

# In the Supreme Court of the State of Idaho

IN RE: AMENDMENT OF IDAHO )  
JUVENILE RULES (I.J.R.) 39 and 45 ) ORDER

The Court having reviewed a recommendation from the Child Protection Committee and the Administrative Conference to amend rules of the Idaho Juvenile Rules, and the Court being fully informed;

NOW, THEREFORE, IT IS HEREBY ORDERED that the Idaho Juvenile Rules as they appear in the volume published by the Idaho Code Commission be, and they are hereby, amended as follows:

1. That Rule 39 be, and the same is hereby, amended as follows:

## **Idaho Juvenile 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 be placed in the care of the department; ~~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~~ order of removal, 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.

(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.

2. That Rule 45 be, and the same is hereby, amended as follows:

**Idaho Juvenile 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 16-1620 or 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.

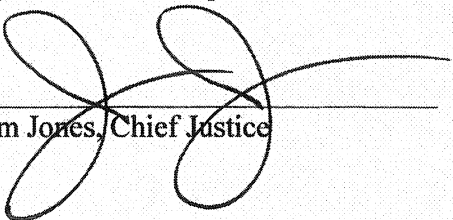
IT IS FURTHER ORDERED, that this order and these amendments shall be effective the first day of July, 2016.

IT IS FURTHER ORDERED, that the above designation of the striking of words from the Rules by lining through them, and the designation of the addition of new portions of the Rules by underlining such new portion is for the purposes of information only as amended, and NO OTHER AMENDMENTS ARE INTENDED. The lining through and underlining shall not be considered a part of the permanent Idaho Juvenile Rules.

IT IS FURTHER ORDERED, that the Clerk of the Court shall cause notice of this Order to be published in one issue of *The Advocate*.

DATED this 29<sup>th</sup> day of March, 2016.

By Order of the Supreme Court

  
Jim Jones, Chief Justice

ATTEST: Stephen Kenyon  
Clerk

I, Stephen W. Kenyon, Clerk of the Supreme Court of the State of Idaho, do hereby certify that the above is a true and correct copy of the Order entered in the above entitled cause and now on record in my office.

WITNESS my hand and the Seal of this Court 3/29/16

Stephen Kenyon  
Clerk

By: Simon D. Thomas  
Deputy

