

ADVISEMENT OF RIGHTS

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

To advise the parent(s), guardian or other legal custodian:

1. that a Child Protective Act petition concerning a child in their custody or control has been filed with the court, and has been scheduled for a shelter care hearing;
2. that 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;¹ and
3. of their rights and the possible consequences of failing to appear at Child Protective Act hearings.

WHEN

At the shelter care hearing.

ADVISEMENT:

Purpose and Scope of the Shelter Care Hearing

The court shall advise the parents(s), guardian, or other legal custodian that the purpose and scope of the shelter care hearing is to determine whether there is reasonable cause to believe that the child is neglected, abused, abandoned, homeless, or lacks a stable home environment.² If the court determines there is reasonable cause, the child may be returned home with a protective order safeguarding the child's welfare or may be placed in or remain in foster care pending the adjudicatory hearing.³ If the court decides there is not reasonable cause, the petition will be dismissed and the child will be returned home to the parent, guardian or other legal custodian.⁴

Rights of the Custodial Party

The court shall advise the parent(s), guardian, or other legal custodian that they have the following rights at every hearing in a Child Protective Act case:

Right to Counsel. You have the right to be represented by an attorney. If you are financially unable to hire an attorney, you have the right to be represented by a court-appointed attorney.⁵

Knowledge of the Allegations. The allegations claiming to bring the child within the jurisdiction of the Child Protective Act are found in the petition. You are entitled to a copy of the petition, and to be advised of the allegations contained in the petition.⁶

Evidentiary Rights. At hearings in your case, you have the right to present evidence and cross-examine witnesses on relevant issues, including whether the child should return home with or without conditions, or whether the child should be placed in the care of the Department or other authorized agency.⁷

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Right to Appeal. You have the right to appeal the adjudicatory order, any order after the adjudicatory order that vests custody of the child in the Department, any order that authorizes the Department to cease making reasonable efforts to make it possible for the child to return home, or an order of dismissal.⁸

Indian Child Welfare Act. If your unmarried child under the age of 18 is a member of a federally recognized Indian tribe or is eligible for membership in a federally recognized Indian tribe and is the biological child of a member of a federally recognized Indian tribe, the Indian Child Welfare Act is applicable to your case. The court, the Department, and the prosecuting attorney must follow certain additional standards.⁹ Please provide the court and your caseworker with any information about possible tribal membership regarding your child, yourself, the child's other parent, or any legal custodian of the child.

POSSIBLE CONSEQUENCES OF THE PROCEEDINGS

At the time of the shelter care hearing, the court shall advise the parent(s), guardian, or other legal custodian that the Child Protective Act proceedings could result in the following:

1. If you fail to appear at future hearings, the court could:
 - a. find that the petition has been proved,¹⁰
 - b. issue an order adjudicating that the child is in need of protection or services.¹¹
 - c. may proceed without your presence and you may forfeit your rights,¹²
 - d. issue an order transferring permanent legal or physical custody of your child to another,¹³
 - e. find grounds for contempt. Each count of contempt is punishable by up to five (5) days in jail and/or a \$5,000 fine.¹⁴
2. The State may file a petition with the court to terminate your parental rights. If a child has been in the custody of the Department for 15 of the most recent 22 months, the Department shall file a petition for termination of parental rights unless the court finds that:
 - a. the child is placed permanently with a relative,
 - b. there are compelling reasons why termination is not in the best interests of the child, or
 - c. the Department has failed to provide reasonable efforts to reunify the child with the child's family.¹⁵

ENDNOTES

¹ I.J.R. 39(a) and (g).

² I.C. § 16-1603(1).

³ I.C. § 16-1615(5)(e) and (8).

⁴ I.C. § 16-1615(9) and (10).

⁵ I.C. § 16-1613(1); I.J.R. 37(c) and (d), I.J.R. 39(g).

⁶ I.J.R. 39(g).

⁷ I.C. § 16-1602(7).

⁸ I.C. § 16-1625, § 16-1613(1).

⁹ 25 U.S.C. § 1901-1923.

¹⁰ I.J.R. 39(g).

¹¹ *Id.*

¹² I.J.R. 33(b).

¹³ I.J.R. 39(g).

¹⁴ I.C. § 1-1901, § 1-1902, § 7-610.

¹⁵ I.C. § 16-1622(g); 42 U.S.C. § 675(5)(E).