*Determination of Counsel*]

[ ] and counsel being present on behalf of \_\_\_\_\_\_\_\_,

OR [Choose one if counsel not present)

[ ] and there being a waiver of counsel by \_\_\_\_\_\_\_\_\_\_\_, entered freely and voluntarily

OR

[ ] \_\_\_\_\_\_\_(mother) requests appointed counsel, and the court finds that the parent has insufficient means to hire private counsel, and appoints \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to represent the mother.

[ ] \_\_\_\_\_\_\_(father) requests appointed counsel, and the court finds that the parent has insufficient means to hire private counsel, and appoints \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to represent the father.

A denial to the Petition is entered, and the case shall be set for further hearing to allow time for notice to the designated Indian Tribe(s) or Alaska Native Village(s).

[*Removal determinations*]

[ ] The Child has not been removed and currently resides in the home of his parent(s), guardian, custodian.

OR

[ ] (*Removal prior to detention hearing)* **The Court now proceeds to a Detention Hearing.**

[ ] Removal of the Child was not authorized because removal was not necessary to prevent imminent serious emotional or physical damage or harm to the Child.

OR

[ ] Emergency removal of the Child was necessary to prevent imminent physical damage or harm to the Child. DCS made the following immediate, reasonable and active efforts to prevent the need for continued emergency removal of the Child: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. These reasonable and active efforts have been unsuccessful in preventing/eliminating the need for emergency removal.

 Additionally, the removal of the Child was authorized under IC 31-34-2 or 2.5, and necessary to protect the Child. It is in the best interest of the Child to be removed from the home environment and remaining in the home would be contrary to the health and welfare of the Child based on the finding of probable cause, the allegations in the Petition, and the Report of Preliminary Inquiry.

**Title *IV-E and Statutory (IC 31-34-5-2) Findings:***

**The Court finds that it is in the best interests of the Child to be removed from the home environment and remaining in the home would be contrary to the welfare of the Child because:**

**(*Check all that apply*)**

**( ) of the allegations admitted**

**( ) of an inability, refusal or neglect to provide shelter, care, and/or supervision at the present time**

**( ) the Child needs protection that cannot be provided in the home**

**( ) the Child has special needs that require services for care and treatment that cannot be provided in the home**

**( ) other: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.**

**[ ] The Court finds that reasonable efforts to prevent or eliminate removal of the Child were not required due to the emergency nature of the situation, as follows:**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**-or-**

**[ ] The Court finds that reasonable efforts were made by DCS to prevent or eliminate the need for removal of the Child. The statements of reasonable efforts as set forth in the pleadings, reports, and documents of DCS and/or all other service providers filed herein are incorporated by reference.**

**-or-**

**[ ] The Court finds that reasonable efforts were made by DCS to prevent or eliminate the need for removal of the Child, including:**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**The Court finds responsibility for the placement and care of the Child is ordered or continues to be ordered to the DCS.**

[ ] *(Determination of continued detention)* The Court now proceeds to determine the appropriateness of continued removal of the Child from the Child’s home:

[ ] The Child is not in need of further detention and the Court orders the Child released to\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(parent) (guardian) (custodian) upon the latter’s written promise to bring the Child before the Court on the\_\_\_\_\_\_\_\_\_\_\_day of\_\_\_\_\_\_, 20\_\_\_, at \_\_\_\_\_\_a.m./p.m. and from day to day thereafter as ordered by the Court.

 DCS made the following immediate, reasonable and **active** efforts to prevent the need for continued emergency removal of the Child: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. These reasonable and active efforts were successful in eliminating the need for continued emergency removal.

OR

[ ] DCS did not make reasonable and active efforts to allow the Child to remain in his/her home. Continued removal or detention is improper based upon the DCS’ failure to make reasonable and active efforts to prevent or eliminate the need for emergency removal.

 **-OR-**

 [ ] The Child should continue to be detained because:

[ ] the Child is unlikely to appear for subsequent proceedings;

[ ] detention is necessary to protect the Child;

[ ] the parent, guardian, or custodian cannot be located or is unable or unwilling to take custody of the Child; or

[ ] consideration for the safety of the Child precludes the use of family services to prevent removal of the Child; or

[ ] the Child has a reasonable basis for requesting that the Child not be released;

AND continued emergency removal and placement is necessary to prevent imminent physical damage or harm to the Child. The DCS made the following immediate, reasonable and active efforts to prevent the need for continued emergency removal of the Child:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

These reasonable and active efforts have been unsuccessful in preventing and/or eliminating the need for emergency removal.

The DCS has placed the Child in: (ICWA placement preferences in descending order)

[ ] a member of the child’s extended family;

[ ] a foster home licensed, approved or specified by the Child’s Tribe;

[ ] an Indian foster home licensed or approved by an authorized non-Indian licensing authority;

[ ] an institution for children approved by an Indian Tribe or operated by an Indian organization which has a program suitable to meet the Child’s needs.

-OR-

There is good cause to deviate from the placement preferences contemplated by the Indian Child Welfare Act, to wit: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,and the DCS has placed the Child in:

[ ] a kinship placement;

[ ] a non-Indian foster home

[ ] an institution (name) \_\_\_\_\_\_\_\_\_\_\_\_located in \_\_\_\_\_ County, \_\_\_\_(state), that is not approved by an Indian Tribe or operated by an Indian organization.

-OR-

The DCS failed to place the Child in accordance with the placement preferences of ICWA. The Court ORDERS that the Child be placed at: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

who has no/has the relationship of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to the Child. This placement is the most preferable placement available under the circumstances.

*(When a child is placed out of state, complete this section:)*

*The Court finds by clear and convincing evidence that the above out of state placement in a facility that is not a secure detention facility is appropriate because:*

 *() The Director of the DCS or their designee has recommended or approved of the placement;*

*or*

 *( ) There is not an equivalent facility with adequate services in Indiana, because \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_; and*

 *( ) Institutional care in this facility is in the best interest of the child and will not produce undue hardship, because\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;*

*or*

 *() the facility is not more than 50 miles from the county of the residence of the child.*

The Court finds responsibility for the placement and care of the Child is ordered or continues to be ordered to the DCS.

The DCS recommends

[ ] continuation of the existing placement

[ ] change of placement to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

[*Determination of acceptability of DCS recommendations*]

[ ] The Court accepts the recommendation of the DCS regarding placement, services, and programs.

 OR

[ ] (*Consideration)* The Court finds that the recommendations of the DCS are unreasonable

based on the facts and circumstances of the case or are contrary to the welfare and best interests of the Child as follows: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

The Court orders a change in the Child’s current placement to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

The placement is an emergency required to protect the health and welfare of the Child for the following reasons: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

 Within three days of the date of this order, DCS may submit a consideration report to the court, stating whether the department approves or disapproves the proposed service, program, or placement. The department may recommend an alternative service, program, or placement for the Child. The court shall accept the recommendations of the department unless it finds the recommendation is unreasonable, based on the facts and circumstances of the case; or contrary to the welfare and best interests of the Child.

The court further finds that the legal settlement of the Child is\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_and DCS

shall provide notice required by IC 20-26-11-9.

[ ] This matter is set for an additional Initial Hearing on \_\_\_\_\_\_\_\_\_, 20\_\_\_ at \_\_\_\_\_\_\_\_\_a.m./p.m. to provide (time for the parents to obtain the assistance of counsel), (notice of the proceedings to\_\_\_\_\_\_\_\_\_\_), (other \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_).

[ ] This matter is set for an ICWA Compliant Detention Hearing on the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_\_\_\_\_ a.m./p.m. (This Hearing may not occur until at least ten days after the tribe and Indian Parent receives notice but Emergency Detention may not continue past thirty days unless additional ICWA Compliant Detention is held and specific evidentiary burdens, including the testimony of a Qualified Expert Witness, are met.)

[ ] This matter is set for a Fact Finding Hearing on the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_ at \_\_\_\_\_\_\_\_\_\_\_\_ a.m./p.m. (The Fact Finding Hearing may not occur until at least ten days after tribe and Indian Parent receives notice.)

A copy of this order is to be distributed to DCS.

[ ] A separate Financial Obligation Order is issued.

So ordered this \_\_\_\_\_\_\_\_\_\_day of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,\_20\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Judge