

# *Task Force on the Rules of Procedure for the Juvenile Court*

## Meeting Agenda

Friday, February 5, 2021

10:30 a.m. to 4:00 p.m.

Telephonic Meeting: 602.452.3533, Access code: 996 173 140

Item no. 1	<b>Call to Order</b>	<i>Hon. Rebecca Berch, Chair</i>
Item no. 2	<b>Approval of the December 18, 2020 meeting minutes</b>	<i>Justice Berch</i>
Item no. 3	<b>Workgroup reports.</b>  <b>Workgroup 3:</b>  <b>New rules:</b> <b>00. Required Admonition and Findings</b> <b>YY. Transfer to a Tribal Court</b> <b>ZZ. Qualified Residential Treatment Programs (“QRTP”)</b>  <b>Rules 50 and 51 (revisited)</b>	<i>Judge Quigley</i>
Item no. 4	<b>Discussion of the initial set of draft rules</b>	<i>All</i>
Item no. 5	<b>Roadmap</b>  <b>Next meeting: To be scheduled</b>	<i>Justice Berch</i>
Item no. 6	<b>Call to the Public</b>  <b>Adjourn</b>	<i>Justice Berch</i>

*The Chair may call items on this Agenda, including the Call to the Public, out of the indicated order.*

Please contact Mark Meltzer at (602) 452-3242 with any questions concerning this Agenda.

Persons with a disability may request reasonable accommodations by contacting Angela Pennington at (602) 452-3547. Please make requests as early as possible to allow time to arrange accommodations.



## Juvenile Rules Task Force

Public Meeting, December 18, 2020  
(All members and guests attending telephonically)

### Meeting Minutes

**Members attending:** Hon. Rebecca Berch (Chair), Hon. Mark Armstrong, Professor Barbara Atwood, Beth Beckmann, Beth Beringhaus, Dale Cardy, Kathleen Coughlin, Maria Christina Fuentes by her proxy Steve Selover, John Gilmore, Magdalena Jorquez, Hon. Joseph Kreamer, Tina Mattison, Donna McQuality, William Owsley, Christina Phillis, Hon. Maurice Portley, Hon. Kathleen Quigley, Beth Rosenberg, Denise Avila Taylor, Hon. Patricia Trebesch, Edward Truman, Kent Volkmer, Hon. Rick Williams, Hon. Anna Young

**Members absent:** Eric Meaux, Denise Smith

**Guests:** Carey Turner, Nina Preston, Lori Ford, Randi Alexander

**AOC staff:** Caroline Lutt-Owens, Joe Kelroy, Mark Meltzer, Angela Pennington

**1. Call to order; preliminary remarks; approval of meeting minutes.** The Chair called the thirteenth Task Force meeting – its eighth consecutive virtual meeting – to order at 10:01 a.m. The Chair noted that there had been 10 workgroup meetings since the November 20 Task Force meeting, and each workgroup had met at least twice. In addition, the Editorial Group met 5 times during that 4-week interval. The December 18 agenda is the most voluminous and complex meeting agenda to date, and, staff prepared a 4-page memo to help guide members through the agenda. The memo includes hyperlinks to three Arizona opinions that are pertinent to some of today's rules: *Mario W. v. Kaipio* (Supreme Court); *DCS v. Stocking-Tate* (Division One); and *Denia L. v. DCS* (Division Two). The packet also includes staff's proposed reorganization of the Table of Contents for the juvenile rules. Workgroups were meeting as recently as Monday and Tuesday of this week, and the meeting packet was posted on Thursday, December 17.

The Chair then asked members to review draft minutes of the November 20, 2020 Task Force meeting. Members had no additions or corrections.

**Motion:** A member moved to approve the November 20, 2020 meeting minutes. The motion received a second and it passed unanimously. **JRTF 013**

Members then considered workgroup reports. Unless these minutes provide otherwise, after presentation and discussion of a rule or form at today's meeting members had consensus and approved the rule or form.

**2. Report from Workgroup 1.**

**Rule 8 (“service of documents by parties”).** Judge Kreamer reminded members that when they considered this rule at the October Task Force meeting, the section on methods of service did not adequately distinguish between service on an attorney and service on a self-represented party. The workgroup thereafter revised the draft rule, this time using Family Law Rule 43 (“service of other documents after service of the summons, petition, and order to appear”) as a model. Revised section (b) (“methods of service”), subpart (b)(1), generally provides that if an attorney represents a party, the attorney must be served. Subpart (b)(2) then details the methods of service. Subpart (b)(2)(E) distinguishes leaving a document for a person if the person is represented by an attorney from situations when the person who is served is not represented. Section (c) (“noting the method of service”) contains a template statement of service that now includes e-mailing (i.e., “mailed/e-mailed/hand-delivered.”) A member asked about a provision in subpart (b)(2), which provides that when a document is served by mail, “service is complete upon mailing.” Judge Kreamer responded that under the text of section (a) (“application of this rule”), Rule 8 applies only after service of a case initiating document, and that service of a case-initiating document requires a higher standard for service. The provision that “service is complete upon mailing” for post-case initiating documents is also in Civil Rule 5.1(c)(2), Criminal Rule 1.7(c)(2), and Family Law Rule 43(b)(2). Members had no other questions.

**Rule 10 (“simultaneous dependency and family law proceedings”).** Judge Armstrong presented this new juvenile rule, which is an analog to Family Law Rule 5.1. FLR 5.1 is a statewide rule that applies in both dependency and family law proceedings that involve the same child. Although draft Rule 10 corresponds with FLR 5.1, Judge Armstrong noted these differences. First, FLR 5.1(a) (“transfer to juvenile division”) refers to legal decision-making and parenting time, whereas Rule 10(a) uses the term “custodial issues.” Judge Armstrong noted that the latter term was more appropriate in juvenile dependency cases because these proceedings determine the custodial setting and who should have custody of the child. However, the use of different terminology should not be a concern because there is no substantive difference. He also noted that the UCCJEA uses the term “custody,” and before recent revisions to the FLR, “custody” was also used in those rules. Second, FLR 5.1(b) (“referral to family division”) allows the juvenile division to refer legal decision-making or parenting time issues to the family division. Draft Juvenile Rule 10 has a similar provision, but it also allows the juvenile division to “decide those issues.” Members had no questions for Judge Armstrong.

**Rule 11 (“computation of time”).** Judge Kreamer noted that this new draft rule is part of the effort to reduce the number of juvenile rules. Draft Rules 17, 43, and 72 all involve computation of time. Rule 43, which is in Part III, and Rule 72, which is in Part IV, both include cross-references to Civil Rule 6. Rule 17, a delinquency rule, has unique provisions, such as the exclusion of time, which cannot be collapsed into a single, unified rule. According, proposed Rule 11(a) refers readers to Rule 17 for computing time in a delinquency case, and Rule 11(b) refers them to Civil Rule 6 for computing time in all

other juvenile matters. This reformulation will eliminate the need for Rules 43 and 72. The resulting Rule 11 would become a Part I rule. Members had no questions.

**Ruler 12 (“virtual proceedings; declared emergencies”).** The detailed provisions of Rule 42, which members previously approved, are limited to Part III proceedings. Judge Kreamer explained that new draft Rule 12 would replace draft Rules 42 and 71 and would become a single rule for virtual proceedings and declared emergencies in any juvenile case. Most of the substance of draft Rule 12, including its title, was taken from draft Rule 42. However, new section (a) distinguishes delinquency and non-delinquency matters. Subpart (a)(1) provides that “this rule and Rules 12 and 13 govern virtual appearances in delinquency matters.” [Staff note: Current draft Rules 12 (“the juvenile’s attendance at court proceedings” and 13 (“attendance of witnesses and counsel by telephone or video conference”) would be renumbered as Rules 27 and 28 in staff’s proposed Table of Contents.] Subpart (a)(2) permits the court to allow “virtual testimony, argument, or appearances” in any non-delinquency proceeding on a party’s motion or the court’s own motion. A new subpart (a)(3) recognizes and requires the court in any juvenile matter to consider due process principles before granting a request for a virtual proceeding. Sections (b) (“meaning of ‘virtual’”) and (c) (“non-evidentiary hearing”) are substantially the same as the provisions in draft Rule 42. While section (d) (“request to testify virtually; evidentiary hearing”) requires a written motion as a requisite for allowing virtual testimony, the section has new provisions in subpart (d)(2) (“time”) to accommodate the shorter time frames for setting delinquency hearings and the relatively longer time frames for setting hearings in non-delinquency matters. A new subpart (d)(2)(C) provides that in all matters, the court may rule on the motion with or without a hearing. Section (e) (“introducing documents during virtual testimony”) is largely unchanged.

Section (f) governs “evidentiary hearings during declared emergencies.” Subpart (f)(1)(B) has been modified to provide a shorter time for filing a response in a delinquency case; in non-delinquency matters, responses must be filed as provided by Rules 46 or 74, the general rules on Part III and Part IV motions. Subpart (f)(2) (now, “case specific determinations in evidentiary hearings”) was modified to broaden the scope of the court’s inquiry if a party objects to a virtual proceeding. The subpart now requires the court to make “a case-specific determination that the objecting party’s constitutional rights, including the rights to due process, will be satisfied by the evidentiary hearing.” The workgroup’s intent was that this new language would require the court to consider constitutional rights—in addition to general principles of due process—that might be applicable in a specific case, such as a delinquent’s right to confront witnesses. As modified, Rule 12 would become a Part I rule. Members had no questions.

**Rule 14 (“combining hearings”).** Judge Kreamer explained that draft Rule 14 permits the court to combine delinquency hearings, which he acknowledged the court could probably do now without a rule, but Rule 14 codifies this practice. That draft provision has been renumbered as Rule 14(a). Proposed Rule 14(b), which is new, would

allow the court to aggregate hearings for cross-over youth by setting a youth's dependency and delinquency hearings on the same date and at the same time, but not by consolidating the cases. This practice would permit families to appear for both hearings at the same date and time, which would be more convenient for them. A newly proposed Rule 14(c) would allow the court to combine Part III hearings, as long as the court provided the parties with notice of this intent, and that it complied with applicable time limits and preserved the parties' due process rights. Doing so would allow the court to accomplish as much as possible at a single Part III court hearing. Rule 14 would be relocated as a Part I rule. Members had no questions.

*Forms 5(a) and 5(b) ("notices of appeal").* Ms. Beckmann revisited Form 5(a), a notice of appeal in a Part II delinquency proceeding, and Form 5(b), a notice of appeal in a Part III, IV, or V proceeding. The recent revisions to Form 5(a) clarify that the order which is the subject of the appeal is the comprehensive final order. This will usually include the adjudication and the disposition. In the event new counsel is appointed on the appeal, the workgroup wanted the form to specify who currently has the client's file, and the recent revisions address this. Members agreed that the avowal by the appealing party's attorney does not apply if the appealing party is the agency that is prosecuting the case on behalf of the State.

Form 5(b) aligns the specified grounds for appeal with the grounds enumerated in Rule 103, including those grounds recently approved by the Task Force, such as appealing from a denial of adoption certification. Because the State in a non-delinquency appeal appears through a cognizable entity, usually the DCS, the avowal requirement in Rule 104(b) continues to apply to the appellant's attorney in every Form 5(b) notice of appeal.

*Form 6 ("supplemental designation of the record").* Ms. Beckmann noted that Form 6 includes introductory text that references Rule 104.1 ("record on appeal"). Both the workgroup and the Task Force questioned the benefit of allowing the appellant to exclude items from the presumptive record, but the provision is in current Rule 104(E) and a similar provision is in Criminal Rule 31.8(a). According members agreed to retain that option in Form 6, as permitted by draft Rule 104.1(b)(2).

**3. Report from Workgroup 2.** Workgroup 1 presented one rule and three pairings of rules that involved common issues or subject matters.

*Rule 35 ("post transfer").* Mr. Cardy presented this rule, which specifies procedures after a judicial officer has decided to transfer the proceeding under Rule 34. Like Rule 34, Rule 35 uses the term "criminal division of the superior court" rather than "adult court," which is used in current Rule 35. Unlike the current rule, the restyled rule includes section and subpart titles. In section (a) ("court actions"), the workgroup organized the subparts in a more logical and sequential order and clarified or restyled the language in several subparts. In subpart (a)(2) ("amendments"), the workgroup

declined to include the words “formal or” in the phrase “formal or technical defects” because the meaning of “formal” was not clear. In section (b) (“time limits”), the workgroup clarified the application of Criminal Rule 8.2, which is unclear in the current rule. A member asked whether subpart (a)(3)(B) should mention the indigency determination before the appointment of counsel, but after discussion, members agreed that the workgroup’s phrasing was appropriate.

***Pairing (a) (Rules 22 and XX).*** Rule XX was initially intended as a repository for definitions in delinquency proceedings, but the workgroup later determined that Rule XX would include only one short definition, of the word “parent,” i.e., “‘Parent’ as used in the delinquency rules includes a parent, guardian, or custodian.” The definition eliminates the need to repetitively say, “parent, guardian, or custodian,” and instead allows the delinquency rules to say “parent” that by definition includes all three. Ms. Phillis advised that the definition has now been relocated to Rule 22 (“referral; diversion”), where it has become a new section (a) (“definition of ‘parent’”).

***Pairing (b) (Rules 23 and 28).*** Rules 23 (“detention and probable cause hearing”) and 28 (“advisory hearing”) each have provisions regarding the collection of DNA samples from juveniles charged with specified offenses. Ms. Phillis noted that while *Mario W.* allows the pre-adjudication collection of DNA samples, it precludes the processing of the samples until the juvenile has been adjudicated. Ms. Phillis also noted that the manner of DNA collection varies by county, for example, some counties, and current Rule 28(C)(8), specify collection by a law enforcement agency, and other counties have a juvenile probation officer collect the sample. To comply with *Mario W.* and to add a provision with general applicability, draft Rules 23(h) and 28(c) each include a new subpart that says, “DNA may not be submitted to DPS for testing unless the juvenile has been adjudicated delinquent for an offense in §13-610(O)(3).”

***Pairing (c) (Rules 19, 30, and 104.1).*** An issue arose under draft Rules 19 (“records and proceedings”), 30 (“disposition”), and 104.1 (“record on appeal”) regarding the distinction between the legal file and the social file (also known as the “red file” in Maricopa County and the “blue file” in Pima County), and ways to assure that the appellate record includes social file items the trial court considered in determining a disposition. Several years ago, the concept of a “segregated portion of the legal file” was added to Rule 19 to assure that social file documents considered by a judicial officer, which had not been introduced into evidence, were nonetheless included in the court’s record. Anecdotally, the requirement was not always followed, and as a result, the record on appeal was occasionally incomplete. The Editorial Group proposed to address this issue by adding new provisions in these three rules for a “disposition file,” which would serve a similar purpose as the segregated portion of the legal file but could be maintained by the probation department or the court. Ms. Phillis advised that Workgroup 2 modified this concept by relocating the proposed disposition file provision of Rule 19 within the subpart on the legal file, thereby assuring that the court would keep the disposition file.

Members suggested adding cross-references to new Rule 19(a)(1)(D) in Rules 30(a)(6) and 104.1, and those cross-references references were added.

#### **4. Report from Workgroup 3.**

**Rule 41.2 (“participant’s rights”).** This rule was previously presented to the Task Force. Judge Quigley noted the workgroup thereafter added a requirement in section (a) (“right to notice”), subpart 4, saying that if DCS is a party, it must provide notice to “a participant Indian tribe that has not intervened or is not endorsed on the court’s minutes entries.” The workgroup also added a reference to 25 C.F.R. § 23.111. A tribe often will have intervened or been previously endorsed on a minute entry because DCS will generally know the tribe’s identity and DCS would have been working with a tribal social worker. In lieu of providing a separate notice, this new provision’s notice requirement will be satisfied if the tribe is endorsed on the minute entry. Judge Quigley also noted section (e) (“review hearings”), which provides that “this rule does not limit the notice requirements of A.R.S. § 8-847(B) regarding periodic review hearings.” That statute requires the court to provide notice of periodic review hearings.

**Rule 48X (“service of the petition, temporary orders, and notice of hearing”).** Mr. Truman reminded members that the Task Force previously approved this rule, but the Editorial Group subsequently revised it and returned it to Workgroup 3 for reconsideration. The meeting materials include the workgroup’s further revisions. Mr. Truman noted that Rule 48X, which is derived from current Rule 48(D) (“service of petition”), applies only to service of the dependency petition and related documents. Rule 48X is a unique rule on service of documents because of the short interval between the filing of a dependency petition and the occurrence of a preliminary protective hearing. Accordingly, revised section (a) (“service or acceptance of service”), subpart 1, allows service to be completed when the documents are “provided to a parent at the preliminary protective conference or at the preliminary protective hearing.” Mr. Truman believes this is the preferred method of service, although he added that this method ceases to be available after the preliminary protective hearing. Subpart (a)(2) is broader and provides that service is complete if the parent signs an acceptance of service “any time after the dependency petition is filed.” If neither option provided by section (a) is utilized, the remaining sections of the draft rule include methods of service that are available under Civil Rules 4(f), 4.1, and 4.2. Section (h), which is not in the Civil Rules, provides for “service under ICWA.” Although other sections of Rule 48X use the term “parent” to refer to “parent, guardian, or Indian custodian,” section (h) expressly refers to “parent or Indian custodian.” Members agreed to retain the comment to this rule but made edits to the form of ICWA citations in the comment.

**Rule 50 (“preliminary protective hearing”).** Judge Quigley presented this rule at the October Task Force meeting, but members asked Judge Quigley to reconsider the ICWA provisions. Judge Quigley thereafter met with individuals having special ICWA expertise, including Professor Atwood, Mr. Withey, Ms. Preston, and Mr. Turner,

particularly with regard to emergency proceedings under 25 C.F.R. § 23.113. Judge Quigley noted that draft Rule 50(b), now titled “ICWA,” incorporates the federal emergency hearing requirement upon the child’s removal, but Rule 50(b) also recognizes the overlap of federal and state requirements on this subject. Most notably, subpart (b)(2) provides that if there is reason to know the child is an Indian child and the child was removed from the physical custody of the parent or Indian custodian, the preliminary protective hearing must be held as an emergency hearing as provided by § 23.113, and the court must find, under subpart (b)(1)(A), whether the emergency removal was necessary to prevent imminent physical damage or harm to the child *unless those findings were made prior to the removal pursuant to Rule 47.3(D)(1) and C.F.R. § 23.113(d); ....*” The court also must find, under subpart (b)(2)(B), “that the emergency removal or placement terminated upon the filing of the dependency petition.” Thus, if the state court conducts a preliminary protective hearing, that hearing constitutes an emergency hearing under ICWA, and the filing of the dependency petition terminates the emergency. Subpart (b)(2)(B) also includes a new provision that provides that “if there is a request to transfer the proceeding to the jurisdiction of the Indian tribe, see Rule YY [Rule YY will be subsequently drafted].”

In section (c) (“procedure”), subpart (c)(2)(C), the draft provides that at the preliminary protective hearing, the court must determine whether paternity has been established as to any father, and if not, the court “must/may” ask the mother and “must/may” take her testimony concerning the identity and location of any potential father. Judge Quigley asked members to decide which verb was appropriate. After discussion, members concluded that the court “must ask the mother, and may take her testimony ....” Finally, in section (e) (“orders”), subpart 7, “reason to believe” that the child is an Indian child was changed to “reason to know.” Members approved Rule 50 with these changes.

***Rules 50.1 and 50.2 (as proposed, “placement preferences” and “ICWA placement preferences”).*** Mr. Gilmore presented these two rules. Current Rule 50.1 is inappropriately named “deviation from placement preferences” because it specifically concerns deviations from ICWA placement preferences. That rule has been retitled by adding the word “ICWA,” and it has been renumbered as Rule 50.2. The workgroup drafted a new Rule 50.1 to fill a void in the current rules by addressing placement preferences in cases not subject to ICWA. New Rule 50.1 is derived from A.R.S. § 8-514(B). Section (a) (“generally”) mirrors the statute by providing, “A child should be placed in the least restrictive placement available, consistent with the best interests of the child.” Section (b) (“placement preferences”) parallels the prescribed order of placement (i.e., parent, grandparent, kinship, etc.). Section (c) concerns a child with developmental disabilities and requires the court’s consideration of A.R.S. § 8-514.01. Section (d) (“Indian child”) refers the reader to Rule 50.2 for placement preferences for an Indian child.

Current Rule 50.1 specifies deviations from ICWA placement preferences. Its successor, Rule 50.2, goes a step further by first specifying the placement preferences under ICWA, and then providing criteria for deviating from those preferences. The rule has application beyond dependency proceedings. Section (a) (“placement preferences”) provides that the provisions of this rule also apply “in any foster care, guardianship, pre-adoption, or adoption proceeding.” Section (a) also states that “if a tribe has established preferences, those preferences apply to the placement of an Indian child.” Section (b) (“deviation from ICWA placement preferences”) includes subpart titles, which are not used in the current rule. Members agreed to relocate the comment to current Rule 50.1 as a comment to new Rule 50.2. Members approved Rules 50.1 and 50.2 as presented.

*Rule 51 (“review of temporary custody”).* Ms. Avila Taylor presented Rules 51, 52, and 58. The most significant question posed by Rules 51 and 52 is this: does a parent who did not appear at a Rule 50 preliminary protective hearing, presumably because of lack of service or notice, have a right to a review of temporary custody after the parent is subsequently served and appears for a Rule 52 initial dependency hearing? Ms. Avila Taylor believes that Division One did not answer this question in *DCS v Stocking Tate*, and she therefore proposes to answer it in the restyled rules. She contended that upon a parent’s request, the court has a duty to do an initial review of temporary custody and the duty continues when a parent was not served until after the preliminary protective hearing. She asked, how can a parent waive the right to request a temporary custody hearing if the parent had not been served and advised of that right? She further noted that although no Title 8 statute provides authority for her proposal, no statute precludes it. But she believes that if the court at the initial dependency hearing has authority to affirm temporary custody, then it arguably can hold a hearing to make that determination. Finally, she proposed a change in the title of Rule 51, from “review of temporary custody” to “contested review of temporary custody,” because if a parent requests a hearing, then temporary custody has become contested.

Not all members of the workgroup agreed with Ms. Avila-Taylor’s position, and Mr. Truman presented an opposing view. He began by noting that there is statutory direction on this issue, citing A.R.S. § 8-824 for the proposition that a parent must make the request for a review of temporary custody at the preliminary protective hearing (specifically section (F), which provides, “The petitioner has the burden of presenting evidence as to whether there is probable cause to believe that continued temporary custody is clearly necessary to prevent abuse or neglect pending the hearing on the dependency petition.”). He noted that a parent who does not attend the preliminary protective hearing has a right to subsequently request a return of the child under Rule 59. He also noted the history of the temporary custody hearing and said that it originated during the 1990’s in a Pima County “model court” and in omnibus legislation, both of which intended to “frontload” the hearing for challenging temporary custody. He cited *Stocking Tate’s* analysis that as a dependency case proceeds, the available evidence typically expands, leading to logistical and evidentiary issues if a temporary custody

hearing is held at a later time. Mr. Truman concluded with a recommendation that if Ms. Avila Taylor's proposal has merit, it should be adopted by legislation rather than a rule change.

Other members then offered comments. A member who participated in Pima's model court confirmed that this program was designed to promptly get parents into court, appoint their counsel, and then afford them an immediate hearing on temporary custody. Unfortunately, not every parent was served before the hearing, although the member observed that the unserved parent in some cases might have been an appropriate placement for the child. The member believed that depriving that parent of a temporary custody hearing after later service would prejudice the parent, whereas providing a hearing at a later stage would not prejudice the State. The member also noted that although the Rule 59 process might be available at a later stage, it is not prompt; under current Rule 59(b), the court has 30 days to set a hearing on a Rule 59 request. The member supports Ms. Avila Taylor's proposal. Another member supported Mr. Truman's position, contending that the legislature alone can articulate the dependency process, and that this new proposal would impose an unintended burden on the State. Two judge members supported Ms. Avila Taylor's proposal. One judge noted that a parent should have a right to challenge custody at the parent's first court appearance, and that given the short time between the filing of a dependency petition and the preliminary protective hearing, some parents aren't served and are otherwise unaware of the court date. The judge echoed Ms. Avila Taylor contention: how can a parent be deprived of a right that exists at a hearing if the parent was not notified of the hearing? Another judge member recounted instances where one parent failed to inform DCS of the other parent's ability to provide a safe home for the child. The judge affirmed that it is difficult to set a Rule 59 hearing within fewer than 30 days.

The Chair asked for a straw vote on the issue. Two members supported Mr. Truman's position. The remaining members supported Ms. Avila Taylor's position. With this in mind, Ms. Avila Taylor's presentations of Rules 51 and 52 will incorporate her proposal. The Task Force's petition will do likewise, although the Chair noted that Mr. Truman will have the opportunity to elaborate on his viewpoint in that filing.

According, Rule 51, section (a) ("generally") now begins, "if requested by the parent at the preliminary protective hearing or at the initial dependency hearing, if the parent was not served and did not appear for the preliminary protective hearing, the court must ... ." Members discussed whether the words "was not served" should be replaced by the words "was not notified," but concluded that "served" was more accurate, and that "notified" could result in collateral litigation over the meaning of notice, e.g., can a phone call constitute notice? In subparts (a)(1) and (c)(2), the word "physical" was added in the phrase "temporary physical custody" because the hearing applies only in cases of out-of-home placement. In subpart (a)(2), the workgroup added the word "clearly" in the phrase "whether removal of the child from the home was clearly necessary."

Section (b) specifies the burden of proof: “probable cause” in subpart (1), and “clear and convincing evidence” in subpart (2), which applies to an Indian child and that includes an “active efforts” showing. Section (c) (“procedure”) now includes citations to pertinent statutory provisions. Current subpart (C)(3) says that the parent “shall” be permitted to present evidence; draft subpart (c)(3) says “must” be permitted. That subpart also includes a new sentence that says, “The court may consider as mitigating factors the participation of the parent in healthy families or whether the availability of reasonable services would prevent or eliminate the need for removal and the effort to obtain and participate in these services.” Current section (D) (“findings and orders”) has been bifurcated into new sections (d) (“findings”) and (e) (“orders”). Subpart (d)(2) specifically applies if the child is an Indian child. At Professor Atwood’s request, the Editorial Group will determine if the word “that” in the second sentence (“that active efforts have been made”) should be replaced by the word “whether.” Section (e) has two subparts set out in the alternative. Subpart (1) applies if the petitioner failed to meet the burden of proof and requires the court to order return of the child to the parent. Subpart (2) applies if the petitioner has met the burden of proof and allows the court to declare the child a temporary ward of the court. Judge Quigley concluded the discussion of Rule 51 by confirming with Mr. Truman that a reference in Rule 50 to Rule 51 was correct.

**Rule 52 (“initial dependency hearing”).** Current Rule 52 and the restyled rule are both lengthy. Ms. Avila-Taylor noted that the workgroup in preparing the new draft rule reviewed several statutes, including A.R.S. §§ 8-842, -843, -844, -824, and -825, as well as Rules 50 and 51. It also considered circumstances where the initial dependency hearing could be a parent’s first court appearance in the case.

Ms. Avila Taylor reviewed each of the sections and subparts of draft Rule 52. In section (a) (“generally”), the workgroup added a new sentence, derived from A.R.S. § 8-843: “The court must give paramount consideration to the health and safety of the child.” Draft section (b) (“time for the hearing”) differentiates the time for the initial dependency hearing, depending on whether the parent did not appear at the preliminary protective hearing or whether service by publication is required. The content of section (c) (“procedure”) reflects corresponding content in Rule 50. Notably and based on the earlier discussion of Rule 51, subpart (c)(3) requires the court to conduct a temporary custody hearing if requested by a parent at the initial dependency hearing. Current Rule 52(C)(6) amalgamates the provisions concerning admission, denial, and failure to appear. However, in draft Rule 52, the provisions on admission and denial are in subpart (c)(7), and provisions on failure to appear are in a new section (d) (“failure to appear”).

Similarly, findings and orders, which are consolidated in current Rule 52(D), are separated in draft Rule 52(f) (“findings”) and (g) (“orders”). Ms. Avila Taylor noted in subpart (g)(1) that the court must enter orders “returning the child to the parent, or if the child is not returned to the parent, affirming or modifying the prior orders regarding the placement of the child ....” Members discussed and revised draft subpart (g)(7) regarding

placement of siblings. As revised, the subpart now directs the court to enter an order, “if siblings have not been placed together, requiring that DCS make reasonable efforts to place a child with siblings if such placement is in the children’s best interests or if that is not possible, to maintain frequent visitation or other ongoing contact between the siblings.” Subpart (g)(8) requires the parent to “immediately” inform the court of new information concerning the location of a relative. Members discussed changing “immediately” to “promptly” but did not because “immediately” is used in the statute. Subpart 13 allows the court to enter other orders “as appropriate and required by law.” After discussion, members changed this to “as appropriate or required by law.”

**Rule 58 (“review hearing”).** Ms. Avila Taylor noted that although the workgroup restyled and reorganized this rule and added a couple new statutory references, it did not intend to make substantive changes. Members had questions and suggestions following Ms. Avila Taylor’s overview of the draft. A member inquired why section (e) (“procedure”) did not require DCS to provide a safety plan concerning a child’s potential return to the home. During the ensuing discussion, members strongly supported that addition; they added subpart (e)(4) as a placeholder for the provision and requested the Editorial Group to draft its content. In subpart (f)(1)(B), members deleted the word “specific” in a provision that required the court to “make specific findings.” (Current Rule (F)(2) says “specific findings.”) In subpart (f)(2)(A), members replaced the phrase “educational stability,” which they found ambiguous, with “educational needs.” The workgroup added subpart (f)(2)(B), which requires the court, if it does not place the child with a parent, to “determine whether DCS has identified and assessed whether placement of the child with a relative or person who has a significant relationship with the child is possible.” In subpart (f)(2)(G), which concerns ICWA, members replaced the introductory phrase, “if ICWA applies,” with the more conventional “if the child is an Indian child.”

**Rule 60 (“permanency hearing”).** Ms. Jorquez presented Rule 60. She noted that section (A) of the current rule requires the court to “determine the future permanent legal status of the child.” The workgroup changed this to “determine the child’s permanency plan.” In light of the Task Force’s anticipated approval earlier today of Rule 14 (“combining hearings”), the workgroup believed that current Rule 60(B) (“consolidation of hearings”) would no longer be necessary, and the workgroup recommended that draft Rule 60 not include a section that corresponds to current section (B). The workgroup restyled section (c) (“time limits”) for greater clarity. The workgroup reorganized current section (D) (“procedure”), now section (c) (“procedure”) into subparts. The current section permits the court to consider “an age-appropriate consultation with the child.” Members restated that provision in subpart (c)(3) as, “may allow the child to speak with the court during the hearing to assist the court in determining a permanency plan for the child.” The provision is designed to remove uncertainty about whether the child would speak with the judicial officer in open court and on-the-record.

Draft section (d) is titled “findings and orders.” The workgroup proposed adding a provision in this section, initially discussed at a Task Force meeting a year ago, which would deem a review hearing conducted subsequent to a permanency hearing to be a permanency hearing. This would facilitate compliance with statutory requirements concerning the time for filing guardianship and termination actions. However, a member noted that doing so could require the court to make all of the permanency findings again at every subsequent review hearing. After discussion, members agreed to address this issue by providing in subpart (d)(2) that the court must set a review hearing, “but every review hearing after a permanency hearing for that child may be designated a permanency hearing.”

**5. Report from Workgroup 4.** Professor Atwood and Judge Portley, who presented the following rules, credited Rita Meisner, a subject matter expert on adoptions, for her assistance to the workgroup in preparing these drafts.

**Rule 74 (“motions”).** Professor Atwood explained that the workgroup, in conjunction with its review of Rule 85 (“setting aside an adoption”), made a change to Rule 74(f) (“motion to set aside judgment”). A.R.S. § 8-123 provides, “After one year from the date the adoption decree is entered, any irregularity in the proceeding shall be deemed cured and the validity of the decree shall not thereafter be subject to attack on any such ground in any collateral or direct proceeding.” *Denia L.*, which was provided in the materials, considered the meaning of “irregularity.” The opinion held that a void judgment is not merely an irregularity, and A.R.S. § 8-123 should not operate as a time bar. Civil Rule 60, incorporated by reference in Rule 74(f), sets forth the grounds and time limits for setting aside a judgment. After considering *Denia L.*, the workgroup concluded that Rule 74(f) should clarify that a challenge that an adoption decree is void should not be time limited. Accordingly, the workgroup added this sentence to Rule 74(f): “A motion to set aside a judgment under Civil Rule 60(b)(4) may be filed at any time.”

**Rule 80 (“birth parent living expenses”).** Judge Portley noted that the intent of the rule is to discourage adoption fraud. The substance of the current comment to the rule has been relocated to section (a) (“motion for approval”), and the comment has been eliminated. Section (a) of the draft rule now requires that a person or agency wishing to pay living expenses for a birth parent in excess of one-thousand dollars must file a motion supported by an affidavit justifying those expenses, as provided by A.R.S. § 8-114. Section (b) specifies the procedure, which includes a requirement that the court verify the birth parent’s identity before entering any orders. The court for good cause may waive a hearing on the motion, but if it holds a hearing, it may require the attendance of the birth parent or the person who will be paying the expenses. Section (c) requires a determination of whether the proposed expenses are permissible under the statute.

A judge member asked if a motion to approve expenses and an adoption petition concerning the same child could be filed in different counties. The judge asked whether

the rule should specify the venue for filing the motion, thereby minimizing county-shopping. Judge Portley responded that expenses under this section should be included with the accounting that is filed with the court under Rule 83, which should close the loop. Nonetheless, the judge member had concerns because the motion to approve expenses might be assigned a miscellaneous case number and would be difficult to match with an adoption petition number. Another member advised that in her county, a motion in an adoption proceeding cannot be filed unless there is a pending adoption petition with an assigned case number. Due to the lateness of the hour, members agreed that the Editorial Group should consider this issue.

**Rule 81 (“consent to adopt”).** Professor Atwood presented this rule. Draft section (a) has general application, while the content of draft section (b) is limited to consents in out-of-state adoptions and adoptions under ICWA. The workgroup revised section (b) to clarify this limited scope by, among other things, relocating instructive content from the current comment to the body of the draft rule. Section (A) of the current rule has the odd name, “motion to set hearing.” The workgroup added new section (a) (“generally”) as a more instructive introduction, and then combined current sections (A) and (B) (“procedure”) into a new section (b) titled “consent in open court for an out-of-state adoption.” Section (b) contains a detailed yet practical procedure. For example, while the current rule requires the person giving consent to arrange for the presence of a court reporter, the draft allows either that person or the prospective adoptive parent to make the arrangement. Draft section (c) is “consent to adopt an Indian child,” which parallels current section (C). Draft section (d) (“findings and orders”) includes references to ICWA authorities. In cases involving an Indian child, the workgroup changed the phrase “terms and conditions” in the current section to “terms and consequences” in the draft. Draft section (e) (“invalid consent”) is similar to the current section.

**Rule 82 (“petition to revoke consent”).** A.R.S. § 8-106(D) provides that a consent to adopt is revocable only for fraud, duress, or undue influence, but Professor Atwood advised that there is no statutory guidance for the revocation procedure. Rule 82 provides a procedure. She noted in draft section (a) (“petition to revoke consent”) a nuanced edit by the workgroup specifying that a person may seek to revoke only “their own consent.” Because a petition to revoke consent must be filed before the adoption is finalized, the workgroup also added a new sentence to section (a) that says, “A person who seeks to revoke consent after entry of a final adoption order must proceed under Rule 85 [‘setting aside an adoption’].” Inasmuch as these petitions are uncommon and are likely to be filed by a self-represented person, and because the court should have more knowledge than the petitioner of the location of interested parties, draft section (b) (“service”) requires that the court, not the petitioner, must prepare a notice of hearing and “provide a copy of the petition and notice of hearing to the adoptive parent or the parent’s attorney, DCS, or the agency to whom the consent was originally given.” The provision further requires the court to provide these copies “in a manner that is reasonable calculated to provide prompt notice.” However, if the original consent was

given to DCS or an agency, the entity rather than the court must provide copies to the prospective adoptive parent.

Section (c) (“appointment of counsel”), like the current rule, requires the court to appoint counsel for an indigent petitioner. Under section (d) (“appointment of a guardian ad litem”), appointment of a GAL for the child is discretionary, as is the authority of the GAL to file a dependency petition if the court grants the petition to revoke consent. Professor Atwood reviewed sections “(e) initial hearing and evidentiary hearing,” “(f) burden of proof,” “(g) procedure,” and “(h) findings and orders.” The workgroup made a change in section (i) (“revocation of consent to adopt an Indian child”). Under the current provision, a parent or Indian custodian can revoke consent at any time before entry of a final adoption order, in which case the child “shall then be returned to the custody of the parent or Indian custodian.” The workgroup’s draft provides for return of the Indian child “as soon as practicable.” The draft section also includes a reference to 25 C.F.R. § 23.128.

*Rules 83 (“documentation required to adopt”), 84 (“hearing to finalize adoption”), 85 (“setting aside an adoption”), and 87 (“modification of post-placement agreements”).* There was insufficient time remaining at the meeting for Workgroup 4 to present Rules 83, 84, 85, and 87. The Chair requested members to review the rules after the meeting concluded and to forward any comments or suggestions to Professor Atwood. The Editorial Group will consider these four rules at its next meeting. Professor Atwood noted an issue with a timing provision in Rule 85, which she will discuss with staff.

**6. Roadmap.** The Chair reminded members that she had filed a motion to extend the time for filing a rule petition, and that the Chief Justice entered an Order on December 7, 2020 extending that time until March 31, 2021. The pending rule petition has now been assigned a case number: R-20-0044. The Chair advised that a substantial amount of work still needs to be done. The Editorial Group has set 4 meetings during the first 3 weeks of January, with a goal of having a complete set of rules ready for stakeholder vetting by the end of January. The Chair asked members to provide the Editorial Group with their authority to make substantive edits to the rules that are consistent with and that further the intent of the Task Force. She noted that members will have the opportunity to review those edits before the Task Force files its rule petition.

**Motion:** A member moved that the Task Force give the Editorial Group the authority to make editorial and substantive edits to the proposed rules. The motion received a second and it passed unanimously. **JRTF 014**

Members have previously suggested sending the rules for vetting to the following individuals and entities: Divisions One and Two of the Court of Appeals, the Children’s Action Alliance, the Arizona Center for Law in the Public Interest, the Arizona Council of Human Service Providers, and the Governor’s legal staff. As a matter of course, presentations will be made to the Committee on Superior Court, which meets on

February 5, 2021, and to the Committee on Juvenile Court. Staff will also submit the draft rules to the State Bar's Juvenile Law Section. The Chair asked members to submit to staff the names and contact information for any other person or entity who might review and comment on the draft rules.

As noted in staff's memo, Administrative Order No. 2019-74, which established the Task Force, directed the Task Force to, among other things, "reorganize the rules to enhance their usability." Members have now added, consolidated, relocated, abrogated, or otherwise reorganized a number of rules, and staff has prepared a proposed Table of Contents, which is in the meeting packet and that reflects these changes. The Chair asked members to review the proposed Table of Contents and to send any suggested changes to staff.

The Chair announced a tentative date for the next Task Force meeting: Friday, February 5, 2021. It appears that a quorum will be available for the meeting, but the Chair requested any members who have a conflict with this date to notify staff. The February meeting will probably be virtual. The Task Force will also need to set another meeting in March, on a date to be determined.

The Chair noted that each of the four workgroups has met at least 17 times, and two workgroups have had 25 meetings. Altogether, there have been 89 workgroup meetings to-date. In addition, the Editorial Group has met 16 times, and the Task Force has had 13 meetings, for a total of 118 meetings thus far. The Chair thanked the members for their tremendous effort, their remarkable dedication, and their generous contributions of time during the past 15 months.

7. **Call to the public; adjourn.** Ms. Lori Ford responded to a call to the public and addressed the members.

The meeting adjourned at 4:08 p.m.

---

S1007: PARENTAL RIGHTS; TERMINATION; SEXUAL ASSAULT

---

At any time, a parent of a child who was conceived as a result of a "sexual assault" (defined) committed against that parent by the child's other parent may file a petition to terminate the parental rights of the parent who committed the sexual assault. The court is authorized to grant the petition to terminate parental rights if it finds by clear and convincing evidence that the child was conceived as a result of such a sexual assault. It is presumed that termination of parental rights under these circumstances is in the best interest of the child. If the parent who is the subject of the petition pleads guilty to or is convicted of sexual assault, the court must accept the guilty plea or conviction as conclusive proof that the child was conceived as a result of a sexual assault by that parent.

First sponsor: Sen. Steele (D - Dist 9)

---

S1166: JUVENILE COURT DISPOSITIONS

---

Modifies statute governing when the juvenile court retains jurisdiction over a juvenile who is 17 years of age until the juvenile's 19th birthday. The notice of intent to retain jurisdiction must be filed at any time before an adjudication hearing or proceeding in which a juvenile is admitting to an allegation. The juvenile court's jurisdiction is retained on the filing of the notice of intent. The purposes for which the juvenile court retains jurisdiction after the juvenile's 18th birthday are expanded to include modifying an outstanding monetary obligation imposed by the juvenile court, except for victim restitution. Modifies the written notices that the court is required to provide to a juvenile adjudicated as a first time felony juvenile offender or a repeat felony juvenile offender.

---

S1391: JUVENILE PROCEEDINGS; APPOINTMENT OF ATTORNEY

---

Before the first hearing, the court is required to appoint an attorney for a child in all delinquency, dependency or termination of parental rights proceedings. The attorney is required to represent the child at all stages of the proceedings and, in a dependency proceeding, through permanency. If a juvenile, parent or guardian is found to be indigent and entitled to counsel, the juvenile court is required to appoint an attorney to represent the person or persons unless the person knowingly, intelligently and voluntarily waives counsel. A guardian ad litem is not the child's attorney.

First sponsor: Sen. Barto (R - Dist 15)

---

# Families First Prevention Services Act (QRTP & Arizona Courts)



# Agenda Topic's

- Federal Action
- QRTP Description
- FFPSA QRTP Requirements
- How DCS to meets the Federal Requirements
- Federal QRTP Law and the Court System
- QRTP Process and the Courts
- What we need to accomplish today

# Federal Action

“To reduce states’ use of congregate or residential group care, the federal government will now only reimburse programs that are designated as qualified residential treatment programs (QRTPs). These must be licensed and accredited and use a treatment model that recognizes the effect trauma has on youth. They are also required to have registered or licensed nursing staff available 24 hours a day and seven days a week, and must engage families and support them after discharge. Children must be assessed regularly to determine their need for residential care. Benefit to the child must be regularly demonstrated and approved by the Courts.”

<sup>1</sup><https://www.ncsl.org/research/human-services/family-first-implementing-landmark-federal-child-welfare-law.aspx> 21 of 80



# QRTP Description

A qualified residential treatment program (QRTP) is a specific category of non-foster family home setting, for which public child welfare agencies must meet detailed assessment, case planning, documentation, judicial determinations and ongoing review and permanency hearing requirements for DCYF to receive federal Title IV-E funding for the placement. Facility must also be licensed and comply with criminal records check and child abuse and neglect registry check requirements and must also be accredited.



# QRTP Law Requirements Summarized

According to H.R. 1892, Sections 50741-50742, A Qualified Residential Treatment Programs (QRTP), is defined as a program that:

- Has a trauma-informed treatment model designed to address the needs, and clinical needs as appropriate, of children with serious emotional or behavioral disorders or disturbances, and can implement the necessary treatment identified in the child's assessment.
- Has registered or licensed nursing staff and other licensed clinical staff who can provide care, who are on-site consistent with the treatment model, and available 24 hours and 7 days a week. o Facilitates family participation in child's treatment program (if in child's best interest)
- Facilitates family outreach, documents how this outreach is made, and maintains contact information for any known biological family and fictive kin of the child.
- Documents how the child's family is integrated into the child's treatment, including post-discharge, and how sibling connections are maintained.
- Provides discharge planning and family-based aftercare supports for at least 6 months post-discharge.
- The program is licensed and nationally accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF), the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the Council on Accreditation, or others approved by the Secretary.
- Any child who is placed in a QRTP setting shall participate in an evaluation by a 'Qualified Individual' to assess the strength and needs of the child using an age appropriate, evidence based, validated, functional assessment tool approved by the Secretary as defined in Social Security Act 475A (1)(A).



# What DCS has done to address the law?

- Nearly one year ago, six provider agencies were provided a grant to become accredited. As of 1/5/21, all grantees have been accredited through the Commission on Accreditation of Rehabilitation Facilities (CARF).
- Targeting the end of January 2021, DCS will enter into direct contracts with the six providers
- There have been active efforts to extend the creation of additional QRTP programs by the Department of covering expenses of providers interested in becoming accredited.
- The 3<sup>rd</sup> Party assessment will be completed by the Health Home as a part of the CSOC assessment process.
  - If the CASII score is 91+ days old, a new CASII Assessment will be required and conducted after the youth is placed in a QRTP.
- The Department is making efforts to reduce the requirement of six month aftercare monitoring of children who exit the QRTP environment and assigning the responsibility to both the BH Health home and High Needs Case Manager.



# Statewide QRTP Process & Arizona Courts



# QRTP Statewide Process



**1.** DCS receives a hotline report with allegations of neglect and/or abuse. It is determined during the investigation it is the best interest of the child to be removed from their home. Family and/or kin are now researched in order to care for the child.



**5.** Within 30 day's of QRTP placement, an assessment by a 'Qualified individual' who is not a state employee or placement affiliated must be completed using the CASII evaluation to re-evaluate that the child is placed in the correct level of care.



**2.** If family or kin cannot be located to care for the child, the child is transported to the placement unit to conduct a more diligent effort to place the child based upon their needs.



**6.** Within 60 days of child placement, the Court must review and assess the need for QRTP placement. The court will continue to assess the need for QRTP placement at every permanency hearing. The state will provide the following to the Court prior to every court appearance:

- Ongoing assessment confirms the need for QRTP placement
- Specific treatment needs that will be met
- Length of time child is expected to need additional treatment
- Efforts made to prepare child to transition to a family



**3.** The placement unit assesses the child for a possible placement match using both the placement questions and the CASII assessment score if assessment was completed within 90 day's. *(If not, a new assessment must be completed as noted in step 5.)*



**7.** DCS Director approval needed for children in QRTP placement for 12 consecutive months/ 18 cumulative months (or 6 months for children under 13)



**4.** After conducting the assessment and it determined that a Qualified Residential Treatment Program (QRTP) can best meet the needs of the child in the least restrictive environment, the child is then placed.

# QRTP Law Requirements and the Courts

“(2) Within 60 days of the start of each placement in a qualified residential treatment program, a family or juvenile court or another court (including a tribal court) of competent jurisdiction, or an administrative body appointed or approved by the court, independently, shall—

“(A) consider the assessment, determination, and documentation made by the qualified individual conducting the assessment under paragraph (1);

“(B) determine whether the needs of the child can be met through placement in a foster family home or, if not, whether placement of the child in a qualified residential treatment program provides the most effective and appropriate level of care for the child in the least restrictive environment and whether that placement is consistent with the short- and long-term goals for the child, as specified in the permanency plan for the child; and ‘

‘(C) approve or disapprove the placement.

“(3) The written documentation made under paragraph (1)(C) and documentation of the determination and approval or disapproval of the placement in a qualified residential treatment program by a court or administrative body under paragraph (2) shall be included in and made part of the case plan for the child.

“(4) As long as a child remains placed in a qualified residential treatment program, the State agency shall submit evidence at each status review and each permanency hearing held with respect to the child— ‘<sup>2</sup>

<sup>2</sup>H.R. 1892, Sec. 50742, Subsection 2, A-C

# What we need to accomplish today!

To develop a statewide process that consistently delivers court rulings either approving or denying placement as it relates to youth placed in QRTP settings within 60 days of the start of placement and thereafter at each Review and Permanency Planning hearing the ongoing need for QRTP placement.



# Families First Prevention Services Act (QRTP & Arizona Courts)



# Agenda Topic's

- Federal Action
- QRTP Description
- FFPSA QRTP Requirements
- How DCS to meets the Federal Requirements
- Federal QRTP Law and the Court System
- QRTP Process and the Courts
- What we need to accomplish today

# Federal Action

“To reduce states’ use of congregate or residential group care, the federal government will now only reimburse programs that are designated as qualified residential treatment programs (QRTPs). These must be licensed and accredited and use a treatment model that recognizes the effect trauma has on youth. They are also required to have registered or licensed nursing staff available 24 hours a day and seven days a week, and must engage families and support them after discharge. Children must be assessed regularly to determine their need for residential care. Benefit to the child must be regularly demonstrated and approved by the Courts.”

<sup>1</sup><https://www.ncsl.org/research/human-services/family-first-implementing-landmark-federal-child-welfare-law.aspx> 31 of 80



# QRTP Description

A qualified residential treatment program (QRTP) is a specific category of non-foster family home setting, for which public child welfare agencies must meet detailed assessment, case planning, documentation, judicial determinations and ongoing review and permanency hearing requirements for DCYF to receive federal Title IV-E funding for the placement. Facility must also be licensed and comply with criminal records check and child abuse and neglect registry check requirements and must also be accredited.



# QRTP Law Requirements Summarized

According to H.R. 1892, Sections 50741-50742, A Qualified Residential Treatment Programs (QRTP), is defined as a program that:

- Has a trauma-informed treatment model designed to address the needs, and clinical needs as appropriate, of children with serious emotional or behavioral disorders or disturbances, and can implement the necessary treatment identified in the child's assessment.
- Has registered or licensed nursing staff and other licensed clinical staff who can provide care, who are on-site consistent with the treatment model, and available 24 hours and 7 days a week. o Facilitates family participation in child's treatment program (if in child's best interest)
- Facilitates family outreach, documents how this outreach is made, and maintains contact information for any known biological family and fictive kin of the child.
- Documents how the child's family is integrated into the child's treatment, including post-discharge, and how sibling connections are maintained.
- Provides discharge planning and family-based aftercare supports for at least 6 months post-discharge.
- The program is licensed and nationally accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF), the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the Council on Accreditation, or others approved by the Secretary.
- Any child who is placed in a QRTP setting shall participate in an evaluation by a 'Qualified Individual' to assess the strength and needs of the child using an age appropriate, evidence based, validated, functional assessment tool approved by the Secretary as defined in Social Security Act 475A (1)(A).



# What DCS has done to address the law?

- Nearly one year ago, six provider agencies were provided a grant to become accredited. As of 1/5/21, all grantees have been accredited through the Commission on Accreditation of Rehabilitation Facilities (CARF).
- Targeting the end of January 2021, DCS will enter into direct contracts with the six providers
- There have been active efforts to extend the creation of additional QRTP programs by the Department of covering expenses of providers interested in becoming accredited.
- The 3<sup>rd</sup> Party assessment will be completed by the Health Home as a part of the CSOC assessment process.
  - If the CASII score is 91+ days old, a new CASII Assessment will be required and conducted after the youth is placed in a QRTP.
- The Department is making efforts to reduce the requirement of six month aftercare monitoring of children who exit the QRTP environment and assigning the responsibility to both the BH Health home and High Needs Case Manager.



# Statewide QRTP Process & Arizona Courts



# QRTP Statewide Process



**1.** DCS receives a hotline report with allegations of neglect and/or abuse. It is determined during the investigation it is the best interest of the child to be removed from their home. Family and/or kin are now researched in order to care for the child.



**5.** Within 30 day's of QRTP placement, an assessment by a 'Qualified individual' who is not a state employee or placement affiliated must be completed using the CASII evaluation to re-evaluate that the child is placed in the correct level of care.



**2.** If family or kin cannot be located to care for the child, the child is transported to the placement unit to conduct a more diligent effort to place the child based upon their needs.



**6.** Within 60 days of child placement, the Court must review and assess the need for QRTP placement. The court will continue to assess the need for QRTP placement at every permanency hearing. The state will provide the following to the Court prior to every court appearance:

- Ongoing assessment confirms the need for QRTP placement
- Specific treatment needs that will be met
- Length of time child is expected to need additional treatment
- Efforts made to prepare child to transition to a family



**3.** The placement unit assesses the child for a possible placement match using both the placement questions and the CASII assessment score if assessment was completed within 90 day's. *(If not, a new assessment must be completed as noted in step 5.)*



**7.** DCS Director approval needed for children in QRTP placement for 12 consecutive months/ 18 cumulative months (or 6 months for children under 13)



**4.** After conducting the assessment and it determined that a Qualified Residential Treatment Program (QRTP) can best meet the needs of the child in the least restrictive environment, the child is then placed.

# QRTP Law Requirements and the Courts

“(2) Within 60 days of the start of each placement in a qualified residential treatment program, a family or juvenile court or another court (including a tribal court) of competent jurisdiction, or an administrative body appointed or approved by the court, independently, shall—

“(A) consider the assessment, determination, and documentation made by the qualified individual conducting the assessment under paragraph (1);

“(B) determine whether the needs of the child can be met through placement in a foster family home or, if not, whether placement of the child in a qualified residential treatment program provides the most effective and appropriate level of care for the child in the least restrictive environment and whether that placement is consistent with the short- and long-term goals for the child, as specified in the permanency plan for the child; and ‘

‘(C) approve or disapprove the placement.

“(3) The written documentation made under paragraph (1)(C) and documentation of the determination and approval or disapproval of the placement in a qualified residential treatment program by a court or administrative body under paragraph (2) shall be included in and made part of the case plan for the child.

“(4) As long as a child remains placed in a qualified residential treatment program, the State agency shall submit evidence at each status review and each permanency hearing held with respect to the child— ‘<sup>2</sup>

<sup>2</sup>H.R. 1892, Sec. 50742, Subsection 2, A-C

# What we need to accomplish today!

To develop a statewide process that consistently delivers court rulings either approving or denying placement as it relates to youth placed in QRTP settings within 60 days of the start of placement and thereafter at each Review and Permanency Planning hearing the ongoing need for QRTP placement.



## **Rule 00. Required Admonition and Findings**

### **(a) General.**

- (1)** Before the conclusion of every hearing in a dependency, guardianship, or termination case, the court must address the parents who are present and advise them of the consequences of (A) failing to appear and (B) failing to participate in reunification services.
- (2)** The requirement in subpart (a)(1) does not apply to a parent whose parental rights have been terminated or in cases where the court has established a permanent guardianship.

### **(b) Admonition**

- (1)** At a preliminary protective hearing, or at an initial dependency, initial guardianship, or initial termination hearing, the court must advise the parents who are present that if they fail to attend any of the following court proceedings without good cause for their failure to attend, they will be deemed to have admitted the allegations in the petition or motion:
  - (A)** a pretrial conference or an adjudication hearing in a dependency, guardianship, or termination proceeding,
  - (B)** a settlement conference in a dependency proceeding,
  - (C)** a pretrial conference or a settlement conference in a guardianship proceeding;  
or
  - (D)** a status conference in a termination proceeding.
- (2)** The court also must advise the parents that if they fail to appear at any of these proceedings, the court may adjudicate the case in their absence and, based on the evidence presented, may grant the petition or motion.
- (3)** The court must determine at the conclusion of every proceeding at which the parents appear that the parents understood the consequences of failing to appear at future court proceedings and failing to participate in reunification services.
- (4)** The court must provide parents with Form 1, 2, or 3, as applicable, and request the parents to sign and return the form to the court before the proceeding adjourns.

(5) The court must make findings concerning the matters set forth in subparts (b)(1) through (b)(4) in a signed minute entry or order.

**(c) Failure to Participate in Reunification Services.** The court must also advise parents that substantially neglecting or willfully refusing to remedy the circumstances that caused their child to be in an out-of-home placement, including refusing to participate in reunification services, may be grounds for terminating their parental rights.

**(d) Failure to Appear.** Before the court may proceed with an adjudication hearing as to a parent who fails to appear without good cause at a proceeding specified in subpart (b)(1), the court must first find that the parent:

(1) was properly served;

(2) had notice of the hearing; and

(3) had been admonished regarding the consequences of failing to appear at the hearing, including warnings that the adjudication hearing could go forward in their absence, and that failing to appear may constitute a waiver of their rights and their admission to the allegations contained in the petition or motion.

**(e) Adjudication.** If the requirements of section (d) are satisfied, the court may proceed with the adjudication as provided by Rules 55, 63, or 66, as applicable.

**(f) Minute Entries.**

(1) The court's minute entries for the proceedings described in this rule must contain findings that the parents who were present received the admonition, and that the parents understood it.

(2) Before the conclusion of the hearings described in subpart (b)(1), the court must provide the parents with a written form of the admonition that contains the date, time, and location of the next court proceeding and the court's telephone number.

(3) Before the conclusion of hearings other than those described in subpart (b)(1), the court may provide the parents with a written form of the admonition that contains the date, time, and location of the next court proceeding and the court's telephone number.

(4) The court's findings pursuant to section (d) must be in a signed minute entry or order.

**WG Note 1/15/21:** *If this rule is approved and the admonition is removed from other rules, we should still maintain a reference in those other rules to Rule 00.*



**00. Rule 00. Required Admonitions; Adjudication After a Failure to Appear, and Findings**

**(a) General. At**

**(1) Before** the conclusion of every hearing ~~[proceeding]~~ in a dependency, guardianship, or termination case, ~~unless the court has ordered a guardianship or termination, the court~~ the court must address the parents who are present in open court and advise them ~~mm~~ of the consequences ~~for of~~ (A) failing to appear ~~or and~~ (B) failing to participate in reunification services. The court must find that the parents understood the consequences of failing to appear at future court proceedings and failing to participate in reunification services. This finding must be contained in the minute entry.

**(2) The requirement in subpart (a)(1) does not apply to a parent whose parental rights have been terminated or in cases where the court has established a permanent guardianship, or where the court has previously entered those orders**

~~(a)~~

**(b) Admonition for Adjudications.**

**(1) At a preliminary protective hearing, or at an initial dependency, initial guardianship, or initial termination hearing, the court must provide the parent with Form 1, 2 or 3, as applicable, and the court must advise the parents who are present that their failure if they fail to attend any of the following court proceedings without good cause for their failure to attend, they will be deemed to have admitted the allegations in the petition or motion:**

**(A) the a pretrial conference, settlement conference, or an adjudication hearing in a dependency, guardianship, or termination proceeding without good cause,**

**(B) a settlement conference in a dependency proceeding,**

**(C) a pretrial conference or a settlement conference in a guardianship proceeding;  
or**

**(D) a status conference in a termination proceeding, constitutes a waiver of their legal rights and an admission of the allegations in the petition or motion and**

**(2) The court also must advise the parents that if they fail to appear at any of these proceedings, based on the evidence presented the court may order the adjudication**

adjudicate the case in their absence and, based on the evidence presented, may grant ~~in~~ the petition or motion.

(3) The court must determine at the conclusion of every proceeding at which the parents appear that the parents understood the consequences of failing to appear at future court proceedings and failing to participate in reunification services.

(4) The court must provide parents with Form 1, 2, or 3, as applicable, and request the parents to sign and return the form to the court before the proceeding adjourns.

~~(b)~~(5) The court must make findings concerning the matters set forth in subparts (b)(1) through (b)(4) in a signed minute entry or order.

~~(c)~~ **Failure to Participate in Reunification Services.** ~~S~~The court must also advise parents that substantially neglecting or willfully refusing to remedy the circumstances that caused ~~you~~their child to be in an out-of-home placement, including refusing to participate in reunification services, may be grounds for terminating ~~you~~their parental rights.

~~(d)~~ **Failure to Appear. Required Findings.** Before the court may proceed with ~~the~~an adjudication hearing as to a parent who fails to appear ~~at the pretrial conference, settlement conference, or adjudication~~ without good cause at a proceeding specified in subpart (b)(1), the court must first find that the parent:

(1) was properly served; had notice of the hearing;

(2) had notice of the hearing; was properly served pursuant to Rule 48X; and

(3) had been admonished regarding the consequences of failing to appear at the ~~adjudication~~ hearing, including warnings that the adjudication hearing could go forward in their absence, and that failing to appear may constitute a waiver of their rights and their admission to the allegations contained in the petition or motion.

~~(f)~~ **(e) Adjudication**

~~(1)~~ had notice of the hearing;

~~(2)~~ was properly served pursuant to Rule 48X; and

~~(3) had been admonished regarding the consequences of failing to appear at the adjudication hearing, including warnings that the adjudication hearing could go forward in their absence, and that failing to appear may constitute a waiver of their rights and their admission to the allegations contained in the petition or motion.~~

~~**Procedure.** At an adjudication hearing after the parent's failure to appear, the court may [find the child dependent/establish a guardianship/terminate parental rights] based on the record and evidence presented if the requirements of section (id) are satisfied and the [petitioner/moving party] can meet the burden of proof required for [dependency/guardianship/termination] adjudication provided in Rules 55, 63, or 66, as applicable, the court may proceed with the adjudication as provided by Rules 55, 63, or 66, as applicable.~~

~~(ii) — The court must enter its findings and orders at the conclusion of the adjudication hearing as required by the respective rule. If the child is an Indian child, the court must make further findings pursuant to the standards and burdens of proof required under ICWA.~~

~~(b) — **Admonition for all other hearings\***. The court must address the parent in open court and advise them that their failure to attend further proceedings without good cause, or their failure to participate in reunification services, may have the following consequences:~~

~~(i) If they fail to attend the next proceeding, it may go forward in their absence.~~

~~(ii) Their failure to attend the future proceedings or participate in reunification services may result in the termination of their parental rights or the establishment of a permanent guardianship for their child.~~

~~(f) **Minute Entries\***.~~

~~(1) The court's minute entry entries for the proceedings described in this rule must contain a findings that the parents who were present received the admonition, and that the parentsthey understood it.~~

~~(2) Before the conclusion of the hearings described in subpart (b)(1), the court must must provide the parents , guardian, or Indian custodian with a written form of the admonition that contains the date, time, and location of the next court proceeding and the court's telephone number.~~

~~(3) Before the conclusion of hearings other than those described in subpart (b)(1), the court may provide the parents with a written form of the admonition that~~

contains the date, time, and location of the next court proceeding and the court's telephone number.

(4) The court's findings pursuant to section (d) must be in a signed minute entry or order.

(e)

**WG Note 1/15/21:** *If this rule is approved and the admonition is removed from other rules, we should still maintain a reference in those other rules to Rule 00.*

## Rule YY. Transfer to a Tribal Court

- (a) **Generally.** At any stage of an involuntary or voluntary foster care or a termination of parental rights proceeding, as defined in 25 C.F.R. § 23.2, a parent, the Indian custodian, or the Indian child's tribe may request the court to transfer jurisdiction of the case to the child's tribe. *See* ICWA § 1911 (b) and 23 C.F.R. §§ 23.115 – 23.119.
- (b) **Procedure.**
- (1) ***Request to Transfer.*** The requesting party or tribe may file a motion to transfer or may make the motion orally on the record.
  - (2) ***Notice to Tribe.*** A parent or Indian custodian who requests transfer of the proceeding must notify the tribal court promptly in writing of the transfer request. [WG-3 note 1/15/2021: Should the court provide notice to the tribe? Should the court specify the time within which the tribe must respond? Should the notice include the court's contact information and advise the tribe that it can request additional information from the superior court?]
    - (A) A copy of the requesting party's notice to the tribal court must be filed with the superior court.
    - (B) The notice must ask the tribal court to determine whether the tribal court will accept or decline the transfer.
  - (3) ***Response to the Request.*** The superior court must provide each party and the tribe with an opportunity to respond to a request for transfer.
    - (A) ***Response from a Party.*** If the request for transfer was in writing, a party's response to the request must be filed pursuant to Rule 46(c) and served on the other parties and the tribe as provided in Rule 8. A party may respond to an oral request to transfer orally in open court. If a party objects to the request for transfer, the party's response must state the basis of the objection and any good cause why the court should deny the request.
    - (B) ***Response from the Tribe.*** Regardless of whether the tribe is a party, a response from the tribe may be in writing or provided orally. If the court receives a written response from the tribe that has not been filed, the court

must file it with the clerk. The court may consider the tribe's failure to respond as a declination of the request to transfer.

**(c) Considerations.**

(1) The court must grant the request to transfer unless one or more of the following criteria are met:

- (A) either parent objects to the transfer;
- (B) the tribal court declines the transfer; or
- (C) there is good cause to deny the transfer.

(2) A party who alleges good cause to deny the transfer must demonstrate by clear and convincing evidence the facts that constitute good cause. In determining whether good cause exists, the court must not consider:

- (A) whether the foster-care or termination of parental rights proceeding is at an advanced stage and a parent, Indian custodian, or tribe did not receive notice of the proceeding until an advanced stage;
- (B) whether there have been prior proceedings involving the child for which no petition to transfer was filed;
- (C) whether transfer could affect the placement of the child;
- (D) the Indian child's cultural connections with the tribe or its reservation; or
- (E) socioeconomic conditions or any negative perception of tribal or BIA social services or judicial systems.

**(d) Findings.** The court must find in a signed minute entry or order:

- (1) the date the requesting party [or the court] sent written notification of the request to the tribe, as required by subpart (b)(2);
- (2) whether the tribe responded, whether the tribe's response was in writing, and whether the tribe agreed to or declined the request;

(3) whether either parent objects to the transfer; and

(4) if good cause to deny the transfer was alleged, whether facts constituting good cause were established by clear and convincing evidence and the specific facts that constitute good cause.

**(e) Orders.** The court's order granting or denying a request to transfer must be in a signed minute entry or order. If the court grants the request to transfer jurisdiction, the court must order:

(1) the court clerk to expeditiously transfer the file and admitted exhibits to the tribal court;

(2) the petitioner to expeditiously transfer any reports or records in the petitioner's possession that were not admitted into evidence;

(3) transfer custody of the child to the tribe;

(4) the clerk to dismiss the proceeding and to notify the Foster Care Review Board of the dismissal;

(5) that appointed counsel and any appointed GAL is relieved of responsibility; and

(6) the entry of other orders as appropriate.

**(f) Court Oversight of the Transfer.** The superior court should communicate with the tribal court to ensure that transfer of the child's custody, the file, admitted exhibits, and documentation is accomplished in a manner that minimizes the disruption of services to the family.

### COMMENT TO 2022 RULE AMENDMENT

Parties may request transfer of pre-adoptive or adoptive placement proceedings but the standards for addressing such motions are not dictated by ICWA or the regulations. Tribes possess inherent jurisdiction over domestic relations, including the welfare of child citizens of the tribe, even beyond that authority confirmed in ICWA. Thus, it may be appropriate to transfer pre-adoptive and adoptive proceedings involving children residing outside of a reservation to tribal jurisdiction in particular circumstances. The case may be transferred

to the tribal court but that request is not governed by ICWA or the regulations. *See Gila River Indian Community v. DCS*, 395 P.3<sup>rd</sup> 286 (Arizona Supreme Court, 2017).

**Rule YY. Transfer to a Tribal Court**

(a) **Generally.** At any stage of an involuntary or voluntary foster care or a termination of parental rights proceeding, as defined in 25 C.F.R. § 23.2, A a parent, the Indian custodian, or the Indian child’s tribe may request at any stage of an involuntary or voluntary foster care or a termination of parental rights proceeding, as defined in 25 C.F.R. § 23.2, that the court to transfer the case to the jurisdiction of the case to of the child’s Tribe/tribe. See ICWA § 1911 (b) and 23 C.F.R. §§ 23.115 – 23.119.

(b) **Procedure.**

(1) **Petition/Request to Transfer.** ~~A~~ The requesting party or tribe may file a petition/motion to transfer may be filed with the clerk or made/may make the motion orally orally on the record.

(2) **Notice to Tribe.** A parent or Indian custodian ~~who~~ who petitions the court to requests transfer of the proceeding must notify the ~~Tribal~~ tribal court promptly in writing of the ~~petition to~~ transfer request. [WG-3 note 1/15/2021: Should the court provide notice to the tribe? Should the court specify the time within which the tribe must respond? Should the notice include the court’s contact information and advise the tribe that it can request additional information from the superior court?]

~~a. (Notification to the Tribe must include a request for a timely response from the Tribal court to determine whether the Tribal court will decline the transfer.~~

A) A copy of the requesting party’s notice to the Tribal/tribal court must be filed with the superior court.

~~b. (B) The notice must ask the tribal court to determine whether the tribal court will accept or decline the transfer.~~

(3) **Response to the Request.** ~~The Tribe and each~~ The superior court must provide each party and the tribe must be provided the with an opportunity to respond to a request for transfer.

(A) Response from a Party. A ~~If the request for transfer was in writing, a party’s response to the from a party request~~ must be filed pursuant to Rule 46(c) and served on the other parties and the tribe as provided in Rule 8 for

~~a written petition or may be provided orally. A party may respond to for an oral petition request to transfer orally in open court. An oral response may be provided for a petition to transfer that was made orally on the record. If a party objects to the request for transfer, then a party's objection response by a party to the petition for transfer must state the basis of the objection and including any good cause why the court should to deny the transfer request.~~

~~(B) Response from the Tribe. Whether or not Regardless of whether the Tribe is a party, a response from the Tribe may be in writing or provided orally. If the court receives a written response received from the Tribe that has not been filed, the court must be filed file it with the clerk. The court may consider the tribe's failure to respond as a declination of the request to transfer.~~

~~a.~~

~~b. Any objection by a party to the petition for transfer must state the basis of the objection including any good cause to deny the transfer.~~

~~c. A written response received from the Tribe must be filed with the clerk.~~

**(c) Considerations.**

(1) The court must grant the petition request to transfer unless one or more of the following criteria are met:

(A) either parent objects to the transfer;

(B) the Tribal tribal court declines the transfer; or

(C) there is good cause ~~exists~~ to deny the transfer.

(2) A party alleging who alleges good cause to deny the transfer must prove demonstrate by clear and convincing evidence the facts constituting that constitute good cause by clear and convincing evidence. In determining whether good cause exists, the court must not consider: When good cause is alleged, the following are not good cause to deny the transfer:

(A) whether the foster-care or termination of parental rights proceeding is at an advanced stage if and a parent, Indian custodian, or Tribe tribe did not receive notice of the proceeding until an advanced stage;

(B) whether there have been prior proceedings involving the child for which no petition to transfer was filed;

(C) whether transfer could affect the placement of the child;

(D) the Indian child's cultural connections with the ~~Tribe~~ tribe or its reservation; or

(E) socioeconomic conditions or any negative perception of ~~Tribal~~ tribal or BIA social services or judicial systems.

(d) **Findings.** ~~All The court must find findings must be~~ in a signed minute entry or order ~~or contained in a minute entry. The court must find:~~

(1) the date the requesting party [or the court] ~~the Tribe was~~ sent written notification of the petition request to transfer to the tribe, as required by subpart (b)(2);

(2) whether the ~~Tribe~~ tribe responded, ~~the Tribe's response, if any, and whether any the tribe's response received~~ was in writing, and whether the tribe agreed to or declined the request;

(3) whether either parent objects to the transfer; and

~~(4) — by clear and convincing evidence whether good cause exists to deny the transfer; and~~

~~(5) (4) if good cause to deny the transfer was alleged, whether facts constituting good cause were established by clear and convincing evidence and, if so, the specific facts that constitute the basis for good cause. is found the court must with specificity state the basis for the good cause.~~

(e)

~~(e) — Orders.~~ ~~All The court's orders granting or denying a request to transfer~~ must be in a signed order or contained in a written-minute entry or order as follows:

~~(1) — Granting or denying the petition to transfer.~~

~~(2)~~—If the court grants the request to transfer jurisdiction, is granted, the court must order:

~~(1)~~ the court clerk of the court to expeditiously transfer the file and admitted exhibits to the Tribal court;

~~(1)~~

~~(2)~~ the petitioner to expeditiously transfer any reports or records in its the petitioner's possession that were not admitted into evidence;

~~(A)~~~~(3)~~ transfer legal custody of the child transferred to the Tribe;

~~(B)~~—DCS or other custodian to transfer physical custody of the child to transferred to the legal custody of the Tribe as soon as feasible;

~~(4)~~ the clerk to dismiss the proceeding and to notify the Foster Care Review Board of the dismissal; ~~the case dismissed, and the clerk must notify the foster care review board and all counsel relieved of responsibility; and~~

~~(C)~~~~(5)~~ that appointed counsel and any appointed GAL is relieved of responsibility;  
and

~~(D)~~~~(6)~~ the entry of any other orders as appropriate.

- (f) **Court Oversight of the Transfer.** The superior court should communicate with the ~~Tribal tribal~~ court to ensure that ~~the transfer of the~~ of the child's legal and physical custody of the child, the legal file, admitted exhibits, and documentation is accomplished ~~and done~~ in a manner that minimizes the disruption of services to the family.

### COMMENT TO 2022 RULE AMENDMENT

Parties may request transfer of pre-adoptive or adoptive placement proceedings but the standards for addressing such motions are not dictated by ICWA or the regulations. Tribes possess inherent jurisdiction over domestic relations, including the welfare of child citizens of the Tribetribes, even beyond that authority confirmed in ICWA. Thus, it may be

appropriate to transfer pre-adoptive and adoptive proceedings involving children residing outside of a reservation to ~~Tribal-tribal~~ jurisdiction in particular circumstances. The case may be transferred to the ~~Tribal-tribal~~ court but that request is not governed by ICWA or the regulations. *See Gila River Indian Community v. DCS, 395 P.3<sup>rd</sup> 286 (Arizona Supreme Court, 2017).*



## **Rule ZZ. Qualified Residential Treatment Program; Placement Review Hearings**

- a. **General.** The court must provide initial oversight and on-going review for a child placed in a QRTP as provided in H.R. 1892, Sections 50741-50742. (This is rough – not sure what to include in the general section other than what I wrote.)
- b. **Definitions.**
  - (1) "Qualified Residential Treatment Program" means a program licensed as a group care facility that serves children with specific treatment needs who need short term placement out of their home. A "QRTP" qualifies for funding under the federal family first prevention services act pursuant to 42 U.S.C. Sec. 672(k).
  - (2) "Social study" means a written evaluation of matters relevant to the goal of the placement at the "QRTP".
  - (3) "Qualified Individual" means a trained professional or licensed individual...(insert definition here from the FFPSA)
  - (4) "Child and Adolescent Service Intensity Instrument" is a standardized assessment tool for mental health providers who provide services for children and adolescents from ages 6 to 18. "CASII" links a clinical assessment with standardized "levels of care" and has a method for matching the two.
- c. **QRTP Requirements.** A "QRTP" must:
  - (1) use a trauma-informed treatment model that is designed to address the needs, including clinical needs as appropriate, of children with serious emotional or behavioral disorders or disturbances; and
  - (2) be able to implement treatment for the child based on the assessment prepared by a "qualified individual".
- d. **Assessment Requirements.** The "CASII" assessment must be prepared by a "qualified individual" who is not employed by the QRTP within thirty days of the child's placement with the QRTP. It must:
  - (A) assesses the strengths and needs of the child; and
  - (B) determine whether the child's needs can be met with family members or through placement in a foster family home or, if not, which available placement setting would provide the most effective and appropriate level of care for the child in the least restrictive environment and be consistent with the child's permanency plan.

e. ***Social Study Requirements.*** A social study as defined in this rule must contain the following:

(1) a statement of the specific harm or harms to the child that intervention is designed to alleviate;

(2) a description of the specific services and activities, for both the parent and child, necessary to prevent serious harm to the child; the reasons why such services and activities are likely to be useful; the availability of any proposed services; DCS's overall plan for ensuring that the services will be delivered; and which services were chosen and approved by the parent;

(3) if removal is recommended, a full description of the reasons why the child cannot be protected adequately in the home, including a description of any previous efforts to work with the parents and the child in the home; the in-home treatment programs that have been considered and rejected; the prevention services, including housing assistance, that have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home; and the parents' attitude toward placement of the child;

(4) if the child is placed, for at least thirty days in a QRTP, a copy of the assessment as required by subpart (d) of this rule;

(5) as long as the child remains placed in a QRTP and DCS anticipates that the child will remain in this placement for at least sixty days, or if the child has already been in this placement for at least sixty days, the social study must also include the following information sufficient for the juvenile court to determine at each review hearing concerning the child's placement:

(i) whether ongoing assessment of the child's strengths and needs continues to support the determination that the child's needs cannot be met through placement with a parent or in a foster home;

(ii) whether the child's placement provides the most effective and appropriate level of care in the least restrictive environment;

(iii) the length of time the child is expected to need additional treatment;

(iv) whether the placement is consistent with the child's permanency plan; and

(v) efforts made to prepare the child for transition to a parent or a family.

f. ***QRTP Placement Hearing.***

(1) **Notice and Disclosure.**

(A) DCS must notify the court and parties no later than 5 days after a child is placed in a QRTP.

(B) After receiving notification of the QRTP placement, the court must set a hearing no more than sixty days date after the child's placement to assess and review the need for the QRTP placement.

(C) If the child is discharged prior to the hearing, DCS must notify the court and parties within 3 business days (??) and the court may vacate the hearing.

(D) The social study and assessment must be disclosed to the court and parties by DCS no less than 5 (??) days prior to the QRTP placement hearing.

(2) **Procedure.** At the hearing the court must:

(A) consider the social study, the assessment, and any related documentation;

(B) consider any testimony and the position of the parties; and

(C) determine whether placement in foster care can meet the child's needs or if placement in another available placement would best meets the child's needs in a less restrictive environment.

(3) **Findings and Orders.** In a signed minute entry or order the court must:

(A) find whether the QRTP is meeting the child's needs, or whether foster care, the parent, or another available placement would best meet the needs of the child in a less restrictive placement, and

(B) enter orders affirming the child's placement in the QRTP or order the child moved to another available placement that will meet the child's needs and serve the child's best interests.

g. **Continuing Review of QRTP Placement.** If the child remains placed in a QRTP for more than sixty days, the court must review the child's placement and follow the procedures set forth in (f) (2) & (3) of this rule at every subsequent Rule 58 and 60 hearing or a placement review set by the court. DCS must disclose an updated social study and a new assessment when the original assessment is older than ninety days, to the court and parties 15 days in advance of the Rule 58 and 60 hearings or the placement review.



## **Rule 50. Preliminary Protective Hearing**

**(a) Generally.** At the preliminary protective hearing, the court must determine whether continued temporary physical custody of the child is necessary, giving paramount consideration to the health and safety of the child.

### **(b) ICWA.**

**(1) *Inquiry.*** The court must inquire at the start of the hearing if any party or participant has reason to know under 25 C.F.R. § 23.107 that the child is an Indian child.

**(2) *Emergency Removal or Placement.*** If there is a reason to know the child is an Indian child and the child was removed from the physical custody of the parent or Indian custodian, the preliminary protective hearing must meet the requirements for an emergency hearing as provided in ICWA § 1922 and 25 C.F.R. § 23.113. The petition or accompanying documents must contain the information listed in 25 C.F.R. § 23.113, including the efforts to contact the parent, Indian custodian, and tribe about the emergency proceeding.

### **(3) *Proceedings.***

**(A)** The court must determine whether a judicial officer made a finding before the dependency petition was filed regarding the child's removal from the home, as provided by Rule 47.3(D)(1) and 25 C.F.R. § 23.113(d) and affirm the findings. Or, if a judicial officer did not previously make that finding, then it must find whether the emergency removal or placement was necessary to prevent imminent physical damage or harm to the child pursuant 25 C.F.R. § 23.113(d). A parent may request a hearing to contest the finding.

**(B)** If a judicial officer finds that the emergency removal or placement was necessary to prevent imminent physical damage or harm to the child, the court must affirm the child's placement.

**(C)** If the court has made a finding that emergency removal or placement was not necessary to prevent imminent physical damage or harm, the court must return the child to the parent or Indian custodian, unless the court finds that returning the child to the child's parent or Indian custodian would subject the child to substantial and immediate danger or threat of such danger, as provided by 25 C.F.R. § 23.114.

**(D)** A parent or Indian custodian has a right to request a temporary custody hearing under Rule 51.

- (4) **Notification.** If there is a reason to know that the child is an Indian child, the court must order:
- (A) that the petitioner notify the parent, Indian custodian, the Indian child's tribe, or the Secretary of the Interior by registered or certified mail, as required by ICWA § 1912 (a); or
  - (B) If the court does not have sufficient evidence to determine that the child is an Indian child, then pursuant to 25 C.F.R. § 23.107, order that the petitioner use due diligence to identify and work with all the tribes in which there is reason to know the child may be a member, or a biological parent is a member and the child is eligible for membership.
- (5) **Placement Preferences.** If there is reason to know the child is an Indian child, the court must find whether placement of the Indian child is in accordance with Rule 50.2, ICWA § 1915, and C.F.R. § 23.131, or the court may defer to comply with the requirements of ICWA and the Regulations.
- (6) **Additional Findings.** The court must make the additional ICWA findings required by subpart (d)(5).

(c) **Procedure.** At the preliminary protective hearing, the court must:

- (1) appoint counsel pursuant to Rule 38;
- (2) determine:
  - (A) whether the parties have been served pursuant to A.R.S. § 8-841(D) and Rule 48.X;
  - (B) whether to close the proceeding and provide the admonition for a hearing that remains open to the public, as required by A.R.S. § 8-525 and Rule 41;
  - (C) whether paternity has been established as to any father, and if not, the court must ask the mother, and may take her testimony, concerning the identity and location of any potential father;
  - (D) whether reasonable efforts were made to prevent or eliminate the need for removal of a child from the child's home and if services are available that would eliminate the need for continued removal pursuant to A.R.S. § 8-825(D);
  - (E) whether there is probable cause to believe that continued temporary physical custody is clearly necessary to prevent abuse or neglect pending the hearing on the dependency petition as required by A.R.S. § 8-824(F);

- (F) whether a proposed case plan for services has been submitted and whether it is reasonable and necessary to carry out the case plan; and
- (G) whether the parent admits, does not contest, or denies the allegations in the dependency petition.

(3) if DCS is the petitioner, determine:

(A) whether DCS placed, or is attempting to place, the child with a grandparent or another member of the child's extended family, including a person who has a significant relationship with the child;

(B) whether DCS made arrangements, as provided by A.R.S. §§ 8-512, 8-512.01, and 8-514.05, for:

(i) the assembly of the child's medical records;

(ii) a medical assessment of the child;

(iii) the implementation of any referrals; and

(iv) the communication of recommendations and results;

(4) identify on the record all the documents the court has received and will consider, including DCS's report prepared pursuant to A.R.S. § 8-824(H) and other evidence permitted by A.R.S. § 8-825;

(5) review any agreements reached at the preliminary protective conference;

(6) conduct a temporary custody hearing pursuant to A.R.S. § 8-825 and Rule 51, if requested by a parent;

(7) consider as a mitigating factor the availability of reasonable services to the parent to prevent or eliminate the need for removal of the child and efforts of the parent to obtain and participate in these services;

(8) inform a foster parent, pre-adoptive parent, a member of the child's extended family with whom the child has been placed, or a relative identified as a possible placement, of the right to be heard in any court proceeding regarding the child; and

(9) provide a copy of Form 1, and request that the parent sign and return the form to the court and ensure that the parent understands their rights and responsibilities pursuant to A.R.S. § 8-824(D), (E)(6),(E)(8), and (I).

**(d) Findings.** At the conclusion of the hearing, the court must make findings that include the following:

- (1) that the court has jurisdiction over the subject matter and persons before the court;
  - (2) that the initial dependency hearing was held pursuant to Rule 52 for those parties who were present;
  - (3) if a parent requested a review of temporary custody, that the hearing has been held;
  - (4) whether there is probable cause to believe that the continued temporary or physical custody of the child is clearly and necessary to prevent abuse or neglect pending the dependency adjudication;
  - (5) confirm, under 25 C.F.R. § 23.107 and based on a report, declaration, or testimony included in the record or by court order, that the petitioner has used or will use due diligence to identify and work with all tribes for which there is reason to know the child may be a member, or eligible for membership, to verify whether the child is in fact a member, or a biological parent is a member and the child is eligible for membership;
  - (6) that the parent was advised of, and understands the consequences of:
    - (A) failing to participate in reunification services, and
    - (B) failing to attend future proceedings;
  - (7) if applicable, the reasons why siblings have not been placed together; and
  - (8) other findings as appropriate or required by law.
- (e) **Orders.** At the conclusion of the hearing, the court must enter orders:
- (1) returning the child to the parent, or if the child is not returned to the parent, declaring the child a ward of the court and entering orders regarding the placement of the child pending the determination of the dependency petition, and visitation/parenting time, if any, pursuant to A.R.S. §§ 8-824(J), 8-825(C), and Rule 51(d);
  - (2) approving or modifying any of the agreements the parties reached at the preliminary protective conference;
  - (3) if paternity has not been established, that it be established through testing or execution of a voluntary acknowledgment of paternity;
  - (4) if siblings have not been placed together, requiring that DCS make reasonable efforts to place a child with siblings, if such placement is in the children's best

interests, or if that is not possible, to maintain frequent visitation or other ongoing contact between the siblings;

- (5) except as provided in A.R.S. §§ 8-824(H)(9) and 8-846, regarding services for the child and parent as follows:
    - (A) if the child is in the custody of DCS, that DCS make reasonable efforts to provide services to facilitate reunification, including visitation/parenting time; or
    - (B) if the child is not in the custody of DCS, that the parties participate in reasonable services that will facilitate reunification of the family, including visitation/parenting time, or another permanent plan for the child.
  - (6) that the parent provide the court with the names, relationships, and contact information necessary to locate persons who are related to the child or who have a significant relationship with the child, unless the parent informs the court that there is not sufficient information available to locate a relative or person with a significant relationship with the child;
  - (7) that the parent immediately inform DCS and the court at future hearings if they become aware of new information on the location of a relative or individual with whom the child has a significant relationship;
  - (8) setting an initial dependency, a continued initial dependency, or a publication hearing for any party who was not served and did not appear, in accordance with A.R.S. § 8-842 and Rule 52 ## [to comply with ICWA];
  - (9) setting dates for future proceedings, which may include a settlement conference, mediation, pretrial conference, or adjudication if a denial is entered; and
  - (10) entering other orders as appropriated or required by law.
- (f) Copies for the Parties.** At the conclusion of the hearing, the court must provide a copy of the court's written findings and order to each party who has appeared at the hearing.



## **Rule 50. Preliminary Protective Hearing**

**(a) Generally.** At the preliminary protective hearing, the court must determine whether continued temporary physical custody of the child is necessary, giving paramount consideration to the health and safety of the child.

### **(b) ICWA.**

**(1) Inquiry.** The court must inquire at the start of the hearing if any party or participant has reason to know under 25 C.F.R. § 23.107 that the child is an Indian child.

**(2) Emergency Removal or Placement.** If there is reason to know the child is an Indian child and the child was removed from the physical custody of the parent or Indian custodian, the preliminary protective hearing must meet the requirements for an emergency hearing as provided in ICWA § 1922 and 25 C.F.R. § 23.113. The petition or accompanying documents must contain the information listed in 25 C.F.R. § 23.113, including the efforts to contact the parent, Indian custodian, and tribe about the emergency proceeding.

### **(3) Proceedings.**

**(A)** The court must determine whether a judicial officer made a finding before the dependency petition was filed regarding the child's removal from the home, as provided by Rule 47.3(D)(1) and 25 C.F.R. § 23.113(d); and affirm the findings. Or, if a judicial officer did not previously make that finding, then it must find whether the emergency removal or placement was necessary to prevent imminent physical damage or harm to the child pursuant to 25 C.F.R. § 23.113(d). A parent may request a hearing to contest the finding.

**(B)** If a judicial officer finds that the ~~If a judicial officer has made a finding under subpart (b)(3)(A)~~ that the emergency removal or placement was necessary to prevent imminent physical damage or harm to the child, the court must affirm the child's placement.

**(C)** If the court has made a finding that emergency removal or placement was not necessary to prevent imminent physical damage or harm, the court must return the child to the parent or Indian custodian, unless the court finds that returning the child to the child's parent or Indian custodian would subject the child to substantial and immediate danger or threat of such danger, as provided by 25 C.F.R. § 23.114. ~~If the court makes that finding, the court must determine the child's placement as provided in subpart (b)(5).~~

(D) A parent or Indian custodian has a right to request a temporary custody hearing under Rule 51. ~~and 25 C.F.R. § 23.114.~~

(4) **Notification.** If there is a reason to know the child is an Indian child, the court must order:

(A) that the petitioner notify the parent, Indian custodian, the Indian child's tribe, or the Secretary of the Interior by registered or certified mail, as required by ICWA § 1912 (a); or

(B) if the court does not have sufficient evidence to determine that the child is an Indian child, then pursuant to 25 C.F.R. § 23.107, order that the petitioner use due diligence to identify and work with all tribes in which there is reason to know the child may be a member, or eligible for membership, to verify whether the child is in fact a member, or a biological parent is a member and the child is eligible for membership.

(5) **Placement Preferences.** If there is reason to know the child is an Indian child, the court must find whether placement of the Indian child is in accordance with Rule 50.2, ICWA § 1915, and 25 C.F.R. § 23.131 and 23.132. or whether there is clear and convincing evidence to find good cause to deviate from the ICWA placement preferences or the court may defer to comply with the requirements of ICWA and the Regulations.

(6) **Additional Findings.** The court must make the additional ICWA findings required by subpart (d)(5).

~~— that the emergency removal or placement terminated upon the filing of the dependency petition. the court must determine whether removal and continued custody of the Indian child is necessary to prevent imminent physical damage or harm to the child;~~

~~— If there is a request to transfer the proceeding to the jurisdiction of the Indian tribe see Rule YY.~~

~~(b)~~

(c) **Procedure.** At the preliminary protective hearing, the court must:

(1) appoint counsel pursuant to Rule 38;

(2) determine ~~whether~~:

(A) whether the parties have been served pursuant to A.R.S. § 8-841(D) and Rule 48X;

~~(A)~~(B) whether to close the proceeding and provide the admonition for a hearing that remains open to the public, as required by A.R.S. § 8-525 and Rule 41;

~~(B)~~(C) whether paternity has been established as to any father, and if not, the court mustay/ ask the mother, and mustay take her testimony, ~~from the mother~~ concerning the identity and location of any potential father;

(D) whether reasonable efforts were made to prevent or eliminate the need for removal of a child from the child's home and if services are available that would ~~have eliminated~~ the need for continued removal pursuant to A.R.S. § 8-825(D);

~~(C)~~(E) whether there is probable cause to believe that continued temporary physical custody is clearly necessary to prevent abuse or neglect pending the hearing on the dependency petition as required by A.R.S. § 8-824(F);

~~(D)~~(F) whether a proposed case plan for services has been submitted and whether it is reasonable and necessary to carry out the case plan; and

~~(E)~~ whether the parent, ~~guardian, or Indian custodian~~ admits, does not contest, or denies the allegations in the dependency petition.;

~~(F)~~(G) ~~whether to close the proceeding and provide the admonition for a hearing that remains open to the public, as required by A.R.S. § 8-525 and Rule 41.~~

(3) if DCS is the petitioner, determine ~~whether~~:

(A) whether DCS placed, or is attempting to place, the child with a grandparent or another member of the child's extended family, including a person who has a significant relationship with the child;

(B) whether DCS made arrangements, as provided by A.R.S. §§ 8-512, 8-512.01, and 8-514.05, for: [10/19 WG-3 Note: The workgroup reviewed these statutes but it is not certain whether the referenced statutes address all the items noted below.]

(i) the assembly of the child's medical records;

(ii) a medical assessment of the child;

(iii) the implementation of referrals; and

(iv) the communication of recommendations and results.

~~(4) inquire if any party has reason to know under 25 C.F.R. § 23.107 that the child at issue is an Indian child;~~

~~(5)(4)~~ identify on the record all the documents the court has received and will consider, including DCS's report prepared pursuant to A.R.S. § 8-824(H) and other evidence permitted by A.R.S. § 8-825; ~~[825; 10/19 WG-3 Note: this provision will need to be consistent with Rule 3.1(d).]~~

~~(6)(5)~~ review any agreements reached at the preliminary protective conference; ~~and approve or modify any of the parties' agreements;~~

~~(7)(6)~~ affirm the child's current placement, approve another placement [10/15 WG Note: for TF discussion], or, conduct a temporary custody hearing pursuant to A.R.S. § 8-825 and Rule 51, if requested by a parent;

~~(8)(7)~~ consider as a mitigating factor the availability of reasonable services to the parent, ~~guardian, or Indian custodian~~ to prevent or eliminate the need for removal of the child and efforts of the parent, ~~guardian, or Indian custodian~~ to obtain and participate in these services;

~~(9)(8)~~ inform a foster parent, pre-adoptive parent, a member of the child's extended family with whom the child has been placed, or a relative identified as a possible placement, of the right to be heard in any court proceeding regarding the child; and

~~(10)(9)~~ provide a copy of Form 1, and request that the parent, ~~guardian, or Indian custodian~~ sign and return the form to the court and ensure that the parent, ~~guardian, or Indian custodian~~ understands their rights and responsibilities pursuant to A.R.S. § 8-824(D), (E)(6), ~~& (E)(8)~~, and (I).

**(d) Findings and Orders.** At the conclusion of the hearing, the court must make findings that include the following: ~~provide the parties with a copy of the court's written findings and orders. The findings and orders must include:~~

(1) that the court has jurisdiction over the subject matter and persons before the court;

(2) that the initial dependency hearing was held pursuant to Rule 52 for those parties who were present;

(3) if a parent requested a review of temporary custody, that the hearing has been held; ~~and the court has determined~~

~~(3) whether there is probable cause to believe that continued temporary physical custody of the child is clearly necessary to prevent abuse or neglect pending the dependency adjudication; that the court has done so and that temporary custody and placement of the child as is required by A.R.S. §§ 8-824(J), 8-825(C), and Rule 51(d) [add: to prevent further abuse and neglect?].~~

(4)

~~(4) that the initial dependency hearing was held for those parties who were present;~~

~~(5) that the parent, guardian, or Indian custodian was advised of, and understands the consequences of:~~

~~(A) failing to participate in reunification services, and~~

~~(B) failing to attend future proceedings;~~

—confirm, under 25 C.F.R. § 23.107 and based on a report, declaration, or testimony included in the record or by court order, that the petitioner has used or will use due diligence to identify and work with all tribes for which there is reason to know the child may be a member, or eligible for membership, to verify whether the child is in fact a member, or a biological parent is a member and the child is eligible for membership;

(5)

~~(6)~~

~~if ICWA applies, or there is reason to know a child is an Indian child, that the hearing is an emergency proceeding governed by ICWA § 1922 and 25 C.F.R. § 23.1131, and that removal and continued custody of the Indian child is necessary to prevent imminent physical damage or harm to the child.~~

~~If the standard for emergency removal is not met, the court must return to the child to the parent or Indian custodian, transfer the child to the jurisdiction of the child's tribe, or retain custody of the child and make findings pursuant to the standards and burdens of proof as required by ICWA and the regulations, including whether placement of the Indian child is in accordance with ICWA § 1915 and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences or continue the initial dependency and defer the findings as permitted by Rule 52(E). make findings pursuant to the standards and burdens of proof as required by ICWA and the regulations, including whether placement of the Indian child is in accordance with ICWA Section 1915 and 25 C.F.R. § 23.131 or~~

~~whether there is good cause to deviate from the preferences, unless the proceeding is an emergency proceeding governed by ICWA Section 1922;~~

~~if there is reason to believe know that the child is an Indian child, whether placement of the Indian child is in accordance with ICWA § 1915 and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences or continue the initial dependency and defer the findings as permitted by Rule 52(E).~~

~~(6) that the parent, guardian, or Indian custodian was advised of, and understands the consequences of:~~

~~(A) failing to participate in reunification services, and~~

~~(7)(B) failing to attend future proceedings;~~

~~(8)(7) if applicable, the reasons why siblings have not been placed together;~~

~~(9)(8) other findings as appropriate ~~and~~ required by law.~~

**(e) Orders.** At the conclusion of the hearing, the court must enter orders:

(1) returning the child to the parent, or if the child is not returned to the parent, declaring the child a ward of the court and entering orders regarding the placement of the child pending the determination of the dependency petition, and visitation/parenting time, if any, -pursuant to A.R.S. §§ 8-824(J), 8-825(C), and Rule 51(d);

(2) approving or modifying any of the agreements the parties reached at the preliminary protective conference;

(3) if paternity has not been established, that it be established through testing or execution of a voluntary affidavitscknowledgment of paternity;

(4) if siblings have not been placed together, requiring that DCS make reasonable efforts to place a child with siblings, if such placement is in the children's best interests, or if that is not possible, to maintain frequent visitation or other ongoing contact between the siblings;

(5) except as provided in A.R.S. §§ 8-824(H)(9) and 8-846, regarding services for the child and parent as follows:

(A) if the child is in the custody of DCS, that DCS make reasonable efforts to provide services to facilitate reunification, including visitation/parenting time; or

(B) if the child is not in the custody of DCS, that the parties participate in reasonable services that will facilitate reunification of the family, including visitation/parenting time, or another permanent plan for the child.

~~order if the petitioner has not verified whether the child is an Indian child, that the petitioner must continue to use due diligence to make that determination;~~

~~(6) if ICWA applies or the court has reason to know that an Indian child is involved, that the petitioner serve the parent, Indian custodian, or Indian child's tribe, as required by ICWA § 1912;~~

~~(7)(6)~~ that the parent provide the court with the names, relationships, and contact information necessary to locate persons who are related to the child or who have a significant relationship with the child, unless the parent informs the court that there is not sufficient information available to locate a relative or person with a significant relationship with the child;

~~(8)(7)~~ ~~order~~ that the parent promptly-immediately inform DCS and the court at future hearings if they become aware of new information on the location of a relative or individual with whom the child has a significant relationship;

~~(9)(8)~~ setting an initial dependency, a continued initial dependency, or a publication hearing for any party who was not served and did not appear, ~~or~~ in accordance with A.R.S. § 8-842 and Rule 52 ## [to comply with ICWA]; Rule 52(FE);

~~(10)(9)~~ setting dates for future proceedings, which may include a settlement conference, mediation, pretrial conference, or adjudication if a denial is entered; and

~~(11)(10)~~ entering other ~~findings and~~ orders as appropriate ~~or~~ required by law.

~~(f)~~ **Copies for the Parties.** At the conclusion of the hearing, the court must provide a copy of the court's written findings and orders to each party who has appeared at the hearing.

(f)



## **Rule 51. Contested Review of Temporary Custody**

**(a) Generally.** If requested by the parent at the preliminary protective hearing, or at the initial dependency hearing if the parent was not served and did not appear for the preliminary protective hearing, the court must:

- (1) conduct a review of temporary physical custody of the child in an out-of-home placement, and
- (2) determine
  - (A) whether removal of the child from the home was clearly necessary, and
  - (B) whether the child should remain in an out-of-home placement.

### **(b) Burden of Proof.**

- (1) **Probable Cause.** The petitioner must show there is probable cause to believe that continued temporary physical custody of the child in an out-of-home placement is clearly necessary to prevent abuse or neglect pending the dependency adjudication pursuant to A.R.S. §§ 8-824(F) and 8-825(C).

### **(c) Procedure.** At the temporary custody hearing:

- (1) The court may limit testimony and evidence pursuant to A.R.S. § 8-824(E)(3).
- (2) Evidence may be presented in support of, or to rebut a finding of, the need for the continued temporary physical custody of the child in an out of home placement. Evidence may include hearsay evidence, in whole or in part. *See* A.R.S. § 8-825.
- (3) The parent must be permitted to present evidence in support of the child's return at the conclusion of the petitioner's case.
- (4) A parent may present, and the court may consider as a mitigating factor, the participation of the parent in the healthy families program under A.R.S. § 8-481. *See* A.R.S. § 8-824(E)(4).
- (5) A parent may present, and the court must consider as a mitigating factor, whether the availability of reasonable services would prevent or eliminate the need for removal and the effort to obtain and participate in these services. *See* A.R.S. § 8-824(E)(5).

### **(d) Findings.**

- (1) The court must find whether there is probable cause to believe that continued temporary physical custody is clearly necessary to prevent abuse or neglect.

**(e) Orders.**

- (1) If the petitioner failed to meet the burden of proof, the court must order return of the child to the parent pending the determination of the dependency petition, pursuant to A.R.S. § 8-825(C)(1), or
- (2) if the petitioner met the burden of proof, the court may declare the child a temporary ward of the court pending the determination of the dependency petition and must continue the child in an out-of-home placement pursuant to A.R.S. § 8-825(C)(2).

## Rule 51. ~~Review of~~Contested Review of Temporary Custody

**(a) Generally.** If requested by the parent, ~~guardian, or Indian custodian~~ at the preliminary protective hearing, or at the initial dependency hearing if the parent was not served and did not appear for the preliminary protective hearing, the court ~~at that hearing~~ must:

~~(1) (1)~~ conduct a review of temporary physical custody of the child in an out-of-home placement, and

~~(2) (2)~~ determine

~~(A) (1A)~~ whether removal of the child from the home was clearly necessary, and

~~(a)(B) (2B)~~ whether the child should remain in an out-of-home placement.

### **(b) Burden of Proof.** ~~(move burden of proof after procedure)~~

(1) **Probable Cause.** The petitioner ~~has the burden of proving~~must show ~~there is~~ probable cause to believe that continued temporary physical custody of the child in an out- of-home placement is clearly necessary to prevent abuse or neglect pending the dependency adjudication pursuant to A.R.S. ~~secs~~ §§ 8-824(F) and 8-825(C).

(2) **~~Clear and Convincing Evidence.~~** If there is reason to know the child is an Indian child, the petitioner ~~also~~ has the burden of proving by clear and convincing evidence, including testimony from a qualified expert witness, that continued physical custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The petitioner must ~~satisfy~~ establish by clear and convincing evidence **[Staff Note: First “prove,” and then “satisfy”—do the words have different meanings? What about “establish?” We like establish.]** ~~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 those efforts have proven unsuccessful. See ICWA § 1912 (d), and (e) and 25 C.F.R. § 23.121. whether the emergency removal or placement was necessary to prevent imminent physical damage or harm to the child, and if the court finds it was not, whether returning

the child to his parent or Indian custodian would subject the child to substantial and immediate danger or threat of such danger. See 25 C.F.R. §§ 23.113 and 23.114.

(c) **Procedure.** At the ~~The~~ temporary custody hearing ~~proceeds as follows:~~

- ~~(1) First—The court may limit testimony and evidence pursuant to A.R.S. ~~§sec.~~ 8-824 (E)(3).~~
- ~~(2) Evidence may be presented in support of, or to rebut a finding of, the need for the continued temporary physical custody of the child in an out of home placement (I believe the “support” is of the temporary order from the CAR or temp orders signed by the court)], and Evidence may include hearsay evidence, in whole or in part. See ,A.R.S. § ~~sec.~~ 8-825. or as provided by statute. ~~[Staff Note: Why would petitioner present evidence to rebut the finding? Under section (A), the petitioner does not request a review. Because the petitioner has the burden of proof under section (B), does the petitioner present evidence first? It seems that’s what the rule requires, but if so, the rule should make this clearer.]~~~~
- ~~(3) At the conclusion of the petitioner’s case, ~~th~~The parent must be permitted to present evidence in support of the child’s return at the conclusion of the petitioner’s case.~~
- ~~(4) The A parent may present, and the court may consider as a mitigating factors~~,~~, the participation of the parent in the ~~h~~healthy ~~f~~families program under A.R.S. § 8-481. See A.R.S. § 8-824(E)(4).~~
- ~~(5) A parent may present, and the court must consider as a mitigating factor, ~~or~~ whether the availability of reasonable services would prevent or eliminate the need for removal and the effort to obtain and participate in these services. See A.R.S. See A.R.S. § ~~sec.~~ 8-824(E)(4) and (5). **EDITORIAL GROUP ENDS HERE**  
1/14/2021~~

~~(1)~~

~~(2) **Second**—Evidence relating to placement, visitation parenting time, or services may be presented only as it relates to the issue of continued temporary physical custody. [Staff Note: This provision seems unclear about whether the petitioner or the parent is allowed to present this evidence.]The court must taken into consideration as a mitigating factor the availability of reasonable services to the parent or guardian to prevent or eliminate the need for removal of the child and the effort of the parent or guardian to obtain and participate in these services.~~

~~(3) At the conclusion of the petitioner's case, the parent, guardian, or Indian custodian is permitted to present evidence in support of the child's return.~~

(d) Findings and Orders.

~~(d)~~

~~(1) The court must find determine on the evidence presented [Staff Note: Rule 50 permits the court at the PPH to consider "reports, declarations, and testimony." Is this considered "evidence presented," even if not offered by a party at the hearing?] whether there is probable cause to believe that continued ~~(should we add continued to be more clear)~~ temporary physical custody is clearly necessary to prevent further abuse or neglect. [Staff Note: "Clearly necessary" is the standard in Rule 47.3 for an ex parte proceeding. But in Rule 51(A), the standard is simply "necessary." Is this an accurate and meaningful distinction? Is this standard different than a preponderance of the evidence?] Added the word "clearly" in (a).~~

(1)

~~(2) (2) (2)~~ If there is a reason to know the child is an Indian child, the court also must find determine by clear and convincing evidence, including testimony from a qualified expert witness, whether continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The court must be satisfied that [whether?] active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that those efforts have proven unsuccessful.

(e) Orders.

(1) If the petitioner failed to meet the burden of proof, the court must order return of the child to the parent pending the determination of the dependency petition, pursuant to A.R.S. § 8-825(C)(1), or

~~—~~ if the petitioner met the burden of proof, the court may declare the child a temporary ward of the court pending the determination of the dependency petition and must continue the child in an out-of-home placement pursuant to A.R.S. § 8-825(C)(2).

~~—~~ (1)

~~(1) If the petitioner failed to meet the burden of proof, the court must order the return of the child to the parent, guardian, or Indian custodian pending the determination of the dependency petition. See pursuant to A.R.S. § 8-825 (C)(1); or.~~

~~(2) If the petitioner has met the burden of proof, the court may declare the child a temporary ward of the court pending the determination of the dependency petition and must continue the child in an out-of-home placement. See pursuant to A.R.S. § 8-825 (C)(2).~~