

# IJR 16 EXPANSION FOR CP JUDGES

(CASES COMING FROM JUVENILE CORRECTIONS TO CP PROCEEDINGS)

## Bench Card

*This Bench Card has been created by the Administrative Office of the Court as a resource for judges. Bench Cards do not represent statements of law by the Idaho Supreme Court and do not constitute legal advice.*

### **PURPOSE<sup>1</sup>**

To conduct the initial and subsequent hearings in a child protection case that was expanded from a Juvenile Corrections Act (JCA) case.

### **WHEN**

1. If a JCA proceeding is expanded, the JCA court may, in its discretion, order the juvenile placed in shelter care.<sup>2</sup> The CPA court must then hold a shelter care hearing within 48 hours of the child being placed in shelter care, excluding Saturdays, Sundays, and holidays.<sup>3</sup>
2. The CPA court must hold an adjudicatory hearing within 30 days of the JCA court's determination to expand the proceedings.<sup>4</sup>

### **WHO MAY BE PRESENT**

1. 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.<sup>5</sup>
2. The child may be excluded from hearings at any time at the discretion of the court.<sup>6</sup>
3. The Department of Juvenile Corrections has standing as an interested party in the CPA case if the juvenile is in the custody of the Department of Juvenile Corrections.<sup>7</sup>

### **EVIDENCE**

1. The Rules of Evidence do not apply to shelter care hearings held after the expansion of a JCA proceeding to a CPA proceeding; they do apply in the CPA proceeding only to that part of the adjudicatory hearing where jurisdiction and/or aggravated circumstances is/are determined.<sup>8</sup>
2. A counselor, friend, or other person may be permitted to remain in the courtroom at the witness stand as the child testifies.<sup>9</sup>
3. The burden going forward with the evidence at the adjudicatory hearing remains with the prosecutor.<sup>10</sup>

### **CPA PETITION**

1. The order expanding the JCA proceeding to a CPA proceeding serves as the petition in the CPA case.<sup>11</sup> No further petition is required.<sup>12</sup> The expansion order must be given to the juvenile's parent(s), guardian(s), or legal custodian(s), the Department of Health and Welfare, the prosecuting attorney or deputy attorney general and other counsel of record, and the Department of Juvenile Corrections, if the juvenile is currently under commitment.<sup>13</sup>
2. Notice of hearing will be served on the parents(s), the Department of Health and Welfare, the juvenile, the Department of Juvenile Corrections, if the juvenile is currently under commitment, as though a petition under the CPA has been filed.<sup>14</sup>
3. A petition may be filed in the CPA proceeding, to include other children that come within the jurisdiction of the CPA but who were not before the JCA court.<sup>15</sup>

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### CONSOLIDATING HEARINGS<sup>16</sup>

The court may consolidate hearings under both the JCA and the CPA if the purposes of both acts can be served and the rights of the participants are not prejudiced.

### ENDNOTES

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- <sup>1</sup> I.J.R. 16.
  - <sup>2</sup> I.J.R. 16(f).
  - <sup>3</sup> I.J.R. 16(f); I.C. § 16-1608(2).
  - <sup>4</sup> I.J.R. 16(h); I.C. § 16-1619(1).
  - <sup>5</sup> I.C. § 16-1613(1); I.J.R. 39(h), I.J.R. 52(a).
  - <sup>6</sup> I.C. § 16-1613(1).
  - <sup>7</sup> I.J.R. 16(j).
  - <sup>8</sup> I.R.E. 101(e)(6); I.J.R. 39(e), I.J.R. 41(c), I.J.R. 51(b).
  - <sup>9</sup> I.C. § 16-1613(2).
  - <sup>10</sup> I.J.R. 16(h).
  - <sup>11</sup> *Id.*
  - <sup>12</sup> *Id.*
  - <sup>13</sup> I.J.R. 16(g).
  - <sup>14</sup> I.J.R. 16(h).
  - <sup>15</sup> I.C. § 16-1603(2); I.J.R. 16(h).
  - <sup>16</sup> I.J.R. 16(i).