Idaho Child Protective Act Proceedings: Statutes and Rules

Mini-Reference

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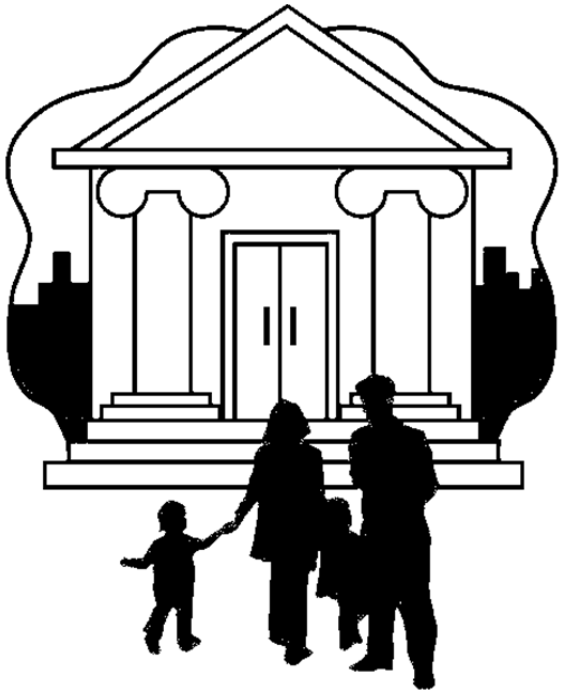

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Statutes and Rules Relevant to Child Protective Act Proceedings

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Introduction

This mini-reference has been created to aid judges, attorneys, social workers, CASA volunteers, and others practicing under Idaho's Child Protective Act. Child protection cases are some of the most important cases heard in Idaho courts, as they are one of the key safeguards to the well-being of Idaho's children and families.

This reference compiles the Idaho statutes and rules relevant to a CPA case. Several pieces of federal legislation regulate child protection cases, particularly the Adoption and Safe Families Act (ASFA), Fostering Connections, and the Indian Child Welfare Act (ICWA). These statutes are particularly important because they impose mandatory timeframes and required findings that courts must follow to ensure timely permanence for children and youth. Following ASFA requirements is key to ensuring federal funding for children and youth in out-of home placements.

For more information regarding the policies, procedures, and practices of child welfare cases, see the Idaho Child Protection Manual, Idaho Child Protection Bench Cards, and Annotated Child Protection Forms, available on the Idaho State Supreme Court's website (http://www.isc.idaho.gov/child-protection/resource).

Thank you for your help in keeping Idaho's children safe.

Idaho Guardians of Minors Statute

§15-5-201. Status of guardian of minor--General
A person becomes a guardian of a minor by acceptance of a testamentary appointment or upon appointment by the court. The guardianship status continues until terminated, without regard to the location from time to time of the guardian and minor ward.

(as added, 1971)

§15-5-202. Testamentary appointment of guardian of minor
A parent of a minor may appoint a guardian of an unmarried minor by will, subject to the right of the minor under section 15-5-203, Idaho Code. The termination of parental rights of a parent as to the minor shall also terminate the right of that parent to appoint a guardian for the minor. A testamentary appointment becomes effective upon the filing of the guardian's acceptance in the court in which the will is probated, if, at the decedent's death, no parent of the minor was alive who had a right to appoint a guardian for the minor. This state recognizes a testamentary appointment effected by the guardian's acceptance under a will probated in another state which is the testator's domicile. Written notice of acceptance of the appointment must be given by the guardian to the minor and to the person having his care or to his nearest relation immediately upon acceptance of appointment.

(most recent amendment, 2006)

§15-5-203. Objection by minor of fourteen or older to testamentary appointment
A minor of fourteen (14) or more years may prevent an appointment of his testamentary guardian from becoming effective, or may cause a previously accepted appointment to terminate, by filing with the court in which the will is probated a written objection to the appointment before it is accepted or within thirty (30) days after notice of its acceptance. An objection may be withdrawn. An objection does not

preclude appointment by the court in a proper proceeding of the testamentary nominee, or any other suitable person.

(most recent amendment, 1972)

§15-5-204. Court appointment of guardian of minor--Conditions for appointment

The court may appoint a guardian for an unmarried minor if all parental rights of custody have been terminated by prior court order or upon a finding that the child has been neglected, abused, abandoned, or whose parents are unable to provide a stable home environment. "Abandoned" means the failure of the parent to maintain a normal parental relationship with the child including, but not limited to, reasonable support or regular contact. Failure to maintain a normal parental relationship with the child without just cause for a period of six (6) months shall constitute prima facie evidence of abandonment. In all cases, the court shall consider the best interests of the child as the primary factor in the determination whether to appoint, and whom to appoint, as a guardian for such child. In determining the choice of a guardian for an unmarried minor, the advanced age or disability of a potential guardian shall not, in and of itself, be used as a criterion of the suitability of the potential guardian so long as the potential guardian is otherwise suitable. A guardian appointed by will as provided in section 15-5-202, Idaho Code, whose appointment has not been prevented or nullified under section 15-5-203, Idaho Code, has priority over any guardian who may be appointed by the court but the court may proceed with an appointment nonetheless upon a finding that the testamentary guardian has failed to accept the testamentary appointment within thirty (30) days after notice of the guardianship proceeding.

(most recent amendment, 2002)

§15-5-205. Court appointment of guardian of minor--Venue

The venue for guardianship proceedings for a minor is in the place where the minor resides or is present.

(as added, 1971)

§15-5-206. Court appointment of guardian of minor--Qualifications--Priority of minor's nominee

The court may appoint as guardian any person whose appointment would be in the best interests of the minor. The court shall appoint a person nominated by the minor, if the minor is fourteen (14) years of age or older, unless the court finds the appointment contrary to the best interests of the minor.

(as added, 1971)

§15-5-207. Court appointment of guardian of minor -- Procedure

(1) Proceedings for the appointment of a guardian may be initiated by the following persons:

(a) Any relative of the minor;

(b) The minor if he is fourteen (14) or more years of age;

(c) Any person who comes within section 15-5-213(1), Idaho Code; or

(d) Any person interested in the welfare of the minor.

(2) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor is to be given by the petitioner in the manner prescribed by section 15-1-401, Idaho Code, to:

(a) The minor, if he is fourteen (14) or more years of age;

(b) The person who has had the principal care and custody of the minor during the sixty (60) days preceding the date of the petition;

(c) Any person who comes within section 15-5-213(1), Idaho Code; and

(d) Any living parent of the minor; provided however, that the court may waive notice to a living parent of the minor who is, or is alleged to be, the father of the minor if:

(i) The father was never married to the mother of the minor and has failed to register his paternity as provided in section 16-1504(4), Idaho Code; or

(ii) The court has been shown to its satisfaction circumstances that would allow the entry of an order of termination of

parental rights pursuant to section 16-2005, Idaho Code, even though termination of parental rights is not being sought as to such father.

(3) Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of section 15-5-204, Idaho Code, have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases the court may dismiss the proceedings, or make any other disposition of the matter that will best serve the interest of the minor.

(4) If necessary, the court may appoint a temporary guardian, with the status of an ordinary guardian of a minor, but the authority of a temporary guardian shall not last longer than six (6) months.

(5) The court shall appoint an attorney to represent the minor if the court determines that the minor possesses sufficient maturity to direct the attorney. If the court finds that the minor is not mature enough to direct an attorney, the court shall appoint a guardian ad litem for the minor. The court may decline to appoint an attorney or guardian ad litem if it finds in writing that such appointment is not necessary to serve the best interests of the minor or if the Idaho department of health and welfare has legal custody of the child.

(6) Letters of guardianship must indicate whether the guardian was appointed by will or by court order.

(most recent amendment, 2010)

§15-5-208. Consent to service by acceptance of appointment--Notice

By accepting a testamentary or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any

interested person. Notice of any proceeding shall be delivered to the guardian, or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner.

(as added, 1971)

§15-5-209. Powers and duties of guardian of minor

A guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of his minor and unemancipated child, except that a guardian is not legally obligated to provide from his own funds for the ward and is not liable to third persons by reason of the parental relationship for acts of the ward. In particular, and without qualifying the foregoing, a guardian has the following powers and duties:

(a) He must take reasonable care of his ward's personal effects and commence protective proceedings if necessary to protect other property of the ward.

(b) He may receive money payable for the support of the ward to the ward's parent, guardian or custodian under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, conservatorship or custodianship. He also may receive money or property of the ward paid or delivered by virtue of section 15-5-103 of this code. Any sums so received shall be applied to the ward's current needs for support, care and education. He must exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in which case excess shall be paid over at least annually to the conservator. Sums so received by the guardian are not to be used for compensation for his services except as approved by order of court or as determined by a duly appointed conservator other than the guardian. A guardian may institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.

(c) The guardian is empowered to facilitate the ward's education, social, or other activities and to authorize medical or other professional care, treatment, or advice. A guardian is not liable by reason of this consent for injury to the ward resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented. A guardian may consent to the marriage or adoption of his ward.

(d) A guardian must report the condition of his ward and of the ward's estate which has been subject to his possession or control, as ordered by court on petition of any person interested in the minor's welfare or as required by court rule.

(as added, 1971)

§15-5-210. Termination of appointment of guardian--General

A guardian's authority and responsibility terminates upon the death, resignation or removal of the guardian or upon the minor's death, adoption, marriage or attainment of majority, but termination does not affect his liability for prior acts, nor his obligation to account for funds and assets of his ward. Resignation of a guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.

(as added, 1971)

§15-5-211. Proceedings subsequent to appointment--Venue

(a) The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian, or in which acceptance of a testamentary appointment was filed, over resignation, removal, accounting and other proceedings relating to the guardianship.

(b) If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, if in this state, and after

consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever is in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed. If the court in which acceptance of appointment is filed is in another state, the court in this state shall proceed in accordance with chapters 9, 10 and/or 11, title 15, Idaho Code, as appropriate.

(most recent amendment, 2006)

§15-5-212. Resignation or removal proceedings

(a) Any person interested in the welfare of a ward, or the ward, if fourteen (14) or more years of age, may petition for removal of a guardian on the ground that removal would be in the best interest of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for appointment of a successor guardian.

(b) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

(c) If, at any time in the proceeding, the court determines that the interests of the ward are, or may be, inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is fourteen (14) or more years of age.

(as added, 1971)

§15-5-212A. Guardianships arising in connection with a proceeding under the child protective act

Where a minor is within the jurisdiction of a court under the child protective act, or where a guardianship proceeding arose in connection with a permanency plan for a minor who was the subject of a proceeding under the child protective act:

(1) The court having jurisdiction over the proceeding under the child protective act shall have exclusive jurisdiction and venue over any guardianship proceeding involving such minor unless, in furtherance of the permanency plan, the court declines to exercise such jurisdiction and venue, notwithstanding sections 15-5-205 and 15-5-211, Idaho Code.

(2) In any action connected to a guardianship governed by this section, in addition to notice or service upon interested parties pursuant to section 15-1-401, Idaho Code, notice of the following shall be served upon the department of health and welfare in the manner prescribed in Idaho rule of civil procedure 4(d)(5):

(a) Any petition for the appointment of a guardian of a minor;

(b) Any pleading filed in connection with such guardianship;

(c) Any proceeding of any nature in such guardianship; or

(d) The time and place of any hearing in connection with such guardianship.

(3) In any action governed by this section, the department of health and welfare shall have the right to appear and be heard at any hearing, and shall have the right to intervene at any stage of the action.

(4) A guardian appointed in an action governed by this section may not consent to the adoption of the minor without providing prior notice of the action of adoption to the department of health and welfare in a manner prescribed in section 15-1-401, Idaho Code.

(5) Any person who moves to terminate a guardianship governed by this section has the burden of proving, by clear and convincing evidence, that:

(a) There has been a substantial and material change in the circumstances of the parent or the minor since the establishment of the guardianship; and

(b) Termination of the guardianship would be in the best interests of the minor.

(6) In any action governed by this section, any person who moves to remove a guardian or modify a guardianship has the burden of proving, by clear and convincing evidence, that:

(a) There has been a substantial and material change in the circumstances of the parent or the minor since the establishment of the guardianship; and

(b) Removal of the guardian or modification of the guardianship would be in the best interests of the minor.

(as added, 2007)

§15-5-213. De facto custodian

(1) "De facto custodian" means a person who has either been appointed the de facto custodian pursuant to section 32-1705, Idaho Code, or if not so appointed, has been the primary caregiver for, and primary financial supporter of, a child who, prior to the filing of a petition for guardianship, has resided with the person for a period of six (6) months or more if the child is under three (3) years of age and for a period of one (1) year or more if the child is three (3) years of age or older.

(2) If a court determines by clear and convincing evidence that a person meets the definition of a de facto custodian, and that recognition of the de facto custodian is in the best interests of the child, the court shall give the person the same standing that is given to each parent in proceedings for appointment of a guardian of a minor. In determining whether recognition of a de facto custodian is in the child's best interests, the court shall consider:

(a) Whether the child is currently residing with the person seeking such standing; and

(b) If the child is not currently residing with the person seeking such standing, the length of time since the person served as the child's primary caregiver and primary financial supporter.

(most recent amendment, 2010)

Idaho Adoption of Children Statute

§16-1501. Minors and adults may be adopted

Any minor child may be adopted by any adult person residing in and having residence in Idaho, in the cases and subject to the rules prescribed in this chapter.

(1) Persons not minors may be adopted by a resident adult in cases where the person adopting has sustained the relation of parent to such adopted person:

(a) For a period in excess of one (1) year while the person was a minor; or

(b) For such period of time or in such manner that the court after investigation finds a substantial family relationship has been created.

(2) Adoptions shall not be denied solely on the basis of the disability of a prospective adoptive parent.

(a) "Adaptive equipment," for purposes of this chapter, means any piece of equipment or any item that is used to increase, maintain, or improve the parenting capabilities of a parent with a disability.

(b) "Disability," for purposes of this chapter, means, with respect to an individual, any mental or physical impairment which substantially limits one (1) or more major life activities of the individual including, but not limited to, self-care, manual tasks, walking, seeing, hearing, speaking, learning, or working, or a record of such an impairment, or being regarded as having such an impairment. Disability shall not include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, other sexual behavior disorders, or substance use disorders, compulsive gambling, kleptomania, or pyromania. Sexual preference or orientation is not considered an impairment or disability. Whether an impairment substantially limits a major life activity shall be

determined without consideration of the effect of corrective or mitigating measures used to reduce the effects of the impairment.

(c) "Supportive services," as used in this chapter, means services which assist a parent with a disability to compensate for those aspects of their disability which affect their ability to care for their child and which will enable them to discharge their parental responsibilities. The term includes specialized or adapted training, evaluations, or assistance with effective use of adaptive equipment, and accommodations which allow a parent with a disability to benefit from other services, such as Braille texts or sign language interpreters.

(3) If applicable, nothing in this chapter shall modify the requirements of the Indian child welfare act of 1978, 25 U.S.C. section 1902, et seq.

(most recent amendment, 2013)

§16-1501A. Rights and responsibilities of parties in adoption proceedings

(1) The legislature finds that the rights and interests of all parties affected by an adoption proceeding must be considered and balanced in determining what constitutional protections and processes are necessary and appropriate.

(2) The legislature finds that:

(a) The state has a compelling interest in providing stable and permanent homes for adoptive children in a prompt manner, in preventing the disruption of adoptive placements, and in holding parents accountable for meeting the needs of children;

(b) An unmarried mother, faced with the responsibility of making crucial decisions about the future of a newborn child, is entitled to privacy, and has the right to make timely and appropriate decisions regarding her future and the future of the child, and is entitled to assurance regarding the permanence of an adoptive placement;

(c) Adoptive children have a right to permanence and stability in adoptive placements;
(d) Adoptive parents have a constitutionally protected liberty and privacy interest in retaining custody of an adopted child; and
(e) An unmarried biological father has an inchoate interest that acquires constitutional protection only when he demonstrates a timely and full commitment to the responsibilities of parenthood, both during pregnancy and upon the child's birth. The state has a compelling interest in requiring unmarried biological fathers to demonstrate that commitment by providing appropriate medical care and financial support and by establishing legal paternity, in accordance with the requirements of this chapter.

(3) (a) The legislature prescribes the conditions for determining whether an unmarried biological father's action is sufficiently prompt and substantial to require constitutional protection pursuant to sections 16-1504 and 16-1513, Idaho Code.
(b) If an unmarried biological father fails to grasp the opportunities to establish a relationship with his child that are available to him, his biological parental interest may be lost entirely, or greatly diminished in constitutional significance by his failure to timely exercise it, or by his failure to strictly comply with the available legal steps to substantiate it.
(c) A certain degree of finality is necessary in order to facilitate the state's compelling interest. The legislature finds that the interest of the state, the mother, the child, and the adoptive parents described in this section outweigh the interest of an unmarried biological father who does not timely grasp the opportunity to establish and demonstrate a relationship with his child in accordance with the requirements of this chapter.
(d) An unmarried biological father has the primary responsibility to protect his rights.
(e) An unmarried biological father is presumed to know that the child may be adopted without his consent unless he strictly complies with the provisions of this chapter, manifests a prompt

and full commitment to his parental responsibilities, and establishes paternity.

(4) The legislature finds that an unmarried mother has a right of privacy with regard to her pregnancy and adoption plan, and therefore has no legal obligation to disclose the identity of an unmarried biological father prior to or during an adoption proceeding, and has no obligation to volunteer information to the court with respect to the father.

(as added, 2000)

§16-1501B. Right of parent with disability to present evidence and information

If the prospective adoptive parent has a disability as defined in this chapter, the prospective adoptive parent shall have the right to provide evidence to the court regarding the manner in which the use of adaptive equipment or supportive services will enable the parent to carry out the responsibilities of parenting the child. Nothing in this chapter shall be construed to create any new or additional obligation on state or local governments to purchase or provide adaptive equipment or supportive services for parents with disabilities.

(as added, 2002)

§16-1502. Restrictions as to comparative age

The person adopting a child must be at least fifteen (15) years older than the person adopted, or twenty-five (25) years of age or older, except such age restrictions or requirements shall not apply in cases where the adopting parent is a spouse of a natural parent, and except that such age restrictions or requirements shall not apply when the person adopting an adult shows to the satisfaction of the court that a substantial relationship as a parent has been maintained for a period in excess of one (1) year.

(most recent amendment, 1991)

§16-1503. Consent of husband and wife necessary

A married man, not lawfully separated from his wife, cannot adopt a child without the consent of his wife; nor can a married woman, not thus separated from her husband, without his consent, provided the husband or wife, not consenting, is capable of giving such consent.

(as added, 1879)

§16-1504. Necessary consent to adoption

(1) Consent to adoption is required from:

(a) The adoptee, if he is more than twelve (12) years of age, unless he does not have the mental capacity to consent;

(b) Both parents or the surviving parent of an adoptee who was conceived or born within a marriage, unless the adoptee is eighteen (18) years of age or older;

(c) The mother of an adoptee born outside of marriage;

(d) Any biological parent who has been adjudicated to be the child's biological father by a court of competent jurisdiction prior to the mother's execution of consent;

(e) An unmarried biological father of an adoptee only if the requirements and conditions of subsection (2)(a) or (b) of this section have been proven;

(f) Any legally appointed custodian or guardian of the adoptee;

(g) The guardian or conservator of an incapacitated adult, if one has been appointed;

(h) The adoptee's spouse, if any;

(i) An unmarried biological father who has filed a voluntary acknowledgment of paternity with the vital statistics unit of the department of health and welfare pursuant to section 7-1106, Idaho Code; and

(j) The father of an illegitimate child who has adopted the child by acknowledgment.

(2) In accordance with subsection (1) of this section, the consent of an unmarried biological father is necessary only if the father has strictly complied with all requirements of this section.

(a) (i) With regard to a child who is placed with adoptive parents more than six (6) months after birth, an unmarried biological father shall have developed a substantial relationship with the child, taken some measure of responsibility for the child and the child's future, and demonstrated a full commitment to the responsibilities of parenthood by financial support of the child, of a fair and reasonable sum and in accordance with the father's ability, when not prevented from doing so by the person or authorized agency having lawful custody of the child, and either:

1. Visiting the child at least monthly when physically and financially able to do so, and when not prevented from doing so by the person or authorized agency having lawful custody of the child; or

2. Have regular communication with the child or with the person or agency having the care or custody of the child, when physically and financially unable to visit the child, and when not prevented from doing so by the person or authorized agency having lawful custody of the child.

(ii) The subjective intent of an unmarried biological father, whether expressed or otherwise, unsupported by evidence of acts specified in this subsection shall not preclude a determination that the father failed to meet any one (1) or more of the requirements of this subsection.

(iii) An unmarried biological father who openly lived with the child for a period of six (6) months within the one (1) year period after the birth of the child and immediately preceding placement of the child with adoptive parents, and who openly held himself out to be the father of the child during that period, shall be deemed to have developed a substantial relationship with the child and to have otherwise met all of the requirements of this subsection.

(b) With regard to a child who is under six (6) months of age at the time he is placed with adoptive parents, an unmarried biological father shall have manifested a full commitment to his parental responsibilities by performing all of the acts described in this subsection and prior to the date of the filing of any proceeding to terminate the parental rights of the birth mother. The father

shall have strictly complied with all of the requirements of this subsection by:

(i) Filing proceedings to establish paternity under section 7-1111, Idaho Code, and filing with that court a sworn affidavit stating that he is fully able and willing to have full custody of the child, setting forth his plans for the care of the child, and agreeing to a court order of child support and the payment of expenses incurred in connection with the mother's pregnancy and the child's birth;

(ii) Filing a notice of the proceedings to establish his paternity of the child with the vital statistics unit of the department of health and welfare pursuant to section 16-1513, Idaho Code; and

(iii) If he had actual knowledge of the pregnancy, paying a fair and reasonable amount of the expenses incurred in connection with the mother's pregnancy and the child's birth, in accordance with his means, and when not prevented from doing so by the person or authorized agency having lawful custody of the child.

(3) An unmarried biological father whose consent is required under subsection (1) or (2) of this section may nevertheless lose his right to consent if the court determines, in accordance with the requirements and procedures of the termination of parent and child relationship act, sections 16-2001 through 16-2015, Idaho Code, that his rights should be terminated, based on the petition of any party as set forth in section 16-2004, Idaho Code.

(4) In any adoption proceeding pertaining to a child born out of wedlock, if there is no showing that an unmarried biological father has consented to or waived his rights regarding a proposed adoption, the petitioner shall file with the court a certificate from the vital statistics unit of the department of health and welfare, signed by the state registrar of vital statistics, stating that a diligent search has been made of the registry of notices from putative fathers, of a child born out of wedlock, and that the putative father involved has not filed

notice of the proceedings to establish his paternity, or if a filing is found, stating the name of the putative father and the time and date of filing. That certificate shall be filed with the court prior to the entrance of the final decree of adoption.

(5) An unmarried biological father who does not fully and strictly comply with each of the conditions provided in this section is deemed to have waived and surrendered any right in relation to the child, including the right to notice of any judicial proceeding in connection with the adoption of the child, or for termination of parental rights and his consent to the adoption of the child is not required unless he proves, by clear and convincing evidence, all of the following:

(a) It was not possible for him, prior to the filing of a proceeding to terminate parental rights of the birth mother to:

(i) Commence proceedings to establish paternity of his child in accordance with section 7-1111, Idaho Code; and

(ii) File notice of the filing of proceedings to establish his paternity of the child with the vital statistics unit of the department of health and welfare in accordance with section 16-1513, Idaho Code;

(b) His failure to timely file notice of the filing of proceedings to establish his paternity of the child with the vital statistics unit of the department of health and welfare in accordance with section 16-1513, Idaho Code, and his failure to commence timely proceedings to establish paternity of his child in accordance with section 7-1111, Idaho Code, was through no fault of his own; and

(c) He filed notice of the filing of proceedings to establish paternity of his child in accordance with section 7-1111, Idaho Code, with the vital statistics unit of the department of health and welfare in accordance with section 16-1513, Idaho Code, and filed proceedings to establish his paternity of the child within ten (10) days after the birth of the child. Lack of knowledge of the pregnancy is not an acceptable reason for his failure to timely file notice of the commencement of proceedings or for his failure to commence timely proceedings.

(6) A minor parent has the power to consent to the adoption of his or her child. That consent is valid and has the same force and effect as a consent executed by an adult parent. A minor parent, having executed a consent, cannot revoke that consent upon reaching the age of majority or otherwise becoming emancipated.

(7) No consent shall be required of, nor notice given to, any person whose parental relationship to such child shall have been terminated in accordance with the provisions of either chapter 16 or 20, title 16, Idaho Code, or by a court of competent jurisdiction of a sister state under like proceedings; or in any other manner authorized by the laws of a sister state. Where a voluntary child placement agency licensed by the state in which it does business is authorized to place a child for adoption and to consent to such child's adoption under the laws of such state, the consent of such agency to the adoption of such child in a proceeding within the state of Idaho shall be valid and no further consents or notices shall be required.

(8) The legislature finds that an unmarried biological father who resides in another state may not, in every circumstance, be reasonably presumed to know of, and strictly comply with, the requirements of this chapter. Therefore, when all of the following requirements have been met, that unmarried biological father may contest an adoption prior to finalization of the decree of adoption and assert his interest in the child:

(a) The unmarried biological father resides and has resided in another state where the unmarried mother was also located or resided;

(b) The mother left that state without notifying or informing the unmarried biological father that she could be located in the state of Idaho;

(c) The unmarried biological father has, through every reasonable means, attempted to locate the mother but does not know or have reason to know that the mother is residing in the state of Idaho; and

(d) The unmarried biological father has complied with the most stringent and complete requirements of the state where the mother previously resided or was located in order to protect and preserve his parental interest and rights in the child in cases of adoption.

(9) An unmarried biological father may, under the provisions of section 7-1107, Idaho Code, file a proceeding to establish his paternity prior to the birth of the child; however, such paternity proceeding must be filed prior to the date of the filing of any proceeding to terminate parental rights of the birth mother..

(most recent amendment, 2013)

§16-1505. Notice of adoption proceedings

(1) Notice of an adoption proceeding shall be served on each of the following persons:

(a) Any person or agency whose consent or relinquishment is required under section 16-1504, Idaho Code, unless that right has been terminated by waiver, relinquishment, consent or judicial action, or their parental rights have been previously terminated;

(b) Any person who has registered notice of the commencement of paternity proceedings pursuant to section 16-1513, Idaho Code;

(c) The petitioner's spouse, if any, only if he or she has not joined in the petition;

(d) Any person who is recorded on the birth certificate as the child's father, with the knowledge and consent of the mother, unless such right to notice or parental rights have been previously terminated;

(e) Any person who is openly living in the same household with the child at the time the mother's consent is executed or relinquishment made, and who is holding himself out to be the child's father, unless such rights to notice or parental rights have been previously terminated; and

(f) Any person who is married to the child's mother at the time she executes her consent to the adoption or relinquishes the child for adoption.

(2) An unmarried biological father, by virtue of the fact that he has engaged in a sexual relationship with a woman, is deemed to be on notice that a pregnancy and an adoption proceeding regarding that child may occur, and has a duty to protect his own rights and interests. He is therefore entitled to actual notice of a birth or an adoption proceeding with regard to that child only as provided in this section.

(3) Notice provided in accordance with this section need not disclose the name of the mother of the child who is the subject of an adoption proceeding.

(4) The notice required by this section may be served immediately after commencement of proceedings to adopt a child but shall be served at least twenty (20) days prior to the final dispositional hearing. The notice shall specifically state that the person served must respond to the petition for adoption within twenty (20) days of service if he intends to intervene in or contest the adoption.

(5) (a) Any person who has been served with notice of an adoption proceeding and who wishes to contest the adoption shall file a written objection to the adoption in the adoption proceeding within twenty (20) days after service. The written objection shall set forth specific relief sought and be accompanied by a memorandum specifying the factual and legal grounds upon which the written objection is based.

(b) Any person who fails to file a written objection to the adoption within twenty (20) days after service of notice waives any right to further notice in connection with the adoption, forfeits all rights in relation to the adoptee, and is barred from thereafter bringing or maintaining any action to assert any interest in the adoptee.

(6) Service of notice under this section shall be made as follows:

(a) With regard to a person whose consent is necessary under section 16-1504, Idaho Code, notice shall be given by personal service. Where reasonable efforts to effect personal service have

been unsuccessful, the court shall order service by registered or certified mail to the last known address of the person to be notified and by publication once a week for three (3) successive weeks in a newspaper or newspapers to be designated by the court as most likely to give notice to the person to be served. The hearing shall take place no sooner than twenty (20) days after service of notice, or where service is by registered or certified mail and publication, the hearing shall take place no sooner than twenty (20) days after the date of last publication. Notice and appearance may be waived by any person in writing before the court or in the presence of, and witnessed by, a clerk of court or a representative of an authorized agency, provided that such parent has been apprised by the court or by such person of the meaning and consequences of the adoption proceeding. Where the person entitled to notice resides outside the state, the waiver shall be acknowledged before a notary of the state and shall contain the current address of said person. The person who has executed such a waiver shall not be required to appear. If service is by publication, the court shall designate the content of the notice regarding the identity of the parties. The notice may not include the name of the person or persons seeking to adopt the adoptee.

(b) As to any other person for whom notice is required under this section, service by certified mail, return receipt requested, is sufficient. If that service cannot be completed after two (2) attempts, the court may issue an order providing for service by publication, posting, or by any other manner of service.

(c) Notice to a person who has registered a notice of his commencement of paternity proceedings with the vital statistics unit of the department of health and welfare in accordance with the requirements of section 16-1513, Idaho Code, shall be served by certified mail, return receipt requested, at the last address filed with the department.

(7) Proof of service of notice on all persons for whom notice is required by this section shall be filed with the court before the final dispositional hearing on the adoption.

(8) Notwithstanding any other provision of law, neither the notice of an adoption proceeding nor any process in that proceeding is required to contain the name of the person or persons seeking to adopt the adoptee.

(9) Except as to those persons whose consent to an adoption is required under section 16-1504, Idaho Code, the sole purpose of notice under this section is to enable the person served to present evidence to the court relevant to the best interest of the child.

(repealing prior statute, as added, 2000)

§16-1506. Proceedings on adoption

(1) Proceedings to adopt a child shall be commenced by the filing of a petition together with a copy thereof. The petition shall be initiated by the person or persons proposing to adopt the child and shall be filed with the district court of the county in which said person or persons reside. If the adoption arises from a child protective act case, the petition shall be filed in the court having jurisdiction over the child protective act case unless that court relinquishes jurisdiction over the adoption proceeding. The petitioners shall have resided and maintained a dwelling within the state of Idaho for at least six (6) consecutive months prior to the filing of a petition. The petition shall set forth the name and address of the petitioner or petitioners, the name of the child proposed to be adopted and the name by which the person to be adopted shall be known if and when adopted, the degree of relationship of the child, if any, to the petitioner or petitioners and the names of any person or agency whose consent to said adoption is necessary. At the time fixed for hearing such petition the person adopting a child, and the child adopted, and the spouse of the petitioner if a natural parent of the child, must appear before the court of the county wherein the petition was filed. The petitioner shall at such time execute an agreement to the effect that the child shall be adopted and treated in all respects as his own lawful child should be treated.

(2) Any person or persons whose consent is required shall execute such consent in writing, in a form consistent with the provisions of section 16-2005(4), Idaho Code, which consent being filed in the court where the application is made, shall be deemed a sufficient appearance on the part of such person or persons. If any adoptive parent, or a person not a minor being adopted by a resident adult under the provisions of section 16-1501, Idaho Code, is a member of the armed services and is unable to attend the hearing, his appearance and testimony shall be received by means of deposition, which shall be filed in the court at the time of the hearing.

(3) Prior to the placement for adoption of any child in the home of prospective adoptive parents, it shall be required that a thorough social investigation of the prospective adoptive family and all of its members, consistent with the rules regarding such investigations promulgated by the department of health and welfare, shall be completed and that a positive recommendation for adoptive placement shall have been made. The social investigation may be performed by any individual who meets the requirements of the law. A copy of the study must be submitted to the department and the department may impose a reasonable fee, not to exceed fifty dollars ($50.00), for oversight of such privately conducted studies. If the prospective adoptive parent has a disability as defined in this chapter, the prospective adoptive parent shall have the right, as a part of the social study, to provide information regarding the manner in which the use of adaptive equipment or supportive services will enable the parent to carry out the responsibilities of parenting the child. The person performing the social investigation shall advise the prospective adoptive parent of such right and shall consider all such information in any findings or recommendations. The social investigation of any prospective adoptive parent with a disability shall be conducted by, or with the assistance of, an individual with expertise in the use of such equipment and services. Nothing in this chapter shall be construed to create any new or additional obligation on state or local governments to purchase or provide adaptive equipment or supportive services for parents with disabilities. In those

instances where the prospective adoptive parent is married to the birth parent or is the grandparent of the child to be adopted, such social investigation shall be completed with regard to the prospective adoptive parent only upon order of the court. In exigent circumstances where the prospective adoptive parents are determined by the court to have been unable to complete a social investigation of the family with a positive recommendation prior to the time the child is placed in the home, the child shall remain in the home unless the court determines the best interests of the child are served by other placement. If exigent circumstances exist, a social investigation shall be initiated within five (5) days of placement. Once initiated, all studies shall be completed within sixty (60) days. Upon the filing of a petition to adopt a minor child by a person unrelated to the child or unmarried to a natural parent of the child and at the discretion of the court upon the filing of any other petition for adoption, a copy of such petition, together with a statement containing the full names and permanent addresses of the child and the petitioners, shall be served by the court receiving the petition within five (5) days on the director of the department of health and welfare by registered mail or personal service. If no private investigation is conducted, it shall then be the duty of the said director, through the personnel of the department or through such qualified child-placing children's adoption agency incorporated under chapter 3, title 30, Idaho Code, as the director may designate, to verify the allegations of the petition, and as soon as possible not exceeding thirty (30) days after service of the petition on the director to make a thorough investigation of the matter to include in all cases information as to the alleged date and place of birth and as to parentage of the child to be adopted as well as the source of all such information and report his findings in writing to the court. The investigative report shall include reasonably known or available medical and genetic information regarding both natural parents and sources of such information as well as reasonably known or available providers of medical care and services to the natural parents. A copy of all medical and genetic information compiled in the investigation shall be made available to the adopting family by the department or other investigating children's adoption agency prior to entry of the final order of adoption. The petition, statement and all other

papers, records or files relating to the adoption, including the pre-placement investigation and recommendation, shall be returned to the court with the investigative report. The department of health and welfare or other children's adoption agency may require the petitioner to pay all or any part of the costs of the investigation. If the report disapproves of the adoption of the child, motion may be made to the court to dismiss the petition.

(4) Proceedings for termination of parent-child relationship in accordance with chapter 20, title 16, Idaho Code, and proceedings for adoption may be consolidated and determined at one (1) hearing provided that all of the requirements of this chapter as well as chapter 20, title 16, Idaho Code, be fully complied with. Nothing in either chapter shall be construed as limiting the initiation of any petition for approval of a verified financial plan for adoption expenses pursuant to section 18-1511, Idaho Code, prior to the birth of the child which is the subject of any adoption proceeding. In all disputed matters under this chapter or chapter 20, title 16, Idaho Code, the paramount criterion for consideration and determination by the court shall be the best interests of the child.

(5) Proceedings for the adoption of an adult shall be as provided in subsection (1) of this section and any consents required shall be executed as provided in subsection (2) of this section. Upon a finding by the court that the consent of all persons for whom consent is required has been given and that the requirements of section 16-1501, Idaho Code, have been proven to the satisfaction of the court, the court shall enter an order granting the adoption. In cases where the adult proposed to be adopted is incapacitated or disabled, the court may require that an investigation be performed. The form and extent of the investigation to be undertaken may be as provided in subsection (3) of this section, or as otherwise ordered by the court. If an investigation is performed, the court must review and approve the findings of the investigation before issuing an order approving the adoption.

(most recent amendment, 2005)

§16-1507. Order of adoption

The judge must examine all persons appearing before him pursuant to this chapter, each separately, and any report of the investigation provided pursuant to the last section and if satisfied that the interests of the child will be promoted by the adoption, he must in the adoption of all foreign born persons make a finding of facts as to the true or probable date and place of birth of the foreign born child to be adopted and make an order declaring that the child shall thenceforth be regarded and treated in all respects as the child of the person adopting.

(most recent amendment, 1996)

§16-1508. Effect of adoption

A child or adult, when adopted, may take the name of the person adopting, and the two (2) shall thenceforth sustain toward each other the legal relation of parent and child, and shall have all the rights and shall be subject to all the duties of that relation, including all of the rights of a child of the whole blood to inherit from any person, in all respects, under the provisions of section 14-103, Idaho Code, and to the same extent as a child of the whole blood.

(most recent amendment, 1996)

§16-1509. Release of child's parents from obligation--Termination of rights of parents and children

Unless the decree of adoption otherwise provides, the natural parents of an adopted child are, from the time of the adoption, relieved of all parental duties toward, and all responsibilities for, the child so adopted, and have no right over it, and all rights of such child from and through such natural parents including the right of inheritance, are hereby terminated unless specifically provided by will.

(most recent amendment, 1969)

§16-1509A. Dissolution of adoption

An adoption may be dissolved, upon petition, with the agreement of both the adoptee and the adopting parent, when the adopting parent was the spouse of a natural parent, and the marriage of the natural parent and adoptive parent was terminated. If the petition for dissolution occurs after the death of the adoptive parent, the court shall, in the finding of dissolution, specify the effect upon rights of inheritance. The court must determine that avoidance of statutory care is not the purpose of the dissolution, unless the court finds grounds to waive this finding. An action to obtain a decree of dissolution of adoption may be commenced at any time after the adoptee reaches twenty-one (21) years of age.

(as added, 1998)

§16-1511. Sealing record of proceedings

Upon the motion of petitioners, or upon its own motion the court shall order that the record of its proceedings in any adoption proceeding shall be sealed. When such order has been made and entered the court shall seal such record and thereafter the seal shall not be broken except upon the motion of petitioners or the person adopted; provided, however, that such record may be sealed again as in this section provided.

(most recent amendment, 1996)

§16-1512. Appeal from order--Binding effect of adoption order

(1) Any appeal from an order granting or refusing to grant an order of adoption shall be taken to the supreme court.

(2) After the order of adoption by the court becomes final, no party to an adoption proceeding, nor anyone claiming under such party, may later question the validity of the adoption proceedings by reason of any defect or irregularity therein, jurisdiction or otherwise, but shall be fully bound by the order, except for such appeal as may be allowed in subsection (1) of this section. In no event, for any reason, other than fraud on the part of the party adopting a child, shall an adoption

be overturned by any court or collaterally attacked by any person or entity after six (6) months from the date the order of adoption becomes final. This provision is intended as a statute of repose.

(most recent amendment, 2010)

§16-1513. Registration of notice of filing of paternity proceedings

(1) A person who is the father or claims to be the father of a child born out of wedlock may claim rights pertaining to his paternity of the child by commencing proceedings to establish paternity under section 7-1111, Idaho Code, and by filing with the vital statistics unit of the department of health and welfare notice of his filing of proceedings to establish his paternity of the child born out of wedlock. The vital statistics unit of the department of health and welfare shall provide forms for the purpose of filing the notice of filing of paternity proceedings, and the forms shall be made available through the vital statistics unit of the Idaho department of health and welfare and in the office of the county clerk in every county of this state. The forms shall include a written notification that filing pursuant to this section shall not satisfy the requirements of chapter 82, title 39, Idaho Code, and the notification shall also include the following statements:

(a) A parent may make a claim of parental rights of an abandoned child, abandoned pursuant to the provisions of chapter 82, title 39, Idaho Code, as provided by section 39-8206, Idaho Code, by filing a notice of claim of parental rights with the vital statistics unit of the department of health and welfare on a form as prescribed and provided by the vital statistics unit of the department of health and welfare;

(b) The vital statistics unit of the department of health and welfare shall maintain a separate registry for claims to abandoned children, abandoned pursuant to the provisions of chapter 82, title 39, Idaho Code;

(c) The department shall provide forms for the purpose of filing a claim of parental rights of an abandoned child, abandoned

pursuant to the provisions of chapter 82, title 39, Idaho Code, and the forms shall be made available through the vital statistics unit of the Idaho department of health and welfare and in the office of the county clerk in every county of this state;

(d) To be valid, a claim of parental rights of an abandoned child, abandoned pursuant to the provisions of chapter 82, title 39, Idaho Code, must be filed before an order terminating parental rights is entered by the court. A parent that fails to file a claim of parental rights prior to entry of an order terminating their parental rights is deemed to have abandoned the child and waived and surrendered any right in relation to the child, including the right to notice of any judicial proceeding in connection with the termination of parental rights or adoption of the child;

(e) Registration of notice of filing of paternity proceedings pursuant to chapter 15, title 16, Idaho Code, shall not satisfy the requirements of chapter 82, title 39, Idaho Code. To register a parental claim to an abandoned child, abandoned pursuant to the provisions of chapter 82, title 39, Idaho Code, an individual must file an abandoned child registry claim with the vital statistics unit of the department of health and welfare and comply with all other provisions of chapter 82, title 39, Idaho Code, in the time and manner prescribed, in order to preserve parental rights to the child.

When filing a notice of the filing of paternity proceedings, a person who claims to be the father of a child born out of wedlock shall file with the vital statistics unit of the department of health and welfare the completed form prescribed by the vital statistics unit of the department of health and welfare. Said form will be filled out completely, signed by the person claiming paternity, and witnessed before a notary public.

(2) The notice of the filing of paternity proceedings may be filed prior to the birth of the child, but must be filed prior to the date of the filing of any proceeding to terminate the parental rights of the birth mother. The notice of the filing of paternity proceedings shall be signed by the person filing the notice and shall include his name and

address, the name and last address of the mother, and either the birth date of the child or the probable month and year of the expected birth of the child. The vital statistics unit of the department of health and welfare shall maintain a central registry for this purpose that shall be subject to disclosure according to chapter 3, title 9, Idaho Code. The department shall record the date and time the notice of the filing of proceedings is filed with the department. The notice shall be deemed to be duly filed with the department as of the date and time recorded on the notice by the department.

(3) If the unmarried biological father does not know the county in which the birth mother resides, he may initiate his action in any county, subject to a change in venue.

(4) Except as provided in section 16-1504(5), Idaho Code, any father of a child born out of wedlock who fails to file and register his notice of the commencement of paternity proceedings pursuant to section 7-1111, Idaho Code, prior to the date of the filing of any proceeding to terminate the parental rights of the birth mother, is deemed to have waived and surrendered any right in relation to the child and of any notice to proceedings for adoption of the child or for termination of parental rights of the birth mother. His consent to the adoption of the child shall not be required and he shall be barred from thereafter bringing or maintaining any action to establish his paternity of the child. Failure of such filing or registration shall constitute an abandonment of said child and shall constitute an irrevocable implied consent in any adoption or termination proceeding.

(5) The filing and registration of an unrevoked notice of the commencement of paternity proceedings by a putative father shall constitute prima facie evidence of the fact of his paternity in any contested proceeding under chapter 11, title 7, Idaho Code. The filing of a notice of the commencement of paternity proceedings shall not be a bar to an action for termination of his parental rights under chapter 20, title 16, Idaho Code.

(6) An unmarried biological father of a child born out of wedlock who has filed and registered a notice of the filing of paternity proceedings may at any time revoke notice of intent to claim paternity previously filed. Upon receipt of written revocation, the effect shall be as if no notice of the filing of paternity proceedings had been filed or registered.

(7) In any adoption proceeding pertaining to a child born out of wedlock, if there is no showing that the putative father has consented to the adoption, a certificate shall be obtained from the vital statistics unit of the department of health and welfare, signed by the state registrar of vital statistics, which certificate shall state that a diligent search has been made of the registry of notices from putative fathers, and that no filing has been found pertaining to the father of the child in question, or if a filing is found, stating the name of the putative father and the time and date of filing. That certificate shall be filed with the court prior to entry of a final decree of adoption.

(8) Identities of putative fathers can only be released pursuant to procedures contained in chapter 3, title 9, Idaho Code.

(9) To cover the cost of implementing and maintaining said central registry, the vital statistics unit of the department of health and welfare shall charge a filing fee of ten dollars ($10.00) at the time the putative father files his notice of his commencement of proceedings. The department shall also charge a reasonable fee to cover all costs incurred in a search of the Idaho putative father registry and for furnishing a certificate in accordance with the provisions of this section and section 16-1504, Idaho Code. It is the intent of the legislature that the fee shall cover all direct and indirect costs incurred pursuant to this section and section 16-1504, Idaho Code. The department shall annually review the fees and expenses incurred pursuant to administering the provisions of this section and section 16-1504, Idaho Code.

(10) Consistent with its authority denoted in the vital statistics act, section 39-242(c), Idaho Code, the board of health and welfare shall adopt, amend and repeal rules for the purpose of carrying out the provisions of this section.

(11) The department shall produce and distribute, within the limits of continuing annual appropriations duly made available to the department by the legislature for such purposes, a pamphlet or publication informing the public about the Idaho putative father registry, printed in English and Spanish. The pamphlet shall indicate the procedures to be followed in order to receive notice of any proceeding for adoption of a child an unmarried biological father claims to have fathered and of any proceeding for termination of his parental rights, voluntary acknowledgment of paternity, the consequences of acknowledgment of paternity, the consequences of failure to acknowledge paternity and the address of the Idaho putative father registry. Within the limits of continuing annual appropriations duly made available to the department by the legislature for such purposes, such pamphlets or publications shall be made available for distribution to the public at all offices of the department of health and welfare. Upon request the department shall also provide such pamphlets or publications to hospitals, libraries, medical clinics, schools, colleges, universities, providers of child-related services and children's agencies licensed in the state of Idaho or advertising services in the state of Idaho.

(12) Within the limits of continuing annual appropriations duly made available to the department by the legislature for such purposes, each county clerk, branch office of the department of motor vehicles, all offices of the department of health and welfare, hospitals and local health districts shall post in a conspicuous place a notice that informs the public about the purpose and operation of the Idaho putative father registry. The notice must include information regarding the following:

(a) Where to obtain a registration form;
(b) Where to register;

(c) The procedures to follow in order to file proceedings to establish paternity of a child born out of wedlock;
(d) The consequences of a voluntary acknowledgment of paternity; and
(e) The consequences of failure to acknowledge paternity.

(13) The department shall host on the department's web page a public service announcement (PSA) informing the public about the Idaho putative father registry, printed in English and Spanish. The PSA shall indicate the procedures to be followed in order to receive notice of any proceeding for adoption of a child an unmarried biological father claims to have fathered and of any proceeding for termination of his parental rights, voluntary acknowledgment of paternity, the consequences of acknowledgment of paternity, the consequences of failure to acknowledge paternity and the address of the Idaho putative father registry.

(14) Failure to post a proper notice under the provisions of this section does not relieve a putative father of the obligation to file notice of the filing of proceedings to establish his paternity pursuant to this section or to commence proceedings to establish paternity pursuant to section 7-1111, Idaho Code, prior to the filing of any proceeding to terminate parental rights of the birth mother.

(15) A person who knowingly or intentionally falsely files or registers as a putative father is guilty of a misdemeanor.

(most recent amendment, 2013)

§16-1514. Petition for adoption of foreign born child

(1) Proceedings to adopt a foreign born child who has been allowed to enter the United States for the purpose of adoption shall be commenced by the filing of a petition under this section. A petition under this section shall be initiated by the person or persons proposing to adopt the child and shall be filed with the district court of the judicial district in which said person or persons reside. The

petitioner shall have resided and maintained a dwelling within the state of Idaho for at least six (6) consecutive months prior to the filing of a petition. The petition shall set forth the following:

(a) The name and address of the petitioner or petitioners;

(b) The name of the child proposed to be adopted and the name by which he or she shall be known when adopted;

(c) The degree of relationship of the child, if any, to the petitioner or petitioners;

(d) The child's country of origin, and date of birth, if known;

(e) That the child has been issued a visa or other document authorizing entry into the United States as an immigrant or for the purpose of adoption or for humanitarian reasons relating to adoption in the United States and the date of the person's entry into the United States;

(f) That a home study of the petitioner or petitioners was prepared and the name of the person or agency performing the home study. A copy of the home study shall be attached to the petition;

(g) That, to the information and belief of the petitioners, the biological parents of the child to be adopted are residents of another country;

(h) That the adoption of such child is in the child's best interests.

(2) At the time fixed for the hearing on a petition for adoption under this section, the person or persons adopting the child and the child to be adopted must appear before the court where the petition was filed. The judge shall examine the petitioner or petitioners at the hearing and, if satisfied that the proposed adoption is in the best interests of the child to be adopted, shall enter a decree of adoption. The petitioner or petitioners shall at such time execute an agreement to the effect that the child shall be adopted and treated in all respects as the petitioner's own lawful child.

(3) This section governs the adoption of all foreign born children who have entered the United States to be adopted. Notwithstanding any

other provision of this chapter, no consent shall be required from the biological parents of the child to be adopted if the child has been granted permission by the United States department of state or United States department of homeland security to enter the United States for the purpose of adoption or for humanitarian reasons relating to adoption by United States citizens. A visa or other document from the United States department of state or United States department of homeland security authorizing entry into the United States for the purpose of adoption, or for humanitarian reasons relating to adoption by United States citizens, shall be deemed conclusive evidence of the termination of the parental rights of the biological parents and compliance with the laws of the country of the child's birth. The provisions of chapter 20, title 16, Idaho Code, shall not apply to adoptions under this section.

(4) The decisions and orders of foreign courts and government agencies, authorized to approve adoptions, shall be accorded judicial comity or the same full faith and credit accorded a judgment of a sister state without additional proceedings or documentation, provided the United States department of state or United States department of homeland security has allowed the child to enter the United States as set forth in subsection (3) of this section.

(most recent amendment, 2006)

§16-1514A. International adoption

(1) When an Idaho resident adopts a child in a foreign country in accordance with the laws of the foreign country, and such adoption is recognized as full and final by the United States government, such resident may file with a petition a copy of the decree, order or certificate of adoption which evidences finalization of the adoption in the foreign country, together with a certified translation thereof if it is not in English, and proof of full and final adoption from the United States government with the clerk of the court of any county in this state having jurisdiction over the person or persons filing such documents.

(2) The court shall assign a docket number and file and enter the documents referenced in subsection (1) of this section with an order recognizing the foreign adoption without the necessity of a hearing. Such order, along with the final decree, order or certificate from the foreign country shall have the same force and effect as if a final order of adoption were granted in accordance with the provisions of this chapter.

(3) When such order is filed and entered, the adoptive parents may request a report of adoption as provided in section 39-259, Idaho Code.

(as added, 2006)

§16-1515. Revocation of adoption--Payment of expenses of adoptive parents

(1) If a natural parent withdraws or revokes a consent to adoption and the court orders that the custody of the child be returned to the natural parent upon the petition of a natural parent, whether or not the order of adoption has been entered, the court shall order the natural parent who so petitioned to reimburse the adoptive or prospective adoptive parents for all adoption expenses including, but not limited to, all medical fees and costs and all legal fees and costs, and all other reasonable costs and expenses including, but not limited to, expenses for food and clothing incurred by the adoptive or prospective adoptive parents in connection with the care and maintenance of the child while the child was living with the adoptive or prospective adoptive parents. The court shall determine the amount of the reimbursement owing and shall enter the same as a money judgment in favor of the adoptive or prospective adoptive parents.

(2) If the natural parent agrees to consent to the adoption and the adoption proceedings have been initiated by the prospective adoptive parents in accordance with that agreement but the natural parent thereafter refuses to execute the consent to adoption, the prospective adoptive parents may file a motion for restitution in the adoption

action and the court may order reimbursement as provided in subsection (1) of this section, or the prospective adoptive parents may file a suit independent of the adoption proceedings for damages which may include those items described in subsection (1) of this section.

(3) For purposes of this section, "prospective adoptive parents" shall include foster parents who have initiated adoption proceedings with respect to the child for whom foster care is being provided, but shall not include foster parents who are wholly or partially reimbursed by the state of Idaho for the care of the child.

(as added, 1998)

Idaho Child Protective Act

§16-1601. Policy

The policy of the state of Idaho is hereby declared to be the establishment of a legal framework conducive to the judicial processing including periodic review of child abuse, abandonment and neglect cases, and the protection of any child whose life, health or welfare is endangered. At all times the health and safety of the child shall be the primary concern. Each child coming within the purview of this chapter shall receive, preferably in his own home, the care, guidance and control that will promote his welfare and the best interest of the state of Idaho, and if he is removed from the control of one (1) or more of his parents, guardian or other custodian, the state shall secure adequate care for him; provided, however, that the state of Idaho shall, to the fullest extent possible, seek to preserve, protect, enhance and reunite the family relationship. Nothing in this chapter shall be construed to allow discrimination on the basis of disability. This chapter seeks to coordinate efforts by state and local public agencies, in cooperation with private agencies and organizations, citizens' groups, and concerned individuals, to:

(1) Preserve the privacy and unity of the family whenever possible;

(2) Take such actions as may be necessary and feasible to prevent the abuse, neglect, abandonment or homelessness of children;

(3) Take such actions as may be necessary to provide the child with permanency including concurrent planning;

(4) Clarify for the purposes of this act the rights and responsibilities of parents with joint legal or joint physical custody of children at risk.

(most recent amendment, 2003)

§16-1602. Definitions

For purposes of this chapter:

(1) "Abused" means any case in which a child has been the victim of:

(a) Conduct or omission resulting in skin bruising, bleeding, malnutrition, burns, fracture of any bone, subdural hematoma, soft tissue swelling, failure to thrive or death, and such condition or death is not justifiably explained, or where the history given concerning such condition or death is at variance with the degree or type of such condition or death, or the circumstances indicate that such condition or death may not be the product of an accidental occurrence; or

(b) Sexual conduct, including rape, molestation, incest, prostitution, obscene or pornographic photographing, filming or depiction for commercial purposes, or other similar forms of sexual exploitation harming or threatening the child's health or welfare or mental injury to the child.

(2) "Abandoned" means the failure of the parent to maintain a normal parental relationship with his child including, but not limited to, reasonable support or regular personal contact. Failure to maintain this relationship without just cause for a period of one (1) year shall constitute prima facie evidence of abandonment.

(3) "Adaptive equipment" means any piece of equipment or any item that is used to increase, maintain or improve the parenting capabilities of a parent with a disability.

(4) "Adjudicatory hearing" means a hearing to determine:

(a) Whether the child comes under the jurisdiction of the court pursuant to the provisions of this chapter;

(b) Whether continuation of the child in the home would be contrary to the child's welfare and whether the best interest of the child requires protective supervision or vesting legal custody of the child in an authorized agency.

(5) "Aggravated circumstances" include, but are not limited to:

(a) Circumstances in which the parent has engaged in any of the following:

(i) Abandonment, chronic abuse or chronic neglect of the child. Chronic neglect or chronic abuse of a child shall consist of abuse or neglect that is so extreme or repetitious as to indicate that return of the child to the home would result in unacceptable risk to the health and welfare of the child.

(ii) Sexual abuse against a child of the parent. Sexual abuse, for the purposes of this section, includes any conduct described in section 18-1506, 18-1506A, 18-1507, 18-1508, 18-1508A, 18-6101, 18-6108 or 18-6608, Idaho Code.

(iii) Torture of a child; any conduct described in the code sections listed in section 18-8303(1), Idaho Code; battery or an injury to a child that results in serious or great bodily injury to a child; voluntary manslaughter of a child, or aiding or abetting such voluntary manslaughter, soliciting such voluntary manslaughter or attempting or conspiring to commit such voluntary manslaughter;

(b) The parent has committed murder, aided or abetted a murder, solicited a murder or attempted or conspired to commit murder; or

(c) The parental rights of the parent to another child have been terminated involuntarily.

(6) "Authorized agency" means the department, a local agency, a person, an organization, corporation, benevolent society or association licensed or approved by the department or the court to receive children for control, care, maintenance or placement.

(7) "Case plan hearing" means a hearing to approve, modify or reject the case plan as provided in section 16-1621, Idaho Code.

(8) "Child" means an individual who is under the age of eighteen (18) years.

(9) "Circumstances of the child" includes, but is not limited to, the joint legal custody or joint physical custody of the child.
(10) "Commit" means to transfer legal and physical custody.

(11) "Concurrent planning" means a planning model that prepares for and implements different outcomes at the same time.

(12) "Court" means district court or magistrate's division thereof, or if the context requires, a magistrate or judge thereof.

(13) "Custodian" means a person, other than a parent or legal guardian, to whom legal or joint legal custody of the child has been given by court order.

(14) "Department" means the department of health and welfare and its authorized representatives.

(15) "Disability" means, with respect to an individual, any mental or physical impairment which substantially limits one (1) or more major life activity of the individual including, but not limited to, self-care, manual tasks, walking, seeing, hearing, speaking, learning or working, or a record of such an impairment, or being regarded as having such an impairment. Disability shall not include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, other sexual behavior disorders, or substance use disorders, compulsive gambling, kleptomania or pyromania. Sexual preference or orientation is not considered an impairment or disability. Whether an impairment substantially limits a major life activity shall be determined without consideration of the effect of corrective or mitigating measures used to reduce the effects of the impairment.

(16) "Family or household member" shall have the same meaning as in section 39-6303(6), Idaho Code.

(17) "Foster care" means twenty-four (24) hour substitute parental care for children placed away from their parents or guardians by

persons who may or may not be related to the children and for whom the state agency has placement and care responsibility.

(18) "Grant administrator" means the supreme court or any organization or agency as may be designated by the supreme court in accordance with such procedures as may be adopted by the supreme court. The grant administrator shall administer funds from the guardian ad litem account in accordance with the provisions of this chapter.

(19) "Guardian ad litem" means a person appointed by the court pursuant to a guardian ad litem volunteer program to act as special advocate for a child under this chapter.

(20) "Guardian ad litem coordinator" means a person or entity receiving moneys from the grant administrator for the purpose of carrying out any of the duties set forth in section 16-1632, Idaho Code.

(21) "Guardian ad litem program" means the program to recruit, train and coordinate volunteer persons to serve as guardians ad litem for abused, neglected or abandoned children.

(22) "Homeless," as used in this chapter, shall mean that the child is without adequate shelter or other living facilities, and the lack of such shelter or other living facilities poses a threat to the health, safety or well-being of the child.

(23) "Law enforcement agency" means a city police department, the prosecuting attorney of any county, state law enforcement officers, or the office of a sheriff of any county.

(24) "Legal custody" means a relationship created by court order, which vests in a custodian the following rights and responsibilities:

(a) To have physical custody and control of the child, and to determine where and with whom the child shall live.

(b) To supply the child with food, clothing, shelter and incidental necessities.

(c) To provide the child with care, education and discipline.

(d) To authorize ordinary medical, dental, psychiatric, psychological, or other remedial care and treatment for the child, including care and treatment in a facility with a program of services for children; and to authorize surgery if the surgery is deemed by two (2) physicians licensed to practice in this state to be necessary for the child.

(e) Where the parents share legal custody, the custodian may be vested with the custody previously held by either or both parents.

(25) "Mental injury" means a substantial impairment in the intellectual or psychological ability of a child to function within a normal range of performance and/or behavior, for short or long terms.

(26) "Neglected" means a child:

(a) Who is without proper parental care and control, or subsistence, medical or other care or control necessary for his well-being because of the conduct or omission of his parents, guardian or other custodian or their neglect or refusal to provide them; however, no child whose parent or guardian chooses for such child treatment by prayers through spiritual means alone in lieu of medical treatment shall be deemed for that reason alone to be neglected or lack parental care necessary for his health and well-being, but this subsection shall not prevent the court from acting pursuant to section 16-1627, Idaho Code; or

(b) Whose parents, guardian or other custodian are unable to discharge their responsibilities to and for the child and, as a result of such inability, the child lacks the parental care necessary for his health, safety or well-being; or

(c) Who has been placed for care or adoption in violation of law; or

(d) Who is without proper education because of the failure to comply with section 33-202, Idaho Code.

(27) "Permanency hearing" means a hearing to review, approve, reject or modify the permanency plan of the department, and review reasonable efforts in accomplishing the permanency plan.

(28) "Permanency plan" means a plan for a continuous residence and maintenance of nurturing relationships during the child's minority.

(29) "Protective order" means an order issued by the court in a child protection case, prior to the adjudicatory hearing, to enable the child to remain in the home pursuant to section 16-1615(5)(f), Idaho Code. Such an order shall be in the same form and have the same effect as a domestic violence protection order issued pursuant to chapter 63, title 39, Idaho Code. A protective order shall be for a period not to exceed three (3) months unless otherwise stated in the order.

(30) "Protective supervision" is a legal status created by court order in a child protective case whereby the child is in the legal custody of his or her parent(s), guardian(s) or other legal custodian(s), subject to supervision by the department.

(31) "Relative" means a child's grandparent, great grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, first cousin, sibling and half-sibling.

(32) "Residual parental rights and responsibilities" means those rights and responsibilities remaining with the parents after the transfer of legal custody including, but not necessarily limited to, the right of visitation, the right to consent to adoption, the right to determine religious affiliation, the right to family counseling when beneficial, and the responsibility for support.

(33) "Shelter care" means places designated by the department for temporary care of children pending court disposition or placement.

(34) "Supportive services," as used in this chapter, shall mean services which assist parents with a disability to compensate for those

aspects of their disability which affect their ability to care for their child and which will enable them to discharge their parental responsibilities. The term includes specialized or adapted training, evaluations or assistance with effectively using adaptive equipment and accommodations which allow parents with a disability to benefit from other services including, but not limited to, Braille texts or sign language interpreters.

(most recent amendment, 2013)

§16-1603. Jurisdiction of the courts

(1) Except as otherwise provided herein, the court shall have exclusive original jurisdiction in all proceedings under this chapter concerning any child living or found within the state:

(a) Who is neglected, abused or abandoned by his parents, guardian or other legal custodian, or who is homeless; or

(b) Whose parents or other legal custodian fails to provide a stable home environment.

(2) If the court has taken jurisdiction over a child under subsection (1) of this section, it may take jurisdiction over another child living or having custodial visitation in the same household without the filing of a separate petition if it finds all of the following:

(a) The other child is living or is found within the state;

(b) The other child has been exposed to or is at risk of being a victim of abuse, neglect or abandonment;

(c) The other child is listed in the petition or amended petition;

(d) The parents or legal guardians of the other child have notice as provided in section 16-1611, Idaho Code.

(most recent amendment, 2005)

§16-1604. Retention of jurisdiction

(1) Jurisdiction obtained by the court under this chapter shall be retained until the child's eighteenth birthday, unless terminated prior thereto. Jurisdiction of the court shall not be terminated by an order of

termination of parental rights if guardianship and/or custody of the child is placed with the department of health and welfare.

(2) The parties have an ongoing duty to inquire concerning, and inform the court as soon as possible about, any other pending actions or current orders involving the child. In the event there are conflicting orders from Idaho courts concerning the child, the child protection order is controlling.

(most recent amendment, 2001)

§16-1605. Reporting of abuse, abandonment or neglect

(1) Any physician, resident on a hospital staff, intern, nurse, coroner, school teacher, day care personnel, social worker, or other person having reason to believe that a child under the age of eighteen (18) years has been abused, abandoned or neglected or who observes the child being subjected to conditions or circumstances which would reasonably result in abuse, abandonment or neglect shall report or cause to be reported within twenty-four (24) hours such conditions or circumstances to the proper law enforcement agency or the department. The department shall be informed by law enforcement of any report made directly to it. When the attendance of a physician, resident, intern, nurse, day care worker, or social worker is pursuant to the performance of services as a member of the staff of a hospital or similar institution, he shall notify the person in charge of the institution or his designated delegate who shall make the necessary reports.

(2) For purposes of subsection (3) of this section the term "duly ordained minister of religion" means a person who has been ordained or set apart, in accordance with the ceremonial, ritual or discipline of a church or religious organization which has been established on the basis of a community of religious faith, belief, doctrines and practices, to hear confessions and confidential communications in accordance with the bona fide doctrines or discipline of that church or religious organization.

(3) The notification requirements of subsection (1) of this section do not apply to a duly ordained minister of religion, with regard to any confession or confidential communication made to him in his ecclesiastical capacity in the course of discipline enjoined by the church to which he belongs if:

(a) The church qualifies as tax-exempt under 26 U.S.C. section 501(c)(3);

(b) The confession or confidential communication was made directly to the duly ordained minister of religion; and

(c) The confession or confidential communication was made in the manner and context which places the duly ordained minister of religion specifically and strictly under a level of confidentiality that is considered inviolate by canon law or church doctrine. A confession or confidential communication made under any other circumstances does not fall under this exemption.

(4) Failure to report as required in this section shall be a misdemeanor.

(most recent amendment, 2005)

§16-1606. Immunity

Any person who has reason to believe that a child has been abused, abandoned or neglected and, acting upon that belief, makes a report of abuse, abandonment or neglect as required in section 16-1605, Idaho Code, shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any such judicial proceeding resulting from such report. Any person who reports in bad faith or with malice shall not be protected by this section. Any privilege between husband and wife, or between any professional person except the lawyer-client privilege, including but not limited to physicians, counselors, hospitals, clinics, day care centers and schools and their clients shall not be grounds for excluding evidence at any proceeding regarding the abuse, abandonment or neglect of the child or the cause thereof.

(most recent amendment, 2005)

§16-1607. Reporting in bad faith--Civil damages

Any person who makes a report or allegation of child abuse, abandonment or neglect knowing the same to be false or who reports or alleges the same in bad faith or with malice shall be liable to the party or parties against whom the report was made for the amount of actual damages sustained or statutory damages of two thousand five hundred dollars ($2,500), whichever is greater, plus attorney's fees and costs of suit. If the court finds that the defendant acted with malice or oppression, the court may award treble actual damages or treble statutory damages, whichever is greater.

(most recent amendment, 2007)

§16-1608. Emergency removal

(1) (a) A child may be taken into shelter care by a peace officer without an order issued pursuant to subsection (4) of section 16-1611 or section 16-1619, Idaho Code, only where the child is endangered in his surroundings and prompt removal is necessary to prevent serious physical or mental injury to the child or where the child is an abandoned child pursuant to the provisions of chapter 82, title 39, Idaho Code.

(b) An alleged offender may be removed from the home of the victim of abuse or neglect by a peace officer without an order, issued pursuant to subsection (5) of section 16-1611, Idaho Code, only where the child is endangered and prompt removal of an alleged offender is necessary to prevent serious physical or mental injury to the child.

(2) When a child is taken into shelter care under subsection (1) of this section, he may be held for a maximum of forty-eight (48) hours, excluding Saturdays, Sundays and holidays, unless a shelter care hearing has been held pursuant to section 16-1615, Idaho Code, and the court orders an adjudicatory hearing.

(3) When an alleged offender is removed from the home under subsection (1)(b) of this section, a motion based on a sworn affidavit

by the department must be filed simultaneously with the petition and the court shall determine at a shelter care hearing, held within a maximum of twenty-four (24) hours, excluding Saturdays, Sundays and holidays, whether the relief sought shall be granted, pending an adjudicatory hearing. Notice of such hearing shall be served upon the alleged offender at the time of removal or other protective relief.

(most recent amendment, 2005)

§16-1609. Emergency removal--Notice

(1) A peace officer who takes a child into shelter care under section 16-1608, Idaho Code, shall immediately:

(a) Take the child to a place of shelter; and

(b) Notify the court of the action taken and the place to which the child was taken; and

(c) With the exception of a child abandoned pursuant to the provisions of chapter 82, title 39, Idaho Code, notify each of the parents, guardian or other legal custodian that the child has been taken into shelter care, the type and nature of shelter care, and that the child may be held for a maximum of forty-eight (48) hours, excluding Saturdays, Sundays and holidays, within which time there must be a shelter care hearing.

(2) A peace officer who takes a child into shelter care under section 16-1608, Idaho Code, shall not be held liable either criminally or civilly unless the action of taking the child was exercised in bad faith and/or the requirements of subsection (1) of this section are not complied with.

(most recent amendment, 2005)

§16-1610. Petition

(1) A petition invoking the jurisdiction of the court under this chapter shall be filed in the manner provided in this section:

(a) A petition must be signed by the prosecutor or deputy attorney general before being filed with the court.

(b) Any person or governmental body of this state having evidence of abuse, abandonment, neglect or homelessness of a child may request the attorney general or prosecuting attorney to file a petition. The prosecuting attorney or the attorney general may file a petition on behalf of any child whose parent, guardian, or custodian has been accused in a criminal complaint of the crime of cruel treatment or neglect as defined in section 18-1501, Idaho Code.

(2) Petitions shall be entitled "In the Matter of....., a child under the age of eighteen (18) years" and shall be verified and set forth with specificity:

(a) The facts which bring the child within the jurisdiction of the court upon the grounds set forth in section 16-1603, Idaho Code, with the actions of each parent described therein;

(b) The name, birth date, sex, and residence address of the child;

(c) The name, birth date, sex, and residence address of all other children living at or having custodial visitation at the home where the injury to the subject child occurred;

(d) The names and residence addresses of both the mother and father, guardian or other custodian. If neither of his parents, guardian or other custodian resides or can be found within the state, or if their residence addresses are unknown, the name of any known adult relative residing within the state;

(e) The names and residence addresses of each person having sole or joint legal custody of the children described in this section;

(f) Whether or not there exists a legal document including, but not limited to, a divorce decree, stipulation or parenting agreement controlling the custodial status of the children described in this section;

(g) Whether the child is in shelter care, and, if so, the type and nature of the shelter care, the circumstances necessitating such care and the date and time he was placed in such care;

(h) When any of the facts required by this section cannot be determined, the petition shall so state. The petition may be based

on information and belief but in such case the petition shall state the basis of such information and belief;

(i) If the child has been or will be removed from the home, the petition shall state that:

(i) Remaining in the home was contrary to the welfare of the child;

(ii) Vesting legal custody of the child in the department or other authorized agency is in the best interests of the child; and

(iii) Reasonable efforts have been made prior to the placement of the child in care to prevent the removal of the child from his home or, if such efforts were not provided, that reasonable efforts to prevent placement were not required because aggravated circumstances were found;

(j) The petition shall state with specificity whether a parent with joint legal custody or a noncustodial parent has been notified of placement;

(k) The petition shall state whether a court has adjudicated the custodial rights of the parents and shall set forth the custodial status of the child;

(l) The court may combine petitions and hearings where multiple petitions have been filed involving related children, parents or guardians.

(most recent amendment, 2013)

§16-1611. Summons

(1) After a petition has been filed, the clerk of the court may issue a summons requiring the person or persons who have custody of the child to bring the child before the court at the adjudicatory hearing held in accordance with section 16-1619, Idaho Code. Each parent or guardian shall also be notified in the manner hereinafter provided of the pendency of the case and the time and place set for the hearing. A summons shall be issued and served requiring the appearance of each parent and legal guardian, and a summons may be issued and served for any other person whose presence is required by the child, either of

his parents or guardian or any other person whose presence, in the opinion of the court, is necessary.

(2) A copy of the petition shall be attached to each summons.

(3) The summons shall notify each of the parents, guardian or legal custodian of their right to retain and be represented by counsel. Each parent or legal guardian of each child named in the petition shall be notified by the court of the case and of the time and place set for the hearing.

(4) If based on facts presented to the court, it appears that the court has jurisdiction upon the grounds set forth in section 16-1603, Idaho Code, and the court finds that the child should be removed from his present condition or surroundings because continuation in such condition or surroundings would be contrary to the welfare of the child and vesting legal custody with the department or other authorized agency would be in the child's best interests, the court shall include on the summons an order to remove the child. The order to remove the child shall specifically state that continuation in the present condition or surroundings is contrary to the welfare of the child and shall require a peace officer or other suitable person to take the child at once to a place of shelter care designated by the authorized agency which shall provide shelter care for the child.

(5) If it appears that the child is safe in his present condition or surroundings and it is not in his best interest to remove him at this time, the court may issue a protective order based on an affidavit pending the adjudicatory hearing. If the child is in joint custody, the protective order shall state with specificity the rights and responsibilities of each parent. Each parent shall be provided with a copy of the protective order.

(most recent amendment, 2007)

§16-1612. Service of summons--Travel expenses--Necessary witnesses

(1) Service of summons shall be made personally by delivery of an attested copy thereof to the person summoned; provided that if the court is satisfied that it is impracticable to serve personally such summons or the notice provided for in the preceding section, he may order service by registered mail addressed to the last known address, or by publication thereof, or both. It shall be sufficient to confer jurisdiction if service is effected at least forty-eight (48) hours before the time fixed in the summons for the hearing.

(2) When publication is used the summons shall be published once a week for two (2) consecutive weeks in a newspaper of general circulation in the county; such newspaper to be designated by the court in the order for publication of the summons, and such publication shall have the same force and effect as though such person had been personally served with said summons.

(3) Service of summons, process or notice required by this chapter shall be made by the sheriff or other person appointed by the court, and a return must be made on the summons showing that service has been made.

(4) The court may authorize payment of any necessary travel expenses incurred by any person summoned or otherwise required to appear at the hearing of any case coming within the purview of this chapter, and such expenses when approved by the court shall be a charge upon the county, except that not more than five (5) witnesses on behalf of any parent or guardian may be required to attend such hearing at the expense of the county.

(5) The court may summon the appearance of any person whose presence is deemed necessary as a witness.

(6) The child, each of his parents, guardian or custodian shall be notified as soon as practicable after the filing of a petition and prior to the start of a hearing of their right to be represented by counsel.

(7) If any person summoned as herein provided shall, without reasonable cause, fail to appear, the court may proceed in such person's absence or such person may be proceeded against for contempt of court.

(8) Where the summons cannot be served, or the parties served fail to obey the same, or in any case when it shall be made to appear to the court that the service will be ineffectual, or that the welfare of the child requires that he be brought forthwith into the custody of the court, a warrant or capias may be issued for the parent, guardian or the child.

(most recent amendment, 2005)

§16-1613. Hearings under the child protective act

(1) Proceedings under this chapter shall be dealt with by the court at hearings separate from those for adults and without a jury. The hearings shall be conducted in an informal manner and may be adjourned from time to time. The general public shall be excluded, and only such persons shall be admitted as are found by the court to have a direct interest in the case. The child may be excluded from hearings at any time at the discretion of the court. If the parent or guardian is without counsel, the court shall inform them of their right to be represented by counsel and to appeal from any disposition or order of the court.

(2) When a child is summoned as a witness in any hearing under this act, notwithstanding any other statutory provision, parents, a counselor, a friend, or other person having a supportive relationship with the child shall, if available, be permitted to remain in the courtroom at the witness stand with the child during the child's testimony unless, in written findings made and entered, the court finds that the constitutional right of the child's parent(s), guardian(s) or other custodian(s) to a fair hearing will be unduly prejudiced.

(3) At any stage of a proceeding under this chapter, if the court determines that it is in the best interests of the child or society, the court may cause the proceeding to be expanded or altered to include full or partial consideration of the cause under the juvenile corrections act without terminating the original proceeding under this chapter.

(most recent amendment, 2005)

§16-1614. Appointment of guardian ad litem, counsel for guardian ad litem, counsel for child

(1) In any proceeding under this chapter for a child under the age of twelve (12) years, the court shall appoint a guardian ad litem for the child or children and shall appoint counsel to represent the guardian ad litem, unless the guardian ad litem is already represented by counsel. If a court does not have available to it a guardian ad litem program or a sufficient number of guardians ad litem, the court shall appoint counsel for the child. In appropriate cases, the court may appoint a guardian ad litem for the child and counsel to represent the guardian ad litem and may, in addition, appoint counsel to represent the child.

(2) In any proceeding under this chapter for a child twelve (12) years of age or older, the court:

(a) Shall appoint counsel to represent the child and may, in addition, appoint a guardian ad litem; or

(b) Where appointment of counsel is not practicable or not appropriate, may appoint a guardian ad litem for the child and shall appoint counsel to represent the guardian ad litem, unless the guardian ad litem is already represented by counsel.

(3) Counsel appointed for the child under the provisions of this section shall be paid for by the county unless the party for whom counsel is appointed has an independent estate sufficient to pay such costs.

(most recent amendment, 2013)

§16-1615. Shelter care hearing

(1) Notwithstanding any other provision of this chapter, when a child is taken into shelter care pursuant to section 16-1608 or 16-1611, Idaho Code, a hearing to determine whether the child should be released shall be held according to the provisions of this section.

(2) Each of the parents or custodian from whom the child was removed shall be given notice of the shelter care hearing. Such notice shall include the time, place, and purpose of the hearing; and, that such person is entitled to be represented by legal counsel. Notice as required by this subsection shall be given at least twenty-four (24) hours before the shelter care hearing.

(3) Notice of the shelter care hearing shall be given to the parents or custodian from whom the child was removed by personal service and the return of service shall be filed with the court and to any person having joint legal or physical custody of the subject child. Provided, however, that such service need not be made where the undelivered notice is returned to the court along with an affidavit stating that such parents or custodian could not be located or were out of the state.

(4) The shelter care hearing may be continued for a reasonable time upon request by the parent, custodian or counsel for the child.

(5) If, upon the completion of the shelter care hearing, it is shown that:

(a) A petition has been filed; and

(b) There is reasonable cause to believe the child comes within the jurisdiction of the court under this chapter and either:

(i) The department made reasonable efforts to eliminate the need for shelter care but the efforts were unsuccessful; or

(ii) The department made reasonable efforts to eliminate the need for shelter care but was not able to safely provide preventive services; and

(c) The child could not be placed in the temporary sole custody of a parent having joint legal or physical custody; and

(d) It is contrary to the welfare of the child to remain in the home; and

(e) It is in the best interests of the child to remain in temporary shelter care pending the conclusion of the adjudicatory hearing; or

(f) There is reasonable cause to believe that the child comes within the jurisdiction of the court under this chapter, but a reasonable effort to prevent placement of the child outside the home could be affected by a protective order safeguarding the child's welfare and maintaining the child in his present surroundings;

the court shall issue, within twenty-four (24) hours of such hearing, an order of temporary legal custody and/or a protective order. Any evidence may be considered by the court which is of the type which reasonable people may rely upon.

(6) Upon ordering shelter care pursuant to subsection (5) of this section, the court shall also order an adjudicatory hearing to be held as soon as possible, but in no event later than thirty (30) days from the date the petition was filed.

(7) If the court does not find that the child should remain in shelter care under subsection (5) of this section, the child shall be released and the court may dismiss the petition.

(most recent amendment, 2007)

§16-1616. Investigation

(1) After a petition has been filed, the department shall investigate the circumstances of the child and his family and prepare a written report to the court.

(2) The report shall be delivered to the court with copies to each of the parties prior to the pretrial conference for the adjudicatory hearing. If delivered by mail the report must be received by the court and the parties prior to the pretrial conference for the adjudicatory hearing. The report shall contain a social evaluation of the child and

the parents or other legal custodian and such other information as the court shall require.

(3) The report shall not be considered by the court for purposes of determining whether the child comes within the jurisdiction of the act. The report may be admitted into evidence at the adjudicatory hearing for other purposes.

(most recent amendment, 2005)

§16-1617. Investigation by multidisciplinary teams

(1) By January 1, 1997, the prosecuting attorney in each county shall be responsible for the development of an interagency multidisciplinary team or teams for investigation of child abuse and neglect referrals within each county. The teams shall consist of, but not be limited to, law enforcement personnel, department of health and welfare child protection risk assessment staff, a representative of the prosecuting attorney's office, and any other person deemed to be necessary due to his special training in child abuse investigation. Other persons may participate in investigation of particular cases at the invitation of the team and as determined necessary, such as medical personnel, school officials, mental health workers, personnel from domestic violence programs, persons knowledgeable about adaptive equipment and supportive services for parents or guardians with disabilities or the guardian ad litem program.

(2) The teams shall develop a written protocol for investigation of child abuse cases and for interviewing alleged victims of such abuse or neglect, including protocols for investigations involving a family member with a disability. Each team shall develop written agreements signed by member agencies, specifying the role of each agency, procedures to be followed to assess risks to the child and criteria and procedures to be followed to ensure the child victim's safety including removal of the alleged offender.

(3) Each team member shall be trained in risk assessment, dynamics of child abuse and interviewing and investigatory techniques.

(4) Each team shall classify, assess and review a representative selection of cases referred to either the department or to law enforcement entities for investigation of child abuse or neglect.

(5) Each multidisciplinary team shall develop policies that provide for an independent review of investigation procedures utilized in cases upon completion of any court actions on those cases. The procedures shall include independent citizen input. Nonoffending parents of child abuse victims shall be notified of the review procedure.

(6) Prosecuting attorneys of the various counties may determine that multidisciplinary teams may be most effectively established through the use of joint exercise of powers agreements among more than one (1) county and such agreements are hereby authorized.

(7) Lack of review by a multidisciplinary team of a particular case does not defeat the jurisdiction of the court.

(most recent amendment, 2005)

§16-1618. Investigative interviews of alleged child abuse victims

Unless otherwise demonstrated by good cause, all investigative or risk assessment interviews of alleged victims of child abuse will be documented by audio or video taping whether conducted by personnel of law enforcement entities or the department of health and welfare. The absence of such audio or video taping shall not limit the admissibility of such evidence in any related court proceeding.

(most recent amendment, 2005)

§16-1619. Adjudicatory hearing--Conduct of hearing--Consolidation

(1) When a petition has been filed, the court shall set an adjudicatory hearing to be held no later than thirty (30) days after the filing of the petition.

(2) A pretrial conference shall be held outside the presence of the court within three (3) to five (5) days before the adjudicatory hearing. Investigative reports required under section 16-1616, Idaho Code, shall be delivered to the court with copies to each of the parents and other legal custodians, guardian ad litem and attorney for the child prior to the pretrial conference.

(3) At the adjudicatory hearing, parents or guardians with disabilities shall have the right to introduce admissible evidence regarding how use of adaptive equipment or supportive services may enable the parent or guardian to carry out the responsibilities of parenting the child by addressing the reason for the removal of the child.

(4) If a preponderance of the evidence at the adjudicatory hearing shows that the child comes within the court's jurisdiction under this chapter upon the grounds set forth in section 16-1603, Idaho Code, the court shall so decree and in its decree shall make a finding on the record of the facts and conclusions of law upon which it exercises jurisdiction over the child.

(5) Upon entering its decree the court shall consider any information relevant to the disposition of the child but in any event shall:

(a) Place the child under the protective supervision of the department for an indeterminate period not to exceed the child's eighteenth birthday; or

(b) Vest legal custody in the department or other authorized agency subject to residual parental rights and subject to full judicial review by the court of all matters relating to the custody of the child by the department or other authorized agency.

(6) If the court vests legal custody in the department or other authorized agency, the court shall make detailed written findings based on facts in the record, that, in addition to the findings required in subsection (4) of this section, continuation of residence in the home would be contrary to the welfare of the child and that vesting legal custody with the department or other authorized agency would be in the best interests of the child. In addition the court shall make detailed written findings based on facts in the record as to whether the department made reasonable efforts to prevent the placement of the child in foster care, including findings, when appropriate, that:

(a) Reasonable efforts were made but were not successful in eliminating the need for foster care placement of the child;

(b) The department made reasonable efforts to prevent removal but was not able to safely provide preventive services;

(c) Reasonable efforts to temporarily place the child with related persons were made but were not successful; or

(d) Reasonable efforts to reunify the child with one (1) or both parents were not required because aggravated circumstances were present. If aggravated circumstances are found, a permanency hearing for the child shall be held within thirty (30) days of the determination of aggravated circumstances.

(7) A decree vesting legal custody in the department shall be binding upon the department and may continue until the child's eighteenth birthday.

(8) A decree vesting legal custody in an authorized agency other than the department shall be for a period of time not to exceed the child's eighteenth birthday, and on such other terms as the court shall state in its decree to be in the best interests of the child and which the court finds to be acceptable to such authorized agency.

(9) In order to preserve the unity of the family system and to ensure the best interests of the child whether issuing an order of protective supervision or an order of legal custody, the court may consider extending or initiating a protective order as part of the decree. The

protective order shall be determined as in the best interests of the child and upon a showing of continuing danger to the child. The conditions and terms of the protective order shall be clearly stated in the decree.

(10) If the court does not find that the child comes within the jurisdiction of this chapter pursuant to subsection (4) of this section it shall dismiss the petition.

(most recent amendment, 2013)

§16-1620. Finding of aggravated circumstances--Permanency plan--Hearing

(1) After a judicial determination that reasonable efforts to return the child to his home are not required because aggravated circumstances were found to be present, the court shall hold a permanency hearing within thirty (30) days after the finding. The department shall prepare a permanency plan and file the permanency plan with the court at least five (5) days prior to the permanency hearing. If the permanency plan has a goal of termination of parental rights and adoption, the department shall file the petition to terminate as required in section 16-1624(2), Idaho Code. Copies of the permanency plan shall be delivered to the parents and other legal guardians, prosecuting attorney or deputy attorney general, the guardian ad litem and attorney for the child.

(2) The permanency plan shall have a permanency goal of termination of parental rights and adoption, guardianship or another planned permanent living arrangement and shall set forth the reasonable efforts necessary to finalize the permanency goal.

(3) The permanency plan shall also:

(a) Identify the services to be provided to the child, including services to identify and meet any special educational, emotional, physical or developmental needs the child may have, to assist the

child in adjusting to the placement or to ensure the stability of the placement;

(b) Address all options for permanent placement of the child, including consideration of options for in-state and out-of-state placement of the child;

(c) Address the advantages and disadvantages of each option and include a recommendation as to which option is in the child's best interest;

(d) Specifically identify the actions necessary to implement the recommended option;

(e) Specifically set forth a schedule for accomplishing the actions necessary to implement the permanency goal;

(f) Consider the options for maintaining the child's connection to the community, including individuals with a significant relationship to the child, and organizations or community activities with which the child has a significant connection; and

(g) In the case of a child who has attained the age of sixteen (16) years, identify the services needed to assist the child to make the transition from foster care to independent living.

(4) The court shall hold a permanency hearing to determine whether the best interest of the child is served by adopting, rejecting or modifying the permanency plan proposed by the department.

(5) Notice of the permanency hearing shall be provided to the parents and other legal guardians, prosecuting attorney or deputy attorney general, guardian ad litem, attorney for the child, the department and foster parents; provided however, that foster parents are not thereby made parties to the child protective act action.

(6) The permanency plan as approved by the court shall be entered into the record as an order of the court. The order may include interim and final deadlines for implementing the permanency plan and finalizing the permanency goal.

(7) If the permanency goal is not termination of parental rights and adoption or guardianship, the court may approve a permanency plan with a permanency goal of another planned permanent living arrangement only upon written case-specific findings that specify why a more permanent plan is not in the best interest of the child.

(8) The court may authorize the department to suspend further efforts to reunify the child with the child's parent, pending further order of the court, when a petition or other motion is filed in a child protection proceeding seeking a determination of the court that aggravated circumstances were present.

(most recent amendment, 2013)

§16-1621. Case plan hearing--No finding of aggravated circumstances

(1) In every case in which the child is determined to be within the jurisdiction of the court, and there is no judicial determination that aggravated circumstances were present, the department shall prepare a written case plan, including cases in which the parent(s) is incarcerated. The court shall schedule a case plan hearing to be held within thirty (30) days after the adjudicatory hearing. The case plan shall be filed with the court no later than five (5) days prior to the case plan hearing. Copies of the case plan shall be delivered to the parents and other legal guardians, the prosecuting attorney or deputy attorney general, the guardian ad litem and attorney for the child. The court shall hold a case plan hearing to determine whether the best interest of the child is served by adopting, rejecting or modifying the case plan proposed by the department.

(2) Notice of the case plan hearing shall be provided to the parents, and other legal guardians, the prosecuting attorney or deputing attorney general, guardian ad litem, attorney for the child, the department and foster parents. Although foster parents are provided notice of this hearing, they are not parties to the child protective act action.

(3) If the child is placed in the legal custody of the department, the case plan filed by the department shall set forth reasonable efforts that will be made to make it possible for the child to return home. The case plan shall also:

(a) Identify the services to be provided to the child, including services to identify and meet any special educational, emotional, physical or developmental needs the child may have, to assist the child in adjusting to the placement or to ensure the stability of the placement.

(b) Address options for maintaining the child's connection to the community, including individuals with a significant relationship to the child, and organizations or community activities with which the child has a significant connection.

(c) Include a goal of reunification and a plan for achieving that goal. The reunification plan shall identify all issues that need to be addressed before the child can safely be returned home without department supervision. The court may specifically identify issues to be addressed by the plan. The reunification plan shall specifically identify the tasks to be completed by the department, each parent or others to address each issue, including services to be made available by the department to the parents and in which the parents are required to participate, and deadlines for completion of each task. The case plan shall state with specificity the role of the department toward each parent. When appropriate, the reunification plan should identify terms for visitation, supervision of visitation and child support.

(d) Include a concurrent permanency goal and a plan for achieving that goal. The concurrent permanency goal may be one (1) of the following: termination of parental rights and adoption, guardianship or another planned permanent living arrangement. The concurrent plan shall:

(i) Address all options for permanent placement of the child, including consideration of options for in-state and out-of-state placement of the child;

(ii) Address the advantages and disadvantages of each option and include a recommendation as to which option is in the child's best interest;

(iii) Specifically identify the actions necessary to implement the recommended option;

(iv) Specifically set forth a schedule for accomplishing the actions necessary to implement the concurrent permanency goal;

(v) Address options for maintaining the child's connection to the community, including individuals with a significant relationship to the child, and organizations or community activities with which the child has a significant connection;

(vi) In the case of a child who has attained the age of sixteen (16) years, include the services needed to assist the child to make the transition from foster care to independent living; and

(vii) Identify further investigation necessary to identify or assess other options for permanent placement, to identify actions necessary to implement the recommended placement or to identify options for maintaining the child's significant connections.

(4) If the child has been placed under protective supervision of the department, the case plan, filed by the department, shall:

(a) Identify the services to be provided to the child, including services to identify and meet any special educational, emotional, physical or developmental needs the child may have, to assist the child in adjusting to the placement or to ensure the stability of the placement. The plan shall also address options for maintaining the child's connection to the community, including individuals with a significant relationship to the child, and organizations or community activities with which the child has a significant connection.

(b) Identify all issues that need to be addressed to allow the child to remain at home without department supervision. The court may specifically identify issues to be addressed by the plan. The case plan shall specifically identify the tasks to be completed by the

department, the parents or others to address each issue, including services to be made available by the department to the parents and in which the parents are required to participate, and deadlines for completion of each task. The plan shall state with specificity the role of the department toward each parent.

(5) The case plan, as approved by the court, shall be entered into the record as an order of the court. The order may include interim and final deadlines for implementing the case plan and finalizing the permanency goal. The court's order shall provide that reasonable efforts shall be made to reunify the family in a timely manner in accordance with the case plan. Unless the child has been placed under the protective supervision of the department, the court's order shall also require the department to simultaneously take steps to accomplish the goal of reunification and the concurrent permanency goal.

(most recent amendment, 2013)

§16-1622. Review hearings--Annual permanency hearings

(1) Review hearing.

(a) A hearing for review of the child's case and permanency plan shall be held no later than six (6) months after entry of the court's order taking jurisdiction under this act and every six (6) months thereafter. The purpose of the review hearing is to determine:

(i) The safety of the child;

(ii) The continuing necessity for and appropriateness of the placement;

(iii) The extent of compliance with the case plan;

(iv) The extent of progress that has been made toward alleviating or mitigating the causes necessitating placement in foster care; and

(v) When reasonable, to project a likely date by which the child may be safely returned to and maintained in the home or placed in another permanent placement.

(b) A motion for revocation or modification of an order issued under section 16-1619, Idaho Code, may be filed by the department or any party; provided that no motion may be filed by the respondents under this section within three (3) months of a prior hearing on care and placement of the child. Notice of a motion for review of a child's case shall be provided to the parents and other legal guardians, the prosecuting attorney or deputy attorney general, guardian ad litem, attorney for the child, the department and foster parents.

(c) If the motion filed under paragraph (b) of this subsection alleges that the child's best interests are no longer served by carrying out the order issued under section 16-1619, Idaho Code, or that the department or other authorized agency has failed to provide adequate care for the child, the court shall hold a hearing on the motion.

(d) The department or authorized agency may move the court at any time to vacate any order placing a child in its custody or under its protective supervision.

(2) Permanency plan and hearing.

(a) The permanency plan shall include a permanency goal. The permanency goal may be one (1) of the following: continued efforts at reunification, in the absence of a judicial determination of aggravated circumstances; or termination of parental rights and adoption, guardianship or another planned permanent living arrangement. Every permanency plan shall include the information set forth in section 16-1621(3)(a), Idaho Code. If the permanency plan has reunification as a permanency goal, the plan shall include information set forth in section 16-1621(3)(b), Idaho Code. If the permanency plan has a permanency goal other than reunification, the plan shall include the information set forth in section 16-1621(3)(c), Idaho Code. The court may approve a permanency plan which includes a primary goal and a concurrent goal.

(b) A permanency hearing shall be held no later than twelve (12) months from the date the child is removed from the home or the date of the court's order taking jurisdiction under this chapter,

whichever occurs first, and at least every twelve (12) months thereafter, so long as the court has jurisdiction over the child. The court shall approve, reject or modify the permanency plan of the department and review progress in accomplishing the permanency goal. A permanency hearing may be held at any time and may be combined with the review hearing required under subsection (1) of this section.

(c) The court shall make written case-specific findings whether the department made reasonable efforts to finalize the primary permanency goal in effect for the child. Lack of reasonable efforts to reunify may be a basis for an order approving a permanency plan with a permanency goal of reunification.

(d) Where the permanency goal is not reunification, the hearing shall include a review of the department's consideration of options for in-state and out-of-state placement of the child. In the case of a child in an out-of-state placement, the court shall determine whether the out-of-state placement continues to be appropriate and in the best interest of the child.

(e) In the case of a child who has attained the age of sixteen (16) years, the hearing shall include a determination of the services needed to assist the child to make the transition from foster care to independent living.

(f) The court may approve a primary permanency goal of another planned permanent living arrangement only upon written, case-specific findings that there are compelling reasons why a more permanent goal is not in the best interests of the child.

(g) If the child has been in the temporary or legal custody of the department for fifteen (15) of the most recent twenty-two (22) months, the department shall file, prior to the last day of the fifteenth month, a petition to terminate parental rights, unless the court finds that:

(i) The child is placed permanently with a relative;

(ii) There are compelling reasons why termination of parental rights is not in the best interests of the child; or

(iii) The department has failed to provide reasonable efforts to reunify the child with his family.

(h) The court may authorize the department to suspend further efforts to reunify the child with the child's parent, pending further order of the court, when a permanency plan is approved by the court and the permanency plan does not include a permanency goal of reunification.

(most recent amendment, 2013)

§16-1623. Amended disposition--Removal during protective supervision

(1) Where the child has been placed under the protective supervision of the department pursuant to section 16-1619, Idaho Code, the child may be removed from his or her home under the following circumstances:

(a) A peace officer may remove the child where the child is endangered in his surroundings and prompt removal is necessary to prevent serious physical or mental injury to the child; or

(b) The court has ordered, based upon facts presented to the court, that the child should be removed from his or her present conditions or surroundings because continuation in such conditions or surroundings would be contrary to the welfare of the child and vesting legal custody in the department or other authorized agency would be in the child's best interests.

(2) Upon removal, the child shall be taken to a place of shelter care.

(3) When a child under protective supervision is removed from his home, a hearing shall be held within forty-eight (48) hours of the child's removal from the home, except for Saturdays, Sundays and holidays. At the hearing, the court shall determine whether to vest legal custody in the department or other authorized agency pursuant to section 16-1619(5)(b), Idaho Code.

(4) In determining whether to vest legal custody in the department or other authorized agency, the court shall consider any information relevant to the redisposition of the child, and in any event shall make

detailed written findings based upon facts in the record as required by section 16-1619(6), Idaho Code.

(5) An order vesting legal custody with the department or other authorized agency under this section shall be treated for all purposes as if such an order had been part of the court's original decree under section 16-1619, Idaho Code. The department shall prepare a written case plan and the court shall hold a case plan hearing within thirty (30) days pursuant to section 16-1621, Idaho Code.

(6) Each of the parents or legal guardians from whom the child was removed shall be given notice of the redisposition hearing in the same time and manner as required for notice of a shelter care hearing under section 16-1615(2) and (3), Idaho Code.

(7) The redisposition hearing may be continued for a reasonable time upon the request of the parties.

(most recent amendment, 2013)

§16-1624. Termination of parent-child relationship

(1) If the child has been placed in the legal custody of the department or under its protective supervision pursuant to section 16-1619, Idaho Code, the department may petition the court for termination of the parent and child relationship in accordance with chapter 20, title 16, Idaho Code. A petition to terminate parental rights shall be filed in the child protective act case.

(2) A petition to terminate parental rights shall be filed within thirty (30) days of an order approving a permanency plan with a permanency goal of termination of parental rights and adoption.

(3) Unless there are compelling reasons it would not be in the best interest of the child, the department shall be required to file a petition to terminate parental rights within thirty (30) days of a judicial

determination that an infant has been abandoned or that reasonable efforts are not required because aggravated circumstances were present.

(4) The department shall join as a party to the petition if such a petition to terminate is filed by another party; as well as to concurrently identify, recruit, process and approve a qualified family for adoption unless it is determined that such actions would not be in the best interest of the child, or the child is placed with a fit and willing relative.

(5) If termination of parental rights is granted and the child is placed in the guardianship or legal custody of the department, the court, upon petition, shall conduct a hearing as to the future status of the child within twelve (12) months of the order of termination of parental rights, and every twelve (12) months subsequently until the child is adopted or is in a placement sanctioned by the court.

(6) The court may authorize the department to suspend further efforts to reunify the child with the child's parent, pending further order of the court, when a petition to terminate parental rights has been filed with regard to the child.

(most recent amendment, 2013)

§16-1625. Appeal--Effect on custody

(1) An aggrieved party may appeal the following orders or decrees of the court to the district court, or may seek a direct permissive appeal to the supreme court as provided by rules adopted by the supreme court:

(a) An adjudicatory decree entered pursuant to section 16-1619, Idaho Code;

(b) Any order subsequent to the adjudicatory decree that vests legal custody of the child in the department or other authorized agency;

(c) Any order subsequent to the adjudicatory decree that authorizes or mandates the department to cease reasonable efforts

to make it possible to return the child to his home, including an order finding aggravated circumstances; or
(d) An order of dismissal.

(2) Where the order affects the custody of a child, the appeal shall be heard at the earliest practicable time. The pendency of an appeal shall not suspend the order of the court regarding a child, and it shall not discharge the child from the legal custody of the authorized agency to whose care he has been committed, unless otherwise ordered by the district court. No bond or undertaking shall be required of any party appealing to the district court under the provisions of this section. Any final order or judgment of the district court shall be appealable to the supreme court of the state of Idaho in the same manner as appeals in other civil actions. The filing of the notice of appeal shall not, unless otherwise ordered, stay the order of the district court.

(most recent amendment, 2013)

§16-1626. Court records

The court shall keep a record of all court proceedings under this chapter. The records shall be available only to parties to the proceeding, persons having full or partial custody of the subject child and authorized agencies providing protective supervision or having legal custody of the child. Any other person may have access to the records only upon permission by the court and then only if it is shown that such access is in the best interests of the child; or for the purpose of legitimate research. If the records are released for research purposes, the person receiving them must agree not to disclose any information which could lead to the identification of the child.

(most recent amendment, 2005)

§16-1627. Authorization of emergency medical treatment

(1) At any time whether or not a child is under the authority of the court, the court may authorize medical or surgical care for a child when:

(a) A parent, legal guardian or custodian is not immediately available and cannot be found after reasonable effort in the circumstances of the case; or

(b) A physician informs the court orally or in writing that in his professional opinion, the life of the child would be greatly endangered without certain treatment and the parent, guardian or other custodian refuses or fails to consent.

(2) If time allows in a situation under subsection (1)(b) of this section, the court shall cause every effort to be made to grant each of the parents or legal guardian or custodian an immediate informal hearing, but this hearing shall not be allowed to further jeopardize the child's life.

(3) In making its order under subsection (1) of this section, the court shall take into consideration any treatment being given the child by prayer through spiritual means alone, if the child or his parent, guardian or legal custodian are adherents of a bona fide religious denomination that relies exclusively on this form of treatment in lieu of medical treatment.

(4) After entering any authorization under subsection (1) of this section, the court shall reduce the circumstances, finding and authorization to writing and enter it in the records of the court and shall cause a copy of the authorization to be given to the physician or hospital, or both, that was involved.

(5) Oral authorization by the court is sufficient for care or treatment to be given by and shall be accepted by any physician or hospital. No physician or hospital nor any nurse, technician or other person under the direction of such physician or hospital shall be subject to criminal or civil liability for performance of care or treatment in reliance on the court's authorization, and any function performed thereunder shall be regarded as if it were performed with the child's and the parent's authorization.

(most recent amendment, 2005)

§16-1628. Support of committed child

(1) Whenever legal custody of a child is vested in someone other than his parents, after due notice to the parent or other persons legally obligated to care for and support the child, and after a hearing, the court may order and decree that the parent or other legally obligated person shall pay in such a manner as the court may direct a reasonable sum that will cover in whole or in part the support and treatment of the child after an order of temporary custody, if any, or the decree is entered. If the parent or other legally obligated person willfully fails or refuses to pay such sum, the court may proceed against him for contempt, or the order may be filed and shall have the effect of a civil judgment.

(2) All child support orders shall notify the obligor that the order will be enforced by income withholding pursuant to chapter 12, title 32, Idaho Code.

(3) Failure to include these provisions does not affect the validity of the support order or decree. The court shall require that the social security numbers of both the obligor and obligee be included in the order or decree.

(most recent amendment, 2012)

§16-1629. Powers and duties of the department

The department, working in conjunction with the court and other public and private agencies and persons, shall have the primary responsibility to implement the purpose of this chapter. To this end, the department is empowered and shall have the duty to do all things reasonably necessary to carry out the purpose of this chapter, including, but not limited to, the following:

(1) The department shall administer treatment programs for the protection and care of neglected, abused and abandoned children, and in so doing may place in foster care, shelter care, or other diagnostic, treatment, or care centers or facilities, children of

whom it has been given custody. The department is to be governed by the standards found in chapter 12, title 39, Idaho Code.

(2) On December 1, the department shall make an annual statistical report to the governor covering the preceding fiscal year showing the number and status of persons in its custody and including such other data as will provide sufficient facts for sound planning in the conservation of children and youth. All officials and employees of the state and of every county and city shall furnish the department, upon request, such information within their knowledge and control as the department deems necessary. Local agencies shall report in such uniform format as may be required by the department.

(3) The department shall be required to maintain a central registry for the reporting of child neglect, abuse and abandonment information. Provided however, that the department shall not retain any information for this purpose relating to a child, or parent of a child, abandoned pursuant to chapter 82, title 39, Idaho Code.

(4) The department shall make periodic evaluation of all persons in its custody or under its protective supervision for the purpose of determining whether existing orders and dispositions in individual cases shall be modified or continued in force. Evaluations may be made as frequently as the department considers desirable and shall be made with respect to every person at intervals not exceeding six (6) months. Reports of evaluation made pursuant to this section shall be filed with the court that has jurisdiction. Reports of evaluation shall be provided to persons having full or partial legal or physical custody of a child. Failure of the department to evaluate a person or to reevaluate him within six (6) months of a previous examination shall not of itself entitle the person to a change in disposition but shall entitle him, his parent, guardian or custodian or his counsel to petition the court pursuant to section 16-1622, Idaho Code.

(5) In a consultive capacity, the department shall assist communities in the development of constructive programs for the protection, prevention and care of children and youth.

(6) The department shall keep written records of investigations, evaluations, prognoses and all orders concerning disposition or treatment of every person over whom it has legal custody or under its protective supervision. Department records shall be subject to disclosure according to chapter 3, title 9, Idaho Code, unless otherwise ordered by the court, the person consents to the disclosure, or disclosure is necessary for the delivery of services to the person. Notwithstanding the provisions restricting disclosure or the exemptions from disclosure provided in chapter 3, title 9, Idaho Code, all records pertaining to investigations, the rehabilitation of youth, the protection of children, evaluation, treatment and/or disposition records pertaining to the statutory responsibilities of the department shall be disclosed to any duly elected state official carrying out his official functions.

(7) The department shall establish appropriate administrative procedures for the processing of complaints of child neglect, abuse and abandonment received and for the implementation of the protection, treatment and care of children formally or informally placed in the custody of the department or under its protective supervision under this chapter including, but not limited to:

(a) Department employees whose job duties are related to the child protective services system under this chapter shall first be trained as to their obligations under this chapter regarding the protection of children whose health and safety may be endangered. The curriculum shall include information regarding their legal duties, how to conduct their work in conformity with the requirements of this chapter, information regarding applicable federal and state laws with regard to the rights of the child, parent and others who may be under investigation under the child protective services system, and

the applicable legal and constitutional parameters within which they are to conduct their work.

(b) Department employees whose job duties are related to the child protective services system shall advise the individual of the complaints or allegations made against the individual at the time of the initial contact, consistent with protecting the identity of the referent.

(8) The department having been granted legal custody of a child, subject to the judicial review provisions of this subsection, shall have the right to determine where and with whom the child shall live, provided that the child shall not be placed outside the state without the court's consent. Provided however, that the court shall retain jurisdiction over the child, which jurisdiction shall be entered on any order or petition granting legal custody to the department, and the court shall have jurisdiction over all matters relating to the child. The department shall not place the child in the home from which the court ordered the child removed without first obtaining the approval of the court.

(9) The department shall give to the court any information concerning the child that the court may at any time require, but in any event shall report the progress of the child under its custody or under its protective supervision at intervals of not to exceed six (6) months. The department shall file with the court at least five (5) days prior to the permanency hearing either under section 16-1622, Idaho Code, or, in the case of a finding of aggravated circumstances, section 16-1620, Idaho Code, the permanency plan and recommendations of the department.

(10) The department shall establish appropriate administrative procedures for the conduct of administrative reviews and hearings as required by federal statute for all children committed to the department and placed in out of the home care.

(11) At any time the department is considering a placement pursuant to this chapter, the department shall make a reasonable effort to place the child in the least restrictive environment to the child and in so doing shall consider, consistent with the best interest and special needs of the child, placement priority of the child in the following order:

(a) A fit and willing relative.

(b) A fit and willing nonrelative with a significant relationship with the child.

(c) Foster parents and other persons licensed in accordance with chapter 12, title 39, Idaho Code.

(most recent amendment, 2013)

§16-1630. Other duties of the department--Exceptions

(1) Nothing in this chapter shall be construed as modifying duties of the department as described in sections 56-204A and 56-204B, Idaho Code.

(2) Nothing in this chapter shall be construed as assigning or imposing duties or responsibilities on the department by those provisions of this chapter relating to guardian ad litem.

(most recent amendment, 2005)

§16-1631. Authorization for department to act

(1) Upon receiving information that a child may be abused, neglected or abandoned, the department shall cause such investigation to be made in accordance with this chapter as is appropriate. In making the investigation the department shall use its own resources, and may enlist the cooperation of peace officers for phases of the investigation for which they are better equipped. Upon satisfying itself as to the course of action which should be pursued to best accord with the purpose of this chapter, the department shall:

(a) Resolve the matter in such informal fashion as is appropriate under the circumstances; or

(b) Seek to enter a voluntary agreement with all concerned persons to resolve the problem in such a manner that the child will remain in his own home; or

(c) Refer the matter to the prosecutor or attorney general with recommendation that appropriate action be taken under this chapter; or

(d) Refer the matter to the prosecutor or attorney general with recommendation that appropriate action be taken under other laws.

(2) In the event that the department concludes that a voluntary agreement pursuant to subsection (1)(b) of this section should be used, the agreement shall be in writing, shall state the behavioral basis of each parent and necessary third person, shall contain such other terms as the department and each parent having joint custody shall deem appropriate under the circumstances, shall utilize such resources as are available to the department from any source and are considered appropriate to the situation, shall specify the services or treatment to be undertaken, shall be signed by all persons, including:

(a) The child if appropriate;
(b) Every parent having joint custody of the subject child;
(c) Any other full or part-time resident of the home;
(d) All other persons the department considers necessary to the agreement's success;

and shall specify the responsibilities of each party to the agreement, which responsibilities shall be thoroughly explained to each person orally. The agreement shall not run for more than one (1) year. Copies shall be given to all signatories.

(most recent amendment, 2005)

§16-1632. Guardian ad litem coordinator--Duties--Annual report

(1) Under rules, policies and procedures adopted by the Idaho supreme court which may include, but are not limited to, provisions establishing fiscal controls and requiring compliance with all or part

of the standards adopted by the national court appointed special advocate association, the persons or entities receiving moneys from the grant administrator to coordinate a guardian ad litem program in a judicial district may be required by the terms of the grant to perform any or all of the following duties:

(a) To establish, maintain and coordinate a districtwide guardian ad litem program consistent with the provisions of this chapter;

(b) To furnish the necessary administrative and staffing services as may from time to time be required;

(c) To act as a coordinator for the purpose of providing guardians ad litem for children brought within the purview of this chapter;

(d) To seek to have each child brought within the purview of this chapter available to him a guardian ad litem throughout each stage of any child protective proceeding;

(e) To establish a program for attorneys to represent guardians ad litem, whether or not appointed by the court in conjunction with the local, district wide, and state bar associations;

(f) To the extent possible to establish a district wide program to recruit volunteer guardians ad litem sufficient to provide services in each county of the judicial district;

(g) In conjunction with the department, prosecuting attorneys and city and county law enforcement officials, mental health professionals, social workers, school counselors and the medical community, the coordinators may assist in the development and implementation of a statewide uniform protocol for the investigation of allegations of abuse, neglect or abandonment pursuant to the provisions of this chapter;

(h) To develop uniform criteria to screen, select, train and remove guardians ad litem;

(i) To establish a priority list of those proceedings under this chapter in which a guardian ad litem shall be appointed in districts where there are insufficient numbers of guardians ad litem.

(2) Each guardian ad litem coordinator shall submit an annual report for the preceding fiscal year to the grant administrator for delivery to the legislature no later than ten (10) days following the start of each regular session. Such report shall contain the number and type of

proceedings filed in the district under this chapter, the number of children subject to proceedings in the district under this chapter and the number of appointed guardians ad litem, the nature of services the guardians ad litem provided, the number of guardians ad litem trained in each district, the number of hours of service provided by guardians ad litem and attorneys and a complete financial statement for the past year and financial support requirements for the next fiscal year.

(3) The coordinators and staff members of any guardian ad litem program receiving moneys from the grant administrator, and any persons volunteering to serve as guardians ad litem in such programs, shall submit to a fingerprint-based criminal history check through any law enforcement office in the state providing such service. The criminal history check shall include a statewide criminal identification bureau check, federal bureau of investigation criminal history check, and statewide sex offender registry check. A record of all background checks shall be maintained in the office of the supreme court of the state of Idaho with a copy going to the applicant.

(most recent amendment, 2007)

§16-1633. Guardian ad litem--Duties

Subject to the direction of the court, the guardian ad litem shall advocate for the best interests of the child and shall have the following duties which shall continue until resignation of the guardian ad litem or until the court removes the guardian ad litem or no longer has jurisdiction, whichever first occurs:

(1) To conduct an independent factual investigation of the circumstances of the child including, without limitation, the circumstances described in the petition.

(2) To file with the court prior to any adjudicatory, review or permanency hearing a written report stating the results of the investigation, the guardian ad litem's recommendations and such other information as the court may require. In all post-adjudicatory reports, the guardian ad litem shall inquire of any child capable of expressing his or her wishes regarding permanency and, when

applicable, the transition from foster care to independent living and shall include the child's express wishes in the report to the court. The guardian ad litem's written report shall be delivered to the court, with copies to all parties to the case at least five (5) days before the date set for the hearing. The report submitted prior to the adjudicatory hearing shall not be admitted into evidence at the hearing and shall be used by the court only for disposition if the child is found to be within the purview of the act.

(3) To act as an advocate for the child for whom appointed at each stage of proceedings under this chapter. To that end, the guardian ad litem shall participate fully in the proceedings and to the degree necessary to adequately advocate for the child's best interests, and shall be entitled to confer with the child, the child's siblings, the child's parents and any other individual or entity having information relevant to the child protection case.

(4) To monitor the circumstances of a child and to assure that the terms of the court's orders are being fulfilled and remain in the best interest of the child.

(5) To maintain all information regarding the case confidential and to not disclose the same except to the court or to other parties to the case.

(6) Such other and further duties as may be expressly imposed by the court order.

(most recent amendment, 2010)

§16-1634. Guardian ad litem--Rights and powers

The guardian ad litem will have the following rights and powers, which shall continue until resignation of the guardian ad litem or until the court removes the guardian ad litem or no longer has jurisdiction, whichever first occurs:

(1) The guardian ad litem, if represented by counsel, may file pleadings, motions, memoranda and briefs on behalf of the child, and shall have all of the rights of a party whether conferred by statute, rule of court or otherwise.

(2) All parties to any proceeding under this chapter shall promptly notify the guardian ad litem and the guardian's attorney of all hearings, staffings, investigations, depositions and significant changes of circumstances of the child.

(3) Except to the extent prohibited or regulated by federal law or by the provisions of chapter 82, title 39, Idaho Code, upon presentation of a copy of the order appointing guardian ad litem, any person or agency, including, without limitation, any hospital, school, organization, department of health and welfare, doctor, nurse, or other health care provider, psychologist, psychiatrist, police department or mental health clinic shall permit the guardian ad litem to inspect and copy pertinent records necessary for the proceeding for which the guardian is appointed relating to the child and parent without consent of the child or parents.

(most recent amendment, 2005)

§16-1635. Immunity from liability

Any person appointed as a guardian ad litem, the coordinator, or a guardian ad litem volunteer program employee shall be personally immune from any liability for acts, omissions or errors in the same manner as if such person were a volunteer officer or director under the provisions of section 6-1605, Idaho Code.

(most recent amendment, 2005)

§16-1636. Compliance with federal law

For the purposes of the child abuse prevention and treatment act, 42 U.S.C. sections 5101 et seq., grant to this state under public law no. 93-247, or any related state or federal legislation, a guardian ad litem or other person appointed pursuant to section 16-1614, Idaho Code, shall be deemed a guardian ad litem to represent the interests of the minor in proceedings before the court. Any provisions of this chapter which shall cause this state to lose federal funding shall be considered null and void.

(most recent amendment, 2005)

§16-1637. Exemption

Any person appointed as a guardian ad litem by court order shall be exempt from the provisions of chapter 32, title 54, Idaho Code.

(most recent amendment, 2005)

§16-1638. Guardian ad litem account--Creation

(1) There is hereby created an account in the agency asset fund in the state treasury to be designated the guardian ad litem account.

(2) The account shall consist of:

(a) Moneys appropriated to the account;

(b) Donations, gifts and grants to the account from any source; and

(c) Any other moneys which may hereafter be provided by law.

(3) Moneys in the account may be expended for the purposes provided in sections 16-1632 through 16-1638, Idaho Code. Interest earned on the investment of idle money in the guardian ad litem account shall be returned to the guardian ad litem account.

(4) Disbursements of moneys from the account shall be by appropriation from the legislature to the supreme court, which moneys shall be used for the payment of grants to qualified recipients and for expenses incurred for carrying out the provisions of this chapter.

(most recent amendment, 2007)

§16-1639. Guardian ad litem grants

The grant administrator is hereby authorized and directed to award and administer grants from the money which shall be from time to time available to the grant administrator from the guardian ad litem account. The foregoing power and authorization shall be subject to requirements imposed by the supreme court and the following provisions:

(1) Grants may be made available to any person, organization, corporation, or agency for any of the following purposes:

(a) To enable such entity to act as the guardian ad litem coordinator in any judicial district.

(b) To enable such entity to recruit, organize and administer a panel of guardians ad litem and volunteer lawyers to represent guardians ad litem.

(c) To enable such entity to recruit, organize, train and support persons or entities to act as guardian ad litem coordinators in judicial districts which do not yet have guardian ad litem coordinators.

(d) To enable such entity to pay the administrative and other miscellaneous expenses incurred in carrying out the provisions of the guardian ad litem program.

(2) The grant administrator shall endeavor in allocating available funds to foster the development and operation of a guardian ad litem program in each judicial district in the state; provided, however, the grant administrator shall have no obligation to seek out or organize guardian ad litem coordinators or persons willing to act as such in judicial districts lacking a guardian ad litem coordinator.

(3) Funds available to the grant administrator from the guardian ad litem account may be also used to pay the grant administrator's cost of performing its duties and obligations pursuant to this chapter.

(most recent amendment, 2007)

§16-1640. Administrative procedure act

Nothing in this chapter shall be construed to alter the requirements provided in chapter 52, title 67, Idaho Code.

(most recent amendment, 2005)

§16-1641. Construction

This chapter shall be liberally construed to accomplish the purposes herein set forth.

(most recent amendment, 2005)

§16-1642. Short title

This chapter shall be known and cited as the "Child Protective Act."

(most recent amendment, 2005)

§16-1643. Severability

The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this chapter.

(most recent amendment, 2005)

Idaho Termination of Parent-Child Relationship Statute

§16-2001. Purpose

(1) The purpose of this chapter is to:

(a) Provide for voluntary and involuntary severance of the parent and child relationship and for substitution of parental care and supervision by judicial process, thereby safeguarding the rights and interests of all parties concerned and promoting their welfare and that of the state of Idaho; and

(b) Provide permanency for children who are under the jurisdiction of the court through the child protective act, chapter 16, title 16, Idaho Code, where the court has found the existence of aggravated circumstances or that reasonable efforts to return the child to his or her home have failed.

(2) Implicit in this chapter is the philosophy that wherever possible family life should be strengthened and preserved and that the issue of severing the parent and child relationship is of such vital importance as to require a judicial determination in place of attempts at severance by contractual arrangements, express or implied, for the surrender and relinquishment of children. Nothing in this chapter shall be construed to allow discrimination in favor of, or against, on the basis of disability.

(most recent amendment, 2005)

§16-2002. Definitions

When used in this chapter, unless the text otherwise requires:

(1) "Court" means the district court or magistrate's division thereof or, if the context requires, a judge or magistrate thereof.

(2) "Child" or "minor" means any individual who is under the age of eighteen (18) years.

(3) "Neglected" means:

(a) Conduct as defined in section 16-1602(26), Idaho Code; or

(b) The parent(s) has failed to comply with the court's orders or the case plan in a child protective act case and:

(i) The department has had temporary or legal custody of the child for fifteen (15) of the most recent twenty-two (22) months; and

(ii) Reunification has not been accomplished by the last day of the fifteenth month in which the child has been in the temporary or legal custody of the department.

(4) "Abused" means conduct as defined in section 16-1602(1), Idaho Code.

(5) "Abandoned" means the parent has willfully failed to maintain a normal parental relationship including, but not limited to, reasonable support or regular personal contact. Failure of the parent to maintain this relationship without just cause for a period of one (1) year shall constitute prima facie evidence of abandonment under this section; provided however, where termination is sought by a grandparent seeking to adopt the child, the willful failure of the parent to maintain a normal parental relationship as provided herein without just cause for six (6) months shall constitute prima facie evidence of abandonment.

(6) "Legal custody" means status created by court order which vests in a custodian the following rights and responsibilities:

(a) To have physical custody and control of the child and to determine where and with whom the child shall live;

(b) To supply the child with food, clothing, shelter and incidental necessities;

(c) To provide the child with care, education and discipline; and

(d) To authorize medical, dental, psychiatric, psychological and other remedial care and treatment for the child, including care and treatment in a facility with a program of services for children;

provided that such rights and responsibilities shall be exercised subject to the powers, rights, duties and responsibilities of the guardian of the person.

(7) "Guardianship of the person" means those rights and duties imposed upon a person appointed as guardian of a minor under the laws of Idaho. It includes but is not necessarily limited either in number or kind to:

(a) The authority to consent to marriage, to enlistment in the armed forces of the United States, and to major medical, psychiatric and surgical treatment; to represent the minor in legal actions; and to make other decisions concerning the child of substantial legal significance;

(b) The authority and duty of reasonable visitation, except to the extent that such right of visitation has been limited by court order;

(c) The rights and responsibilities of legal custody except where legal custody has been vested in another individual or in an authorized child placement agency;

(d) When the parent and child relationship has been terminated by judicial decree with respect to the parents, or only living parent, or when there is no living parent, the authority to consent to the adoption of the child and to make any other decision concerning the child which the child's parents could make.

(8) "Guardian ad litem" means a person appointed by the court pursuant to section 16-1614 or 5-306, Idaho Code.

(9) "Authorized agency" means the department, a local agency, a person, an organization, corporation, benevolent society or association licensed or approved by the department or the court to receive children for control, care, maintenance or placement.

(10) "Department" means the department of health and welfare and its authorized representatives.

(11) "Parent" means:

(a) The birth mother or the adoptive mother;

(b) The adoptive father;

(c) The biological father of a child conceived or born during the father's marriage to the birth mother; and

(d) The unmarried biological father whose consent to an adoption of the child is required pursuant to section 16-1504, Idaho Code.

(12) "Presumptive father" means a man who is or was married to the birth mother and the child is born during the marriage or within three hundred (300) days after the marriage is terminated.

(13) "Parent and child relationship" includes all rights, privileges, duties and obligations existing between parent and child, including inheritance rights, and shall be construed to include adoptive parents.

(14) "Parties" includes the child and the petitioners.

(15) "Unmarried biological father," as used in this chapter and chapter 15, title 16, Idaho Code, means the biological father of a child who was not married to the child's mother at the time the child was conceived or born.

(16) "Unmarried biological mother," as used in this chapter, means the biological mother of a child who was not married to the child's biological father at the time the child was conceived or born.

(17) "Disability" means, with respect to an individual, any mental or physical impairment which substantially limits one (1) or more major life activities of the individual including, but not limited to, self-care, manual tasks, walking, seeing, hearing, speaking, learning, or working, or a record of such an impairment, or being regarded as having such an impairment. Disability shall not include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, other sexual behavior disorders, or substance use disorders, compulsive gambling, kleptomania, or pyromania. Sexual preference or orientation is not considered an impairment or disability. Whether an impairment substantially limits a major life activity shall be determined without consideration of the effect of corrective or mitigating measures used to reduce the effects of the impairment.

(18) "Adaptive equipment" means any piece of equipment or any item that is used to increase, maintain, or improve the parenting abilities of a parent with a disability.

(19) "Supportive services" means services which assist a parent with a disability to compensate for those aspects of their disability which affect their ability to care for their child and which will enable them to discharge their parental responsibilities. The term includes specialized or adapted training, evaluations, or assistance with effective use of adaptive equipment, and accommodations which allow a parent with a disability to benefit from other services, such as Braille texts or sign language interpreters.

(most recent amendment, 2013)

§16-2003. Jurisdiction

The court shall have exclusive original jurisdiction, other than as provided in title 32, Idaho Code, to hear petitions to terminate the parent and child relationship when the child is present in the state. When a court has jurisdiction over the child under the child protective act, chapter 16, title 16, Idaho Code, that court shall have exclusive jurisdiction of the action to terminate parental rights unless it consents to a different venue or jurisdiction in the best interests of the child.

(most recent amendment, 2005)

§16-2004. Petition--Who may file

A petition may be filed by:

a. Either parent when termination is sought with respect to the other parent.

b. The guardian of the person or the legal custodian of the child or person standing in loco parentis to the child.

c. An authorized agency.

d. Any other person possessing a legitimate interest in the matter.

(as added, 1963)

§16-2005. Conditions under which termination may be granted

(1) The court may grant an order terminating the relationship where it finds that termination of parental rights is in the best interests of the child and that one (1) or more of the following conditions exist:

(a) The parent has abandoned the child.

(b) The parent has neglected or abused the child.

(c) The presumptive parent is not the biological parent of the child.

(d) The parent is unable to discharge parental responsibilities and such inability will continue for a prolonged indeterminate period and will be injurious to the health, morals or well-being of the child.

(e) The parent has been incarcerated and is likely to remain incarcerated for a substantial period of time during the child's minority.

(2) The court may grant an order terminating the relationship and may rebuttably presume that such termination of parental rights is in the best interests of the child where:

(a) The parent caused the child to be conceived as a result of rape, incest, lewd conduct with a minor child under the age of sixteen (16) years, or sexual abuse of a child under the age of sixteen (16) years, as defined in sections 18-6101, 18-1508, 18-1506 and 18-6602, Idaho Code;

(b) The following circumstances are present:

(i) Abandonment, chronic abuse or chronic neglect of the child. Chronic neglect or chronic abuse of a child shall consist of abuse or neglect that is so extreme or repetitious as to indicate continuing the relationship would result in unacceptable risk to the health and welfare of the child;

(ii) Sexual abuse against a child of the parent. Sexual abuse, for the purposes of this section, includes any conduct described in section 18-1506, 18-1506A, 18-1507, 18-1508, 18-1508A, 18-6101, 18-6108 or 18-6608, Idaho Code;

(iii) Torture of a child; any conduct described in the code sections listed in section 18-8303(1), Idaho Code; battery or an

injury to a child that results in serious or great bodily injury to a child; voluntary manslaughter of a child, or aiding or abetting such voluntary manslaughter, soliciting such voluntary manslaughter or attempting or conspiring to commit such voluntary manslaughter;

(iv) The parent has committed murder, aided or abetted a murder, solicited a murder or attempted or conspired to commit murder; or

(c) The court determines the child to be an abandoned infant, except in a parental termination action brought by one (1) parent against another parent.

(3) The court may grant an order terminating the relationship if termination is found to be in the best interest of the parent and child.

(4) The court may grant an order terminating the relationship where a consent to termination in the manner and form prescribed by this chapter has been filed by the parent(s) of the child in conjunction with a petition for adoption initiated by the person or persons proposing to adopt the child, or where the consent to termination has been filed by a licensed adoption agency, no subsequent hearing on the merits of the petition shall be held. Consents required by this chapter must be witnessed by a district judge or magistrate of a district court, or equivalent judicial officer of the state, where a person consenting resides or is present, whether within or without the county, and shall be substantially in the following form:

IN THE DISTRICT COURT OF THE.... JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF....

In the Matter of the termination)
of the parental rights of)
.....)
.....)

I (we), the undersigned, being the.... of...., do hereby give my (our) full and free consent to the complete and absolute termination of my (our) parental right(s), to the said...., who was born....,...., unto...., hereby relinquishing completely and forever, all legal rights, privileges, duties and obligations, including all rights of inheritance to and from the said...., and I (we) do hereby expressly waive my (our) right(s) to hearing on the petition to terminate my (our) parental relationship with the said...., and respectfully request the petition be granted.

DATED:...., 20..

.....

STATE OF IDAHO)
) ss.
COUNTY OF....)

On this.... day of...., 20.., before me, the undersigned....,.... (Judge or Magistrate) of the District Court of the.... Judicial District of the state of Idaho, in and for the county of...., personally appeared...., known to me (or proved to me on the oath of....) to be the person(s) whose name(s) is (are) subscribed to the within instrument, and acknowledged to me that he (she, they) executed the same.
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

..... (District Judge or Magistrate)

The court shall accept a consent or a surrender and release executed in another state if:

(a) It is witnessed by a magistrate or district judge of the state where signed; or
(b) The court receives an affidavit or a certificate from a court of comparable jurisdiction stating that the consent or the surrender

and release was executed in accordance with the laws of the state in which it was executed, or the court is satisfied by other showing that the consent or surrender and release was executed in accordance with the laws of the state in which it was executed; or

(c) The court shall accept a termination or relinquishment from a sister state that has been ordered by a court of competent jurisdiction under like proceedings; or in any other manner authorized by the laws of a sister state. In a state where the father has failed to file notice of claim to paternity and willingness to assume responsibility as provided for pursuant to the laws of such state, and where such failure constitutes an abandonment of such child and constitutes a termination or relinquishment of the rights of the putative father, the court shall accept such failure as a termination in this state without further hearing on the merits, if the court is satisfied that such failure constitutes a termination or relinquishment of parental rights pursuant to the laws of that state.

(5) Unless a consent to termination signed by the parent(s) of the child has been filed by an adoption agency licensed in the state of Idaho, or unless the consent to termination was filed in conjunction with a petition for adoption of the child, the court shall hold a hearing.

(6) If the parent has a disability, as defined in this chapter, the parent shall have the right to provide evidence to the court regarding the manner in which the use of adaptive equipment or supportive services will enable the parent to carry out the responsibilities of parenting the child. Nothing in this section shall be construed to create any new or additional obligation on state or local governments to purchase or provide adaptive equipment or supportive services for parents with disabilities.

(most recent amendment, 2013)

§16-2006. Content of petition

The petition for the termination of the parent and child relationship shall include, to the best information and belief of the petitioner:

(1) The name and place of residence of the petitioner;

(2) The name, sex, date and place of birth, and residence of the child;

(3) The basis for the court's jurisdiction;

(4) The relationship of the petitioner to the child, or the fact that no relationship exists;

(5) The names, addresses, and dates of birth of the parents; and where the child is illegitimate, the names, addresses and dates of birth of both parents, if known to the petitioner;

(6) Where the child's parent is a minor, the names and addresses of said minor's parents or guardian of the person; and where the child has no parent or guardian, the relatives of the child to and including the second degree of kindred;

(7) The name and address of the person having legal custody or guardianship of the person or acting in loco parentis to the child or authorized agency having legal custody or providing care for the child;

(8) The grounds on which termination of the parent and child relationship is sought;

(9) The names and addresses of the persons and authorized agency or officer thereof to whom or to which legal custody or guardianship of the person of the child might be transferred;

(10) A list of the assets of the child together with a statement of the value thereof.

(as added, 1963)

§16-2007. Notice--Waiver--Guardian ad litem

(1) After a petition has been filed, the court shall set the time and place for hearing. The petitioner shall give notice to any person entitled to notice under section 16-1505, Idaho Code, the authorized agency having legal custody of the child and the guardian ad litem of the child and of a parent. The petitioner shall give notice to the Idaho

department of health and welfare if the petition for termination was not filed in conjunction with a petition for adoption or by an adoption agency licensed by the state of Idaho.

(2) Notice shall be given by personal service on the parents or guardian. Where reasonable efforts to effect personal service have been unsuccessful or are impossible because the whereabouts of parties entitled to notice are not known or reasonably ascertainable, the court shall order service by registered or certified mail to the last known address of the person to be notified and by publication once a week for three (3) successive weeks in a newspaper or newspapers to be designated by the court as most likely to give notice to the person to be served. The hearing shall take place no sooner than ten (10) days after service of notice, or where service is by registered or certified mail and publication, the hearing shall take place no sooner than ten (10) days after the date of last publication.

(3) Notice and appearance may be waived by a parent in writing and witnessed by a district judge or magistrate of a district court, or equivalent judicial officer of the state, where a person waiving notice and appearance resides or is present, whether within or without the county, and shall be substantially in the following form:

IN THE DISTRICT COURT OF THE.... JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF....

In the Matter of the termination)
of the parental rights to)
.....)
.....)
(a) minor child(ren))

I (we), the undersigned, being the.... of...., do hereby waive my (our) right to notice and my (our) right to appear in any action seeking termination of my (our) parental rights. I (we) understand that by waiving notice and appearance my (our) parental right(s), to the said...., who was born....,...., unto...., may be completely and forever

terminated, including all legal rights, privileges, duties and obligations, including all rights of inheritance to and from the said...., and I (we) do hereby expressly waive my (our) right(s) to notice of or appearance in any such action.

DATED:...., 20..

.....

STATE OF IDAHO)
)ss.
COUNTY OF....)

On this.... day of...., 20.., before me, the undersigned....,.... (Judge or Magistrate) of the District Court of the.... Judicial District of the state of Idaho, in and for the county of...., personally appeared...., known to me (or proved to me on the oath of....) to be the person(s) whose name(s) is (are) subscribed to the within instrument, and acknowledged to me that he (she, they) executed the same.
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

.....
(District Judge or Magistrate)

(4) The court shall accept a waiver of notice and appearance executed in another state if:

(a) It is witnessed by a magistrate or district judge of the state where signed; or

(b) The court receives an affidavit or a certificate from a court of comparable jurisdiction stating that the waiver of notice and appearance was executed in accordance with the laws of the state in which it was executed, or the court is satisfied by other showing that the waiver of notice and appearance was executed in accordance with the laws of the state in which it was executed.

(5) When the termination of the parent and child relationship is sought and the parent is determined to be incompetent to participate in the proceeding, the court shall appoint a guardian ad litem for the alleged incompetent parent. The court may in any other case appoint a guardian ad litem, as may be deemed necessary or desirable, for any party. Except as provided in section 16-1504(5), Idaho Code, where a putative father has failed to timely commence proceedings to establish paternity under section 7-1111, Idaho Code, or has failed to timely file notice of his filing of proceedings to establish his paternity of his child born out of wedlock under section 16-1513, Idaho Code, with the vital statistics unit of the department of health and welfare, notice under this section is not required unless such putative father is one of those persons specifically set forth in section 16-1505(1), Idaho Code.

(6) If a parent fails to file a claim of parental rights pursuant to the provisions of chapter 82, title 39, Idaho Code, for a child left with a safe haven pursuant thereto, prior to entry of an order terminating their parental rights, that parent is deemed to have abandoned the child and waived and surrendered any right in relation to the child, including the right to notice of any judicial proceeding in connection with the termination of parental rights.

(most recent amendment, 2013)

§16-2008. Investigation prior to disposition

(1) If a petition for adoption is not filed in conjunction with a petition for termination, or the petition for termination was not filed by a children's adoption agency licensed by the state of Idaho upon the filing of a petition for termination, the court shall direct the department of health and welfare, bureau of child support services to submit a written financial analysis report within thirty (30) days from date of notification, detailing the amount of any unreimbursed public assistance moneys paid by the state of Idaho on behalf of the child. The financial analysis shall include recommendations regarding

repayment of unreimbursed public assistance and provisions for future support for the child and the reasons therefor.

(2) Upon the filing of a petition, the court may direct, in all cases where written consent to termination has not been given as provided in this chapter, that an investigation be made by the department of health and welfare, division of family and community services, or a licensed children's adoption agency, and that a report in writing of such study be submitted to the court prior to the hearing, except that where the department of health and welfare or a licensed children's adoption agency is a petitioner, either in its own right or on behalf of a parent, a report in writing of the investigation made by such agency shall accompany the petition. The department of health and welfare or the licensed children's adoption agency shall have thirty (30) days from notification by the court during which it shall complete and submit its investigation unless an extension of time is granted by the court upon application by the agency. The court may order additional investigation as it deems necessary. The social study shall include the circumstances of the petition, the investigation, the present condition of the child and parents, proposed plans for the child, and such other facts as may be pertinent to the parent and child relationship, and the report submitted shall include a recommendation and the reasons therefor as to whether or not the parent and child relationship should be terminated. If the parent has a disability as defined in this chapter, the parent shall have the right, as a part of the social study, to provide information regarding the manner in which the use of adaptive equipment or supportive services will enable the parent to carry out the responsibilities of parenting the child. The person performing the social investigation shall advise the parent of such right and shall consider all such information in any findings or recommendations. The social study shall be conducted by, or with the assistance of, an individual with expertise in the use of such equipment and services. Nothing in this section shall be construed to create any new or additional obligations on state or local governments to purchase or provide adaptive equipment or supportive services for parents with disabilities. Where the parent is a minor, if the report does not include

a statement of contact with the parents of said minor, the reasons therefor shall be set forth. The purpose of the investigation is to aid the court in making disposition of the petition and shall be considered by the court prior thereto.

(3) Except as provided in section 16-1504(5), Idaho Code, no social study or investigation as provided for in subsection (2) of this section shall be directed by the court with respect to the putative father who has failed to timely commence proceedings to establish paternity under section 7-1111, Idaho Code, or who has failed to timely file notice of his filing of proceedings to establish his paternity of his child born out of wedlock under section 16-1513, Idaho Code, with the vital statistics unit of the department of health and welfare, unless such putative father is one (1) of those persons specifically set forth in section 16-1505(1), Idaho Code.

(most recent amendment, 2013)

§16-2009. Hearing

Cases under this act shall be heard by the court without a jury. The hearing may be conducted in an informal manner and may be adjourned from time to time. Stenographic notes or mechanical recording of the hearing shall be required. The general public shall be excluded and only such persons admitted whose presence is requested by any person entitled to notice under the provisions of section 16-2007, Idaho Code, or as the judge shall find to have a direct interest in the case or in the work of the court; provided that persons so admitted shall not disclose any information secured at the hearing which would identify an individual child or parent. The court may require the presence of witnesses deemed necessary to the disposition of the petition, except that a parent who has executed a waiver pursuant to section 16-2007, Idaho Code, shall not be required to appear at the hearing.

The parent or guardian ad litem shall be notified as soon as practicable after the filing of a petition and prior to the start of a hearing of his right to have counsel, and if counsel is requested and the parent or guardian is

financially unable to employ counsel, counsel shall be provided. The prosecuting attorneys of the several counties shall represent the department at all stages of the hearing.

The court's finding with respect to grounds for termination shall be based upon clear and convincing evidence under rules applicable to the trial of civil causes, provided that relevant and material information of any nature, including that contained in reports, studies or examinations, may be admitted and relied upon to the extent of its probative value. When information contained in a report, study or examination is admitted in evidence, the person making such report, study or examination shall be subject to both direct and cross-examination.

(most recent amendment, 1993)

§16-2010. Decree

(1) Every order of the court terminating the parent and child relationship or transferring legal custody or guardianship of the person of the child shall be in writing and shall recite the findings upon which such order is based, including findings pertaining to the court's jurisdiction.

(2) (a) If the court finds sufficient grounds exist for the termination of the parent and child relationship, it shall so decree and:

(i) Appoint an individual as guardian of the child's person, or

(ii) Appoint an individual as guardian of the child's person and vest legal custody in another individual or in an authorized agency, or

(iii) Appoint an authorized agency as guardian of the child's person and vest legal custody in such agency.

(b) The court shall also make an order fixing responsibility for the child's support. The parent and child relationship may be terminated with respect to one (1) parent without affecting the relationship between the child and the other parent.

(3) Where the court does not order termination of the parent and child relationship, it shall dismiss the petition; provided however, that where the court finds that the best interest of the child requires substitution or supplementation of parental care and supervision, it shall make an order placing the child under protective supervision, or vesting temporary legal custody in an authorized agency, fixing responsibility for temporary child support, and designating the period of time during which the order shall remain in effect.
(4) If termination of parental rights is granted and the child is placed in the guardianship or legal custody of the department of health and welfare, the court, upon petition, shall conduct a hearing as to the future status of the child within twelve (12) months of the order of termination of parental rights, and every twelve (12) months subsequently until the child is adopted or is in a placement sanctioned by the court.

(most recent amendment 2005)

§16-2011. Effect of decree
An order terminating the parent and child relationship shall divest the parent and the child of all legal rights, privileges, duties, and obligations, including rights of inheritance, with respect to each other.

(as added, 1963)

§16-2012. Court costs
All court costs of giving notice and advertising shall be paid by the petitioners, except when the petitioner is an authorized agency. The court, however, may suspend such costs where payment would work a hardship on the petitioner or would be otherwise inappropriate.

(as added, 1963)

§16-2013. Records
The files and records of the court in any proceedings had under this act shall be kept in a separate locked file and shall be withheld from public inspection, but shall be open to inspection on special order of

the court by persons having a legitimate interest in the case and their attorneys, and by an authorized agency to which legal custody of the child has been transferred. As used in this section, the words "files and records" include the court docket and entries therein, the petitions and other papers filed in any case, transcripts of testimony taken by the court, and findings, orders, and decrees, and other writings filed in proceedings before the court, other than social records. Social records shall be withheld from public inspection except that information from such records may be furnished to persons and agencies having a legitimate interest in the protection, welfare and treatment of the child, in such manner as the court determines. As used in this section, the words "social records" include the social service records of the court, the investigation and reports referred to in Section 16-2008, and related papers and correspondence, including medical, psychological and psychiatric studies and reports, either in the possession of the court or authorized agency.

No person shall be entitled to make copies of such files and records or social records or parts thereof unless the court so orders. It shall be unlawful, except for purposes for which files and records or social records or parts thereof or information therefrom have been released pursuant to this section, or except for purposes permitted by special order of the court, for any person to disclose, receive, or make use of, or authorize, knowingly permit, participate in, or acquiesce in the use of any information concerning any person before the court directly or indirectly derived from the files and records or communications of the court, or social records, or acquired in the course of the performance of official duties. Any person who shall disclose information in violation of the provisions of this section shall be guilty of a misdemeanor.

(as added, 1963)

§16-2014. Appeals

Any appeal from an order or decree of the court granting or refusing to grant a termination shall be taken to the supreme court, provided

however, pendency of an appeal or application therefor shall not suspend the order of the court relative to termination of the parent-child relationship.

(most recent amendment, 2010)

§16-2015. Construction

This act shall be liberally construed to accomplish the purposes herein set forth.

(as added, 1963)

Interstate Compact on the Placement of Children

§16-2101. Legislative findings and policy

It is hereby found and declared:

(1) that the needs of children requiring placement and of adults seeking to receive them cannot be met by restricting child placement services and supervision to the territory of a single state;

(2) that the cooperation of this state with other states is necessary to improve services and protection for children in need of placement.

It shall therefore be the policy of this state, in adopting the Interstate Compact on the Placement of Children, to cooperate fully with other states:

(1) in furnishing public authorities in a receiving state with notice of the intention to place a child in the receiving state;

(2) in placing a child in a receiving state only after receiving notification from that receiving state as to suitability of the placement; and

(3) in conforming with the applicable laws of the receiving state governing the placement of children therein.

Nothing in this act shall be interpreted as limiting the jurisdiction of the courts under chapter [chapters] 16 and 18, title 16, Idaho Code.

(as added, 1976)

§16-2102. Execution of compact

The governor is hereby authorized and directed to execute a compact on behalf of this state with any other state or states legally joining therein in the form substantially as follows:

ARTICLE I. PURPOSE AND POLICY

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

ARTICLE II. DEFINITIONS

As used in this compact:

(a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.

(b) "Sending agency" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought, any child to another party state.

(c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(d) "Placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

ARTICLE III. CONDITIONS FOR PLACEMENT

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state, any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) The name, date and place of birth of the child.

(2) The identity and address or addresses of the parents or legal guardian.

(3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child.

(4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

ARTICLE IV. PENALTY FOR ILLEGAL PLACEMENT

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

ARTICLE V. RETENTION OF JURISDICTION

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or the child's transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed herein.

(b) When the sending agency is a public agency it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state

from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

ARTICLE VI. INSTITUTIONAL CARE OF DELINQUENT CHILDREN

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

(1) Equivalent facilities for the child are not available in the sending agency's jurisdiction; and

(2) Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

ARTICLE VII. COMPACT ADMINISTRATOR

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE VIII. LIMITATIONS

This compact shall not apply to:

(a) The sending or bringing of a child into a receiving state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state.

(b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

ARTICLE IX. ENACTMENT AND WITHDRAWAL

This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico and, with the consent of Congress, the government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two (2) years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

ARTICLE X. CONSTRUCTION AND SEVERABILITY

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

(as added, 1976)

§16-2103. Compact administrator

Pursuant to said compact, the governor is hereby authorized and empowered to designate an officer who shall be the compact administrator and who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms of the compact. Said compact administrator shall serve subject to the pleasure of the governor. The compact administrator is hereby authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state thereunder.

(as added, 1976)

§16-2104. Supplementary agreements

The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to the compact. In the event that such supplementary agreement shall require or contemplate the use of any institution or facility of this state or require or contemplate the provision of any service of this state, said supplementary agreement shall have no force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service.

(as added, 1976)

§16-2105. Financial arrangements

The compact administrator, subject to the approval of the board of examiners, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement entered into thereunder.

(as added, 1976)

§16-2106. Financial responsibility of parents and guardians of estate

The compact administrator shall take appropriate action to effect the recovery from relevant parents or guardians of estate, at the option of said administrator, of any and all costs expended by the state, or any of its subdivisions, with respect to Idaho children handled under said compact.

(as added, 1976)

§16-2107. Responsibilities of enforcement

The courts, departments, agencies and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions.

(as added, 1976)

ICPC Regulation No. 7. Priority Placement

> **NOTE:** ICPC Regulations adopted by the Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC) and are available at http://www.aphsa.org/content/AAICPC/en/ICPCRegulations.html. The regulations have adopted pursuant to the authority conferred by the Compact and codified in Idaho at Idaho Code § 16-2103. Although there are a number of Regulations, only Regulation 7 is included here because it confers an important role on courts in securing priority placements.

Regulation 7

The following regulation adopted by the Association of Administrators of the Interstate Compact on the Placement of Children as Regulation No. 7, Priority Placement, as first adopted in 1996, is amended to read as follows:

1. Words and phrases used in this regulation shall have the same meanings as those ascribed to them in the Interstate Compact on the Placement of Children (ICPC). A word or phrase not appearing in ICPC shall have the meaning ascribed to it by special definition in this regulation or, where not so defined, the meaning properly ascribed to it in common usage.

2. This regulation shall hereafter be denoted as Regulation No. 7 for Expedited Placement Decision.

3. Intent of Regulation No. 7: The intent of this regulation is to expedite ICPC approval or denial by a receiving state for the placement of a child with a parent, stepparent, grandparent, adult uncle or aunt, adult brother or sister, or the child's guardian, and to:

(a) Help protect the safety of children while minimizing the potential trauma to children caused by interim or multiple placements while ICPC approval to place with a parent or relative is being sought through a more comprehensive home study process.

(b) Provide the sending state court and/or sending agency with expedited approval or denial. An expedited denial would underscore the urgency for the sending state to explore alternative placement resources.

4. This regulation shall not apply if:

(a) the child has already been placed in violation of the ICPC in the receiving state, unless a visit has been approved in writing by the receiving state Compact Administrator and a subsequent order

entered by the sending state court authorizing the visit with a fixed return date in accordance with Regulation No. 9.

(b) the intention of the sending state is for licensed or approved foster care or adoption. In the event the intended placement [must be parent, stepparent, grandparent, adult aunt or uncle, adult brother or sister, or guardian as per Article VIII(a)] is already licensed or approved in the receiving state at the time of the request, such licensing or approval would not preclude application of this regulation.

(c) the court places the child with a parent from whom the child was not removed, the court has no evidence the parent is unfit, does not seek any evidence from the receiving state the parent is either fit or unfit, and the court relinquishes jurisdiction over the child immediately upon placement with the parent.

5. Criteria required before Regulation No. 7 can be requested: Cases involving a child who is under the jurisdiction of a court as a result of action taken by a child welfare agency, the court has the authority to determine custody and placement of the child or has delegated said authority to the child welfare agency, the child is no longer in the home of the parent from whom the child was removed, and the child is being considered for placement in another state with a parent, stepparent, grandparent, adult uncle or aunt, adult brother or sister, or the child's guardian, must meet at least one of the following criteria in order to be considered a Regulation No. 7 case:

(a) unexpected dependency due to a sudden or recent incarceration, incapacitation or death of a parent or guardian. Incapacitation means a parent or guardian is unable to care for a child due to a medical, mental or physical condition of a parent or guardian, or

(b) the child sought to be placed is four years of age or younger, including older siblings sought to be placed with the same proposed placement resource; or

(c) the court finds that any child in the sibling group sought to be placed has a substantial relationship with the proposed placement resource. Substantial relationship means the proposed placement has a familial or mentoring role with the child, has spent more than cursory time with the child, and has established more than a minimal bond with the child; or

(d) the child is currently in an emergency placement.

6. Provisional approval or denial:
(a) Upon request of the sending agency and agreement of the receiving state to make a provisional determination, the receiving state may, but is not required to, provide provisional approval or denial for the child to be placed with a parent or relative, including a request for licensed placement if the receiving state has a separate licensing process available to relatives that includes waiver of non-safety issues.

Upon receipt of the documentation set forth in Section 7 below, the receiving state shall expedite provisional determination of the appropriateness of the proposed placement resource by:

1. performing a physical "walk through" by the receiving state's caseworker of the prospective placement's home to assess the residence for risks and appropriateness for placement of the child,
2. searching the receiving state's child protective services data base for prior reports/investigations on the prospective placement as required by the receiving state for emergency placement of a child in its custody,
3. performing a local criminal background check on the prospective placement,
4. undertaking other determinations as agreed upon by the sending and receiving state Compact Administrators, and
5. providing a provisional written report to the receiving state

Compact Administrator as to the appropriateness of the proposed placement.

(b) A request by a sending state for a determination for provisional approval or denial shall be made by execution of an Order of Compliance by the sending state court that includes the required findings for a Regulation No. 7 request and a request for provisional approval or denial.

(c) Determination made under a request for provisional approval or denial shall be completed within seven (7) calendar days of receipt of the completed request packet by the receiving state Compact Administrator. A provisional approval or denial shall be communicated to the sending state Compact Administrator by the receiving state Compact Administrator in writing. This communication shall not include the signed Form 100A until the final decision is made pursuant to Section 9 below.

(d) Provisional placement, if approved, shall continue pending a final approval or denial of the placement by the receiving state or until the receiving state requires the return of the child to the sending state pursuant to paragraph 12 of this regulation.

(e) If provisional approval is given for placement with a parent from whom the child was not removed, the court in the sending state may direct its agency to request concurrence from the sending and receiving state Compact Administrators to place the child with the parent and relinquish jurisdiction over the child after final approval is given. If such concurrence is not given, the sending agency shall retain jurisdiction over the child as otherwise provided under Article V of the ICPC.

(f) A provisional denial means that the receiving state cannot approve a provisional placement pending the more comprehensive home study or assessment process due to issues that need to be resolved.

7. Sending agency steps before sending court enters Regulation No. 7 Order of Compliance: In order for a placement resource to be considered for an ICPC expedited placement decision by a receiving state, the sending agency shall take the following minimum steps prior to submitting a request for an ICPC expedited placement decision:

(a) Obtain either a signed statement of interest from the potential placement resource or a written statement from the assigned case manager in the sending state that following a conversation with the potential placement resource, the potential placement resource confirms appropriateness for the ICPC expedited placement decision process. Such statement shall include the following regarding the potential placement resource:

1. s/he is interested in being a placement resource for the child and is willing to cooperate with the ICPC process.
2. s/he fits the definition of parent, stepparent, grandparent, adult brother or sister, adult aunt or uncle, or his or her guardian, under Article VIII(a) of the ICPC.
3. the name and correct address of the placement resource, all available telephone numbers and other contact information for the potential placement resource, and the date of birth and social security number of all adults in the home.
4. a detail of the number and type of rooms in the residence of the placement resource to accommodate the child under consideration and the number of people, including children, who will be residing in the home.
5. s/he has financial resources or will access financial resources to feed, clothe and care for the child.
6. if required due to age and/or needs of the child, the plan for child care, and how it will be paid for.
7. s/he acknowledges that a criminal records and child abuse history check will be completed on any persons residing in the home required to be screened under the law of the receiving state and that, to the best knowledge of the placement resource, no one residing in the home has a criminal history or child abuse history that would prohibit the placement.

8. whether a request is being made for concurrence to relinquish jurisdiction if placement is sought with a parent from whom the child was not removed.

(b) The sending agency shall submit to the sending state court:
1. the signed written statement noted in 7a, above, and
2. a statement that based upon current information known to the sending agency, that it is unaware of any fact that would prohibit the child being placed with the placement resource and that it has completed and is prepared to send all required paperwork to the sending state ICPC office, including the ICPC-100A and ICPC Form 101.

8. Sending state court orders: The sending state court shall enter an order consistent with the Form Order for Expedited Placement Decision adopted with this modification of Regulation No. 7 subject to any additions or deletions required by federal law or the law of the sending state. The order shall set forth the factual basis for a finding that Regulation No. 7 applies to the child in question, whether the request includes a request for a provisional approval of the prospective placement and a factual basis for the request. The order must also require completion by the sending agency of ICPC Form 101 for the expedited request.

9. Time frames and methods for processing of ICPC expedited placement decision:

(a) Expedited transmissions: The transmission of any documentation, request for information under paragraph 10, or decisions made under this regulation shall be by overnight mail, facsimile transmission, or any other recognized method for expedited communication, including electronic transmission, if acceptable. The receiving state shall recognize and give effect to any such expedited transmission of an ICPC-100A and/or supporting documentation provided it is legible and appears to be a complete representation of the original. However, the receiving state may request and shall be entitled to receive originals or duly

certified copies if it considers them necessary for a legally sufficient record under its laws. Any state Compact Administrator may waive any requirement for the form of transmission of original documents in the event he or she is confident in the authenticity of the forms and documents provided.

(b) Sending state court orders to the sending state agency: The sending state court shall send a copy of its signed order of compliance to the sending state agency within two (2) business days of the hearing or consideration of the request. The order shall include the name, mailing address, e-mail address, telephone number and FAX number of the clerk of court or a designated court administrator of the sending state court exercising jurisdiction over the child.

(c) Sending agency sends ICPC request to sending state ICPC office: The sending state court shall direct the sending agency to transmit to the sending state Compact Administrator within three (3) business days of receipt of the signed Order of Compliance, a completed ICPC-100A and Form 101, the statement required under Paragraph 7 above and supporting documentation pursuant to ICPC Article III.

(d) Sending State ICPC office sends ICPC Request to Receiving State ICPC office: Within two (2) business days after receipt of a complete Regulation 7 request, the sending state Compact Administrator shall transmit the complete request for the assessment and for any provisional placement to the receiving state Compact Administrator. The request shall include a copy of the Order of Compliance rendered in the sending state.

(e) Timeframe for receiving state ICPC office to render expedited placement decision: no later than twenty (20) business days from the date that the forms and materials are received by the receiving state Compact Administrator, the receiving state Compact Administrator shall make his or her determination pursuant to

Article III(d) of the ICPC and shall send the completed 100-A to the sending state Compact Administrator by expedited transmission.

(f) Timeframe for receiving state ICPC office to send request packet to receiving local agency: The receiving state Compact Administrator shall send the request packet to the local agency in the receiving state for completion within two (2) business days of receipt of the completed packet from the sending state Compact Administrator.

(g) Timeframe for receiving state local agency to return completed home study to central office: The local agency in the receiving state shall return the completed home study to the receiving state Compact Administrator within fifteen (15) business days (including date of receipt) of receipt of the packet from the receiving state Compact Administrator.

(h) Timeframe for receiving state ICPC Compact Administrator to return completed home study to sending state: Upon completion of the decision process under the timeframes in this regulation, the receiving state Compact Administrator shall provide a written report, a 100A approving or denying the placement, and a transmittal of that determination to the sending state Compact Administrator as soon as possible, but no later than three (3) business days after receipt of the packet from the receiving state local agency and no more than twenty (20) business days from the initial date that the complete documentation and forms were received by the receiving state Compact Administrator from the sending state Compact Administrator.

10. Recourse if sending or receiving state determines documentation is insufficient:

(a) In the event the sending state Compact Administrator finds that the ICPC request documentation is substantially insufficient, s/he shall specify to the sending agency what additional information is

needed and request such information from the sending agency.

(b) In the event the receiving state Compact Administrator finds that the ICPC request documentation is substantially insufficient, he or she shall specify what additional information is needed and request such information from the sending state Compact Administrator. Until receipt of the requested information from the sending state Compact Administrator, the receiving state is not required to continue with the assessment process.

(c) In the event the receiving state Compact Administrator finds that the ICPC request documentation is lacking needed information but is otherwise sufficient, s/he she shall specify what additional information is needed and request such information from the sending state Compact Administrator. If a provisional placement is being pursued, the provisional placement evaluation process shall continue while the requested information is located and provided.

(d) Failure by a Compact Administrator in either the sending state or the receiving state to make a request for additional documentation or information under this paragraph within two (2) business days of receipt of the ICPC request and accompanying documentation by him or her shall raise a presumption that the sending agency has met its requirements under the ICPC and this regulation.

11. Failure of receiving state ICPC office or local agency to comply with ICPC Regulation No. 7: Upon receipt of the Regulation No. 7 request, if the receiving state Compact Administrator determines that it will not be possible to meet the timeframes for the Regulation No. 7 request, whether or not a provisional request is made, the receiving state Compact Administrator shall notify the sending state Compact Administrator as soon as practical and set forth the receiving state's intentions in completing the request, including an estimated time for completion or consideration of the request as a regular ICPC request.

Such information shall also be transmitted to the sending agency by the sending state Compact Administrator for it to consider other possible alternatives available to it.

If the receiving state Compact Administrator and/or local state agency in the receiving state fail(s) to complete action for the expedited placement request as prescribed in this regulation within the time period allowed, the receiving state shall be deemed to be out of compliance with this regulation and the ICPC. If there appears to be a lack of compliance, the sending state court that sought the provisional placement and expedited placement decision may so inform an appropriate court in the receiving state, provide that court with copies of relevant documentation and court orders entered in the case, and request assistance. Within its jurisdiction and authority, the requested court may render such assistance, including the holding of hearings, taking of evidence, and the making of appropriate orders, for the purpose of obtaining compliance with this regulation and the ICPC.

12. Removal of a child: Following any approval and placement of the child, if the receiving state Compact Administrator determines that the placement no longer meets the individual needs of the child, including the child's safety, permanency, health, well-being, and mental, emotional, and physical development, then the receiving state Compact Administrator may request the sending state Compact Administrator arrange for the immediate return of the child or make alternative placement as provided in Article V (a) of the ICPC. The receiving state request for removal may be withdrawn if the sending state arranges services to resolve the reason for the requested removal and the receiving and sending state Compact Administrators mutually agree to the plan. If no agreement is reached, the sending state shall expedite return of the child to the sending state within five (5) business days unless otherwise agreed in writing between the sending and receiving state Compact Administrators.

13. This regulation as first effective October 1, 1996, and readopted pursuant to Article VII of the Interstate Compact on the Placement of

Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting of April 1999, is amended pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting of May 1, 2011; the regulation, as amended was approved on May 1, 2011 and is effective as of October 1, 2011.

Mental Health Assessments

§20-511A. Mental health assessments and plans of treatment

(1) A judge of any court shall order the department of health and welfare to submit appropriate mental health assessments and a plan of treatment for the court's approval if at any stage of a proceeding under this chapter or the child protective act, chapter 16, title 16, Idaho Code, a judge has reason to believe, based upon the record and proceedings of the court or upon an affidavit of a party, state or county agency or any person having physical custody of the juvenile or juvenile offender, that he or she:

(a) Is suffering a substantial increase or persistence of a serious emotional disturbance as defined in section 16-2403, Idaho Code, which impairs his or her ability to comply with the orders and directives of the court, or which presents a risk to his or her safety or well-being or the safety of others; and

(b) Such condition has not been adequately addressed with supportive services and/or corrective measures previously provided to the juvenile, or the juvenile's needs with respect to the serious emotional disturbance are not being met or have not been met.

(2) The court may convene a screening team consisting of representatives from the department of health and welfare, county probation, local school officials, teen early intervention specialists as provided for under section 16-2404A, Idaho Code, the department of juvenile corrections and/or other agencies or persons designated by the court to review the plan of treatment and provide written recommendations to the court. Parents and guardians of the juvenile or juvenile offender, if available, shall be included in the screening team and consulted with regard to the plan of treatment.

(3) If the court, after receiving the mental health assessment and plan of treatment submitted by the department of health and welfare and

any recommendations from the screening team, determines that additional information is necessary to determine whether the conditions set forth in subsections (1)(a) and (1)(b) of this section are present, or to determine an appropriate plan of treatment for the juvenile or juvenile offender, the court may order an evaluation and/or recommendations for treatment to be furnished by a psychiatrist, licensed physician or licensed psychologist, with the expenses of such evaluation and/or recommendations to be borne by the department of health and welfare.

(4) If the court concludes that the conditions set forth in subsections (1)(a) and (1)(b) of this section are present, the plan of treatment, as approved by the court, shall be entered into the record as an order of the court. The department of health and welfare shall provide mental health treatment as designated by the approved plan of treatment. If in-patient or residential treatment is required as part of the plan of treatment, the court shall hold a hearing on whether to order such treatment unless the hearing is waived by the juvenile or juvenile offender and his or her parents or guardians. The court may order parents, legal guardians or custodians to adhere to the treatment designated in the plan of treatment. Representatives from the department of health and welfare, county probation, local school officials, teen early intervention specialists as provided for under section 16-2404A, Idaho Code, the department of juvenile corrections and/or other agencies or persons designated by the court shall attend case review hearings as scheduled by the court.

(5) All costs associated with assessment and treatment shall be the responsibility of the parents of the juvenile or juvenile offender according to their ability to pay based upon the sliding fee scale established pursuant to section 16-2433, Idaho Code. The financial obligation of the family shall be determined after consideration of all available payment and funding sources including title XIX of the social security act, as amended, all available third party sources, and parent resources according to any order for child support under

chapter 10, title 32, Idaho Code. Services shall not be conditioned upon transfer of custody or parental rights.

(most recent amendment, 2012)

> **Editorial Note**: Idaho Juvenile Rule 54 establishes the procedure and forms to be used in children's mental health assessments.

Idaho Safe Haven Act

§39-8201. Title
This chapter shall be known as the "Idaho Safe Haven Act."

(most recent amendment, 2005)

§39-8202. Definitions
As used in this chapter, the following terms shall mean:

(1) "Custodial parent," for the purposes of this chapter, means, in the absence of a court decree, the parent with whom the child resides.

(2) "Safe haven" means:
(a) Hospitals licensed in the state of Idaho;
(b) Licensed physicians in the state of Idaho and staff working at their offices and clinics;
(c) Advanced practice professional nurses including certified nurse-midwives, clinical nurse specialists, nurse practitioners and certified registered nurse anesthetists licensed or registered pursuant to chapter 14, title 54, Idaho Code;
(d) Physician assistants licensed pursuant to chapter 18, title 54, Idaho Code.
(e) Medical personnel when making an emergency response to a "911" call from a custodial parent, for the purpose of taking temporary physical custody of a child pursuant to the provisions of this act. For purposes of this act, "medical personnel" shall include those individuals certified by the department of health and welfare as:
(i) First responders;
(ii) Emergency medical technicians - basic;
(iii) Advanced emergency medical technicians - ambulance;
(iv) Emergency medical technicians - intermediate; and
(v) Emergency medical technicians - paramedic.

(most recent amendment, 2005)

§39-8203. Emergency custody of certain abandoned children--Confidentiality--Immunity

(1) A safe haven shall take temporary physical custody of a child, without court order, if the child is personally delivered to a safe haven, provided that:

(a) The child is no more than thirty (30) days of age;

(b) The custodial parent delivers the child to the safe haven; and

(c) The custodial parent does not express an intent to return for the child.

(2) If a safe haven takes temporary physical custody of a child pursuant to subsection (1) of this section, the safe haven shall:

(a) Perform any act necessary, in accordance with generally accepted standards of professional practice, to protect, preserve, or aid the physical health and safety of the child during the temporary physical custody including, but not limited to, delivering the child to a hospital for care or treatment; and

(b) Immediately notify a peace officer or other person appointed by the court of the abandonment.

(3) The safe haven shall not inquire as to the identity of the custodial parent and, if the identity of a parent is known to the safe haven, the safe haven shall keep all information as to the identity confidential. The custodial parent leaving the child shall not be required to provide any information to the safe haven but may voluntarily provide information including, but not limited to, medical history of the parent(s) or the child.

(4) A safe haven with responsibility for performing duties under this section, and any employee, doctor, or other personnel working at the safe haven, are immune from any civil or criminal liability that otherwise might result from their actions, if they are acting in good faith in receiving a child and performing duties under this section.

(5) A custodial parent may leave a child with a safe haven in this state without being subjected to prosecution for abandonment

pursuant to the provisions of title 18, Idaho Code, provided that the child was no more than thirty (30) days of age when it was left at the safe haven, as determined within a reasonable degree of medical certainty.

(most recent amendment, 2005)

§39-8204. Protective custody--Placement--Immunity

(1) Upon notification by a safe haven that a child has been abandoned pursuant to the provisions of this chapter, a peace officer or other person appointed by the court shall take protective custody of the child and shall immediately deliver the child to the care, control and custody of the department of health and welfare. Provided however, where the child requires further medical evaluation, care or treatment, the child shall be left in the care of a hospital and the peace officer or other person appointed by the court shall notify the court and prosecutor of the action taken and the location of the child so that a shelter care hearing may be held.

(2) The department of health and welfare shall place an abandoned child with a potential adoptive parent as soon as possible.

(3) A peace officer or other person appointed by the court who takes a child into custody under this section, shall not be held liable either criminally or civilly unless the action of taking the child was exercised in bad faith or in violation of the provisions of this chapter.

(most recent amendment, 2005)

§39-8205. Shelter care hearing--Investigation--Adjudicatory hearing--Termination of parent-child relationship

(1) A shelter care hearing shall be held pursuant to section 16-1615, Idaho Code, and the department shall file a petition for adjudicatory hearing to vest legal custody in the department pursuant to section 16-1621, Idaho Code, at or prior to the time set for shelter care hearing.

(2) A child protective investigation or criminal investigation shall not be initiated based on a claim of abandonment unless a claim of parental rights is made and the court orders the investigation.

(3) During the initial thirty (30) day period from the time the child was delivered to a safe haven by a custodial parent, the department shall request assistance from law enforcement officials to investigate through the missing children information clearinghouse and other state and national resources to ensure that the child is not a missing child.

(4) An adjudicatory hearing shall be conducted pursuant to the provisions of section 16-1619, Idaho Code, and section 16-1621, Idaho Code.

(5) As soon as practicable following the initial thirty (30) day period from the time the child was delivered to a safe haven by a custodial parent, the department shall petition to terminate the parental rights of the parent who abandoned the child at the safe haven and any unknown parent pursuant to section 16-1624, Idaho Code, and in accordance with chapter 20, title 16, Idaho Code.

(most recent amendment, 2005)

§39-8206. Claim of parental rights--Procedure

(1) A parent of the child may make a claim of parental rights of an abandoned child, abandoned pursuant to the provisions of this chapter, by filing a notice of claim of parental rights with the vital statistics unit of the department of health and welfare. The vital statistics unit of the department of health and welfare shall maintain an abandoned child registry for this purpose which shall be subject to disclosure according to chapter 3, title 9, Idaho Code. The department shall provide forms for the purpose of filing a claim of parental rights, and the forms shall be made available through the vital statistics unit of the Idaho department of health and welfare and in the office of the county clerk in every county of this state. Any parent claiming a

parental right of an abandoned child, abandoned pursuant to the provisions of this chapter, shall file the form with the vital statistics unit of the department of health and welfare. The form must be filled out completely and provide the name and address for service of the person asserting the parental claim and set forth the approximate date the child was left in a safe haven. The form must be signed by the person claiming the parental right and be witnessed before a notary public. The department shall record the date and time the claim of parental rights is filed with the department. The claim shall be deemed to be duly filed with the department as of the date and time recorded on the claim by the department. To be valid, a claim of parental rights must be filed before an order terminating parental rights is entered by the court. A parent that fails to file a claim of parental rights prior to entry of an order terminating their parental rights is deemed to have abandoned the child and waived and surrendered any right in relation to the child, including the right to notice of any judicial proceeding in connection with the termination of parental rights or adoption of the child. Registration of notice of commencement of paternity proceedings pursuant to chapter 15, title 16, Idaho Code, shall not satisfy the requirements of this section.

(2) Prior to the time set for hearing on the petition to terminate parental rights filed by the department of health and welfare, and prior to entry of an order terminating parental rights by the court, the department of health and welfare shall obtain and file with the court a certificate from the vital statistics unit of the department of health and welfare, signed by the state registrar of vital statistics, which certificate shall state that a diligent search has been made of the registry of claims of parental rights of abandoned children, abandoned pursuant to this chapter, and shall set forth the results of that search.

(3) If a claim of parental rights is made before an order terminating parental rights is entered by the court, notice pursuant to section 16-2007, Idaho Code, will be required and the court shall hold the action for involuntary termination of parental rights in abeyance for a period

of time not to exceed sixty (60) days unless otherwise ordered by the court. During that period:

(a) The court shall order genetic testing to establish maternity or paternity, at the expense of the person or persons claiming the parental right.

(b) The department of health and welfare shall conduct an investigation pursuant to section 16-2008, Idaho Code, and in those cases where a guardian ad litem has been appointed, the guardian ad litem shall have all rights, powers and duties as provided for in chapter 16, title 16, Idaho Code, and as provided for in chapter 20, title 16, Idaho Code.

(c) When indicated as a result of the investigation, a shelter care hearing shall be conducted by the court in accordance with section 16-1615, Idaho Code, within forty-eight (48) hours, or at an earlier time if ordered by the court, to determine whether the child should remain in the physical custody of the department or be released to a parent or other third party.

(d) Further proceedings shall be conducted as the court determines appropriate. However, where a claim of parental rights is made before an order terminating parental rights is entered by the court, a parent shall not be found to have neglected or abandoned a child placed in accordance with this chapter solely because the child was left with a safe haven.

(4) If there is no showing that a parent has claimed a parental right to the child, the department of health and welfare shall file with the court a certificate from the vital statistics unit of the department of health and welfare, signed by the state registrar of vital statistics, stating that a diligent search has been made of the registry of parental claims for children abandoned pursuant to the provisions of this chapter and that no parental claim has been made. The certificate shall be filed with the court prior to the entrance of the final order of termination of parental rights.

(most recent amendment, 2005)

§39-8207. Report to legislature

The department of health and welfare shall evaluate the program and shall submit a written report on the program, including recommendations for revisions and improvements, to the senate health and welfare committee and the house of representatives health and welfare committee of the legislature of the state of Idaho no later than two (2) years after the effective date of this act.

(most recent amendment, 2005)

Idaho Juvenile Rules (C.P.A.)

Rule 16. Expanding a Juvenile Corrections Act proceeding to a Child Protective Act proceeding (J.C.A.)

(a) If at any stage of a J.C.A. proceeding the court has reasonable cause to believe that a juvenile living or found within the state is neglected, abused, abandoned, homeless, or whose parent(s) or other legal custodian fails or is unable to provide a stable home environment, as set forth in I.C. Section 16-1603, the court may order the proceeding expanded to a C.P.A. proceeding or direct the Department of Health and Welfare to investigate the circumstances of the juvenile and his or her family and report to the court as provided in I.C. § 16-1616. Any order expanding the proceeding to a C.P.A. proceeding must be in writing and contain the factual basis found by the court to support its order. The order shall direct that copies of all court documents, studies, reports, evaluations, and other records in the court files, probation files, and juvenile corrections files relating to the juvenile/child be made available to the Department of Health and Welfare at its request.

(b) Upon expanding the proceeding to a C.P.A., the court may order the juvenile placed in shelter care under the C.P.A. if that is in the best interest of the juvenile and needed for the juvenile's protection. If the juvenile is placed in shelter care, a shelter care hearing under the C.P.A. must be held within 48 hours, excluding Saturdays, Sundays, and holidays, and notice thereof shall be given to the juveniles parents(s), guardian, or custodian, and to the Department of Health and Welfare.

(c) A copy of the order expanding a J.C.A. proceeding to a C.P.A. proceeding shall be given to the juvenile's parent(s), guardian, or custodian, the Idaho Department of Health and Welfare, the prosecuting attorney and other counsel of record, and the Department of Juvenile Corrections if the juvenile is currently under commitment

to the Department, pursuant to these rules and the rules of civil procedure.

(d) No further C.P.A. petition will be required. A petition may be filed to include other children that come within the jurisdiction of the C.P.A. but who are not before the court under the Juvenile Corrections Act. Any petition must be filed 14 days before the date set for the adjudicatory hearing. Any adjudicatory hearing pursuant to I.C. Section 16-1619 will be held within 30 days of the court's determination to expand the proceeding to a C.P.A. proceeding. A notice of the hearing will be served upon the parent(s), the Department of Health and Welfare, the juvenile, and the Department of Juvenile Corrections if the juvenile is currently under commitment to the Department, as though a petition under the C.P.A. has been filed. The burden of going forward with the evidence at the adjudicatory hearing shall remain with the prosecuting attorney.

(e) The proceeding under the J.C.A. will continue unless otherwise ordered by the court. The court may consolidate hearings under both the J.C.A. and the C.P.A. if the purposes of both acts can be served and the rights of the participants are not prejudiced.

(f) The Department of Juvenile Corrections shall have standing as an interested party in the child protective action if the juvenile is in the custody of the Department.

(g) Form of order expanding the Juvenile Correction Act proceeding to a Child Protective Act proceeding. The order expanding the Juvenile Correction Act proceeding to a Child Protective Act proceeding shall substantially conform to the following format:

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF _____ MAGISTRATE DIVISION

In the Interest of:	) Case No. _____
_____	)
	) ORDER EXPANDING
	) JUVENILE CORRECTIONS
	) ACT (J.C.A.)PROCEEDING
A Child Under Eighteen	) TO CHILD PROTECTIVE
(18) Years of Age	) ACT (C.P.A.) PROCEEDING

This matter came before the Court under the J.C.A. on the ___ day of _____, 20__. Based upon the J.C.A. proceeding, the Court has reasonable cause to believe that the above named child is neglected and/or abused and/or abandoned and/or homeless or that the child's parent(s)/ guardian(s)/custodian(s) fail(s) or is/are unable to provide a stable home environment pursuant to Idaho Code Section 16-1603.

In support thereof, the Court does hereby enter findings of fact as follows:

1. The birth date, sex and residence address of the above named child are:_____
_____

2. The names and residence addresses of the child's parent(s)/guardian(s)/custodian(s) are: _____
_____
(If neither parent is within the state, or if the residence address of neither parent is known, the name and address of any known adult relative residing in Idaho is:_____
_____

3. The specific facts which bring the child(ren) within the jurisdiction of the Child Protective Act are:
(a)_____
_____
_____

(b)_____
_____
_____

(c)_____
_____
_____

(d)_____
_____
_____

4. (_____) (Initial and complete if child/children are to be placed in custody of I.D.H.W.) It is contrary to the welfare of the child [children] to remain in the home and it is in the best interest of the child to be removed from the home pending further proceedings in this case. It is in the best interest of the child to vest legal custody of the child [children] in the Idaho Department of Health and Welfare pending further proceedings. The court makes this finding based on:

(_____) information set forth in _____, prepared by _____, and dated _____, which is incorporated by reference in this order. (_____) the following information: _____
_____
_____
_____.

Based upon the foregoing findings and conclusions, THE COURT HEREBY ORDERS that pursuant to I.J.R. 16, the J.C.A. proceeding is hereby expanded to a C.P.A. proceeding. The filing and service of this Order shall have the same effect as the filing and service of a C.P.A. petition.

THE COURT FURTHER ORDERS that: (initial if applicable)
(_____) the above named child(ren) shall be taken forthwith to a place of shelter care by either a peace officer or an Idaho Department of Health and Welfare (I.D.H.W.) caseworker, based upon the best interest of the child(ren) and the need for the child(ren)'s protection and further, that said child(ren) is/are hereby placed in the temporary custody of the I.D.H.W. pending the shelter care hearing and/or further order of the Court; and the shelter care hearing under the C.P.A. shall be held within 48 hours of entry of this Order excluding weekends and holidays and notice of state action shall be given to the child's parent(s)/guardian(s)/custodian(s) and I.D.H.W. as provided by I.J.R. 16(c) and 32.

(_____) the above named child(ren) does/do not appear endangered by present circumstances and may remain in the custody of the parent(s)/ guardian(s)/custodian(s) pending the adjudicatory hearing and/or further order of the Court; and the adjudicatory hearing under the C.P.A. shall be held within 30 days of entry of this Order and notice thereof shall be served by summons upon the child(ren), his/her/their parent(s)/guardian(s)/custodian(s), and notice thereof shall be given to I.D.H.W. and the Department of Juvenile Corrections if the juvenile is in the custody of the Department, as provided by Rule 16(d), I.J.R.

(_____) the Idaho Department of Health and Welfare shall investigate the applicability of the Indian Child Welfare Act (25 USC 1901) to this proceeding.

(_____) copies of all court documents, studies, reports, evaluations, and other records in the court files, probation files and

juvenile corrections files relating to the child(ren) shall be made available to the Idaho Department of Health and Welfare at its request.

(_____)
Other: _____
_____

DATED this ___ day of _____, 20 ___.

_____
JUDGE

Copies: H. & W. [ ] Juv. Prob. [ ] Parent [ ] Pros. Att. [ ] Def. Att. [ ] Other [ ]

(h) Form of order directing the Department of Health and Welfare to investigate. The order directing the Department of Health and Welfare to investigate the circumstances of the juvenile and his or her family shall substantially conform to the following:

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF _____ MAGISTRATE DIVISION

In the Interest of:	) Case No. _____
_____	)
	) ORDER FOR
	) INVESTIGATIVE REPORT
A Child Under Eighteen	) TO THE COURT UNDER
(18) Years of Age	) I.J.R. 16

Pursuant to Rule 16 of the Idaho Juvenile Rules and Section 16-1616, Idaho Code, and good cause appearing therefore;

IT IS HEREBY ORDERED that the Department of Health & Welfare shall conduct an investigation and shall report to the court information concerning the juvenile. This investigation shall include but may not be limited to the circumstances of the juvenile and his/her family. It shall also include appropriate family, social, educational, psychological and law enforcement information as they relate to the juvenile. This report shall be delivered to the court with copies to each of the parents or their attorney, any other legal custodian and the prosecuting attorney at least two (2) days before the date set by this court for hearing on this matter, _____, 20 ___, at _____: ___ _____ m. The Department of Health and Welfare shall include with the investigation report a recommendation to this court as to the application of Idaho Juvenile Rule 16 or the application of the Idaho Child Protective Act.

IT IS FURTHER ORDERED that copies of all court documents, studies, reports, evaluations and other records in the court files, probation files and juvenile corrections files relating to the juvenile be made available to the Department of Health and Welfare at its request.

In support thereof, the Court does hereby enter findings of fact as follows:

1. The birth date, sex and residence address of the above named juvenile are ____

2. The names and residence addresses of the juvenile's parent(s), guardian(s) or custodian(s) are _____

If neither parent is within the state, or the residence or whereabouts of the parents are unknown, the name of any known adult relative residing in Idaho is _____

3. The facts which have caused the court to order this report are:
a._____
b._____
c._____

ORDERED this ___ day of _____, 20 ___,

_____
Magistrate Judge

Copies: H. & W. [ ] Juv. Prob. [ ] Parent [ ] Pros. Att. [ ]
Def. Att. [ ] Other [ ]

(most recent amendment, 2006)

Rule 29. Application of other rules (C.P.A.)
The Idaho Rules of Civil Procedure shall apply to C.P.A. proceedings to the extent that they are not inconsistent with these rules, statutes, or the law.

(as adopted, 2006)

Rule 30. [Reserved]

Rule 31. Emergency (pretrial) removal of a child and/or offender (C.P.A.)
There are four procedures pursuant to which a child or an alleged offender may be removed from the home prior to the adjudicatory hearing:

(a) A child or an alleged offender may be removed from the home by a peace officer upon a declaration of imminent danger by a peace officer, without prior court order, pursuant to I.C. §16-1608(1).

(b) A child may be removed from the home by a summons with an order of removal by the court, pursuant to I.C. §16-1611(4) and I.J.R. 34.

(c) A child may be removed from the home upon order of the court following a shelter care hearing pursuant to I.C. §16-1615 and I.J.R. 39.

(d) A child may be removed from the home and placed in shelter care upon order of the court when the court expands a J.C.A. proceeding to a C.P.A. proceeding pursuant to I.J.R. 16.

(most recent amendment, 2007)

Rule 32. Notice of emergency removal (C.P.A.)

(a) When a child is taken into custody pursuant to I.C. § 16-1608(1)(a) under a declaration of imminent danger, the peace officer shall provide a written notice of emergency removal to the court, and to the parent(s), guardian or custodian, in accordance with I.C. §16-1609(1).

(b) When an alleged offender is removed from the home pursuant to I.C. 16-1608(1)(b) written notice of emergency removal shall be provided to the alleged offender.

(c) The notice of emergency removal to the parent(s), guardian, or custodian shall contain a notification of right to counsel and right to court appointed counsel, pursuant to these rules, and shall be given by personal service at least 24 hours prior to the shelter-care hearing. Notice is not required for purposes of the shelter-care hearing in the event the parent(s), guardian, or custodian cannot be located or are out of state.

(d) The notice of emergency removal of the child or alleged offender from the home shall substantially conform to the following format:

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF _____ MAGISTRATE DIVISION

In the Interest of:	)	Case No. _____
_____	)	
	)	NOTICE OF EMERGENCY
	)	REMOVAL UNDER Idaho
A Child Under Eighteen	)	Code §§ 16 1608 and 16 1609
(18) Years of Age	)	

GREETINGS TO: _____

(____) The undersigned hereby gives notice that on _____, the above named child was removed by a peace officer and taken to a place of shelter at a (foster/group) home previously designated by this court for his/her immediate care and protection.

(____) The undersigned hereby gives notice that on _____, the alleged offender was removed from the home for the protection of the child, and the child was allowed to remain in the home.

I further certify that in accordance with Idaho Code § 16-1609, I duly notified the parent(s), guardian, or custodian of the above named child and/or the alleged offender that a shelter care hearing will be conducted by this court within (24/48) hours, excluding Saturdays, Sundays, and holidays.

By this notice, the parent(s), guardian, custodian, or the alleged offender have been informed of their right to retain and be represented by an attorney. If the parent(s), guardian, custodian, or alleged offender cannot afford an attorney, an attorney can be appointed by the court.

If you wish to have the court appoint an attorney for you, please immediately call (telephone) or go to the _____ County Court, _____ (address), to make application for a court-appointed attorney because time is of the essence.

_____ _____
Date Person Exercising Emergency Powers

Hearing: Notice:
Location: _____ Served on: _____
Day: _____ Served by: _____
Date: _____ Time: _____
Date: _____ Time: _____

(most recent amendment, 2006)

Rule 33. Summons (C.P.A.)

(a) After a petition has been filed service of process shall be made as provided in Idaho Code §§16-1611 and 16-1612.

(b) Form of Child Protective Act Summons. The summons in Child Protective Act cases shall substantially conform to the following format:

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF

IN THE MATTER OF:	)	
_____,	)	CHILD PROTECTIVE
	)	ACT SUMMONS
A child under the age of	)	
eighteen (18) years.	)	
_____	)	

(name)
(address)
(city & state)

YOU ARE HEREBY NOTIFIED THAT:

A Petition has been filed in the above-entitled matter in the district court of _____ County, Idaho, alleging that the above-named child/ren come/s within the jurisdiction of the Child Protective Act.
A copy of the Petition is attached hereto.

[If seeking an Order of Removal] You, as the individual(s) who has/have the custody or control of said child/ren, are hereby directed to appear personally and bring said child/ren before this court for a/an _____ hearing at the _____ Courthouse, (address), (city), Idaho, on _____, 20___, at _____ o'clock ____.m.

[If not seeking Order of Removal] You, as parent, legal guardian, custodian or _____(other) of the child/ren is/are hereby directed to appear personally before this court for (type of) hearing at the _____ Courthouse (address), (city), Idaho, on _____, 20____, at _____ o'clock ___.m.
You are hereby notified that service of the attached petition upon you, as the parent(s), legal guardian, or custodian of this/these child/ren, confers personal jurisdiction of the court over you and subjects you to the provisions of the Child Protective Act.

If you fail to appear without reasonable cause, the court may proceed in your absence or proceed against you for contempt of court. If the court proceeds without your presence, you may forfeit all of your rights.

As the parent(s), legal guardian, or custodian, you may be financially liable for the support and/or treatment of the child/ren.

If you are the parent(s), legal guardian, or custodian, you have the right to be represented by counsel. If you are unable to afford an attorney, you have the right to have an attorney appointed by the court to represent you at county expense. If you request to have an attorney appointed at county expense, contact the court in advance of the hearing which is scheduled on the _____ date of

_____, 20___ at _____ a.m./p.m. at the following number: _____.

You are further notified that when a child has been placed in the temporary and/ or legal custody of the Idaho Department of Health and Welfare for fifteen (15) out of the most recent twenty-two (22) months the Department shall, prior to the last day of the fifteenth month, file a petition for termination of parental rights unless the child has been permanently placed with a relative, there are compelling reasons why termination of parental rights is not in the best interest of the child(ren), or, the Department has failed to provide reasonable efforts to reunify the child(ren) with his/her /their family.

DATED _____

CLERK OF THE DISTRICT COURT

by _____
Deputy Clerk

STATE OF IDAHO)
) ss.
COUNTY OF _____)

I HEREBY CERTIFY AND RETURN that I have received the above Summons and copy of the petition in the above-entitled matter on the ____ day of _____, 20____, and personally served the same on _____ by delivering to _____ in _____ County, state of Idaho, a copy of said Summons duly attested by the clerk of the above-entitled court, together with a copy of the petition and a copy of the Order Setting Time and Place of Hearing.
DATED this ____ day of _____, 20___.

by _____
(Deputy Marshal/Deputy Sheriff)

(most recent amendment, 2013)

Rule 34. Order of removal of child upon issuance of the summons (C.P.A.)

(a) The court may order the removal of the child/ren from the home, in accordance with I.C. § 16-1611(4), at the time the Summons is issued. A request for an Order of Removal must be made in writing, either in the petition or by separate motion of the petitioner. Determination shall be made on facts presented to the court ex parte, either by testimony or affidavit.

(b) If the Order of Removal of Child is the first court order sanctioning removal of the children from the home, the court shall make written, case-specific findings that remaining in the home is contrary to the child/ren's welfare and that vesting legal custody with the Department of Health and Welfare or other authorized agency is in the best interest of the child/ren.

(c) Form of Order of Removal to accompany the Summons. The Order of Removal accompanying the summons shall substantially conform to the following format:

ORDER OF REMOVAL

It is contrary to the welfare of the child/ren to remain in the child/ren's present condition or surroundings, and it is in the best interest of the child/ren to place the child/ren in the legal custody of the Idaho Department of Health and Welfare until the shelter care hearing. This finding is made based on the information set forth in the verified Petition Under the Child Protective Act, and the affidavit attached to and incorporated in the Petition, that have been filed in this case.

[Insert additional case factual findings.]

IT IS HEREBY ORDERED that a peace officer or other authorized person promptly take [child(ren)'s name(s)] to an authorized place of shelter care until the shelter care hearing. (The date, time, and place

of the shelter care hearing scheduled before this court at the _____ Courthouse, (address), (city), Idaho,

on _____, 20___, at _____ o'clock ____.m.

DATED: _____

_____
JUDGE

Committee Comments. As to subsection (c), federal law requires the court to make a written, case-specific finding that remaining in the home is contrary to the child's welfare. See 45 CFR § 1356.21(c). Idaho Code § 16-1611(4) requires the court to find that remaining in the home is contrary to the child's welfare and that vesting legal custody in IDHW is in the child's best interests. The policy of the rule is to require written case specific findings on both best interest and contrary to the welfare. Failure to timely make the federal finding will result in loss of federal funding for an otherwise eligible child. If the case-specific finding is not made, or not made at the required time, the error cannot be corrected at a later date to restore funding. The funding cannot be a simple recitation of the language of the statute; however, if the case-specific information upon which the finding is based is set forth in a document in the court record (such as an affidavit), the finding can incorporate the document by reference without reiterating the facts set forth in the document.

(most recent amendment, 2011)

Rule 35. Guardian ad litem programs (C.P.A.)

(a) The purpose of Guardian ad Litem programs in Idaho shall be to provide court-appointed volunteer advocacy to abused, neglected, abandoned and/or homeless children.

(b) Each GAL program shall have a governing body responsible for overseeing compliance with all applicable laws and regulations,

adoption of program policies, the defining of program services, and the guidance of program development.

(c) The GAL programs shall communicate, collaborate, and share information with fellow programs in the state.

(d) The GAL Program follows written policies for inclusiveness, recruitment, selection, training, retention, effective performance and evaluation of its paid personnel.

(e) Each GAL Program shall develop and follow written policies for its volunteers regarding recruitment; application, selection and screening; training; supervision; volunteer roles and responsibilities; and dismissal.

(1) Each GAL Program shall require that volunteers complete at least 30 hours of required pre-service training and 12 hours of required in-service training per year

(2) Pre-service training shall include the following topics:

(A) Roles and responsibilities of a GAL volunteer;

(B) Court process;

(C) Dynamics of families including mental health, substance abuse, domestic violence, and poverty;

(D) Relevant state laws, regulations and policies;

(E) Relevant federal laws, regulations and policies, including the Adoption and Safe Families Act (ASFA), the Child Abuse Prevention and Treatment Act (CAPTA), the Indian Child Welfare Act (ICWA), and the Multi Ethnic Placement Act (MEPA):

(F) Confidentiality and record keeping practices;

(G) Child development;

(H) Child abuse and neglect;

(I) Permanency planning;

(J) Community agencies and resources available to meet the needs of children and families;

(K) Communication and information gathering;

(L) Effective advocacy;

(M) Cultural competency

(N) Special needs of the children served
(O) Volunteer safety
(P) Educational advocacy

(f) Each GAL program shall manage its operations in accordance with generally accepted financial and risk management practices and applicable federal, state and local statutory requirements.

(g) Each GAL program shall purchase liability protection for governing body, organization, program staff and volunteers to the extent that such individuals are not otherwise immune from liability under Idaho law.

(h) Each GAL program shall maintain management information and data necessary to plan and evaluate its services.

(i) Each GAL Program shall maintain complete, accurate and current case records and follow local policies for acceptance and assignment of GAL cases.

(j) The GAL program shall maintain all information regarding a case confidential and shall not disclose the same except to the court or to other parties to the case and to the Department of Health and Welfare, whether or not a party. This duty of confidentiality is not extinguished by the dismissal of the case. Each GAL program shall follow written policies and procedures regarding access to, use of, and release of information about the children it serves to ensure that children's confidentiality is maintained at all times.

(k) Each GAL program shall complete the following national fingerprint based criminal records checks which shall include a complete check of the Idaho Sex Offender Registry maintained by the Idaho State Police and of the Child Abuse Registry maintained by the Idaho Department of Health & Welfare.

(1) GAL volunteers shall obtain a national fingerprint based criminal records check prior to being assigned a case, at least

every two years thereafter and at any time requested by the Program Director;

(2) Program Staff shall obtain a national fingerprint based criminal records check at the time of hire and at any time thereafter at the discretion of the Program Director; and,

(3) Members of the Board of Directors of the Program shall obtain a national fingerprint based criminal records check upon appointment to the Board and at any time thereafter at the request of the Board of Directors or the Program Director.

(most recent amendment, 2012)

Rule 36. Guardian ad litem (C.P.A.)

(a) As soon as practicable after the filing of the petition, the court shall appoint a guardian ad litem for the child as provided in I.C. § 16-1614.

(b) Upon the resignation or removal of a guardian ad litem, the court shall appoint a successor guardian ad litem for the child or children in accordance with I.C. § 16-1614.

(c) Subject to the direction of the court, the guardian ad litem shall maintain all information regarding the case confidential and shall not disclose the same except to the court or to other parties to the case or to the Department of Health and Welfare, whether or not a party. This duty of confidentiality is not extinguished by the resignation of the guardian ad litem; the removal of the guardian ad litem, or the dismissal of the case.

(most recent amendment, 2012)

Rule 37. Right to counsel (C.P.A.)

(a) The court should appoint counsel to represent the guardian ad litem, unless the guardian ad litem has counsel or has waived counsel.

(b) The court may appoint separate counsel for the child in appropriate cases. The court may consider the nature of the case, the child's age, maturity, intellectual ability, and other factors relevant to the child's need for counsel and ability to direct the activities of counsel.

(c) If there is no qualified guardian ad litem program or qualified guardian ad litem available, the court shall appoint counsel for the child as provided in I.C. § 16-1614.

(d) The parent(s), guardian, or legal custodian has the right to be represented by counsel in all proceedings before the court. The court shall appoint counsel to represent the parent(s), guardian, or legal custodian if it finds that they are financially unable to pay for such legal services, unless representation is competently and intelligently waived.

(e) Notice of the right to be represented by counsel, and at public expense where financial inability exists on the part of the parent(s), guardian, or legal custodian, should be given at the earliest possible time. Notice shall be given in the summons, and at the outset of any hearing in which the parent(s), guardian, or legal custodian is making a first appearance before the court.

(most recent amendment, 2006)

Rule 38. Stipulations (C.P.A.)

All or some of the parties may enter into stipulations as to any issue at any stage of a proceeding under the Child Protective Act. Stipulations shall be made part of the court record, and are subject to court approval. The court may enter orders or decrees based upon such stipulations only upon a reasonable inquiry by the court to confirm that the parties entered into the stipulation knowingly and voluntarily, that the stipulation has a reasonable basis in fact, and that the stipulation is in the best interest of the child. Any order entered

based on a stipulation must include all case-specific findings required by the state or federal statute or these rules.

(as adopted, 2006)

Rule 39. Shelter care hearing (C.P.A.)

(a) The purpose of the shelter care hearing is to determine whether the child will be placed in or remain in shelter care pending the adjudicatory hearing.

(b) The court shall schedule a shelter care hearing whenever a child or alleged offender is removed from the home as described in I.J.R. 31(a), (b), and (d), or upon the written motion or petition of the petitioner with or without prior removal of a child or alleged offender.

(c) When a child is taken into custody as described in I.J.R. 31(a) or (d), the court must hold a shelter-care hearing within 48 hours, excluding weekends and holidays.

(d) When an alleged offender is removed from the home under I.J.R. 31(a), the court must hold a shelter-care hearing within 24 hours, excluding weekends and holidays.

(e) The Idaho Rules of Evidence, other than those regarding privileges, do not apply in a shelter-care hearing as provided in I.R.E. 101(e)(6).

(f) The shelter-care hearing may be continued for a reasonable time by request of the parent(s), guardian, or custodian of the child upon entry of a waiver of the statutory time limits for setting the shelter-care hearing. The court may also grant a reasonable continuance to all other parties or participants upon good cause shown.

(g) At the time of the shelter-care hearing, the court shall advise the child, if present, and the parent(s), guardian, or custodian of their right to be represented by an attorney and, if financially unable to hire

an attorney, of their right to be represented by a court-appointed attorney. The court should verify that each party has a copy of the petition and they are advised of the allegations therein; the purpose and scope of the hearing; the possible consequences of the proceedings, including termination of parental rights; the right of the parties to present evidence and to cross-examine witnesses regarding whether the child should return home with or without conditions or whether the child should be placed in protective care; and that failure to appear at future hearings could result in a finding that the petition has been proved, issuance of an order adjudicating that the child is in need of protection or services, and an order transferring permanent legal and physical custody of the child to another.

(h) The shelter-care hearing in its entirety shall be placed upon the record, and the general public shall be excluded in the manner set forth in I.J.R. 52.

(i) Pursuant to I.C. § 16-1615(5), and following receipt of evidence at the shelter care hearing, the court shall enter an order of shelter care/protective order if shown that:

(1) A petition has been filed; and

(2) Reasonable cause exists to believe that the child comes within the jurisdiction of the C.P.A.; and

(3) The department made reasonable efforts to eliminate the need for shelter care but the efforts were unsuccessful; or the department made reasonable efforts to eliminate the need for shelter care but was not able to safely provide preventative services; and

(4) The child could not be placed in the temporary sole custody of a parent having joint legal or physical custody; and

(5) It is contrary to the welfare of the child to remain in the home; and

(6) It is in the best interest of the child to remain in shelter care pending the adjudicatory hearing.

The court's findings as to reasonable efforts to prevent removal shall be in writing, and case-specific. If the shelter care order is the first

order sanctioning removal of the child from the home, the court shall make written, case-specific findings that remaining in the home is contrary to the child's welfare and that vesting custody with the department or other authorized agency is in the best interest of the child.

(j) The court may enter a protective order as defined in I.C. § 16-1602(28), in addition to the shelter care order or instead of the shelter care order if it is shown that:

(1) Reasonable cause exists to believe the child comes within the purview of the C.P.A.; and

(2) A reasonable effort to prevent placement of the child outside the home could be effected by a protective order safeguarding the child's welfare and maintaining the child in the child's present surroundings.

(k) The court shall enter its order within 24 hours. If the court enters an order placing the child in shelter care, then the court must set the adjudicatory hearing as soon as possible and not more than 30 days after the filing of the Child Protective Act petition, or the date the court orders a Juvenile Corrections Act case expanded to a Child Protective Act case, or service of the endorsement on the summons, whichever occurs later. If the court does not find that the child should remain in shelter care, the court may return the child to the home under a protective order, which will safeguard the child's health, safety or welfare, or may dismiss the petition.

(l) In making the determination as to whether shelter care of the child is required, the court shall consider any relevant facts consistent with subsection (i) of this rule, but generally the existence of any of the following facts will justify ordering temporary shelter care of the child:

(1) The child is in immediate need of medical treatment; or

(2) The child is seriously endangered in the child's surroundings and prompt removal appears to be necessary for the child's immediate protection; or

(3) The evidence indicates a danger that some action may be taken which would deprive the court of jurisdiction over the child; or

(m) At the shelter care hearing, or at any other time, upon notice and motion by any party, the court may make the following determinations, which shall temporarily suspend further efforts to reunify the child who is the subject of the action with the child's parent, pending further order of the court:

(1) when a termination of parental rights petition has been filed regarding this child; or

(2) there is reason to believe that aggravated circumstances exist; or

(3) the parental rights of the parent to a sibling have been terminated involuntarily.

(most recent amendment, 2013)

Rule 40. Notice of further proceedings including parents, foster parents and others (C.P.A.)

(a) After the adjudicatory hearing, any person who is designated by the Department of Health and Welfare as the foster parent, as a pre-adoptive parent, or as a relative providing care for a child who is in the custody of the department, shall be provided with notice of, and have a right to be heard in, any further hearings to be held with respect to the child. This provision shall not be construed to require that any foster parent, pre-adoptive parent, or relative providing care for the child be made a party to the proceeding solely on the basis of such notice and right to be heard. The Department of Health and Welfare shall provide this notice and shall confirm to the court that the notice was given.

(b) After the adjudicatory hearing, a child eight (8) year of age or older, shall be provided with notice of, and have a right to be heard, either in person or in writing, in any further hearings to be held with respect to the child. The Department of Health and Welfare shall provide this notice and shall confirm to the court that the notice was

given. If the child chooses to be heard in writing, the writing shall be filed, copies provided to all parties and to the Department of Health and Welfare, whether or not a party, and considered by the court.

(c) Notice to any party of the time, date, and place of further proceedings after an initial appearance or service of summons may be given in open court, by written acknowledgment of receipt, or by mail to any party. Notice shall be sufficient if the clerk deposits the notice in the United States mail, postage prepaid, to the address provided by the party to the court or the address at which the party was initially served, and files a certificate of such service, or if notice is sent by registered or certified mail.

(d) The notice of hearing shall conform to the following format:

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____

IN THE MATTER OF:)	Case No. _____
)	
_____,)	NOTICE OF HEARING
)	
A child under the age of)	
eighteen (18) years.)	
_____)	

PLEASE TAKE NOTICE that the above matter has been set for hearing in the Magistrate Court at the _____ County Courthouse, (address) , (city) , Idaho, on the ____ day of _____, 20___, at _____ o'clock ___.m. The nature of the hearing is:

_____ Shelter Care Hearing
_____ Pretrial Conference
_____ Adjudicatory Hearing
_____ Case Plan Hearing

_____ Permanency Hearing (Aggravated Circumstances)
_____ Review Hearing
_____ Permanency Hearing (12 month)
_____ Other:_____

You are further notified that the parent(s), guardian, or custodian have the right to be represented by an attorney of your choosing, or if financially unable to pay, have the right to have an attorney appointed by the court to represent the child or the parent(s), guardian, or custodian at county expense. If you wish to have an attorney appointed at county expense, you must contact the court at the address given above, at least two days prior to the hearing, for the court to inquire whether the parent(s), guardian, or custodian require the separate appointment of an attorney.

DATED this ____ day of _____, 20_____.

CLERK OF THE DISTRICT COURT

By: _____
Deputy Clerk

CERTIFICATE OF SERVICE

I hereby certify that copies of this notice were served as follows on this date: _____.

Parent(s)/Guardian/Custodian:
Hand Delivered ____ Mailed ____

_____
Parent's/Guardian's/Custodian's Signature of Hand Receipt

Defense Counsel:
Hand Delivered ____ Mailed ____
Prosecutor:

Hand Delivered ____ Mailed ____

Other: _____
Hand Delivered ____ Mailed ____

Probation Officer/Caseworker:
Hand Delivered ____ Mailed ____

By _____
Deputy Clerk

(most recent amendment, 2012)

Rule 41. Adjudicatory hearing (C.P.A.)

(a) The purpose of the adjudicatory hearing is to determine: (1) whether the child is within the jurisdiction of the court under the Child Protective Act as set forth in I.C. §§ 16-1603; and (2) if jurisdiction is found, to determine the disposition of the child. The court may also determine whether aggravated circumstances exist, if aggravated circumstances were alleged in the petition or raised by written motion with notice to the parents prior to the adjudicatory hearing. The court may make an aggravated circumstances determination at any time after the adjudicatory hearing if aggravated circumstances is raised by written motion with notice to the parents prior to the hearing.

(b) The hearing shall be scheduled as set forth in I.C. § 16-1619. The hearing may not be continued more than 60 days from the date the child was removed from the home, unless the court has made case-specific, written findings as to whether the department made reasonable efforts to prevent the need to remove the child from the home.

(c) The hearing shall be conducted in an informal manner. The Idaho Rules of Evidence apply to the portion of the hearing where jurisdiction and/or aggravated circumstances is determined. The

Idaho Rules of Evidence do not apply to disposition or any other portion of the hearing.

(d) In the event the court finds the child is within the jurisdiction of the court under the Child Protective Act, it shall make findings of fact and conclusions of law indicating the basis of jurisdiction.

(e) If the court finds that the child is within the jurisdiction of the court under the Child Protective Act, and if the court places the child in the custody of the department, and if the court does not find that the parent subjected the child to aggravated circumstances, then the court shall make written, case-specific findings that the department made reasonable efforts to eliminate the need for shelter care but the efforts were unsuccessful or that the department made reasonable efforts to eliminate the need for shelter care but was not able to safely provide preventative services.

(f) If the adjudicatory decree is the first order of the court sanctioning removal of the child from the home, the court shall make a written, case-specific finding that remaining in the home is contrary to the welfare of the child, or, in the alternative, removal from the home is in the best interest of the child.

(g) If the court finds that the child is within the jurisdiction of the court under the Child Protective Act, and if the court vests legal custody of the child in the department, and the court does not find that the parent subjected the child to aggravated circumstances, then the court shall order the department to prepare a written case plan, to be filed with the court and served upon the parties five days prior to the hearing on the case plan. The department shall consult with the guardian ad litem and the child's parents in preparing the plan.

(h) If the court finds that the child is within the jurisdiction of the court under the Child Protective Act, and the court places the child under the protective supervision of the department, then the court shall order the department to prepare a written case plan, to be filed with the court and served upon the parties five days prior to the

hearing on the case plan. The department shall consult with the guardian ad litem and the child's parents in preparing the plan.

(i) If the court finds that the child is within the jurisdiction of the court under the Child Protective Act, and finds that the parent has subjected the child to aggravated circumstances, then the court shall order the department to prepare a written permanency plan, to be filed with the court and served upon the parties five days prior to the hearing on the permanency plan. The department shall consult with the guardian ad litem, and the child's parents in preparing the plan.

(most recent amendment, 2013)

Rule 42. Extended home visits (C.P.A.)

If the court vests legal custody of the child in the department, then extended home visits must be approved by the court in writing prior to the extended home visit. For purposes of this rule, an extended home visit is any period of unsupervised visitation between the parent and the child that exceeds forty-eight (48) hours duration. The department may terminate an extended home visit without prior court approval when, in the determination of the department, termination of the extended home visit and removal of the child is in the best interest of the child. If the department terminates an extended home visit, the department shall prepare a written statement, setting forth when the extended home visit was terminated and the reason(s) for terminating the extended home visit. The statement shall be filed with the court within forty-eight (48) hours (excluding weekends and holidays) of the termination of the extended home visit, and shall be mailed or otherwise provided to the parties.

(as adopted, 2006)

Rule 43. [Reserved]

Rule 44. Case Plan Hearing/Permanency Hearing - Aggravated circumstances (C.P.A.)

(a) Case Plan: No Finding of Aggravated Circumstances.

(1) Absent a finding of aggravated circumstances, the case plan shall provide that reunification must be finalized within twelve (12) months from the date the child is removed from the home. If in the child's best interest, the court may approve an amendment to the case plan extending the time to finalize reunification for up to three (3) months.

(2) Absent a finding of aggravated circumstances, if the case plan has a concurrent permanency goal of guardianship, the case plan shall include a schedule to finalize the guardianship within thirteen (13) months from the date the child was removed from the home. Any amendment to the case plan to extend the time to finalize the guardianship must be approved by the court.

(b) Permanency Plan- Aggravated Circumstances Found.

(1) If the permanency plan has a permanency goal of guardianship, the permanency plan will include a schedule to finalize the guardianship within five (5) months from the date of the judicial determination of aggravated circumstances. Amendments to the permanency plan to extend the time to finalize the guardianship must be approved by the court.

(2) If the permanency plan has a permanency goal of termination of parental rights and adoption, the permanency plan shall include a schedule to finalize the termination of parental rights within six (6) months from the approval of the permanency plan, and has the objective of finalizing the adoption within twelve (12) months from the approval of the permanency plan. Amendments to the permanency plan to extend the time to finalize the termination of parental rights or the adoption must be approved by the court.

(3) If the court approves a permanency plan with a permanency goal of termination of parental rights and adoption, the court shall order the department to file a petition to terminate parental rights within thirty (30) days of approval of the permanency plan and

shall enter a scheduling order that complies with the time limits of this rule and implements the schedule set forth in the permanency plan. The scheduling order may include, but is not limited to, deadlines for filing the petition for termination of parental rights and service of process, the date and time of hearing in the event the petition is not contested, and the date and time of pretrial conference and trial in the event the petition is contested.

(most recent amendment, 2013)

Rule 45. Review hearings (C.P.A.)

(a) At review hearings, the court shall review compliance with the case plan; and/or the permanency plan (whichever is in place at the time of the hearing) and the progress of the department in achieving permanency for the child. The court may:

(1) modify the case plan or permanency plan as appropriate;

(2) modify disposition (provided that where a child was placed under the protective supervision of the department, modification is subject to the requirement of section 16-1623, Idaho Code);

(3) determine whether the department has made reasonable efforts to finalize a permanency plan for the child; and in the case of a child who will not be returned to a parent, review the department's consideration of options for in-state and out-of-state placement of the child;

(4) enter further orders as necessary or appropriate to ensure the progress of the case towards achieving permanency for the child.

(b) The court may continue a review hearing for a short period of time to give the parties time to respond to substantive issues raised for the first time at a review hearing. The court may enter temporary orders as appropriate pending the continued hearing.

(c) If the next review hearing to be scheduled is combined with the annual permanency hearing described at section 16-1622(b)(4), Idaho Code, the court shall order the department to prepare a written

permanency plan, to be filed with the court and served upon the parties at least five (5) days prior to the hearing.

(most recent amendment, 2013)

Rule 46. Annual permanency hearings

(a) If the permanency plan has a permanency goal of termination of parental rights and adoption, the permanency plan shall include a schedule which has the objective of finalizing the termination of parental rights within eighteen (18) months from the date the child was removed from the home, and has the objective of finalizing the adoption within twenty-four(24) months from the date the child was removed from the home. Amendments to the permanency plan to extend the time to finalize the termination of parental rights or the adoption must be approved by the court.

(b) If the court approves a permanency plan with a permanency goal of termination of parental rights and adoption, the court shall order the department to file a petition to terminate parental rights within thirty (30) days of approval of the permanency plan and shall enter a scheduling order that complies with the time limits set forth in this rule and implements the schedule set forth in the permanency plan. The scheduling order may include, but is not limited to, deadlines for filing the petition for termination of parental rights and service of process, the date and time of hearing in the event the petition is not contested, and the date and time of pretrial conference and trial in the event the petition is contested, with the objective of finalizing the proceedings on the petition within six (6) months of the date of the permanency hearing.

(most recent amendment, 2013)

Rule 47. Modification or revocation of disposition or case plan (C.P.A.)

Any C.P.A. disposition or case plan may be modified or revoked at any time that the court has jurisdiction over the child. If the

modification is to remove a child from the home who has been placed there under protective supervision, then the modification shall be made in accordance with the procedure set forth in I.C. § 16-1623.

(as adopted, 2006)

Rule 48. Termination of parent-child relationship (C.P.A.)

(a) At any time after the entry of a decree finding that the child is within the jurisdiction of the court under the C.P.A. a petition for termination of the parent child relationship may be filed in accordance with the provisions of I.C. § 16-1624 and Chapter 20, Title 16, of the Idaho Code.

(b) The petition to terminate parental rights shall be filed in the same case as the proceeding under the Child Protective Act, for purposes of judicial administration only. All appointments of attorneys and guardians ad litem in the proceeding under the Child Protective Act shall remain in effect for purposes of proceedings on the petition to terminate, unless otherwise ordered by the court. The petitioner must serve process in accordance with the statute governing termination of parental rights, set forth at Chapter 20, Title 16, Idaho Code. At trial on the petition to terminate parental rights, the petitioner must meet its burden of proof through evidence admissible pursuant to the Idaho Rules of Evidence; no part of the court's record in the proceeding under the Child Protective Act may be used for purposes of meeting the petitioner's burden of proof in the trial on the petition to terminate parental rights, unless the part offered is admissible under the Idaho Rules of Evidence, or unless the parties stipulate to its admission.

(as adopted, 2006)

Rule 49. Right of appeal (C.P.A.)

(a) An aggrieved party may appeal to the district court those orders of the court in a C.P.A. action specified in I.C. § 16-1625. A party may also seek a permissive appeal to the Supreme Court pursuant to Idaho Appellate Rule. 12.1.

(b) During the pendency of an appeal of a C.P.A. proceeding, or of an order, decree or judgment terminating parental rights, from the magistrate's division to the district court, and any further appeal to the Supreme Court, the magistrate shall continue to conduct review hearings and annual permanency hearings pursuant to I.C. § 16-1622 and to enter orders thereon, unless otherwise ordered by the district judge or the Supreme Court. If the district judge or the Supreme Court orders that the magistrate judge shall not conduct the review hearings and annual permanency hearings, then the district judge or the Supreme Court will conduct the review hearings and annual permanency hearings.

(most recent amendment, 2009)

Rule 50. Transfer of venue (C.P.A.)

(a) Transfer of venue in a case under the Child Protective Act is governed by these rules and is not subject to the Idaho Rules of Civil Procedure.

(b) Venue in a case under Child Protective Act may not be transferred prior to the entry of a decree finding the child within the jurisdiction of the court under the Child Protective Act.

(c) In the discretion of the court, venue in a case arising under the Child Protective Act may be transferred when the following conditions exist:

(1) The court has entered a decree finding the child within the jurisdiction of the court under the Child Protective Act;

(2) It is in the best interest of the child;

(3) All parties either agree or do not object to the transfer;

(4) The Department of Health & Welfare is able and ready to provide services in case management in the new county;

(5) The parents or a parent who is the subject of a reunification plan lives in the receiving county;

(6) Prior to the transfer, the judge of the sending county court will communicate either verbally or in writing and obtain consent to the transfer from a judge of the receiving county court; and

(7) All currently needed hearings and findings have been completed and transfer will not jeopardize the ability of the court or parties to comply with the time requirements of the Child Protective Act or these rules.

(d) Counsel of record and guardians ad litem shall continue in the case unless there is a stipulation for substitution of counsel and/or guardians ad litem with the new counsel or guardians ad litem or an order of the receiving court allowing withdrawal of counsel or guardians ad litem.

(e) If a case is transferred, the clerk shall forward the original file to the receiving court and shall maintain a copy of the file in the sending jurisdiction for record purposes and shall, if possible, transfer any ISTARS record to the receiving county.

(f) The receiving county will conduct a review hearing of the case status within sixty (60) days of receipt of the file.

(as adopted, 2006)

Rule 51. Application of Idaho rules of evidence (C.P.A.) (J.C.A.)

(a) The Idaho Rules of Evidence shall apply to J.C.A. proceedings except in the following situations:

(1) Detention review hearings. Pre-adjudication detention hearings held under I.C. § 20-516 and Idaho Juvenile Rule 7.

(2) Sentencing hearings. Sentencing hearings held under I.C. § 20-520 and Idaho Juvenile Rule 17.

(b) The Idaho Rules of Evidence shall apply in C.P.A proceedings only to the portion of the adjudicatory hearing where jurisdiction is being determined, or to the portion of any hearing where aggravated circumstances is being determined.

(c) Where a petition to terminate parental rights has been filed in a C.P.A. case, the Idaho Rules of Evidence shall apply to proceedings on the petition to terminate.

(d) The Idaho Rules of Evidence shall not apply in proceedings under I.C. § 20-511A and Idaho Juvenile Rule 54.

(most recent amendment, 2013)

Rule 52. Closed hearings (C.P.A.) (J.C.A.)

(a) All C.P.A. hearings shall be closed to the public, except for those persons found by the court to have a direct interest in the case or in the work of the court.

(b) All Juvenile Correction Act proceedings on a petition filed under I.C. § 20-510 shall be closed to the public except for those persons found by the court to have a direct interest in the case or who work for the court, until a admit/deny hearing is held pursuant to Idaho Juvenile Rule 6 to permit the parties to request that the court consider, or permit the court to consider on its own motion, closing the proceedings. Thereafter the proceedings shall be open unless the court enters an order closing them. At the admit/deny hearing, the court shall make a determination whether the proceedings shall be opened or closed to the public as provided in (1) and (2) below:

(1) Juvenile Correction Act proceedings brought against any juvenile under the age of fourteen (14) or brought against a juvenile fourteen (14) years or older who is charged with an act that would not be a felony if committed by an adult may be closed to the public at the court's discretion by a written order made in each case.

(2) Juvenile Correction Act proceedings brought against a juvenile fourteen (14) years or older who is charged with an act that would be a felony if committed by an adult shall be open to the public unless the court determines by a written order made in each case that extraordinary circumstances exist which justify that the proceedings should be confidential.

(c) All hearings and screening team meetings held pursuant to I.C. § 20-511A and Idaho Juvenile Rule 54 shall be closed to the public.

(d) Notwithstanding any other provision of this rule, in every case the court may exclude the public from a proceeding during the testimony of a child witness or child victim if the court determines that the exclusion of the public is necessary to protect the welfare of the child witness or child victim.

(e) Persons found by the court to have a direct interest in the case or who work for the court may attend all Juvenile Corrections Act proceedings.

(f) If a juvenile fourteen (14) years or older who is charged with an act which would be a felony if committed by an adult is found not to have committed an act that would be a felony if committed by an adult, or the charge is reduced to allege an act that would not constitute a felony if committed by an adult, all further court proceedings may be closed upon written order of the court made in each case.

(g) If a petition filed against a juvenile fourteen (14) years or older alleges acts committed by the juvenile which would be a felony if committed by an adult, and acts which would be a misdemeanor if committed by an adult or a status offense, or if separate petitions are filed against a juvenile fourteen (14) years of age or older which, if consolidated, allege acts which would be a felony if committed by an adult, and acts which would be a misdemeanor if committed by an adult or a status offense, the proceedings relating to all of the charges, including those charges alleging acts which would be a misdemeanor if committed by an adult or a status offense, shall be open to the public as though all of the charges allege acts which would be felonies if committed by an adult. The case records and files of the proceedings in such a case shall be subject to the disclosure provisions of Idaho Juvenile Rule 53 and Rule 32 of the Idaho Court Administrative Rules.

Comment of the Child Protection Committee:
This rule gives the court broad discretion on who may attend juvenile proceedings. The direct interest standard can be considered on a case-by-case basis. This standard is consistent with I.C. § 16-1613.

(as adopted, 2006)

Rule 53. Release of information (C.P.A.) (J.C.A.)
A court shall not disclose any of the contents of a case file of any action brought under the Juvenile Corrections Act or the Child Protective Act, nor other records of such proceedings, except as authorized under Rule 32 of the Idaho Court Administrative Rules and I. C. § 16-1626 (addressing the disclosure of judicial records.)

(as adopted, 2006)

Rule 54. Mental health assessments and plans of treatment under I.C. § 20-511A
(a) As used in this rule, 'interested parties' means:
(1) in Juvenile Corrections Act proceedings, the juvenile, the juvenile's parents, guardians and custodians, the juvenile's counsel, the prosecuting attorney, the department of health and welfare, the department of juvenile corrections, county probation and any other agencies or persons designated by the court.
(2) in Child Protective Act proceedings, the child, the child's parents, guardians and custodians, the child's counsel if any, the child's guardian ad litem if any, the attorney general or prosecuting attorney appearing in the case, the department of health and welfare, and any other agencies or persons designated by the court.

(b) When the court has reason to believe that the conditions specified in I.C. § 20-511A(1)(a) and (b) are present, the court may order the department of health and welfare to submit appropriate mental health assessments and a plan of treatment for the court's approval. The order shall set a time for the submission of the mental health

assessment and plan of treatment, which time may be extended for good cause. Notice of the order shall be given to all interested parties.

The order shall give notice to the parents of the juvenile or child that initial costs of the preparation of the assessment and plan of treatment, and of any additional evaluation and/or recommendations under Idaho Code § 20-511A(3) and subsection (e) of this rule, may be borne by the department of health and welfare, but that, pursuant to I.C. § 20-511A(5), these costs and all costs associated with assessment and treatment shall be the responsibility of the parents according to their ability to pay based upon the sliding fee scale established pursuant to I.C. § 16-2433.

(c) At any time after determining that there is reason to believe that the conditions specified in I.C. § 20-511A(1)(a) and (b) are present, the court may order the convening of a screening team consisting of representatives from the department of health and welfare, county probation, local school officials, teen early intervention specialists as provided for under I.C. § 16-2404A, the department of juvenile corrections and/or other agencies or persons designated by the court. The screening team shall review the mental health assessment and plan of treatment and any other relevant information and make written recommendations to the court. Any parents or guardians of the juvenile or child who are available shall be included in the screening team and consulted with regard to the plan of treatment. The order shall set a time for the submission of the written recommendations, which time may be extended for good cause. The order shall designate a leading member of the screening team, who shall have the responsibility for scheduling meetings and submitting the written recommendations of the screening team to the court. Notice of the order shall be given to all interested parties.

(d) The court may:

(1) order any agencies that have treated or had custody of the juvenile or child to release any pertinent information or records to

the department of health and welfare for the purpose of mental health assessment and preparation of a plan of treatment;

(2) order the department of health and welfare, county probation, school officials and the department of juvenile corrections to release all pertinent information regarding the juvenile or child to the court and and/or the screening team; and

(3) require the parents or guardians of the juvenile or child, and where appropriate require the juvenile or child, to allow information pertinent to the assessment or treatment of the child to be released to the department of health and welfare, the court and/or the screening team.

(e) If the court, after receiving the mental health assessment and plan of treatment submitted by the department of health and welfare and any recommendations from the screening team, determines that additional information is necessary to determine whether the conditions specified in I.C. § 20-511A(1)(a) and (b) are present, or to determine an appropriate plan of treatment for the juvenile, the court may order an evaluation and/or recommendations for treatment to be furnished by a psychiatrist, licensed physician or licensed psychologist, with the expenses of such evaluation and/or recommendations to be borne by the department of health and welfare.

(f) After receiving the mental health assessment and plan of treatment from the department of health and welfare, any written recommendations from the screening team and any additional evaluations or recommendations for treatment, the court may make a determination of whether the conditions specified in I.C. § 20-511A(1)(a) and (b) are present. If the court finds that such conditions are present, the court shall order mental health treatment in accordance with a plan of treatment as approved or modified by the court. However, the court shall first hold a hearing before making such determination or entering such order if:

(1) the court determines that a hearing would be helpful in making such determinations or fashioning the order; or

(2) any interested party objects to the entry of such a determination or order; or
(3) in-patient or residential treatment would be required as part of the plan of treatment, unless the hearing is waived by the juvenile or child and the parents or guardians of the juvenile or child. Notice of the hearing shall be given to all interested parties.

(g) At the hearing, the court shall consider the mental health assessment and plan of treatment submitted by the department of health and welfare, the recommendations of the screening team and any additional evaluation or recommendations for treatment. The parties may present evidence in support of, or opposed to, the information from any of these sources. Each party shall have the right to present any relevant evidence on the issues of: (1) whether the conditions specified in I.C. § 20-511A(1)(a) and (b) are present; and (2) what should be included in the plan of treatment, if any, ordered by the court.

(h) At the conclusion of the hearing, the court shall determine whether the conditions specified in I.C. § 20-511A(1)(a) and (b) are present. If the court determines that such conditions are present, the court shall order mental health treatment for the juvenile or child in accordance with the plan of treatment as approved or modified by the court. The court shall not order in-patient or residential treatment unless the court determines by clear and convincing evidence that the conditions specified in I.C. § 20-511A(1)(a) and (b) are present and that such treatment is required.

(i) Where the procedures set forth in I.C. § 20-511A and this rule are initiated in a Juvenile Corrections Act proceeding, any communications made by the juvenile to any person participating in an assessment, evaluation or preparation of a plan of treatment for the juvenile, and made for the purpose of such assessment, evaluation or preparation of a plan of treatment, shall not be used against the juvenile for any purpose in the evidentiary hearing in the Juvenile Corrections Act proceeding.

(j) Forms.

(1) An order for mental health assessment and preparation of a plan of treatment under subsection (b), and for the convening of a screening team under subsection (c), shall be in substantially the following form:

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____

In the Interest of:	) Case No. _____
_____	)
DOB: _____	) ORDER FOR MENTAL
	) HEALTH ASSESSMENT
A Child Under Eighteen	) AND PLAN OF
(18) Years of Age	) TREATMENT FOR
	) SCREENING TEAM

Pursuant to I.C. 20-511A it is ordered the Idaho Department of Health and Welfare submit appropriate mental health assessments and plan of treatment for the juvenile. The Department shall submit the assessments and plan of treatment by the ____ day of ____, 20__. Upon good cause shown the date may be extended. [If a screening team is convened by the court, the Department may submit their assessments and plan of treatment separately or in conjunction with the recommendations of the screening team.]

[Pursuant to I.C. 20-511A (2) the court convenes a screening team. The team should consist of a representative from:

1. _____ Department of Health and Welfare,
2. _____ _____ Juvenile Probation Office,
3. _____ _____ School District,
4. _____ Department of Juvenile Corrections,
5. _____ _____ agency
6. _____ _____

and the parents or guardians of the juvenile. The representative from _____shall be the lead member, responsible for scheduling team meetings and submitting the written recommendations to the court.

The team shall review all pertinent information available concerning the juvenile's emotional and mental health and the plan of treatment of the juvenile. Each of the above agencies having information regarding the juvenile's emotional and mental health shall make such material available to the screening team. If additional current information is necessary and can be obtained, it is the order of the court that the parents or guardians provide confidentiality waivers to obtain any additional current information if necessary. If the screening team determines additional information is necessary to make necessary written recommendations to the court and such information can be obtained only by a court order, the court will be so advised.

Screening team meetings will be confidential and only written recommendations will be made to the court.

The team shall issue its written recommendations to the court no later than the _____ day of _____, 20__. This time may be extended upon good cause found by the court.] Initial costs of assessment and treatment may be borne by the Department of Health and Welfare, but pursuant I.C. 20-511(A) (5) all costs associated with assessment and treatment shall be the responsibility of the parents of the juvenile according to their ability to pay based upon the sliding fee scale established pursuant to section 16-2433, Idaho Code. The financial obligation of the family shall be determined after consideration of all available payment and funding sources including title XIX of the social security act, as amended, all available third party sources, and parent resources according to any order for child support under chapter title 32, Idaho Code.

IT IS SO ORDERED THIS _____ DAY OF _____, 20__.

_____

Magistrate Judge

*Note: The bracket portion of the above order can be used if the judge determines to utilize a screening team.

(2) The form for an order for an additional assessment and recommendations under subsection (e) shall be in substantially the following form:

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____

In the Interest of:	) Case No. _____
_____	)
DOB: _____	) ORDER REQUIRING
	) ADDITIONAL MENTAL
A Child Under Eighteen	) HEALTH ASSESSMENT
(18) Years of Age	) AND RECOMMENDATIONS

The court having received the mental health assessment and plan of treatment submitted by the Department of Health and Welfare and recommendations of the screening team determines additional information is necessary to make the findings required by I.C. 20-511(A), hereby orders that an _____ [evaluation/assessment] and recommendations be conducted and submitted by _____. The initial cost of such assessment shall be borne by the Department of Health and Welfare with reimbursement to be made by the parents pursuant to I.C. 20-511A (5).

Dated this _____ day of _____, 20__.

_____
Magistrate Judge

*Note: I.C. 20-511(3) provides an evaluation and/or recommendations for treatment to be furnished by a psychiatrist,

licensed physician or licensed psychologist. The type of evaluation/assessment may depend upon the information being sought, thus the judge will have to delineate in the order the type of evaluation/assessments necessary.

(3) The order for a plan of treatment under subsections (f) and (h) shall be in substantially the following form:

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____

IN THE INTEREST OF	)	
	)	
_____,	)	Case No. _____
DOB: _____	)	
	)	ORDER DESIGNATING
	)	A PLAN OF TREATMENT
A Child Under Eighteen	)	
(18) Years of Age	)	

The court having considered the mental health assessment, other assessments, written recommendations of the screening team and current plan of treatment finds:_____
_____
_____
_____
_____. The court concludes the juvenile:

(a) Is suffering a substantial increase or persistence of a serious emotional disturbance as defined in section 16-2403, Idaho Code, which impairs his or her ability to comply with the orders and directives of the court, or which presents a risk to the juvenile's safety or well-being or the safety of others; and

(b) Such condition has not been adequately addressed with supportive services and/or corrective measures previously provided to the juvenile, or the juvenile's needs with respect to the serious emotional disturbance are not being met or have not been met.
Based upon the above findings the court orders the approved plan of treatment for the juvenile be as follows: _____
_____
_____
_____

It is further ordered that the Department of Health and Welfare provide mental health treatment for the juvenile in accord with the above ordered approved plan of treatment.

The costs of such treatment shall be borne by the Department with reimbursement required from the parents pursuant to I.C. 20-5ll(A)(5).

It is further ordered that a review hearing shall be set for the _____ day of _____, 20__.

At least _____ days before the hearing, a report shall be delivered to the court noting all progress and other pertinent information occurring under the ordered plan of treatment.

The following shall attend the hearing:

1. _____ Department of Health and Welfare,
2. _____ _____ Juvenile Probation Office,
3. _____ _____ School District,
4. _____ Department of Juvenile Corrections,
5. _____ _____ agency

and the parents or guardians of the juvenile.

IT IS SO ORDERED THIS _____ DAY OF _____, 20__.

_____
Magistrate Judge

(most recent amendment, 2007)

Rule 55. Review of voluntary out-of-home placements

(a) The department of health and welfare may petition the court for review of voluntary out-of-home placement of children.

(b) The petition shall be signed by the prosecutor or deputy attorney general before being filed with the court. The petition shall be entitled "In the Matter of _____, a child under the age of eighteen (18) years," and shall be verified and set forth with specificity:

1. The name, birthdate, sex and residence address of the child;
2. The name and residence addresses of the child's parents, custodian, or guardian,
3. The date the child entered the voluntary out-of-home placement, and the nature and location of that placement,
4. A statement that review is sought to ensure the child's eligibility for federal funding for the placement, or statement of such other reasons for which the review is requested.
5. The name of the parent, guardian, or custodian consenting to the placement, and in the case of a guardian or custodian, the basis for the guardian or custodian's authority to consent to treatment on behalf of the child, and a statement that the consent has not been withdrawn.
6. A statement that continued voluntary out-of-home placement is in the best interest of the child.

(c) In the case of a voluntary out-of-home placement, the petition shall be accompanied by an affidavit of the department setting forth the basis for the department's determination that continued voluntary out-of-home placement is in the best interest of the child. In the case of a voluntary placement pursuant to the Children's Mental Health Services Act, the petition shall also be accompanied by an affidavit of the child's clinician setting forth the basis for the clinician's determination that the child is seriously emotionally disturbed, and is in need of continued out-of-home placement.

(d) At or following the hearing, the court shall enter an order approving the placement if the court finds that:

1. A petition has been filed.
2. In the case of a voluntary out-of-home placement pursuant to the Children's Mental Health Services Act, the clinician's determination that the child is seriously emotionally disturbed and is in need of continued out-of-home placement is supported by information in the affidavit and/or the clinician's testimony at the hearing.
3. The child's parent, guardian, or custodian has consented to continuation of the placement, and in the case of a guardian or custodian, that the guardian or custodian has authority to consent to treatment on behalf of the child.
4. The voluntary out-of-home placement of the child is in the best interest of the child.

(e) The court's best interest finding shall be in writing and shall be case-specific.

(f) This procedure shall not be used to convert a voluntary placement to an involuntary placement.

(as adopted, 2008)

Rule 56. Declarations

Whenever these rules require or permit a written statement to be made under oath or affirmation, such statement may be made as provided in Idaho Code § 9-1406.

(most recent amendment, 2013)

Rule 57. [Reserved]

Rule 58. ICWA (C.P.A.)

In any child custody proceeding where the court or any party knows or has reason to know that a child who is the subject of the proceedings is a member of, or is eligible for membership in an Indian tribe, notice of the proceedings shall be provided to the child's

parent(s) or Indian custodian and to the appropriate Indian tribe. If the child is an Indian child as defined by the Indian Child Welfare Act, then the provisions of the ICWA, 25 U.S.C. § 1901, et seq., and 25 C.F.R. § 23.11 shall apply.

(as adopted, 2006)

Selected Idaho Appellate Rules

Rule 11.1. Appealable judgments and orders from the magistrate court.

An appeal as a matter of right may be taken to the Supreme Court from any final judgment, as defined in Rule 54(a) of the Idaho Rules of Civil Procedure, granting or denying a petition for termination of parental rights, or any order granting or denying a petition for adoption. All time frames for such appeals, including the time for filing a notice of appeal, shall proceed in an expedited manner pursuant to Rule 12.2.

(most recent amendment, 2010)

Rule 12.1. Permissive appeal in custody cases.

(a) Whenever the best interest of a child would be served by an immediate appeal to the Supreme Court, any party or the magistrate hearing a case may petition the Supreme Court to accept a direct permissive appeal of a final judgment, as defined in Rule 54(a) of the Idaho Rules of Civil Procedure, or order made after final judgment, involving the custody of a minor, or a Child Protective Act proceeding, without first appealing to the district court. The filing of a motion for permissive appeal shall stay the time for appealing to the district court until the Supreme Court enters an order granting or denying the appeal. In the event a notice of appeal to the district court is filed prior to the motion for permissive appeal, the magistrate shall retain jurisdiction to rule on the motion and, in the event the motion is granted by the Supreme Court, the appeal to the district court shall be dismissed.

(b) Motion to magistrate court. In any case in which it is a party seeking the permissive appeal, a motion for permission to appeal must first be filed with the magistrate court within fourteen days from the date of entry of the final judgment or order. The motion shall be filed, served, noticed for hearing and processed in the same manner as any other motion, and hearing of the motion shall be expedited. The

magistrate court shall, within fourteen (14) days after the hearing, enter an order approving or disapproving the motion.

(c) Motion to Supreme Court for permission to appeal.

(1) Motion of a party. Within fourteen (14) days from entry by the magistrate court of an order approving or disapproving a motion for permission to appeal under this rule, any party may file a motion with the Supreme Court requesting acceptance of the appeal by permission. A copy of the order of the magistrate court approving or disapproving the permission to appeal shall be attached to the motion. If the magistrate court fails to rule upon a motion for permission to appeal within twenty-one (21) days from the date of the filing of the motion, any party may file a motion with the Supreme Court for permission to appeal without any order of the magistrate court.

(2) Motion by order of court. A magistrate court may enter, on its own initiative, an order recommending permission to appeal directly to the Supreme Court. The magistrate court shall file a certified copy of its order with the Supreme Court and serve copies on all parties. The order recommending permission to appeal shall constitute and be treated as a motion for permission to appeal under this rule.

(3) Procedure. A motion to the Supreme Court for permission to appeal under this rule shall be filed, served, and processed in the same manner as any other motion under Rule 32 of these rules.

(d) Acceptance by Supreme Court. Any appeal by permission of a judgment or order of a magistrate under this rule shall not be valid and effective unless and until the Supreme Court shall enter an order accepting such judgment or order of a magistrate, as appealable and granting leave to a party to file a notice of appeal, which must be filed within 14 days from the date of issuance of the Supreme Court order. Such appeal shall thereafter proceed in an expedited manner pursuant to Rule 12.2. The clerk of the Supreme Court shall file with the magistrate court a copy of the order of the Supreme Court granting or

denying acceptance, and shall send copies to all parties to the action or proceeding.

(most recent amendment, 2010)

Rule 12.2. Expedited review for appeals in custody cases brought pursuant to Rule 11.1 or Rule 12.1.

This rule governs procedures for an expedited review of an appeal brought as a matter of right pursuant to Rule 11.1 or a permissive appeal granted pursuant to Rule 12.1.

(a) Notice of appeal.

(1) An appeal from any final judgment, as defined in Rule 54(a) of the Idaho Rules of Civil Procedure, granting or denying a petition for termination of parental rights or granting or denying a petition for adoption shall be made only by physically filing a notice of appeal with the clerk of the district court within fourteen (14) days from the date of issuance of the judgment. A notice of cross appeal must be filed within seven (7) days from the notice of appeal.

(2) An appeal filed pursuant to order of the Supreme Court granting a motion for permissive appeals pursuant to Rule 12.1 shall be made only by physically filing a notice of appeal with the clerk of the district court within fourteen (14) days from the date of issuance of the order granting the appeal. A notice of cross appeal must be filed within seven (7) days from the notice of appeal.

(b) Preparation and filing of clerk’s record. The official court file, including any minute entries or orders together with the exhibits offered or admitted, shall constitute the clerk's record in such appeal. The record shall be prepared in accord with Rule 27 (a) and (b) as to number, use and fee, and Rule 28 (d) (e) and (f) and (g) as to preparation. The clerk shall prepare the record and have it ready for service on the parties within twenty one (21) days of the date of the filing of the notice of appeal. Clerks shall give priority to preparation of the record in these cases. The payment of the clerk's record fee as required by this rule may be waived by the magistrate court pursuant to section 31-3220, Idaho

Code, in accordance with the local rules of the judicial district of the district court.

(c) Preparation and filing of transcript. Upon the filing of the notice of appeal the clerk of the district court shall forward the notice to the Trial Court Administrator, who shall be responsible for assigning preparation of the transcript. Unless otherwise ordered by the magistrate court, the appellant shall pay the estimated fee for preparation of the transcript as determined by the transcriber within the time set by the Trial Court Administrator and transcriptionist. The payment of the transcript fee may be waived by the magistrate court pursuant to section 31-3220, Idaho Code, in accordance with the local rules of the judicial district of the district court. The transcript shall be prepared in accord with Rule 24 (a) and (b) as to number, use and format, and in accord with Rules 25 and 26. The transcript shall be prepared and ready for service on the parties within twenty-one (21) days of the date of the filing of the notice of appeal.

(d) Briefing. The time prescribed in Rule 34 for filing of briefs shall be reduced such that the appellant's brief is due within twenty-one (21) days of the date that the clerk's record and transcript are filed with the Supreme Court. The respondent's and cross-appellant's brief, if any, shall be joined in one brief, and shall be filed within twenty-one (21) days after service of the appellant's brief. The reply brief and cross-respondent's brief, if any, shall be combined and shall be filed within fourteen (14) days of service of any respondent's brief. If there is no cross- respondent's brief then the reply brief shall be filed within seven (7) days after service of the respondent's brief.

(e) Extensions. Each case subject to this rule shall be given the highest priority at all stages of the appellate process, and the clerk, transcriptionist or court reporter, and litigants will not be given extensions of time in which to comply with the expedited docketing and briefing schedules except upon a verified showing of the most unusual and compelling circumstances.

(f) Oral argument. Oral argument, if requested, shall be held within one hundred twenty (120) days from the filing of the notice of appeal.

(g) Petitions for rehearing and review. Any petition for rehearing or review shall be accompanied by the brief in support of the petition or the petition shall be summarily dismissed.

(most recent amendment, 2013)

Selected Idaho Court Administrative Rules

Rule 32. Records of the judicial department—Examination, inspection and copying--Exemption from and limitations on disclosure.

(a) Statement of policy. This rule is adopted pursuant to the Supreme Court’s authority to control access to court records, as recognized in the Idaho Public Records Act, I.C. § 9-340A. The public has a right to examine and copy the judicial department's declarations of law and public policy and to examine and copy the records of all proceedings open to the public. This rule provides for access in a manner that:

(1) Promotes accessibility to court records;
(2) Supports the role of the judiciary;
(3) Promotes governmental accountability;
(4) Contributes to public safety;
(5) Minimizes the risk of injury to individuals;
(6) Protects individual privacy rights and interests;
(7) Protects proprietary business information;
(8) Minimizes reluctance to use the court system;
(9) Makes the most effective use of court and clerk of court staff;
(10) Provides excellent customer service; and
(11) Avoids unduly burdening the ongoing business of the judiciary.

In the event of any conflict this rule shall prevail over any other rule on the issue of access to judicial records.

(b) Definitions: As used in this Rule:

(1) "Custodian" means the person defined in paragraph (j)(2) of this Rule.
(2) "Custodian judge" means the Justice, Judge or Magistrate defined in paragraph (j)(3) of this Rule.

(3) "Personnel" means justices, judges, magistrates, trial court administrators, clerks of the district court and staff of a court.

(4) "Court record" includes:

(A) Any document, information or other thing that is collected, received, or maintained by a court or clerk of court in connection with a judicial proceeding;

(B) Any index, calendar, docket, register of actions, official record of the proceedings, order, decree, judgment, minute, and any information in an automated case management system created by or prepared by the court or clerk of court that is related to a judicial proceeding, including existing ISTARS reports.

(5) "Physical record" means a judicial branch record, including a court record that exists in physical form, irrespective of whether it also exists in electronic form.

(6) "Electronic form" means a court record that exists as:

(A) Electronic representations of text or graphic documents;

(B) An electronic image, including a video image, of a document, exhibit or other thing;

(C) Data in the fields or files of an electronic database; or

(D) An audio or visual recording, analog or digital, of an event or notes in an electronic file from which a transcript of an event can be prepared; irrespective of whether it also exists in physical form.

(7) "Remote access" means the ability whereby a person may electronically search, examine and copy court information maintained in a court record by means of access via the Internet or other publicly available telecommunication mechanism.

(8) "Bulk Distribution" means the distribution of all, or a significant subset of the information in court records in electronic form, as is, and without modification or compilation.

(9) "ISTARS" means the automated trial court case management system used to support the operations of the trial courts.

(10) "Compiled Data Information" means information that is derived from the selection, aggregation or reformulation by the

court of some of the information from more than one individual court record.

(c) Applications. This Rule shall apply to all court records existing on or after the date of adoption of this Rule. Provided, this Rule shall not prevent access to records, otherwise exempt from disclosure by the following persons in the following situations:

(1) If approved by the custodian judge, or the custodian in the case of any record in the judicial council, federal, state and local officials or their agent examining a judicial record in the exercise of their official duties and powers; however, requests for numerous records or records from more than one county must be approved by the Chief Justice.

(2) Parties to an action and their attorney examining the court file of the action, unless restricted by order of the court, except as limited in paragraphs (g)(11), (12), (15) and (17)(F).

(3) Disclosure by the custodian of statistical information that is not descriptive of identifiable persons.

(4) Employees shall have access to their own personnel files.

(5) Judges, clerks, trial court administrators, or other staff employed by or working under the supervision of the courts who are acting within the scope of their duties.

(d) Access to Court Records, Examination and Copying. Except as provided in paragraphs (g) and (i), the following are subject to examination, inspection and copying.

(1) Minutes, orders, opinions, findings of fact, conclusions of law, and judgments of a court and notices of the clerk of the court;

(2) Transcripts and recordings of all trials and hearings open to the public;

(3) Pleadings, motions, affidavits, responses, memoranda, briefs and other documents filed or lodged in a case file;

(4) Administrative or other records of the clerk, justice, judge, magistrate or staff of the court unless exempt from disclosure by statute, case law, or court rule; and

(5) A court record that has been offered or admitted into evidence in a judicial action or that a court has considered as evidence or relied upon for purposes of deciding a motion, unless the custodian judge expressly orders otherwise.

(e) Access to Records Maintained in Electronic Form (Electronic Records).

(1) The public shall have access to the following if they exist in electronic form:

(A) Litigant/party indexes to cases filed with the court;

(B) Listings of new case filings, including the names of the parties;

(C) The chronological case summary of events;

(D) Calendars or dockets of court proceedings, including case numbers and captions, date and time of hearings, and location of hearings and;

(E) Final judgments, orders, or decrees.

Except as provided in paragraphs (g) and (i), the Supreme Court may provide such access from terminals at judicial branch facilities or on-line from any remote location over the Internet.

(2) The public shall not have access to the following data elements in an electronic case record with regard to parties or their family members: the first six characters of social security numbers; street addresses; telephone numbers; and any personal identification numbers, including motor vehicle operator's license numbers and financial account numbers.

(f) Compiled Information. Any member of the public may request copies of existing compiled information that consists solely of information that is not exempt from disclosure. In addition, the Supreme Court may compile and provide the information if it determines, in its discretion, that the resources are available to compile the information and that it is an appropriate use of public resources. The Supreme Court may delegate to its staff the authority

to make the initial determination as to whether to provide the compiled information.

Compiled information that includes information to which public access has been restricted may be requested from the Supreme Court by any member of the public. The request shall:

(1) identify what information is sought,

(2) describe the purpose for requesting the information and explain how the information will benefit the public interest or public education, and

(3) explain provisions for the secure protection of any information requested to which public access is restricted or prohibited.

The response to the request shall be made by the Supreme Court within ten (10) working days following the date of the request.

(g) Court records exempt from disclosure. Except as provided in paragraph (h) of this rule, court records specified below are confidential and are exempt from disclosure. Any willful or intentional disclosure of a confidential court record may be treated as a contempt of court.

(1) Documents and records to which access is otherwise restricted by state or federal law;

(2) Pre-sentence investigation reports, except as provided in Idaho Criminal Rule 32;

(3) Affidavits or sworn testimony and records of proceedings in support of the issuance of search or arrest warrant pending the return of the warrant;

(4) Unreturned search warrants;

(5) Unreturned arrest warrants, except bench warrants, or summonses in a criminal case, provided that the arrest warrants or summonses may be disclosed by law enforcement agencies at their discretion;

(6) Unless otherwise ordered by the custodian judge, applications made and orders granted for the interception of wire, electronic or oral communications pursuant to Idaho Code § 18-6708,

recordings of intercepted communications provided to the court, and reports made to the court regarding such interceptions under Idaho Code § 18-6708(7);

(7) Except as provided by Idaho Criminal Rules or statutes, records of proceedings and the identity of jurors of grand juries;

(8) Except as provided by the Idaho Criminal Rules or Idaho Rules of Civil Procedure, the names of jurors placed in a panel for a trial of an action and the contents of jury qualification forms and jury questionnaires for these jurors, unless ordered to be released by the presiding judge;

(9) Juvenile court records as hereinafter provided:

(A) All court records of Child Protective Act proceedings.

(B) All court records of Juvenile Corrections Act proceedings on a petition filed under I.C. § 20-510 pending an admit/deny hearing held pursuant to Rule 6, I.J.R. to permit the parties to request that the court consider, or permit the court to consider on its own motion, closing the records and files. Thereafter the court records shall be open unless the court enters an order exempting them from disclosure. At the admit/deny hearing the court shall determine whether the court records shall remain exempt from disclosure as provided in 1. and 2. below:

1. Court records of Juvenile Corrections Act proceedings brought against a juvenile under the age of fourteen (14), or brought against a juvenile fourteen (14) years or older who is charged with an act that would not be a felony if committed by an adult, shall be exempt from disclosure if the court determines by a written order in each case that the records should be closed to the public.

2. Court records of Juvenile Corrections Act proceedings brought against a juvenile fourteen (14) years or older who is charged with an act which would be a felony if committed by an adult, shall be exempt from disclosure if the court determines upon a written order made in each case that extraordinary circumstances exist which justify that the records should be confidential.

(C) If a juvenile fourteen (14) years or older who is charged with an act which would be a felony if committed by an adult is not found to have committed an act which would be a felony if committed by an adult or the charge is reduced to allege an act which would not constitute a felony if committed by an adult, all existing and future case records and documents shall be exempt from disclosure if the court determines by written order in each case that the court records should be closed to the public.

(D) Notwithstanding any other provision of paragraph (g)(9) of this rule, reports prepared pursuant to I.C. § 20-520(1), and other records and reports described in paragraph (g)(17) of this rule are exempt from disclosure.

(E) Notwithstanding any other provision of paragraph (g)(9) of this rule, if a juvenile is adjudicated guilty of an act which would be a criminal offense if committed by an adult, the name, offense, and disposition of the court shall be open to the public.

(F) Notwithstanding any other provision of paragraph (g)(9) of this rule, the court shall make available upon the written request of a superintendent or an employee of the school district authorized by the board of trustees of the school district, the facts contained in any records of a juvenile maintained under Chapter 5, Title 20,Idaho Code. If a request is made to examine records in courts of multiple districts, it shall be ruled upon by the Chief Justice.

(10) Mental commitment case records; provided, the court may disclose these records when consented to by the person identified or his or her legal guardian, or the parent if the individual is a minor. The court in its discretion may make such records available to the spouse, or the immediate family of the person who is the subject of the proceedings;

(11) Adoption records, except that an adopted person may obtain non-identifying medical information in all cases; the court may also in its discretion make information from the adoption records available, upon such conditions as the court may impose, to the

person requesting the record, if the court finds upon written verification of a medical doctor a compelling medical need for disclosure;

(12) Records of proceedings to terminate the parent and child relationship under Chapter 20 of Title 16, Idaho Code, except that the child may obtain non-identifying medical information in all cases, and the court may also in its discretion make information from the records available, upon such conditions as the court may impose, to the person requesting the record, if the court finds upon written verification of a medical doctor a compelling medical need for disclosure;

(13) All records of proceedings relating to the consent required for abortion for minors brought pursuant to I.C. 18-609A(1) or (3);

(14) All records of proceedings relating to the judicial authorization of sterilization procedures pursuant to I.C. 39-3901;

(15) Documents filed or lodged with the court in camera;

(16) Domestic abuse files maintained pursuant to domestic violence crime prevention acts, except orders of the court;

(17) Records maintained by a court that are gathered at the request or under the auspices of a court (other than records that have been admitted in evidence);

(A) to determine an individual's need for counseling, rehabilitation, treatment or assistance with personal conflicts;

(B) to assist in assigning an appropriate disposition in the case, including the ADR screening report and screening reports prepared by Family Court Service Coordinators or their designees;

(C) to provide the court with a recommendation regarding the custody of minor children;

(D) to provide a court with a psychological evaluation of an individual;

(E) to provide annual or other accountings by conservators and guardians, except to interested parties as defined by Idaho law;

(F) the family law case information sheet.

(18) A reference list of personal data identifiers or an un-redacted copy of a document filed pursuant to I.R.C.P. 3(c).

(19) All court filings, including attachments, in guardianship or conservatorship proceedings whether temporary or permanent, and whether for an adult, a minor, or a developmentally disabled person, except to interested persons as defined in section 15-1-201, Idaho Code, guardians ad litem, court visitors, or any monitoring entity as defined by Idaho law, or any attorney representing any of the foregoing; provided, however, the following shall be not be exempt from disclosure:

(A) the register of actions for the case;

(B) letters of guardianship and letters of conservatorship, and any supplemental orders, decrees or judgments describing, limiting, or expanding the rights and duties of the guardian or conservator;

(C) any order by the court regarding bond by a conservator, and the conservator's bond ;

(D) any order, decree, or judgment dismissing, concluding, or otherwise disposing of the case.

(20) The records in cases involving child custody, child support, and paternity, except that officers and employees of the Department of Health and Welfare shall be able to examine and copy such records in the exercise of their official duties; and provided further that the following shall not be exempt from disclosure to any person:

(A) the register of actions for the case;

(B) any order, decree or judgment issued in the case, which shall be drafted and issued in compliance with the provisions of Rule 3(c)(4) of the Idaho Rules of Civil Procedure.

This subsection (g)(20) shall apply only to records in cases filed on or after July 1, 2012, and to records in cases in which a motion to modify an order, decree, or judgment was filed on or after July 1, 2012.

(21) Records of judicial work product or drafts, including all notes, e-mail, memoranda or drafts prepared by a judge or a court-employed attorney, law clerk, legal assistant or secretary;

(22) Personnel records, application for employment and records of employment investigations and hearings, including, but not

limited to, information regarding sex, race, marital status, birth date, home address, telephone number, applications, testing and scoring materials, grievances or complaints against an employee, correspondence, and performance evaluations; provided the following are not exempt from disclosure: a public official's public service or employment history, classification, pay grade and step, longevity, gross salary and salary history, status, workplace, employing agency, and any adverse official action taken against an employee as a result of a grievance or complaint (except a private letter of reprimand), and after such action is taken (except when the action is a private letter of reprimand), the record of any investigation and hearing leading to the action;

(23) Applications, testing and scoring to be included on a court maintained roster;

(24) Computer programs and related records, including but not limited to technical and user manuals, which the judicial branch has acquired and agreed to maintain on a confidential basis;

(25) Records maintained by the state law library that link a patron's name with materials requested or borrowed in the patron's name with a specific subject about which the patron has requested information or materials;

(26) Allegations of attorney misconduct received by the Idaho State Bar and records of the Idaho State Bar relating to attorney discipline, except where confidentiality is waived under the Idaho Bar Commission Rules;

(27) All records relating to applications for permission to take the Idaho bar examination or for admission to practice as exempted from disclosure in the Idaho Bar Commission Rules;

(28) All records and records of proceedings, except the identity of applicants for appointment to judicial office, of the Idaho Judicial Council or any District Magistrates Commission pertaining to the appointment, performance, removal, disability, retirement or disciplining of judges or justices. Provided, however, that the record of a disciplinary proceeding filed by the Judicial Council in the Supreme Court loses its confidential character upon filing;

(29) Bulk distribution of electronic court data is not allowed. However, at its discretion, the Supreme Court may grant request for scholarly, journalistic, political, governmental, research, evaluation or statistical purposes where the identification of specific individuals is ancillary to the purpose of the inquiry.

(h) Permissive Release of Judicial Decision in Exempted Categories. Records of courts' determinations in proceedings exempt from disclosure under (g) of this rule may, by direction of the court issuing the determination, be subject to inspection, examination and copying in a manner that preserves the anonymity of the participants to the proceeding. In particular, the Supreme Court and the Court of Appeals may provide copies of their rulings in appeals from proceedings exempt from disclosure under paragraph (g) by using "John Doe/Jane Doe" designations or other anonymous designations in documents made available for inspection, examination and copying. Further deletions from the decisions may be made if necessary to preserve anonymity.

(i) Other Prohibitions or Limitations on Disclosure and Motions Regarding the Sealing of Records. Physical and electronic records, may be disclosed, or temporarily or permanently sealed or redacted by order of the court on a case-by-case basis. Any interested person or the court on its own motion may move to disclose, redact, seal or unseal a part or all of the records in any judicial proceeding. The custodian judge shall hold a hearing on the motion after the moving party gives notice of the hearing to all parties to the judicial proceeding and any other interested party designated by the custodian judge. In ruling on whether specific records should be disclosed, redacted or sealed by order of the court, the court shall determine and make a finding of fact as to whether the interest in privacy or public disclosure predominates. If the court redacts or seals records to protect predominating privacy interests, it must fashion the least restrictive exception from disclosure consistent with privacy interests. Before a court may enter an order redacting or sealing records, it must also make one or more of the following determinations in writing:

(1) That the documents or materials contain highly intimate facts or statements, the publication of which would be highly objectionable to a reasonable person, or
(2) That the documents or materials contain facts or statements that the court finds might be libelous, or
(3) That the documents or materials contain facts or statements, the dissemination or publication of which would reasonably result in economic or financial loss or harm to a person having an interest in the documents or materials, or compromise the security of personnel, records or public property of or used by the judicial department, or
(4) That the documents or materials contain facts or statements that might threaten or endanger the life or safety of individuals, or
(5) That it is necessary to temporarily seal or redact the documents or materials to preserve the right to a fair trial.

In applying these rules, the court is referred to the traditional legal concepts in the law of the right to a fair trial, invasion of privacy, defamation, and invasion of proprietary business records as well as common sense respect for shielding highly intimate material about persons. In applying these rules, the court is referred to the traditional legal concepts in the law of invasion of privacy, defamation, and invasion of proprietary business records as well as common sense respect for shielding highly intimate material about persons. When a record is sealed under this rule, it shall not be subject to examination, inspection or copying by the public. When the court issues an order sealing or redacting records, the court shall also inform the Clerk of the District Court of which specific files, documents and ISTARS records are to be sealed or redacted. Sealed files shall be marked "sealed" on the outside of the file. Sealed or redacted records shall be placed in a manila envelope marked "sealed" with a general description of the records, their filing date and date they were sealed or redacted. When a file has been ordered sealed, or when records within a file have been ordered sealed or redacted, the electronic record shall reflect such action and shall be limited accordingly. When the court issues an order redacting records for purposes of

public disclosure, the records in the court file or in the custody of the court shall not be altered in any fashion. The originals shall be placed in a manila envelope marked "sealed" with a general description of the records, and a redacted copy, so marked, shall be substituted for the originals in the court file. An order directing that records be redacted or sealed shall be subject to examination, inspection or copying by the public to the extent that such disclosure does not reveal the information that the court sought to protect in issuing the order. The decision on a motion to redact, seal or unseal records may be reconsidered, altered or amended by the court at any time. When the court issues an order disclosing otherwise exempt records, it shall place appropriate limitations on the dissemination of that information.

(j) Request for Records.

(1) Any person desiring to inspect, examine or copy physical records shall make an oral or written request to the custodian. If the request is oral, the custodian may require a written request if the custodian determines that the disclosure of the records is questionable or the request is so involved or lengthy as to need further definition. The request must clearly identify each record requested so that the custodian can locate the record without doing extensive research and continuing requests for documents not yet in existence will not be considered.

(2) Custodian Defined. The custodian of judicial public records is designated as follows:

(A) For any record in a case file in the Supreme Court or Court of Appeals, the custodian is the Clerk of the Supreme Court or a deputy clerk designated in writing.

(B) For any record not in a case file in the Supreme Court or Court of Appeals, the custodian is the Administrative Director of the Courts or other person designated in writing by the Chief Justice.

(C) For any record in a case file in a district court or magistrate court, the custodian is the Clerk of the District Court or a deputy clerk designated in writing.

(D) For any record not in a case file in the district court or magistrate court, the custodian is the Trial Court Administrator of the judicial district, or judge or magistrate designated by the Administrative District Judge.

(E) For any record in the judicial council, the custodian is the Executive Director of the Judicial Council.

(F) For any record in the Idaho State Bar, the custodian is the Executive Director of the Idaho State Bar or other person designated in writing by the Idaho State Bar Commissioners.

(G) For the purposes of the ISTARS system, the ISTARS Data warehouse, and compiled information, the custodian is the Administrative Director of the Courts or other person designated in writing by the Chief Justice.

(3) Custodian Judge. The custodian judge of a judicial public record is designated as follows:

(A) For any record in the Supreme Court, ISTARS or the ISTARS Data warehouse the custodian judge is the Chief Justice, or the Vice-Chief Justice in the absence of the Chief Justice.

(B) For any record in the Court of Appeals, the custodian judge is the Chief Judge of the Court of Appeals, or a Judge of the Court of Appeals designated in writing.

(C) For any record in a case file in the district court or magistrate court, the custodian judge is the presiding magistrate or judge of that case, or judge or magistrate designated in writing by the Administrative District Judge.

(D) For any record not in a case file in the district court or magistrate court, the custodian judge is the Administrative District Judge of that judicial district, or other district judge or magistrate designated in writing by the Administrative District Judge.

(E) For any record in the judicial council, the custodian judge is the Chief Justice or the Vice-Chief Justice in the absence of the Chief Justice.

(F) For any record in the Idaho State Bar, the custodian judge is the Administrative District Judge of the Fourth Judicial

District of the State of Idaho or a district judge designated in writing by the Administrative District Judge.

(4) Response to Request. The custodian shall respond to a request for examination of public records. Within three (3) working days from receipt of request, the custodian shall disclose the records requested, refer the request to the custodian judge for determination, or give written notice of denial of the request. Provided, if the custodian determines that it will take more than three (3) working days to determine whether the request should be granted, or that a longer period of time is needed to locate or retrieve the requested records, the custodian shall so notify the person making the request within ten (10) working days following the date of the request. If the documents requested are disclosed by the custodian, no other notice need be given by the custodian. The custodian is not under a duty to compile or summarize information contained in records, nor is the custodian obligated to create new records for the requesting party, except as provided herein. The custodian may deny a request for a copy of all or part of a transcript of an administrative or judicial proceeding or other voluminous publication or document when by rule or statute it may be obtained from the preparer of such record after payment of a fee. Efforts should be made to respond promptly to requests for records.

(5) Response by Custodian Judge. If a custodian determines that there is a question as to whether records should be disclosed pursuant to a request, or if a request is made for a ruling by a judge after the custodian denies the request, the custodian shall refer the request to the custodian judge for determination. The custodian judge shall make a written determination as to whether the records should be disclosed within ten (10) working days following the request. In the sole discretion of the custodian judge, an informal hearing may be held by the custodian judge on the question of whether the records should be disclosed. The custodian judge shall determine the time and place of the hearing and the notice to be given by the custodian to the person requesting the records and any other interested person. If a hearing

is held under this rule, the response to the person requesting the record may be delayed a reasonable time after the conclusion of the hearing.

(6) Cost of Copying Records. The cost to make a paper copy of any record filed in a case with the clerk of the district court shall be as specified in I.C. § 31-3201. The cost for any other copying of any record shall be determined by order of the Supreme Court or the Administrative District Judge in accordance with the provisions of I.C. § 9-338(8). The costs so determined shall be paid, in advance, by the person requesting the records. Any delay in paying the costs of copying the records shall extend the time for response by the custodian. In the event that a person wishes to have a copy of a court record that can be easily copied to digital media by court personnel, the person making that request shall provide the appropriate media to the court for that purpose.

(7) Proceedings after Denial. If a custodian denies a request for the examination or copying of records, the aggrieved party may file a request for a ruling by the custodian judge. If the custodian judge denies a request for the examination or copying of records, the sole remedy of any aggrieved person shall be to institute proceedings for disclosure in the district court in accordance with I.C. § 9-343.

(most recent amendment, 2012)

Rule 47. Criminal history checks.

This rule applies to persons applying to be included in the roster of Parenting Coordinators pursuant to Rule 16(l), I.R.C.P., to persons seeking appointment as supervised access providers pursuant to Rule 16(o) I.R.C.P., to family court services coordinators, to domestic violence court coordinators, to persons seeking to be placed on the roster of evaluators of domestic assault or battery pursuant to Rule 33.3 I.C.R., to guardian ad litem program directors and to staff members and volunteers of guardian ad litem programs. The criminal history check will consist of a self-declaration, fingerprints of the individual, information obtained from the Federal Bureau of

Investigation, the National Criminal History Background Check System, Bureau of Criminal Identification and the Sexual Offender Registry, and as required by statute or rule the statewide child abuse registry and adult protection registry. A record of all criminal history background checks shall be maintained in the office of the Supreme Court with a copy going to the applicant in accord with subsection (f) of this rule. A criminal history background check conducted pursuant to this rule and maintained in the office of the Supreme Court, may be used for any position identified under this rule including parenting coordinators, supervised access providers, family court services coordinators, guardian ad litem program directors and staff and volunteers of guardian ad litem programs so long as the fingerprints of the applicant have been submitted and the criminal history check has been conducted within the preceding twelve months.

(a) Self-declaration. Individuals who are subject to a criminal history check shall complete a self-declaration form signed under penalty of perjury that contains the name, address and date of birth which appears on a valid identification document issued by a governmental entity. The self-declaration is the individual's request for the criminal history check to be done and authorizes the Supreme Court to obtain information and release it as required without liability. The applicant shall disclose any conviction or pending indictment for crimes and to furnish a description of the crime and the particulars and any other information as required. The Supreme Court, through its administrative offices, shall complete the criminal history check and inform the individual of the results.

(b) Updating criminal history checks. Every individual subject to this rule shall complete an updated criminal history check at least every five (5) years. An updated criminal history check shall include a self-declaration form, state and local checks, and child and adult protection checks. The Supreme Court or any appointing court may, at its discretion, require a criminal history check or updated criminal history check of any individual subject to this

rule at any other time. Five (5) years will be calculated from the date of the individual's most recent Criminal History Check letter of approval.

(c) Designated crimes resulting in an unconditional denial.

1. Individuals subject to this rule shall not be eligible to serve if they have pled guilty or been found guilty one (1) or more of the designated crimes listed below, or their equivalent under the laws of any other jurisdiction, regardless the form of the judgment or withheld judgment.

2. Designated Crimes. No exemption shall be granted for any of the following designated crimes:

a. Armed Robbery, as defined by Section 18-6501, Idaho Code;

b. Arson, as defined by Sections 18-801 through 18-805, Idaho Code;

c. Crimes against nature, as defined by Section 18-6605, Idaho Code;

d. Forcible sexual penetration by use of a foreign object, as defined by Section 18-6608, Idaho Code;

e. Incest, as defined by Section 18-6602, Idaho Code;

f. Injury to a child, felony or misdemeanor, as defined by Section 18-1501, Idaho Code;

g. Kidnapping, as defined by Sections 18-4501 through 18-4503, Idaho Code;

h. Lewd conduct with a minor, as defined by Section 18-1508, Idaho Code;

i. Mayhem, as defined by Section 18-5001, Idaho Code;

j. Murder in any degree, voluntary manslaughter, assault or battery with intent to commit a serious felony, as defined by Sections 18-4001, 18-4003, 18-4006, 18-4015, 18-909 and 18-911, Idaho Code;

k. Poisoning, as defined by Sections 18-4014 and 18-5501, Idaho Code;

l. A felony involving a controlled substance, where the judgment or withheld judgment was entered within seven (7) years preceding the denial;
m. Possession of sexually exploitative material, as defined by Section 18-1507A, Idaho Code;
n. Rape or male rape, as defined by Sections 18-6101 and 18-6108, Idaho Code;
o. Felony stalking, as defined by Section 18-7905, Idaho Code;
p. Sale or barter of a child, as defined by Section 18-1511, Idaho Code;
q. Sexual abuse or exploitation of a child, as defined by Sections 18-1506 and 18-1507, Idaho Code;
r. Any felony punishable by death or life imprisonment;
s. Any felony involving any type or degree of embezzlement, fraud, theft or burglary, where the judgment or withheld judgment was entered within seven (7) years preceding the denial.
t. Abuse, neglect, exploitation or abandoning of a vulnerable adult, as defined by Sections 18-1505 and 18-1505A, Idaho Code; or
u. Attempt, solicitation or conspiracy to commit any of the designated crimes.

(d) Conditional denials. Except with respect to any crime which results in an unconditional denial under subsection (c) of this rule, the Administrative Director of the Courts may conditionally deny an individual’s application, if the criminal history check reveals a plea, finding or adjudication of guilt to any felony or misdemeanor, (excluding traffic violations which do not result in a suspension of the individual's driver's license), the individual has been found to have committed abuse or neglect in a child protection or adult protection case, or the individual appears on either the child abuse registry or the adult protection registry. The Administrative Director may also conditionally deny an application if the results of the criminal history check reveal that

the individual has falsified or omitted information on the self-declaration form. A conditional denial becomes a final unconditional denial within twenty-one (21) days from the date of the conditional denial notice unless, prior to the expiration of this period, the individual requests an exemption review which shall be conducted as provided in subsection (e) of this rule. The twenty-one (21) day period for filing a request for an exemption review may be extended by the Administrative Director for good cause.

(e) Exemption reviews. If an exemption review is requested in accordance with subsection (d) of this rule, the Administrative Director of the Courts shall initiate an exemption review in regard to any cause, action or crime for which a conditional denial was issued under subsection (d) of this rule. As determined by the Administrative Director, the review may consist of a review of the documents and supplemental information provided by the individual, a telephonic interview with the individual, an in person review hearing or any other review of the individual's criminal history. The Administrative Director may appoint a subcommittee from the Idaho Supreme Court's Children and Families in the Courts Committee and/or the Child Protection Act Committee to conduct any exemption review provided for under subsection (e) of this rule. Exemption reviews shall be governed by and conducted as follows.

1. Scheduling an Exemption Review. Upon receipt of the request for an exemption review, the Administrative Director shall determine the type of review to be conducted. If an in-person review hearing is not scheduled, one of the other types of review enumerated above shall be conducted within fifteen (15) business days from the receipt of the request. If an in-person review hearing is scheduled, the hearing shall be held within fifteen (15) business days from the receipt of the request and the applicant shall be provided with at least seven (7) days' notice of the hearing date.

2. Factors to Be Considered. During the review, the following factors shall be considered:

a. The severity or nature of the crime or other findings;

b. The period of time since the incident(s) under current review;

c. The number and pattern of incident(s);

d. Circumstances surrounding the incident(s) that would help determine the risk of repetition;

e. Activities since the incident(s) such as continuous employment, education, participation in treatment, payment of restitution, or any other factors which may be evidence of rehabilitation;

f. Granting of a pardon by the Governor or the President; and

g. The falsification or omission of information on the self-declaration form and other supplemental forms submitted.

h. The relationship between the crime or finding and the position sought.

i. Any other factor deemed relevant by the exemption review subcommittee.

3. Decision after Review. A notice of decision shall be issued within fifteen (15) business days of the date of review.

(f) Criminal history records. Criminal history checks done pursuant to this rule become the property of the Supreme Court and shall be held confidential subject to the provisions of Rule 32, I.C.A.R.

1. Release of Criminal History Checks. A copy of the criminal history check shall be released:

a. To the individual named in the criminal history upon receipt of a written request to the Supreme Court, provided the individual also releases the state from all liability; or

b. In response to a subpoena issued by a court of competent jurisdiction.

2. Release Of Information Obtained Through A Criminal History Check. Information may be released, upon written request or upon signed release by the individual who is the subject of the criminal history check, to:

a. any judge considering appointment of the subject individual; and

b. as otherwise required by law.

3. Retention of Records. The criminal history record, supplemental documentation received, notes from the review, and the decision shall be retained by the Supreme Court for a period of not less than six (6) years after the criminal background check is completed.

4. Use and Dissemination Restrictions for FBI Criminal Identification Records. According to the provisions set for in 28 CFR 50.12, the Supreme Court shall:

a. Notify the applicant or individual fingerprinted that the fingerprints will be used to check the criminal history records of the FBI;

b. In determining the suitability for licensing or employment, provide the applicant or individual the opportunity to complete or challenge the accuracy of the information contained in the FBI identification record;

c. Afford the applicant or individual fifteen (15) days to correct or complete the FBI identification record or to decline to do so; and

d. Advise the applicant or individual who wishes to correct the FBI identification record that procedures for changing, correcting, or updating are set forth in 28 CFR 16.34.

(g) Confidentiality. Before any information obtained in a criminal history check may be released to the person who is the subject of the record, to another governmental agency, or to a private individual or organization, the Supreme Court will comply with federal Public Law 103-209 and 92-544.

(most recent amendment, 2009)

Indian Child Welfare Act 25 U.S.C. §§1901-1922

§1901. Congressional findings

Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds –

(1) that clause 3, section 8, article I of the United States Constitution provides that "The Congress shall have Power * * * To regulate Commerce * * * with Indian tribes" and, through this and other constitutional authority, Congress has plenary power over Indian affairs;

(2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;

(3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

(5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

(as adopted, 1978)

§1902. Congressional declaration of policy

The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

(as adopted, 1978)

§1903. Definitions

For the purposes of this chapter, except as may be specifically provided otherwise, the term –

(1) "child custody proceeding" shall mean and include –

(i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;

(iii) "pre-adoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a

crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(2) "extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

(3) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in 1606 of title 43;

(4) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(5) "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

(6) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

(7) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

(8) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of

their status as Indians, including any Alaska Native village as defined in section 1602(c) of title 43;

(9) "parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom.

It does not include the unwed father where paternity has not been acknowledged or established;

(10) "reservation" means Indian country as defined in section 1151 of title 18 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

(11) "Secretary" means the Secretary of the Interior; and

(12) "tribal court" means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

(as adopted, 1978)

§1911. Indian tribe jurisdiction over Indian child custody proceedings

(a) Exclusive jurisdiction An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a

tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) Transfer of proceedings; declination by tribal court In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: Provided, That such transfer shall be subject to declination by the tribal court of such tribe.

(c) State court proceedings; intervention In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

(d) Full faith and credit to public acts, records, and judicial proceedings of Indian tribes The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

(as adopted, 1978)

§1912. Pending court proceedings

(a) Notice; time for commencement of proceedings; additional time for preparation In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the

parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention.

If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe.

No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: Provided, That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

(b) Appointment of counsel In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding.

The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child.

Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to section 13 of this title.

(c) Examination of reports or other documents Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

(d) Remedial services and rehabilitative programs; preventive measures Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(e) Foster care placement orders; evidence; determination of damage to child No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(f) Parental rights termination orders; evidence; determination of damage to child No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(as adopted, 1978)

§1913. Parental rights; voluntary termination

(a) Consent; record; certification matters; invalid consents
Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian.

The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood.

Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

(b) Foster care placement; withdrawal of consent
Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

(c) Voluntary termination of parental rights or adoptive placement; withdrawal of consent; return of custody
In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

(d) Collateral attack; vacation of decree and return of custody; limitations
After the entry of a final decree of adoption of an Indian child in any State court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree.
Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent.
No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under State law.

(as adopted, 1978)

§1914. Petition to court of competent jurisdiction to invalidate action upon showing of certain violations

Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 1911, 1912, and 1913 of this title.

(as adopted, 1978)

§1915. Placement of Indian children

(a) Adoptive placements; preferences In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

(b) Foster care or pre-adoptive placements; criteria; preferences Any child accepted for foster care or pre-adoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child.

In any foster care or pre-adoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with –

(i) a member of the Indian child's extended family;

(ii) a foster home licensed, approved, or specified by the Indian child's tribe;

(iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

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

(c) Tribal resolution for different order of preference; personal preference considered; anonymity in application of preferences In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section.

Where appropriate, the preference of the Indian child or parent shall be considered: *Provided* that where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(d) Social and cultural standards applicable The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

(e) Record of placement; availability
A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section.
Such record shall be made available at any time upon the request of the Secretary or the Indian child's tribe.

(as adopted, 1978)

§1916. Return of custody
(a) Petition; best interests of child Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court

shall grant such petition unless there is a showing, in a proceeding subject to the provisions of section 1912 of this title, that such return of custody is not in the best interests of the child.

(b) Removal from foster care home; placement procedure Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, pre-adoptive, or adoptive placement, such placement shall be in accordance with the provisions of this chapter, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

(as adopted, 1978)

§1917. Tribal affiliation information and other information for protection of rights from tribal relationship; application of subject of adoptive placement; disclosure by court

Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

(as adopted, 1978)

§1918. Reassumption of jurisdiction over child custody proceedings

(a) Petition; suitable plan; approval by Secretary

Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such

jurisdiction which includes a suitable plan to exercise such jurisdiction.

(b) Criteria applicable to consideration by Secretary; partial retrocession

(1) In considering the petition and feasibility of the plan of a tribe under subsection (a) of this section, the Secretary may consider, among other things:

(i) whether or not the tribe maintains a membership roll or alternative provision for clearly identifying the persons who will be affected by the reassumption of jurisdiction by the tribe;

(ii) the size of the reservation or former reservation area which will be affected by retrocession and reassumption of jurisdiction by the tribe;

(iii) the population base of the tribe, or distribution of the population in homogeneous communities or geographic areas; and

(iv) the feasibility of the plan in cases of multitribal occupation of a single reservation or geographic area.

(2) In those cases where the Secretary determines that the jurisdictional provisions of section 1911(a) of this title are not feasible, he is authorized to accept partial retrocession which will enable tribes to exercise referral jurisdiction as provided in section 1911(b) of this title, or, where appropriate, will allow them to exercise exclusive jurisdiction as provided in section 1911(a) of this title over limited community or geographic areas without regard for the reservation status of the area affected.

(c) Approval of petition; publication in Federal Register; notice; reassumption period; correction of causes for disapproval

If the Secretary approves any petition under subsection (a) of this section, the Secretary shall publish notice of such approval in the Federal Register and shall notify the affected State or States of such approval.

The Indian tribe concerned shall reassume jurisdiction sixty days after publication in the Federal Register of notice of approval.

If the Secretary disapproves any petition under subsection (a) of this section, the Secretary shall provide such technical assistance as may be necessary to enable the tribe to correct any deficiency which the Secretary identified as a cause for disapproval.

(d) Pending actions or proceedings unaffected Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction, except as may be provided pursuant to any agreement under section 1919 of this title.

(as adopted, 1978)

§1919. Agreements between States and Indian tribes

(a) Subject coverage States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes.

(b) Revocation; notice; actions or proceedings unaffected
Such agreements may be revoked by either party upon one hundred and eighty days' written notice to the other party.

Such revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

(as adopted, 1978)

§1920. Improper removal of child from custody; declination of jurisdiction; forthwith return of child: danger exception

Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

(as adopted, 1978)

§1921. Higher State or Federal standard applicable to protect rights of parent or Indian custodian of Indian child

In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this subchapter, the State or Federal court shall apply the State or Federal standard.

(as adopted, 1978)

§1922. Emergency removal or placement of child; termination; appropriate action

Nothing in this subchapter shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child.

The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent

physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this subchapter, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

(as adopted, 1978)

Department of the Interior, Bureau of Indian Affairs Guidelines for State Courts; Indian Child Custody Proceedings

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Introduction

Although the rulemaking procedures of the Administration Procedures Act have been followed in developing these guidelines, they are not published as regulations because they are not intended to have binding legislative effect. Many of these guidelines represent the interpretation of the Interior Department of certain provisions of the Act. Other guidelines provide procedures which, if followed, will help assure that rights guaranteed by the Act are protected when state courts decide Indian child custody matters. To the extent that the Department's interpretations of the Act are correct, contrary interpretations by the courts would be violations of the Act. If procedures different from those recommended in these guidelines are adopted by a state, their adequacy to protect rights guaranteed by the Act will have to be judged on their own merits.

Where Congress expressly delegates to the Secretary the primary responsibility for interpreting a statutory term, regulations interpreting that term have legislative effect. Courts are not free to set aside those regulations simply because they would have interpreted that statute in a different manner. Where, however, primary responsibility for interpreting a statutory term rests with the courts, administrative interpretations of statutory terms are given important but not controlling significance. *Batterton v. Francis*, 432 U.S. 416, 424-425 (1977).

In other words, when the Department writes rules needed to carry out responsibilities Congress has explicitly imposed on the Department, those rules are binding. A violation of those rules is a violation of the law. When, however, the Department writes rules or guidelines advising some other agency how it should carry out responsibilities explicitly assigned to it by Congress, those rules or guidelines are not, by themselves, binding. Courts will take what this Department has to say into account in such instances, but they are free to act contrary to what the Department has said if they are convinced that the Department's guidelines are not required by the statute itself.

Portions of the Indian Child Welfare Act do expressly delegate to the Secretary of the Interior responsibility for interpreting statutory language. For example, under 25 U.S.C. 1918, the Secretary is directed to determine whether a plan for reassumption of jurisdiction is "feasible" as that term is used in the statute. This and other areas where primary responsibility for implementing portions of the Act rest with this Department, are covered in regulations promulgated on July 31, 1979, at 44 FR 45092.

Primary responsibility for interpreting other language used in the Act, however, rests with the courts that decide Indian child custody cases. For example, the legislative history of the Act states explicitly that the use of the term "good cause" was designed to provide state courts with flexibility in determining the disposition of a placement proceeding involving an Indian child. S. Rep. No. 95-597, 95th Cong., 1st Sess. 17 (1977). The Department's interpretation of statutory language of this type is published in these guidelines.

Some commenters asserted that Congressional delegation to this Department of authority to promulgate regulations with binding legislative effect with respect to all provisions of the Act is found at 25 U.S.C. 1952, which states, "Within one hundred and eighty days after November 8, 1978, the Secretary shall promulgate such rules and regulations as may be necessary to carry out the provisions of this chapter." Promulgation of regulations with legislative effect with respect to most of the responsibilities of state or tribal courts under the

Act, however, is not necessary to carry out the Act. State and tribal courts are fully capable of carrying out the responsibilities imposed on them by Congress without being under the direct supervision of this Department.

Nothing in the legislative history indicates that Congress intended this department to exercise supervisory control over state or tribal courts or to legislate for them with respect to Indian child custody matters. For Congress to assign to an administrative agency such supervisory control over courts would be an extraordinary step. Nothing in the language or legislative history of 25 U.S.C. 1952 compels the conclusion that Congress intended to vest this Department with such extraordinary power. Both the language and the legislative history indicate that the purpose of that section was simply to assure that the Department moved promptly to promulgate regulations to carry out the responsibilities Congress had assigned it under the Act. Assignment of supervisory authority over the courts to an administrative agency is a measure so at odds with concepts of both federalism and separation of powers that it should not be imputed to Congress in the absence of an express declaration of Congressional intent to that effect.

Some commenters also recommended that the guidelines be published as regulations and that the decision of whether the law permits such regulations to be binding be left to the court. That approach has not been adopted because the Department has an obligation not to assert authority that it concludes it does not have.

Each section of the revised guidelines is accompanied by commentary explaining why the Department believes states should adopt that section and to provide some guidance where the guidelines themselves may need to be interpreted in the light of specific circumstances.

The original guidelines used the word “should” instead of “shall” in most provisions. The term “should” was used to communicate the fact that the guidelines were the Department’s interpretations of the Act and were not intended to have binding legislative effect. Many commenters, however, interpreted the use of “should” as an attempt by this

Department to make statutory requirements themselves optional. That was not the intent. If a state adopts those guidelines, they should be stated in mandatory terms. For that reason the word “shall” has replaced “should” in the revised guidelines. The status of these guidelines as interpretative rather than legislative in nature is adequately set out in the introduction.

In some instances a state may wish to establish rules that provide even greater protection for rights guaranteed by the Act than those suggested by these guidelines. These guidelines are not intended to discourage such action. Care should be taken, however, that the provision of additional protections to some parties to a child custody proceeding does not deprive other parties of rights guaranteed to them by the Act.

In some instances the guidelines do little more than restate the statutory language. This is done in order to make the guidelines more complete so that they can be followed without the need to refer to the statute in every instance. Omission of any statutory language, of course, does not in any way affect the applicability of the statute. A number of commenters recommended that special definitions of residence and domicile be included in the guidelines. Such definitions were not included because these terms are well defined under existing state law. There is no indication that these state law definitions tend to undermine in any way the purposes of the Act. Recommending special definitions for the purpose of this Act alone would simply provide unnecessary complication in the law.

A number of commenters recommended that the guidelines include recommendations for tribal-state agreements under 25 U.S.C. 1919. A number of other commenters, however, criticized the one provision in the original guidelines addressing that subject as tending to impose on such agreements restrictions that Congress did not intend should be imposed. Because of the wide variation in the situations and attitudes of states and tribes, it is difficult to deal with that issue in the context of guidelines. The Department is currently developing materials to aid states and tribe with such agreements. The Department hopes to have those materials available later to have those materials available later this

year. For these reasons, the provision in the original guidelines concerning tribal-state agreements has been deleted from the guidelines.

The Department has also received many requests for assistance from tribal courts in carrying out the new responsibilities resulting from the passage of this Act. The Department intends to provide additional guidance and assistance in the area also in the future. Providing guidance to state courts was given a higher priority because the Act imposes many more procedures on state courts than it does on tribal courts.

Many commenters have urged the Department to discuss the effect of the Act on the financial responsibilities of states and tribes to provide services to Indian children. Many such services are funded in large part by the Department of Health, Education, and Welfare. The policies and regulations of that Department will have a significant impact on the issue of financial responsibility. Officials of Interior and HEW will be discussing this issue with each other. It is anticipated that more detailed guidance on questions of financial responsibility will be provided as a result of those consultations.

One commenter recommended that the Department establish a monitoring procedure of exercise its right under 25 U.S.C. 1915(e) to review state court placement records. HEW currently reviews state placement records on a systematic basis as part of its responsibilities with respect to statutes it administers. Interior Department officials are discussing with HEW officials the establishment of a procedure for collecting data to review compliance with the Indian Child Welfare Act.

[**Note**: The remaining procedural information from the introduction is omitted.]

Guidelines for State Courts

A. Policy

1. Congress through the Indian Child Welfare Act has expressed its clear preference for keeping Indian children with their families,

deferring to tribal judgment on matters concerning the custody of tribal children, and placing Indian children who must be removed from their homes within their own families or Indian tribes. Proceedings in state courts involving the custody of Indian children shall follow strict procedures and meet stringent requirements to justify any result in any individual case contrary to these preferences. The Indian Child Welfare Act, the federal regulations implementing the Act, the recommended guidelines and nay state statutes, regulations or rules promulgated to implement the Act shall be liberally construed in favor of a result that is consistent with these preferences. Any ambiguities in any of such statutes, regulations, rules or guidelines shall be resolved in favor of the result that is most consistent with these preferences.

2. In any child custody proceedings where applicable state or other federal law provides a higher standard of protection to the rights of the parent or Indian custodian than the protection accorded under the Indian Child Welfare Act, the state court shall apply the state or other federal law, provided that application of that law does not infringe any right accorded by the Indian Child Welfare Act to an Indian tribe or child.

A. Commentary

The purpose of this section is to apply to the Indian Child Welfare Act the canon of construction that remedial statutes are to be liberally construed to achieve their purposes. The three major purposes are derived from a reading to the Act itself. In order to fully implement the Congressional intent the rule shall be applied to all implementing rules and state legislation as well Subsection A. (2) applies to canon of statutory construction that specific language shall be given precedence over general language. Congress has given certain specific rights to tribes and Indian children. For example, the tribe has a right to intervene in involuntary custody proceedings. The child has a right to learn of tribal affiliation upon becoming 18 years old. Congress did not intend 25 U.S.C. 1921 to have the effect of eliminating those rights where a court concludes they are in derogation of a parental right provided under a state statute. Congress intended for this section to apply primarily in those instances where a state provides greater protection for a right

accorded to parents under the Act. Examples of this include State laws which: impose a higher burden of proof than the Act for removing a child from a home, give the parents more time to prepare after receiving notice, require more effective notice, impose stricter emergency removal procedure requirements on those removing a child, give parents greater access to documents, or contain additional safeguard to assure the voluntariness of consent.

B. Pretrial requirements

B.1. Determination That Child Is an Indian

a. When a state court has reason to believe a child involved in a child custody proceeding is an Indian, the court shall seek verification of the child's status from either the Bureau of Indian Affairs or the child's tribe. In a voluntary placement proceeding where a consenting parent evidences a desire for anonymity, the court shall make its inquiry in a manner that will not cause the parent's identity to become publicly known.

b.i. The determination by a tribe that a child is or is not a member of that tribe, is or is not eligible for membership in that tribe, or that the biological parent is or is not a member of that tribe is conclusive.

ii. Absent a contrary determination by the tribe that is alleged to be the Indian child's tribe, a determination by the Bureau of Indian Affairs that a child is or is not an Indian child is conclusive.

c. Circumstances under which a state court has reason to believe a child involved in a child custody proceeding is an Indian include but are not limited to the following:

i. Any party to the case, Indian tribe Indian organization or public or private agency informs the court that the child is and Indian child.

ii. Any public or state-licensed agency involved in child protection services or family support has discovered information which suggests that the child is an Indian child.

iii. The child who is the subject of the proceeding gives the court reason to believe he or she is an Indian child.

iv. The residence or the domicile of the child, his or her biological parents, or the Indian custodian is known by the court to be or is shown to be a predominantly Indian community.
v. An officer of the court involved in the proceeding has knowledge that the child may be an Indian child.

B.1. Commentary

This guideline makes clear that the best source of information on whether a particular child is Indian is the tribe itself. It is the tribe's prerogative to determine membership criteria. *Cohen, Handbook of Federal Indian Law* 133 (1942). Because of the Bureau of Indian Affair's long experience in determining who is an Indian for a variety of purposes, its determinations are also entitled to great deference. See, e.g., *United States v Sandoval*, 231 U.S.28, 27 (1913).

Although tribal verification is preferred, a court may want to seek verification from the BIA in those voluntary placement cases where the parent has requested anonymity and the tribe does not have a system for keeping child custody matters confidential.

Under the Act confidentially is given a much higher priority in voluntary proceedings than in involuntary ones. The Act mandates a tribal right of notice and intervention in involuntary proceedings but not in voluntary ones. Cf. 25 U.S.C. For voluntary placements, however, the Act specifically directs state courts to respect parental requests for confidentiality. 25 U.S.C. The most common voluntary placement involves a newborn infant.

Confidentiality has traditionally been a high priority in such placements. The Act reflects that traditional approach by requiring deference to requests for anonymity in voluntary placements but not in involuntary ones. This guideline specifically provides that anonymity not be compromised in seeking verification of Indian status. If anonymity were compromised at that point, the statutory requirement that requests for anonymity be respected in applying the preferences would be meaningless.

Enrollment is not always required in order to be a member of a tribe. Some tribes do not have written rolls. Others have rolls that list only persons that were members as of a certain date. Enrollment is the common evidentiary means of establishing Indian status, but it is not the only means nor is it necessarily determinative. *United States v. Brocheau*, 597 F. 2nd 1260, 1263 (9th Cir. 1979*).*

The guidelines also list several circumstances which shall trigger an inquiry by the court and petitioners to determine whether a child is an Indian for purposes of this Act. This listing is not intended to be complete, but it does list the most common circumstances giving rise to a reasonable belief that a child may be an Indian.

B.2. Determination of Indian Child's Tribe

a. Where an Indian child is a member of more than one tribe or is eligible for membership in more than one tribe but is not a member of any of them, the court is called upon to determine with which tribe the child has more significant contacts.

b. The court shall send the notice specified in recommended guideline B.4. to each such tribe. The notice shall specify the other tribe or tribes that are being considered as the child's tribe and invite each tribe's views on which tribe shall be so designated.

c. In determining which tribe shall be designated the Indian child's tribe, the court shall consider, among other things, the following factors:

i. length of residence on or near the reservation of each tribe and frequency of contacts with each tribe;
ii. child's participation in activities of each tribe;
iii. child's fluency in the language of each tribe;
iv. whether there has been a previous adjudication with respect to the child by a court of one of the tribes;
v. residence on or near one of the tribe's reservation by the child's relatives;
vi. tribal membership of custodial parent or Indian custodian;

vii. interest asserted by each tribe in response to the notice specified in subsection B.2.(b) of these guidelines; and
viii. the child's self-identification.

d. The court's determination together with the reasons for it shall be set out in a written document and made a part of the record of the proceeding. A copy of that document shall be sent to each party to the proceeding and to each person or governmental agency that received notice of the proceeding.

e. If the child is a member of only one tribe, that tribe shall be designated the Indian child's tribe even though the child is eligible for membership in another tribe. If a child becomes a member of one tribe during or after the proceeding, that tribe shall be designated as the Indian child's tribe with respect to all subsequent actions related to the proceeding. If the child becomes a member of a tribe other than the one designated by the court as the Indian child's tribe, actions taken based on the court's determination prior to the child's becoming a tribal member continue to be valid.

B.2. Commentary

This guideline requires the court to notify all tribes that are potentially the Indian child's tribe so that each tribe may assert its claim to that status and the court may have the benefit of the views of each tribe. Notification of all the tribes is also necessary so the court can consider the comparative interest of each tribe in the child's welfare in making its decision. That factor has long been regarded an important consideration in making child custody decisions.

The significant factors listed in this section are based on recommendations by tribal officials involved in child welfare matters. The Act itself and the legislative history make it clear that tribal rights are to be based on the existence of a political relationship between the family and the tribe. For that reason, the guidelines make actual tribal membership of the child conclusive on this issue.

The guidelines do provide, however, that previous decisions of a court made on its own determination of the Indian child's tribe are not invalidated simply because the child becomes a member of a different tribe. This provision is included because of the importance of stability and continuity to a child who has been placed outside the home by a court. If a child becomes a member before a placement is made or before a change of placement becomes necessary for other reasons, however, then that membership decision can be taken into account without harm to the child's need for stable relationships.

We have received several recommendations that the "Indian child's tribe" status be accorded to all tribes in which a child is eligible for membership. The fact that Congress, in the definition of "Indian child's tribe," provided a criterion for determining which is *the* Indian child's tribe, is a clear indication of legislative intent that there be only one such tribe for each child. For purposes of transfer of jurisdiction, there obviously can be only one tribe to adjudicate the case. To give more than one tribe "Indian child's tribe" status for purposes of the placement preferences would dilute the preference accorded by Congress to the tribe with which the child has the more significant contacts.

A right of intervention could be accorded a tribe with which a child has less significant contacts without undermining the right of the other tribe. A state court can, if it wishes and state law permits, permit intervention by more than one tribe. It could also give a second tribe preference in placement after attempts to place a child with a member of the first tribe or in a home or institution designated by the first tribe had proved unsuccessful. So long as the special rights of *the* Indian child's tribe are respected, giving special status to the tribe with the less significant contacts is not prohibited by the Act and may, in many instances, be a good way to comply with the spirit of the Act.

Determination of the Indian child's tribe for purposes of this Act shall not serve as any precedent for other situations. The standards in this statute and these guidelines are designed with child custody matters in

mind. A difference determination may be entirely appropriate in other legal contexts.

B.3. Determination That Placement Is Covered by the Act

a. Although most juvenile delinquency proceedings are not covered by the Act, the Act does apply to status offenses, such as truancy and incorrigibility, which can only be committed by children, and to any juvenile delinquency proceeding that results in the termination of a parental relationship.

b. Child custody disputes arising in the context of divorce or separation proceedings or similar domestic relations proceedings are not covered by the Act so long as custody is awarded to one of the parents.

c. Voluntary placements which do not operate to prohibit the child's parent or Indian custodian from regaining custody of the child at any time are not covered by the Act. Where such placements are made pursuant to a written agreement, that agreement shall state explicitly the right of the parent or custodian to regain custody of the child upon demand.

B.3. Commentary

The purpose of this section is to deal with some of the questions the Department has been receiving concerning the coverage of the Act.

The entire legislative history makes it clear that the Act is directed primarily at attempts to place someone other than the parent or Indian custodian in charge of raising an Indian child-whether on a permanent or temporary basis. Although there is some overlap, juvenile delinquency proceedings are primarily designed for other purposes. Where the child is taken out of the home for committing a crime it is usually to protect society from further offenses by the child and to punish the child in order to persuade that child and others not to commit other offenses.

Placements based on status offenses (actions that are not a crime when committed by an adult), however, are usually premised on the conclusion that the present custodian of the child is not providing adequate care or supervision. To the extent that a status offense poses any immediate danger to society, it is usually also punishable as an offense which would be a crime if committed by an adult. For that reason status offenses are treated the same as dependency proceedings and are covered by the Act and these guidelines, while other juvenile delinquency placements are excluded.

While the Act excludes *placements* based on an act which would be a crime if committed by an adult, it does cover terminations of parental rights even where they are based on an act which would be a crime if committed by an adult. Such terminations are not intended as punishment and do not prevent the child from committing further offenses. They are based on the conclusion that someone other than the present custodian of the child should be raising the child. Congress has concluded that courts shall make such judgments only on the basis of evidence that serious physical or emotional harm to the child is likely to result unless the child is removed.

The Act excludes from coverage an award of custody to one of the parents "in a divorce proceeding." If construed narrowly, this provision would leave custody awards resulting from proceedings between husband and wife for separate maintenance, but not for dissolution of the marriage bond within the coverage of the Act. Such a narrow interpretation would not be in accord with the intent of Congress. The legislative history indicates that the exemption for divorce proceedings, in part, was included in response to the views of this Department that the protections provided by this Act are not needed in proceedings between parents. In terms of the purposes of this Act, there is no reason to treat separate maintenance or similar domestic relations proceedings differently from divorce proceedings. For that reason, the statutory term "divorce proceeding" is construed to include other domestic relations proceedings between spouses.

The Act also excludes from its coverage any placements that do not deprive the parents or Indian custodians of the right to regain custody of the child upon demand. Without this exception a court appearance would be required every time an Indian child left home to go to school. Court appearances would also be required for many informal caretaking arrangements that Indian parents and custodians sometimes make for their children. This statutory exemption is restated here in the hope that it will reduce the instances in which Indian parents are unnecessarily inconvenienced by being required to give consent in court to such informal arrangements.

Some private groups and some states enter into formal written agreements with parents for temporary custody (*See e.g.* Alaska Statutes § 47.10.230). The guidelines recommend that the parties to such agreements explicitly provide for return of the child upon demand if they do not wish the Act to apply to such placements. Inclusion of such a provision is advisable because courts frequently assume that when an agreement is reduced to writing, the parties have only those rights specifically written into the
agreement.

B.4. Determination of Jurisdiction

a. In any Indian child custody proceeding in state court, the court shall determine the residence and domicile of the child. Except as provided in Section B.7. of these guidelines, if either the residence or domicile is on a reservation where the tribe exercises exclusive jurisdiction over child custody proceedings, the proceedings in state court shall be dismissed.

b. If the Indian child has previously resided or been domiciled on the reservation, the state court shall contact the tribal court to determine whether the child is a ward of the tribal court. Except as provided in Sections B.7. of these guidelines, if the child is a ward of a tribal court, the state court proceedings shall be dismissed.

B.4. Commentary

The purpose of this section is to remind the state court of the need to determine whether it has jurisdiction under the Act. The action is dismissed as soon as it is determined that the court lacks jurisdiction except in emergency situations. The procedures for emergency situations are set out in Section B.7.

B.5. Notice Requirements

a. In any involuntary child custody proceeding, the state court shall make inquiries to determine if the child involved is a member of an Indian tribe or if a parent of the child is a member of an Indian tribe and the child is eligible for membership in an Indian tribe.

b. In any involuntary Indian child custody proceeding, notice of the proceeding shall be sent to the parents and Indian custodians, if any, and to any tribes that may be the Indian child's tribe by registered mail with return receipt requested. The notice shall be written in clear and understandable language and include the following information:

i. The name of the Indian child.

ii. His or her tribal affiliation.

iii. A copy of the petition, complaint or other document by which the proceeding was initiated.

iv. The name of the petitioner and the name and address of the petitioner's attorney.

v. A statement of the right of the biological parents or Indian custodians and the Indian child's tribe to intervene in the proceeding.

vi. A statement that if the parents or Indian custodians are unable to afford counsel, counsel will be appointed to represent them.

vii. A statement of the right of the natural parents or Indian custodians and the Indian child's tribe to have, on request, twenty days (or such additional time as may be permitted under state law) to prepare for the proceedings.

viii. The location, mailing address and telephone number of the court.

ix. A statement of the right of the parents or Indian custodians or the Indian child's tribe to petition the court to transfer the proceeding to the Indian child's tribal court.

x. The potential legal consequences of an adjudication on future custodial rights of the parents or Indian custodians.

xi. A statement in the notice to the tribe that since child custody proceedings are usually conducted on a confidential basis, tribal officials should keep confidential the information contained in the notice concerning the particular proceeding and not reveal it to anyone who does not need the information in order to exercise the tribe's right under the Act.

c. The tribe, parents or Indian custodians receiving notice from the petitioner of the pendency of a child custody proceeding has the right, upon request, to be granted twenty days (or such additional time as may be permitted under state law) from the date upon which the notice was received to prepare for the proceeding.

d. The original or a copy of each notice sent pursuant to this section shall be filed with the court together with any return receipts or other proof of service.

e. Notice may be personally served on any person entitled to receive notice in lieu of mail service.

f. If a parent or Indian custodian appears in court without an attorney, the court shall inform him or her of the right to appointed counsel, the right to request that the proceeding be transferred to tribal court or to object to such transfer, the right to request additional time to prepare for the proceeding and the right (if the parent or Indian custodian in not already a party) to intervene in the proceedings.

g. If the court or a petitioning party has reason to believe that a parent or Indian custodian is not likely to understand the contents of the notice because of lack of adequate comprehension of written English, a copy of the notice shall be sent to the Bureau of Indian Affairs agency nearest

to the residence of that person requesting that Bureau of Indian Affairs personnel arrange to have the notice explained to that person in the language that he or she best understands.

B.5. Commentary

This section recommends that state courts routinely inquire of participants in child custody proceedings whether the child is an Indian. If anyone asserts that the child is an Indian or that there is reason to believe the child may be an Indian, then the court shall contact the tribe or the Bureau of Indian Affairs for verification. Refer to section B.1. and B.2. of these guidelines.

This section specifies the information to be contained in the notice. This information is necessary so the persons who receive notice will be able to exercise their rights in a timely manner. Subparagraph (xi) provides that tribes shall be requested to assist in maintaining the confidentiality of the proceeding. Confidentiality may be difficult to maintain-especially in involuntary proceedings. It is reasonable, however, to ask tribal officials to maintain as much confidentiality as possible consistent with the exercise of tribal rights under the Act.

The time limits are minimum ones required by the Act. In many instances, more time may be available under state court procedures or because of the circumstances of the particular case. In such instances, the notice shall state that additional time is available.

The Act requires notice to the parent *or* Indian custodian. At a minimum, parents must be notified if termination of parental rights is a potential outcome since it is their relationship to the child that is at stake. Similarly, the Indian custodians must be notified of any action that could lead to the custodians' losing custody of the child. Even where only custody is an issue, noncustodial parents clearly have a legitimate interest in the matter. Although notice to both parents and Indian custodians may not be required in all instances by the Act or the Fourteenth Amendment to the U.S. Constitution, providing notice to

both is in keeping with the spirit of the Act. For that reason, these guidelines recommend notice be sent to both.

Subsection (d) requires filing the notice with the court so there will be a complete record of efforts to comply with the Act.

Subsection (e) authorizes personal services since it is superior to mail services and provides greater protection or rights as authorized by 25 U.S.C. 1921. Since serving the notices does not involve any assertion of jurisdiction over the person served, personal notices may be served without regard to state or reservation boundaries.

Subsections (f) and (g) provide procedures to increase the likelihood that rights are understood by parents and Indian custodians.

B.6. Time Limits and Extensions

a. A tribe, parent or Indian custodian entitled to notice of the pendency of a child custody proceeding has a right, upon request, to be granted an additional twenty days from the date upon which notice was received to prepare for participation in the proceeding.

b. The proceeding may not begin until all of the following dates have passed:

i. ten days after the parent or Indian custodian (or Secretary where the parent or Indian custodian is unknown to the petitioner) has received notice;

ii. ten days after the parent or Indian child's tribe (or the Secretary if the Indian child's tribe is unknown to the petitioner) has received notice;

iii. thirty days after the parent or Indian custodian has received notice if the parent or Indian custodian has requested an additional twenty days to prepare for the proceeding; and

iv. Thirty days after the Indian child's tribe has received notice if the Indian child's tribe has requested an additional twenty days to prepare for the proceeding.

c. The time limits listed in this section are minimum time periods required by the Act. The court may grant more time to prepare where state law permits.

B.6. Commentary

This section attempts to clarify the waiting periods required by the Act after notice has been received of an involuntary Indian child custody proceeding. Two independent rights are involved-the right of the parents or Indian custodians and the right of the Indian child's tribe. The proceeding may not begin until the waiting periods to which both are entitled have passed.

This section also makes clear that additional extensions of time may be granted beyond the minimum required by the Act.

B.7. Emergency Removal of an Indian Child

a. Whenever an Indian child is removed from the physical custody of the child's parents or Indian custodians pursuant to the emergency removal or custody provisions of state law, the agency responsible for the removal action shall immediately cause an inquiry to be made as to the residence and domicile of the child.

b. When a court order authorizing continued emergency physical custody is sought, the petition for that order shall be accompanied by an affidavit containing the following information:

i. The name, age and last known address of the Indian child.

ii. The name and address of the child's parents and Indian custodians, if any. If such persons are unknown, a detailed explanation of what efforts have been made to locate them shall be included.

iii. Facts necessary to determine the residence and the domicile of the Indian child and whether either the residence or domicile is on an Indian reservation. If either the residence or domicile is believed to be on an Indian reservation, the name of the reservation shall be stated.

iv. The tribal affiliation of the child and of the parents and/or Indian custodians.
v. A specific and detailed account of the circumstances that lead the agency responsible for the emergency removal of the child to take that action.
vi. If the child is believed to reside or be domiciled on a reservation where the tribe exercises exclusive jurisdiction over child custody matters, a statement of efforts that have been made and are being made to transfer the child to the tribe's jurisdiction.
vii. A statement of the specific actions that have been taken to assist the parents or Indian custodians so the child may safely be returned to their custody.

c. If the Indian child is not restored to the parents or Indian custodians or jurisdiction is not transferred to the tribe, the agency responsible for the child's removal must promptly commence a state court proceeding for foster care placement. If the child resides or is domiciled on a reservation where the tribe exercises exclusive jurisdiction over child custody matters, such placement must terminate as soon as the imminent physical damage or harm to the child which resulted in the emergency removal no longer exists or as soon as the tribe exercises jurisdiction over the case-whichever is earlier.

d. Absent extraordinary circumstances, temporary emergency custody shall not be continued for more than 90 days without a determination by the court, supported by clear and convincing evidence and the testimony of at least one qualified expert witness, that custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

B.7. Commentary

Since jurisdiction under the Act is based on domicile and residence rather than simple physical presence, there may be instances in which action must be taken with respect to a child who is physically located off a reservation but is subject to exclusive tribal jurisdiction. In such instances the tribe will usually not be able to take swift action to

exercise its jurisdiction. For that reason, Congress authorized states to take temporary emergency action.

Since emergency action must be taken without the careful advance deliberation normally required, procedures must be established to assure that the emergency actions are quickly subjected to review. This section provides procedures for prompt review of such emergency actions. It presumes the state already has such review procedures and only prescribes additional procedures that shall be followed in cases involving Indian children.

The legislative history clearly states that placements under such emergency procedures are to be as short as possible. If the emergency ends, the placement shall end. State action shall also end as soon as the tribe is ready to take over the case.

Subsection (d) refers primarily to the period between when the petition is filed and when the trial court renders its decision. The Act requires that, except for emergencies, Indian children are not to be removed from their parents unless a court finds clear and convincing evidence that the child would be in serious danger unless removed from the home. Unless there is some kind of time limit on the length of an "emergency removal" (that is, any removal not made pursuant to a finding by the court that there is clear and convincing evidence that continued parental custody would make serious physical or emotional harm likely), the safeguards of the Act could be evaded by use of long-term emergency removals.

Subsection (d) recommends what is, in effect, a speedy trial requirement. The court shall be required to comply with the requirements of the Act and reach a decision within 90 days unless there are "extraordinary circumstances" that make additional delay unavoidable.

B.8. Improper Removal From Custody

a. If, in the course of any Indian child custody proceeding, the court has reason to believe that the child who is the subject of the proceeding may have been improperly removed from the custody of his or her parent or Indian custodian or that the child has been improperly retained after a visit or other temporary relinquishment of custody, and that the petitioner is responsible for such removal or retention, the court shall immediately stay the proceedings until a determination can be made on the question of improper removal or retention.

b. If the court finds that the petitioner is responsible for an improper removal or retention, the child shall be immediately returned to his or her parents or Indian custodian.

B.8. Commentary

This section is designed to implement 25 U.S.C. § 1920. Since a finding of improper removal goes to the jurisdiction of the court to hear the case at all, this section provides that the court will decide the issue as soon as it arises before proceeding further on the merits.

C. Requests for Transfer to Tribal Court

C.1. Petitions under 25 USC §1911(b) for transfer of proceeding

Either parent, the Indian custodian or the Indian child's tribe may, orally or in writing, request the court to transfer the Indian child custody proceeding to the tribal court of the child's tribe. The request shall be made promptly after receiving notice of the proceeding. If the request is made orally, it shall be reduced to writing by the court and made a part of the record.

C.1. Commentary

Reference is made to 25 U.S.C. 1911(b) in this title of this section deals only with transfers where the child is not domiciled or residing on an Indian reservation.

So that transfers can occur as quickly and simply as possible, requests can be made orally.

This section specifies that requests are to be made promptly after receiving notice of the proceeding. This is a modification of the timeliness requirement that appears in the earlier version of the guidelines. Although the statute permits proceedings to be commenced even before actual notice, those parties do not lose their right to request a transfer simply because neither the petitioner nor the Secretary was able to locate them earlier.

Permitting late transfer requests by persons and tribes who were notified late may cause some disruption. It will also, however, provide an incentive to the petitioners to make a diligent effort to give notice promptly in order to avoid such disruptions.

The Department received a number of comments objecting to any timeliness requirement at all. Commenters pointed out that the statue does not explicitly require transfer requests to be timely. Some commenters argued that imposing such a requirement violated tribal and parental rights to intervene at any point in the proceedings under 25 U.S.C. § 1911(c) of the Act.
While the Act permits intervention at any point in the proceeding, it does not explicitly authorize transfer requests at any time. Late interventions do not have nearly the disruptive effect on the proceeding that last minute transfers do. A case that is almost completed does not need to be retried when intervention is permitted. The problems resulting from late intervention are primarily those of the intervenor, who has lost the opportunity to influence the portion of the proceedings that was completed prior to intervention.

Although the Act does not explicitly require transfer petitions to be timely, it does authorize the court to refuse to transfer a case for good cause. When a party who could have petitioned earlier waits until the case is almost complete to ask that it be transferred to another court and retried, good cause exists to deny the request.

Timeliness is a proven weapon of the courts against disruption caused by negligence or obstructionist tactics on the part of counsel. If a transfer petition must be honored at any point before judgment, a party could wait to see how the trail is going in state court and then obtain another trial if it appears the other side will win. Delaying a transfer request could be used as a tactic to wear down the other side by requiring the case to be tried twice. The Act was not intended to authorize such tactics and the "good cause" provision is ample authority for the court to prevent them.

C.2. Criteria and Procedures for Ruling on 25 U.S. C. §1911(b) Transfer Petitions

a. Upon receipt of a petition to transfer by a parent, Indian custodian or the Indian child's tribe, the court must transfer unless either parent objects to such transfer, the tribal court declines jurisdiction, or the court determines that good cause to the contrary exists for denying the transfer.

b. If the court believes or any party asserts that good cause to the contrary exists, the reasons for such belief or assertion shall be stated in writing and made available to the parties who are petitioning for transfer. The petitioners shall have the opportunity to provide the court with their views on whether or not good cause to deny transfer exists.

C.2. Commentary

Subsection (a) simply states the rule provided in 25 U.S.C. § 1911(b). Since the Act gives the parents and the tribal court of the Indian child's tribe an absolute veto over transfers, there is no need for any adversary proceedings if the parents or the tribal court opposes transfer. Where it is proposed to deny transfer on the grounds of "good cause," however, all parties need an opportunity to present their views to the court.

C.3. Determination of Good Cause to the Contrary

a. Good cause not to transfer the proceeding exists if the Indian child's tribe does not have a tribal court as defined by the Act to which the case can be transferred.

b. Good cause not to transfer this proceeding may exist if any of the following circumstances exists:

i. The proceeding was at an advanced stage when the petition to transfer was received and the petitioner did not file the petition promptly after receiving notice of the hearing.

ii. The Indian child is over twelve years of age and objects to the transfer.

iii. The evidence necessary to decide the case could not be adequately presented in the tribal court without undue hardship to the parties or the witnesses.

iv. The parents of a child over five years of age are not available and the child has had little or no contact with the child's tribe or members of the child's tribe.

c. Socio-economic conditions and the perceived adequacy of tribal or Bureau of Indian Affairs social services or judicial systems may not be considered in a determination that good cause exists.

d. The burden of establishing good cause to the contrary shall be on the party opposing the transfer.

C.3. Commentary

All five criteria that were listed in the earlier version of the guidelines were highly controversial. Comments on the first two criteria were almost unanimously negative. The first criterion was whether the parents were still living. The second was whether an Indian custodian or guardian for the child had been appointed. These criteria were criticized as irrelevant and arbitrary. It was argued that children who are orphans or have no appointed Indian custodian or guardian are no more nor less in need of the Act's protections that other children. It was also pointed out that these criteria are contrary to the decision in *Wisconsin Potowatomies of the Hannahville Indian Community v. Houston*, 393 F. Supp. 719 (W.D. Mich. 1973), which was explicitly endorsed by the committee that drafted that Act. The court in that case found that tribal jurisdiction existed even through the children involved were orphans for whom no guardian had been appointed.

Although there was some support for the third and fourth criteria, the preponderance of the comment concerning them was critical. The third criteria was whether the child had little or no contact with his or her Indian tribe for a significant period of time. These criteria were criticized, in part, because they would virtually exclude from transfers infants who were born off the reservation. Many argued that the tribe has a legitimate interest in the welfare of members who have not had significant previous contact with the tribe or the reservation. Some also argued that these criteria invited the state courts to be making the kind of cultural decisions that the Act contemplated should be made by tribes. Some argued that the use of vague words in these criteria accorded state courts too much discretion.

The fifth criteria was whether a child over the age of twelve objected to the transfer. Comment on this criteria was much more evenly divided and many of the critics were ambivalent. They worried that young teenagers could be too easily influenced by the judge or by social workers. They also argued that fear of the unknown would cause many teenagers to make an ill-considered decision against transfer.

The first four criteria in the earlier version were all directed toward the question of whether the child's connections with the reservation were so tenuous that transfer back to the tribe is not advised. The circumstances under which it may be proper for the state court to take such considerations into account are set out in the revised subsection (iv).

It is recommended that in most cases state court judges not be called upon to determine whether or not a child'' contacts with a reservation are so limited that a case should not be transferred. This may be a valid consideration since the shock of changing cultures may, in some cases, be harmful to the child. This determination, however, can be made by the parent, who has a veto-over transfer to tribal court.

This reasoning does not apply, however, where there is no parent available to make that decision. The guidelines recommend that state

courts be authorized to make such determinations only in those cases where there is no parent available to make it.

State court authority to make such decisions is limited to those cases where the child is over five years of age. Most children younger than five years can be expected to adjust more readily to a change in cultural environment.

The fifth criterion has been retained. It is true that teenagers may make some unwise decisions, but it is also true that their judgment has developed to the extent that their views ought to be taken into account in making decisions about their lives.

The existence of a tribal court is made an absolute requirement for transfer of a case. Clearly, the absence of a tribal court is good cause not to ask the tribe to try the case.
Consideration of whether or not the case can be properly tried in tribal court without hardship to the parties or witnesses was included on the strength of the section-by-section analysis in the House Report on the Act, which stated with respect to the § 1911(b), "The subsection is intended to permit a state court to apply a modified doctrine of *forum non conveniens*, in appropriate cases, to insure that the rights of the child as an Indian, the Indian parents or custodian, and the tribe are fully protected." Where a child is in fact living in a dangerous situation, he or she should not be forced to remain there simply because the witnesses cannot afford to travel long distances to court.

Application of this criterion will tend to limit transfers to cases involving Indian children who do not live very far from the reservation. This problem may be alleviated in some instances by having the court come to the witnesses. The Department is aware of one case under that Act where transfer was conditioned on having the tribal court meet in the city where the family lived. Some cities have substantial populations of members of tribes from distant reservations. In such situations some tribes may wish to appoint members who live in those cities as tribal judges.

The timeliness of the petition for transfer, discussed at length in the commentary to section C.1., is listed as a factor to be considered. Inclusion of this criterion is designed to encourage the prompt exercise of the right to petition for transfer in order to avoid unnecessary delays. Long periods of uncertainty concerning the future are generally regarded as harmful to the well-being of children. For that reason, it is especially important to avoid unnecessary delays in child custody proceedings.

Almost all commenters favored retention of the paragraph stating that reservation socio-economic conditions and the perceived adequacy of tribal institutions are not to be taken into account in making good cause determinations. Come commenters did suggest, however, that a case not be transferred if it is clear that a particular disposition of the case that could only be made by the state court held especially great promise of benefiting the child.

Such considerations are important but they have not been listed because the Department believes such judgments are best made by tribal courts. Parties who believe that state court adjudication would be better for such reasons can present their reasons to the tribal court and urge it to decline jurisdiction. The Department is aware of one case under the Act where this approach is being used and believes it is more in keeping with the confidence Congress has expressed in tribal courts.

Since Congress has established a policy of preferring tribal control over custody decisions affecting tribal members, the burden of proving that an exception to that policy ought to be made in a particular case rests on the party urging that an exception be made. The rule is reflected in subsection (d).

C.4. Tribal Court Declination of Transfer

a. A tribal court to which transfer is requested may decline to accept such transfer.

b. Upon receipt of a transfer petition the state court shall notify the tribal court in writing of the proposed transfer. The notice shall state how long the tribal court has to make its decision. The tribal court shall have at least twenty days from the receipt of notice of a proposed transfer to decide whether to decline the transfer. The tribal court may inform the state court of its decision to decline either orally or in writing.

c. Parties shall file with the tribal court any arguments they wish to make either for or against tribal declination of transfer. Such arguments shall be made orally in open court or in written pleadings that are served on all other parties.

d. If the case is transferred the state court shall provide the tribal court with all available information on the case.

C.4. Commentary

The previous version of this section provided that the state court should presume the tribal court has declined to accept jurisdiction unless it hears otherwise. The comments on this issue were divided. This section has been revised to require the tribal court to decline the transfer affirmatively if it does not wish to take the case. This approach is in keeping with the apparent intent of Congress. The language in the Act providing that transfers are "subject to declination by the tribal court" indicates that affirmative action by the tribal court is required to decline a transfer.

The recommended time limit for a decision has been extended from ten to twenty days. The additional time is needed for the court to become apprised of factors it may want to consider in determining whether or not to decline the transfer. A new paragraph has been added recommending that the parties assist the tribal court in making its decision on declination by giving the tribal court their views on the matter.

Transfers ought to be arranged as simply as possible consistent with due process. Transfer procedures are a good subject for tribal-state agreements under 25 U.S.C. § 1919.

D. Adjudication of Involuntary Placements, Adoptions, or Terminations or Terminations of Parental Rights

D.1. Access to Reports

Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child has the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based. No decision of the court shall be based on any report or other document not filed with the court.

D.1. Commentary

The first sentence merely restates the statutory language verbatim. The second sentence makes explicit the implicit assumption of Congress - that the court will limit its considerations to those documents and reports that have been filed with the court.

D.2. Efforts To Alleviate Need To Remove Child From Parents or Indian Custodians

Any party petitioning a state court for foster care placement or termination of parental rights to an Indian child must demonstrate to the court that prior to the commencement of the proceeding active efforts have been made to alleviate the need to remove the Indian child from his or her parents or Indian custodians. These efforts shall take into account the prevailing social and cultural conditions and way of life of the Indian child's tribe. They shall also involve and use the available resources of the extended family, the tribe, Indian social service agencies and individual Indian care givers.

D.2. Commentary

This section elaborates on the meaning of "breakup of the Indian family" as used in the Act. "Family breakup" is sometimes used as a synonym for divorce. In the context of the statue, however, it is clear

that Congress meant a situation in which the family is unable or unwilling to raise the child in a manner that is not likely to endanger the child's emotional or physical health.

This section also recommends that the petitioner take into account the culture of the Indian child's tribe and use the resources of the child's extended family and tribe in attempting to help the family function successfully as a home for the child. The term "individual Indian care givers" refers to medicine men and other individual tribal members who may have developed special skills that can be used to help the child's family succeed.

One commenter recommended that detailed procedures and criteria be established in order to determine whether family support efforts had been adequate. Establishing such procedures and requirements would involve the court in second-guessing the professional judgment of social service agencies. The Act does not contemplate such a role for the courts and they generally lack the expertise to make such judgments.

D.3. Standards of Evidence

a. The court may not issue an order effecting a foster care placement of an Indian child unless clear and convincing evidence is presented, including the testimony of one or more qualified expert witnesses, demonstrating that the child/s continued custody with the child's parents or Indian custodian is likely to result in serious emotional or physical damage to the child.

b. The court may not order a termination of parental rights unless the court's order is supported by evidence beyond a reasonable doubt, including the testimony of one or more qualified expert witnesses, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

c. Evidence that only shows the existence of community or family poverty, crowded or inadequate housing, alcohol abuse, or nonconforming social behavior does not constitute clear and convincing

evidence that continued custody is likely to result in serious emotional or physical damage to the child. To be clear and convincing, the evidence must show the existence of particular conditions in the home that are likely to result in serious emotional or physical damage to the particular child who is the subject of the proceeding. The evidence must show the casual relationship between the conditions that exist and the damage that is likely to result.

D.3. Commentary

The first two paragraphs are essentially restatement of the statutory language. By imposing these standards, Congress has changed the rules of law of many states with respect to the placement of Indian children. A child may not be removed simply because there is someone else willing to raise the child who is likely to do a better job or that it would be "in the best interests of the child" for him or her to live with someone else. Neither can a placement or termination of parental rights be ordered simply based on a determination that the parents or custodians are "unfit parents." It must be shown that it is shown that it is dangerous for the child to remain with his or her present custodians. Evidence of that must be "clear and convincing" for placements and "beyond a reasonable doubt" for terminations.

The legislative history of the Act makes it pervasively clear that Congress attributes many unwarranted removals of Indian children to cultural bias on the part of the courts and social workers making the decisions. In many cases children were removed merely because the family did not conform to the decision-maker's stereotype of what a proper family should be-without any testing of the implicit assumption that only a family that conformed to that stereotype could successfully raise children. Subsection (c) makes it clear that mere non-conformance with such stereotypes or the existence of other behavior or conditions that are considered bad does not justify a placement or termination under the standards imposed by Congress. The focus must be on whether the particular conditions are likely to cause serious damage.

D.4. Qualified Expert Witnesses

a. Removal of an Indian child from his or her family must be based on competent testimony from one or more experts qualified to speak specifically to the issue of whether continued custody by the parents or Indian custodians is likely to result in serious physical or emotional damage to the child.

b. Persons with the following characteristics are most likely to meet the requirements for a qualified expert witness for purposes of Indian child custody proceedings:

i. A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and childrearing practices.

ii. Any expert witness having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and childrearing practices within the Indian child's tribe.

iii. A professional person having substantial education and experience in the area of his or her specialty.

c. The court or any party may request the assistance of the Indian child's tribe or the Bureau of Indian Affairs agency serving the Indian child's tribe in locating persons qualified to serve as expert witnesses.

D.4. Commentary

The first subsection is intended to point out that the issue on which qualified expert testimony is required is the question of whether or not serious damage to the child is likely to occur if the child is not removed. Basically two questions are involved. First, is it likely that the conduct of the parents will result in serious physical or emotional harm to the child? Second, if such conduct will likely cause such harm, can the parents be persuaded to modify their conduct.

The party presenting an expert witness must demonstrate that the witness is qualified by reason of educational background and prior

experience to make judgments on those questions that are substantially more reliable than judgments that would be made by non-experts.

The second subsection makes clear that knowledge of tribal culture and childrearing practices will frequently be very valuable to the court. Determining the likelihood of future harm frequently involves predicting future behavior – which is influenced to a large degree by culture. Specific behavior patterns will often need to be placed in the context of the total culture to determine whether they are likely to cause serious emotional harm.

Indian tribes and Bureau of Indian Affairs personnel frequently know persons who are knowledgeable concerning the customs and cultures of the tribes they serve. Their assistance is available in helping to locate such witnesses.

E. Voluntary Proceedings

E.1. Execution of Consent

To be valid, consent to a voluntary termination of parental rights or adoption must be executed in writing and recorded before a judge or magistrate of a court of competent jurisdiction. A certificate of the court must accompany any consent and must certify that the terms and consequences of the consent were explained in detail and in the language of the parent or Indian custodian, if English is not the primary language, and were fully understood by the parent or Indian custodian. Execution of consent need not be in open court where confidentiality is requested or indicated.

E.1. Commentary

This section provides that consent may be executed before either a judge or magistrate. The addition of magistrates was made in response to a suggestion from Alaska where magistrates are found in most small communities but "judges" are more widely scattered. The term "judge" as used in the statute is not a term of art and can certainly be construed to include judicial officers who are called magistrates in some states. The statement that consent need not be in open court where

confidentiality is desired or indicated was taken directly from the House Report on the Act. A recommendation that the guideline list the consequences of consent that must be described to the parent or custodian has not been adopted because the consequences can vary widely depending on the nature of the proceeding, state law and the particular facts of individual cases.

E.2. Content of Consent Document

a. The consent document shall contain the name and birthday of the Indian child, the name of the Indian child's tribe, any identifying number or other indication of the child's membership in the tribe, if any, and the name and address of the consenting parent or Indian custodian.

b. A consent to foster care placement shall contain, in addition to the information specified in (a), the name and address of the person or entity by or through who the placement was arranged, if any, or the name and address of the prospective foster parents, if known at the time.

c. A consent to termination of parental rights or adoption shall contain, in addition to the information specified in (a), the name and address of the person or entity by or through whom any pre-adoptive or adoptive placement has been or is to be arranged.

E.2. Commentary

This section specifies the basic information about the placement or termination to which the parent or Indian custodian is consenting to assure that consent is knowing and also to document what took place.

E.3. Withdrawal of Consent to Placement

Where a parent or Indian custodian has consented to a foster care placement under state law, such consent may be withdrawn at any time by filing, in the court where consent was executed and filed, an instrument executed by the parent or Indian custodian. When a parent or Indian custodian withdraws consent to foster care placement, the child shall as soon as is practicable be returned to that parent or Indian custodian.

E.3. Commentary

This section specifies that withdrawal of consent shall be filed in the same court where the consent document itself was executed.

E.4. Withdrawal of Consent to Adoption

A consent to termination of parental rights or adoption may be withdrawn by the parent at any time prior to entry of a *final decree of voluntary termination or adoption* by filing in the court where the consent is filed an instrument executed under oath by the parent stipulating his or her intention to withdraw such consent. The clerk of the court where the withdrawal of consent is filed shall promptly notify the party by or through whom any pre-adoptive or adoptive placement has been arranged of such filing and that party shall insure the return of the child to the parent as soon as practicable.

E.4. Commentary

This provision recommends that the clerk of the court be responsible for notifying the family with whom the child has been placed that consent has been withdrawn. The court's involvement frequently may be necessary since the biological parents are often not told who the adoptive parents are.

F. Dispositions

F.1. Adoptive Placements

a. In any adoptive placement of an Indian child under state law preference must be given (in the order listed below) absent good cause to the contrary, to placement of the child with:

i. A member of the Indian child's extended family;
ii. Other members of the Indian child's tribe; or
iii. Other Indian families, including families of single parents.

b. The Indian child's tribe may establish a different order of preference by resolution. That order of preference must be followed so long as placement is the least restrictive setting appropriate to the child's needs.

c. Unless a consenting parent evidences a desire for anonymity, the court or agency shall notify the child's extended family and the Indian child's tribe that their members will be given preference in the adoption decision.

F.1. Commentary

This section makes clear that preference shall be given in the order listed in the Act. The Act clearly recognizes the role of the child's extended family in helping to raise children. The extended family should be looked to first when it becomes necessary to remove the child from the custody of his or her parents. Because of differences in culture among tribes, placement within the same tribe is preferable.

This section also provides that single parent families shall be considered for placements. The legislative history of the Act makes it clear that Congress intended custody decisions to be made based on a consideration of the present or potential custodian's ability to provide the necessary care, supervision and support for the child rather than on preconceived notions of proper family composition.

The third subsection recommends that the court or agenda make an active effort to find out if there are families entitled to preference who would be willing to adopt the child. This provision recognizes, however, that the consenting parent's request for anonymity takes precedence over efforts to find a home consistent with the Act's priorities.

F.2. Foster Care or Pre-adoptive Placements

In any foster care or pre-adoptive placement of an Indian child:

a. The child must be placed in the least restrictive setting which
   i. most approximates a family;
   ii. in which his or her special needs may be met; and
   iii. which is in reasonable proximity to his or her home.

b. Preference must be given in the following order, absent good cause to the contrary, to placement with:
   i. A member of the Indian child's extended family;

ii. A foster home, licensed, approved or specified by the Indian child's tribe, whether on or off the reservation;
iii. An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
iv. An institution for children approved by an Indian tribe or operated by an
v. Indian organization which has a program suitable to meet the child's needs.

c. The Indian child's tribe may establish a different order of preference by resolution, and that order of preference shall be followed so long as the criteria enumerated in subsection (a) are met.

F.2. Commentary
This guideline simply restates the provision of the Act.

F.3. Good Cause To Modify Preferences
a. For purposes of foster care, pre-adoptive or adoptive placement, a determination of good cause not to follow the order of preference set out above shall be based on one or more of the following considerations:
i. The request of the biological parents or the child when the child is of sufficient age.
ii. The extraordinary physical or emotional needs of the child as established by testimony of a qualified expert witness.
iii. The unavailability of suitable families for placement after a diligent search has been completed for families meeting the preference criteria.

b. The burden of establishing the existence of good cause not to follow the order of preferences established in subsection (b) shall be on the party urging that the preferences not be followed.

F.3. Commentary
The Act indicates that the court is to give preference to confidentiality requests by parents in making placements. Paragraph (I) is intended to

permit parents to ask that the order of preference not be followed because it would prejudice confidentiality or for other reasons. The wishes of an older child are important in making an effective placement.

In a few cases a child may need highly specialized treatment services that are unavailable in the community where the families who meet the preference criteria live. Paragraph (ii) recommends that such considerations be considered as good cause to the contrary. Paragraph (iii) recommends that a diligent attempt to find a suitable family meeting the preference criteria be made before consideration of a non-preference placement be considered. A diligent attempt to find a suitable family includes at a minimum, contact with the child's tribal social service program, a search of all county or state listings of available Indian homes and contact with nationally known Indian programs with available placement resources.

Since Congress has established a clear preference for placements within the tribal culture, it is recommended in subsection (b) that the party urging an exception be made be required to bear the burden of proving an exception is necessary.

G. Post-Trial Rights

G.1. Petition To Vacate Adoption

a. Within two years after a final decree of adoption of any Indian child by a state court, or within any longer period of time permitted by the law of the state, a parent who executed a consent to termination of parental rights or adoption of that child may petition the court in which the final adoption decree was entered to vacate the decree and revoke the consent on the grounds that such content was obtained by fraud or duress.

b. Upon the filing of such petition, the court shall give notice to all parties to the adoption proceedings and shall proceed to hold a hearing on the petition. Where the court finds that the parent's consent was obtained through fraud or duress, it must vacate the decree of adoption and order the consent revoked and order the child returned to the parent.

G.1. Commentary

This section recommends that the petition to vacate an adoption be brought in the same court in which the decree was entered, since that court clearly has jurisdiction, and witnesses on the issue of fraud or duress are most likely to be within its jurisdiction.

G.2. Adult Adoptee Rights

a. Upon application by an Indian individual who has reached the age 18 who was the subject of an adoptive placement, the court which entered the final decree must inform such individual of the tribal affiliations, if any of the individual's biological parents and provide such other information necessary to protect any rights flowing from the individual's tribal relationship.

b. The section applies regardless of whether or not the original adoption was subject to the provision of the Act.

c. Where state law prohibits revelation of the identity of the biological parent, assistance of the Bureau of Indian Affairs shall be sought where necessary to help an adoptee who is eligible for membership in a tribe establish that right without breaching the confidentiality of the record.

G.2. Commentary

Subsection (b) makes clear that adoptions completed prior to May 7, 1979, are covered by this provision. The Act states that most portions of Title I do not "affect a proceeding under State law" initiated or completed prior to May 7, 1979. Providing information to an adult adoptee, however, cannot be said to affect the proceeding by which the adoption was ordered.

The legislative history of the Act makes it clear that this Act was not intended to supersede the decision of state legislatures on whether adult adoptees may be told the names of their biological parents. The intent is simply to assure the protection of rights deriving from tribal membership. Where a state law prohibits disclosure of the identity of the biological parents, tribal rights can be protected by asking the BIA

to check confidentiality whether the adult adoptee meets the requirements for membership in an Indian tribe. If the adoptee does meet those requirements, the BIA can certify that fact to the appropriate tribe.

G.3. Notice of Change in Child's Status

a. Whenever a final decree of adoption of an Indian child has been vacated or set aside, or the adoptive parent has voluntarily consented to the termination of his or her parental rights to the child, or whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, pre-adoptive placement, or adoptive placement, notice by the court or an agency authorized by the court shall be given to the child's biological parents or prior Indian custodians. Such notice shall inform the recipient of his or her right to petition for return of custody of the child.

b. A parent or Indian custodian may waive his or her right to such notice by executing a written waiver of notice filed with the court. Such waiver may be revoked at any time by filing with the court a written notice of revocation, but such revocation would not affect any proceeding which occurred before the filing of the notice of revocation.

G.3. Commentary

This section provides guidelines to aid courts in applying the provisions of Section 106 of the Act. Section 106 gives legal standing to a biological parent or prior Indian custodian to petition for return of a child in cases of failed adoptions or changes in placement in situations where there has been a termination of parental rights. Section 106(b) provides the whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, pre-adoptive placement, or adoptive placement, such placement is to be in accordance with the provisions of the Act – which requires notice to the biological parents.

The Act is silent on the question of whether a parent or Indian custodian can waive the right to further notice. Obviously, there will be cases in

which the biological parents will prefer not to receive notice once their parental rights have been relinquished or terminated. This section provides for such waivers but, because the Act establishes an absolute right to participate in any future proceedings and to petition the court for return of the child, the waiver is revocable.

G.4. Maintenance of Records

The state shall establish a single location where all records of every foster care, pre-adoptive placement and adoptive placement of Indian children by courts of that state will be available within seven days of a request by an Indian child's tribe or the Secretary. The records shall contain, at a minimum, the petition or complaint, all substantive orders entered in the proceeding, and the complete record of the placement determination.

G.4. Commentary

This section of the guidelines provides a procedure for implementing the provisions of 25 U.S. C. § 1915(e). This section has been modified from the previous version which required that all records be maintained in a single location within the state. As revised this section provides only that the records be retrievable by a single office that would make them available to the requester within seven days of a request. For some states (especially Alaska) centralization of the records themselves would create major administrative burdens. So long as the records can be promptly made available at a single location, the intent of this section that the records be readily available will be satisfied.