

CHAPTER 1

Introduction

This manual is published by the Idaho Supreme Court Child Protection Committee. The committee was convened to study ways to strengthen and enhance Idaho court processes in the area of child protection and to work with judges, the Idaho Department of Health and Welfare (IDHW), the Idaho Department of Juvenile Corrections, the Idaho Attorney General's Office, prosecutors, and public defenders to improve outcomes for children in the child protection system in Idaho. The committee's membership is both professionally and geographically diverse.¹

1.1 KEY PRINCIPLES GUIDING CHILD PROTECTION CASES IN IDAHO

The work of the Child Protection Committee has been guided by state and federal law governing child protection cases and is informed by the following principles:

1. *Ensure the Safety of the Child.* The policy of the State of Idaho is that “[a]t all times the health and safety of the child shall be the primary concern” in Child Protective Act (CPA) cases.²
2. *Avoid Unnecessary Separation of Children and Families.* Consistent with the Idaho Child Protective Act, “[t]he state of Idaho shall . . . seek to preserve, protect, enhance and reunite the family relationship.”³ The court system and other stakeholders should use their authority to ensure that social and protective services are immediately available to families whose children may be abused or neglected so that parents have a fair opportunity to become competent and safe caretakers. The services should be easily accessible, adequate, appropriate, and delivered in a culturally competent framework. The child's family - barring insurmountable safety issues - is the first choice for permanency.

Note re Terminology: In this manual, “prosecutor” refers to both a county prosecutor and/or a deputy attorney general; “GAL” refers to both a guardian *ad litem* and/or a CASA; “Indian child” refers to all native children as defined by ICWA; and “IDHW” and “the Department” are used interchangeably to refer to the Idaho Department of Health and Welfare.

¹ For more information on the Child Protection Committee, please visit the Idaho Supreme Court website:

<http://www.isc.idaho.gov/>.

² IDAHO CODE ANN. §16-1601 (2011).

³ *Id.*

3. *Make Timely Decisions in Child Protection Cases.* For children, the prolonged uncertainty of not knowing whether they will be removed from home, whether and when they will return home, when they might be moved to another foster home, or whether and when they may be placed in a new permanent home is frightening. This uncertainty can seriously and permanently damage a child’s mental health and emotional development. All stakeholders in the child protection system should be attentive to the statutory time deadlines in child protection cases and should move cases forward as expeditiously as possible. To achieve better outcomes in cases, the services should be “front-loaded.” This means that all stakeholders must move quickly to assess the facts of the case, identify the appropriate parties, and provide the appropriate services for the family at the earliest possible stage. Effective practice includes early identification and involvement of fathers and other relatives, early engagement of parents in the court process, as well as early voluntary involvement of the family in remedial services. Other important court practices include establishing firm court dates and times with tight control over continuances and rapid distribution of the court’s orders to all parties.
4. *Identify Indian Children as Quickly as Possible to Ensure Compliance with the Indian Child Welfare Act.* Permanency delays for children can often be caused because the child is not identified as an Indian Child early in the case. When the child is not accurately identified as an Indian Child, Indian Child Welfare Act requirements are not complied with and permanency for the child is at risk. Throughout this manual ICWA requirements are discussed. A thorough overview of ICWA is provided in Chapter 11.
5. *Provide Close Judicial Oversight of Child Protection Cases and Practice One Family/One Judge.* The best practice is that one judge presides over the entire child protection case from the shelter care hearing through permanency (including, where appropriate, termination and adoption). Following a case from start to finish offers the judge an opportunity to monitor the impact of decisions on the child, creates the best possibility of ensuring that case plans are family centered, and helps ensure that the needs of the child and family are met in a timely way. The child’s case must be monitored until a permanent home is finalized. Judges should use the full extent of their authority to ensure that the child is safe. The court is the focal point for ensuring that all participants in the proceedings, including IDHW and other agencies, are accountable for providing reasonable and necessary services to children and families.
6. *Provide Access to Competent Representation in Child Protection Cases.* In child protection proceedings, attorneys for the state, the parents, the guardian *ad litem*, and the children should be well trained and culturally competent. Representation should be available to parents, the child’s guardian *ad litem*, and/or to the child at the earliest opportunity (preferably at the first hearing but no later than the second hearing). The Magistrate Judge in a CPA case should take active steps to ensure that the parties have access to competent representation. Attorneys and other advocates identify key legal issues and determine, to a large extent, what information is presented to a judge. All parties must be competently and diligently represented in order for juvenile and family courts to function effectively.

7. *Gather, Analyze, and Use Data to Improve Court and Child Welfare Processes.* Decisions regarding processes in the Idaho child protection system should be based on accurate information and thorough study and research. Information gathered from the Idaho Courts' Case Management Information System (ISTARS) and from the Idaho Department of Health and Welfare should be analyzed to assist the child welfare system in strengthening and enhancing outcomes for children. These systems must be continually monitored and enhanced to ensure compliance with statutory time limits, track compliance with goals, analyze trends, and evaluate the effectiveness of programs and policies.
8. *Promote Collaboration with Child Welfare Professionals and the Community.* The court should encourage and promote collaboration, cross-training, and mutual respect among all participants in the child welfare system, including IDHW, other social service agencies, attorneys, guardians *ad litem*, tribal representatives and staff, community members, court staff, foster parents, and any other relevant participants. Judges and other professionals in the system should help the larger community to understand that child protection is a community responsibility.
9. *Recognize Permanency Priorities.* Reunification is usually the primary goal in a child protective case. Options that maximize permanency for a child are preferred. If a child cannot be safely reunified with his/her parents, the order of options which provide the most permanency for children, in descending order, are:
 - a. Termination of parental rights and adoption
 - b. Long-term guardianship
 - c. Another permanent planned living arrangement (APPLA)
10. *Ensure Timely Decision Making and Placement Stability.* Timely decision making at all stages of the child protection case, from shelter care through the reunification or implementation of another permanency plan, should be ensured by the courts. Placement in foster care often has long-term negative consequences for children. Methods to reduce unnecessary delays in achieving permanency include:
 - *Avoiding Continuances.* The court should avoid granting continuances so as to ensure efficient management of the case and timely decision making on behalf of the child.
 - *Ensuring Early Identification of Family Members.* Early identification of family members helps to ensure timely permanency for children. Failure to timely engage parents can delay the court process. In addition, such family members may provide the most appropriate placement for the child.
 - *Confirming Concurrent Planning.* Idaho law requires IDHW to engage in concurrent planning.⁴ Such planning is crucial to reduce delays in achieving permanency for a child should reunification efforts fail. It is the responsibility of the court to ensure that IDHW is pursuing concurrent planning.

⁴ § 16-1621(3). Concurrent planning is defined as “a planning model that prepares for and implements different outcomes at the same time.” § 16-1602(10).

11. *Provide Expedited Appeals.* An expedited appeals process for cases involving termination of parental rights and adoption is crucial to permanency. Idaho Appellate Rules 12.1 and 12.2 provide a framework for expedited appeals in Child Protective Act cases and in related matters involving children. Attorneys and judges should strive to process appeals within the expedited time frames established by these rules and to avoid continuances or extensions of time whenever possible.
12. *Ensure Frequent Review after Termination of Parental Rights to Achieve Timely Permanency.* When parental rights have been terminated, the court should frequently review the case until permanency for the child has been achieved.
13. *Understand the Need for Post-Adoptive Subsidies and Services.* Separating from family and finding permanency with a new family are difficult processes for children. As a result, children and adoptive families often have unique needs. The availability of post-adoptive subsidies and services can be the determining factor in the long-term success of many adoptions. To support adoptive families, participants in the child protection case should be aware of the availability of post-adoptive resources.
14. *Ensure the Availability of IV-E Federal Match Funds.* Judges should make timely, accurate, and complete IV-E findings to ensure the availability of federal IV-E funding for each eligible child. Federal IV-E finding requirements are discussed in detail in Chapter 12.

1.2 ATTORNEYS

The interplay of state and federal laws, the complex legal issues, the upheaval in families, and the need for the case to move quickly through the system all necessitates specialized legal representation in child protection cases. Ideally, attorneys working with the child protective system should be committed, well trained, and experienced.

Idaho law requires appointment of attorneys for parents in child protection cases.⁵ In addition, Idaho law requires the appointment of a guardian *ad litem* or an attorney for the child.⁶ Where a guardian *ad litem* is appointed, best practice recommends appointing counsel for the guardian *ad litem* as well.

Before becoming involved in an abuse and neglect case, attorneys should be trained in or familiar with:

- state and federal legislation and case law on abuse and neglect;
- foster care, termination of parental rights, and adoption of children with special needs;
- the causes of and available treatment for child abuse and neglect;
- the child welfare and family preservation services available in the community and the problems they are designed to address; and
- the structure and functioning of the child welfare agency and court systems.

⁵ IDAHO CODE ANN. §16-1611(3) (2011).

⁶ §16-1614.

To the extent that courts can strengthen and enhance legal representation in child protection cases, they should do so.

1.3 GUARDIANS AD LITEM/COURT APPOINTED SPECIAL ADVOCATES (GALs/CASAs)

The Child Abuse Prevention and Treatment Act of 1974 requires states receiving federal funds for the prevention of child abuse and neglect to provide a guardian *ad litem* (GAL) for every child involved in such proceedings.⁷ Idaho law requires that a guardian *ad litem* be appointed for the child in a child protection case.⁸ The court should consider appointing an attorney for the guardian. If no guardian is available, Idaho law requires that an attorney be appointed for the child.⁹ In Idaho, courts generally appoint trained citizen volunteers as GALs through the Court Appointed Special Advocates (CASA) program.¹⁰ GALs are specially screened and trained volunteers appointed by the court to speak for the best interests of abused and neglected children. They review records, research information, and talk to everyone involved in the child's case. They make recommendations to the court as to what is best for the child, and they monitor the case until it is resolved.¹¹ Both trained volunteers and attorneys play a significant role in providing GAL representation for children. Courts should continue to examine methods of using both volunteers and attorneys to improve optimal representation of children involved in CPA proceedings.

1.4 ORGANIZATION OF THIS MANUAL

The manual follows a child protection action through each step in the statutory process and provides substantive information on important issues that may arise in child protection cases. The flowchart at the conclusion of this chapter illustrates the major steps in a typical child protection case. Corresponding chapters are noted on the chart.

Chapters 2 through 11 correspond with the normal process of a child protection case:

- Chapter 2: Referral and Investigation
- Chapter 3: Initiating a Child Protection Act Case
- Chapter 4: Shelter Care
- Chapter 5: The Adjudicatory Hearing
- Chapter 6: The Case Plan and Case Plan Hearing
- Chapter 7: The Permanency Plan and Permanency Hearing
- Chapter 8: Review Hearings
- Chapter 9: Termination of Parental Rights
- Chapter 10: Adoption
- Chapter 11: The Indian Child Welfare Act (ICWA)

⁷ 42 U.S.C. § 5106a(b)(2)(B)(xiii) (2011).

⁸ IDAHO CODE ANN. §16-1614(1) (2011).

⁹ §16-1614 (2011); IDAHO JUV. R. 36. Section 16-1614(1) authorizes the appointment of counsel to represent the guardian *ad litem*. §16-1614(2) requires the appointment of counsel for the child where there is no available Guardian *ad litem* program or where the number of available guardians is insufficient.

¹⁰ The CASA program is authorized by Idaho law. *See generally* §§16-1632 to 1639; *see also* IDAHO JUV. R. 35.

¹¹ §16-1633.

Each chapter is keyed to a bench card for judges and to annotated court forms.

Chapter 12 focuses on specific substantive issues that may arise in CPA cases:

- Relevant Federal Statute Timeline
- Idaho Juvenile Rule Expansions
- Notifying and Including Unwed Fathers in Child Protective Act Proceedings
- The Idaho Safe Haven Statute
- Defacto Custodians and Child Protective Act Proceedings
- Findings Required to Establish and/or Maintain a Child's Eligibility for IV-E Funding
- Interstate Compact on the Placement of Children
- Idaho Juvenile Rule 40: Involving Children and Foster Parents in Court
- Educational Needs of Children
- Independent Living Requirements for Older Youth in Care
- Guardianships

The entire Idaho Child Protection manual, the coordinated Idaho Child Protection Bench Cards, and the annotated Idaho Child Protection Court Forms are updated as statutes and best practices change. The most up-to-date versions of these materials are available in the Child Protection section of the Idaho State Judiciary website at:

<http://www.isc.idaho.gov/ChildProtection/main.htm>

**Idaho Child Protection Act
Flow Chart**

