

# SHELTER CARE HEARING

## *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 determine:

1. if there is *reasonable cause* to believe that the child comes within the jurisdiction of the Child Protective Act;<sup>1</sup> and,
2. if so, whether it is in the child's best interests to remain in the home or to remain in temporary shelter care pending the conclusion of the adjudicatory hearing.<sup>2</sup>

### **WHEN**

1. Within 48 hours of the child being removed or within 24 hours of an alleged offender being removed, excluding Saturdays, Sundays, and holidays.<sup>3</sup>
2. Continuances<sup>4</sup>
  - a. *Request by child's custodian.* The shelter care hearing may be continued for a reasonable time by the request of a parent(s), guardian, or legal custodian of the child.
  - b. *Request by other parties.* The court may also grant a reasonable continuance to all other parties or participants upon good cause shown.
  - c. *Findings of the court.* If the hearing is continued and if there is a waiver of the statutory time limits for setting the shelter care hearing, the court must find that it is contrary to the welfare of the child to remain in the home.

### **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> A counselor, friend, or other person may be permitted to remain in the courtroom at the witness stand as the child testifies.<sup>7</sup>

### **ADVISEMENT OF RIGHTS AND APPOINTMENT OF COUNSEL**

1. Advise parent(s) of their rights and appoint counsel where appropriate.<sup>8</sup> (*See Advisement of Rights Bench Card*)
2. For a child under 12, appoint a guardian *ad litem* and counsel for the guardian *ad litem*.<sup>9</sup>
3. For a child 12 years of age or older, appoint counsel to represent the child and, in appropriate circumstances, a guardian *ad litem*.<sup>10</sup>

### **EVIDENCE**

1. The Rules of Evidence do not apply.<sup>11</sup>
2. The evidentiary standard is reasonable cause. The court may consider "any evidence which is of the type which reasonable people may rely upon."<sup>12</sup>
3. The only privileges in effect at the shelter care hearing are the lawyer/client privilege and the clergy privilege. There is no other privilege as to a communication relevant to an issue concerning the physical, mental, or emotional condition of or injury to a child, or concerning the welfare of a child.<sup>13</sup>

### **MAKING THE RECORD**

1. The hearing, in its entirety, must be on the record.<sup>14</sup>

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2. The court may enter orders or decrees based upon stipulations only upon a reasonable inquiry by the court to confirm that the stipulation is: knowing and voluntary, has a reasonable basis in fact, and is in the best interests of the child.<sup>15</sup>

## FINDINGS (CASE SPECIFIC)

1. The proceedings were properly initiated by: a) a CPA petition, or b) an Idaho Juvenile Rule 16 expansion, or c) an Order of Removal/Endorsement on Summons.<sup>16</sup>
2. Reasonable cause to believe the child comes within the jurisdiction of the CPA:
  - a. The child lives in or is found within the state of Idaho;<sup>17</sup> and
  - b. The child is abandoned, abused, neglected, homeless, or lacks a stable home environment, or the court has jurisdiction over another child living or having custodial visitation in the same household and this child has been exposed to or is at risk of being a victim of abuse, neglect, or abandonment;<sup>18</sup> and
  - c. The child could not be placed in the temporary sole custody of a parent having joint physical or legal custody.<sup>19</sup>
3. Required IV-E findings:
  - a. The Department made reasonable efforts to eliminate the need for shelter care but was not successful;<sup>20</sup> or
  - b. The Department made reasonable efforts to eliminate the need for shelter care but was not able to safely provide preventative services;<sup>21</sup> and
  - c. It is contrary to the welfare of the child to remain in the home;<sup>22</sup> and
  - d. It is in the child's best interests to remain in temporary shelter care.<sup>23</sup>
4. Child does/does not come within the jurisdiction of the Indian Child Welfare Act (ICWA). (If yes, findings under ICWA must be made.<sup>24</sup> (*See the ICWA Bench Card*))
5. Reasonable efforts to prevent placement outside the home could be affected by a protective order. If a protective order is entered, additional findings may be required.<sup>25</sup>
6. Further efforts to reunify may be temporarily suspended if:<sup>26</sup>
  - a. A termination of parental rights (TPR) petition has been filed regarding the child; or
  - b. There is reason to believe the child has been subjected to aggravated circumstances; or
  - c. The parental rights to a child's sibling have been involuntarily terminated.

## QUESTIONS THE COURT MUST ASK

*ICWA (See the ICWA Bench Card)*

The court must ask on the record if there is reason to believe that the child is an Indian child.<sup>27</sup>

If there is reason to know the child is an Indian child, but the court does not have enough evidence to determine the child's status, the court must treat the child as an Indian child.<sup>28</sup>

*Sibling Placement*<sup>29</sup>

If a group of siblings was removed from the home but was not placed together, the court must ask about:

1) the Department's efforts to place the siblings together, 2) the reasons the siblings were not placed together, and, 3) the Department's plan to ensure frequent visitation or ongoing contact among the siblings, unless visitation or contact would be contrary to the wellbeing of one or more siblings.

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## *Educational Stability* <sup>30</sup>

The court must ask about the Department's efforts to ensure educational stability for the child, including efforts made to keep the child in the same school or the reasons why staying in the same school is not in the child's best interests.

## **QUESTIONS THE COURT SHOULD ASK**

### *Reasonable Efforts* <sup>31</sup>

What efforts did the Department make to prevent the removal of the child from the home?

### *Contrary to the Welfare* <sup>32</sup>

What facts support a finding that it is contrary to the welfare of the child to remain in the home?

### *Best Interests* <sup>33</sup>

What facts support a finding that it is in the child's best interests to remain in temporary shelter care?

## **POSSIBLE OUTCOMES**

1. Proceed to adjudicatory hearing.
  - a. There is reasonable cause to believe the child comes within the jurisdiction of the court, and it is in the best interests of the child to be placed in temporary shelter care (see findings above). If so, the case proceeds to an adjudicatory hearing.<sup>34</sup>
  - b. There is reasonable cause to believe that the child comes within the jurisdiction of the court, but it is not in the best interests of the child to be placed in temporary shelter care.<sup>35</sup> If there was an emergency removal of the child, the child shall be released.<sup>36</sup>
  - c. There is reasonable cause to believe that the child comes within the jurisdiction of the court, 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.<sup>37</sup> The court may issue a protective order in addition to, or instead of, placing the child in temporary shelter care.<sup>38</sup>
2. Dismiss the petition.

There is not reasonable cause to believe that the child comes within the jurisdiction of the court and the court shall dismiss the petition.<sup>39</sup>

## **ORDER**

1. The shelter care order shall be issued within twenty (24) hours of the hearing.<sup>40</sup>
2. Direct the Department and guardian *ad litem* to investigate and file written reports for the adjudicatory hearing. The reports will be provided to the court and the parties prior to the pretrial conference for the adjudicatory hearing.<sup>41</sup>
3. Best practice: Direct the Department to exercise due diligence to contact extended family prior to the adjudicatory hearing.<sup>42</sup> Direct the Department to identify unknown parents, locate missing parents, and provide notice to them, and/or utilize paternity tests to establish biological parentage.
4. Schedule next hearing:
  - a. Pretrial: 3 to 5 days before the adjudicatory hearing.<sup>43</sup>
  - b. Adjudicatory: Within 30 days after filing the petition.<sup>44</sup>

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## RECOMMENDED QUESTIONS

1. What are the specific threats of danger that caused the child to be removed from the home?
2. Is the child vulnerable to the threats of danger? In what way?
3. Do the parent(s) have sufficient protective capacities to protect the child from the threats of danger at home?
4. What is preventing the child from returning home today? How are the conditions for return home in your report related to the threats of danger? How will satisfying those conditions allow the child to return safely home?
5. Is there an in-home safety plan that will allow the child to remain or return safely home? If so, is there at least one caregiver in the home? Is the home calm enough for services to be provided? Are the adults willing to cooperate in the implementation of the in-home plan? Are there sufficient appropriate, reliable resources available and willing to provide services to the family?
6. Will the issuance of a protective order in this case allow the child to return safely home? What conditions need to be included in the protective order to manage the threats of danger and allow the child to return safely home?
7. Is the Department fully exploring placement options with a fit and willing relative?
  - a. Who are the members of the child's extended family (including out-of-state family, adult siblings, and fictive kin)?
  - b. Who has been contacted?
  - c. Are there placement options?<sup>45</sup>
8. Does the current placement support the child's cultural identity?
9. What has the Department done to identify the child's concurrent plan? What concurrent plan are you considering today?
10. Parents:
  - a. Do you understand what happened here today?
  - b. Do you understand what will happen next in your case?
  - c. Do you understand what you need to do before the next hearing?
  - d. Do you have any questions for the court?
11. Department and guardian *ad litem*:
  - a. Do you understand what is required of the Department and/or guardian ad litem prior to the adjudicatory hearing?
  - b. Do you have any questions for the court?

## ENDNOTES

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<sup>1</sup> I.C. § 16-1603.

<sup>2</sup> I.C. § 16-1603, § 16-1615(5); I.J.R. 39(a).

<sup>3</sup> I.C. § 16-1608(2) and (3); I.J.R. 39(c) and (d).

<sup>4</sup> I.C. § 16-1615(4); I.J.R. 39(f).

<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.C. § 16-1613(2).

<sup>8</sup> I.C. § 16-1611(3); I.J.R. 39(g), I.J.R. 37(d).

<sup>9</sup> I.C. § 16-1614(1); I.J.R. 39(g).

<sup>10</sup> I.C. § 16-1614(2).

<sup>11</sup> I.R.E. 101(e)(6); I.J.R. 39(e), I.J.R. 51(b).

<sup>12</sup> I.C. § 16-1615(5); I.J.R. 39 (i).

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<sup>13</sup> I.R.E. 502, I.R.E. 505; I.J.R. 39(e). See also I.R.E. 503(d)(4), I.R.E. 504(d)(1), I.R.E. 516(d)(3), I.R.E. 517(d)(3), I.R.E. 518(d)(5).

<sup>14</sup> I.J.R. 39(h).

<sup>15</sup> I.J.R. 38.

<sup>16</sup> I.C. § 16-1610(1), § 16-1611(4), § 16-1615(5)(a); I.J.R. 16.

<sup>17</sup> I.C. § 16-1603(1), § 16-1615(5)(b); I.J.R. 39(i)(2).

<sup>18</sup> I.C. § 16-1603(1) and (2), § 16-1615(5)(b); I.J.R. 39(i)(2). If the other child is not identified in the petition, the petition must be amended and notice provided to parents under I.C. § 16-1611.

<sup>19</sup> I.C. § 16-1615(5)(c); I.J.R. 39(i)(4).

<sup>20</sup> I.C. § 16-1615(5)(b)(i); I.J.R. 39(i)(3).

<sup>21</sup> I.C. § 16-1615(5)(b)(ii); I.J.R. 39(i)(3).

<sup>22</sup> I.C. § 16-1615(5)(d); I.J.R. 39(i)(5).

<sup>23</sup> I.C. § 16-1615(5)(e); I.J.R. 39(i)(6).

<sup>24</sup> 25 U.S.C. § 1903(4).

<sup>25</sup> I.C. § 16-1615(8); I.J.R. 39(j).

<sup>26</sup> I.J.R. 39(m).

<sup>27</sup> I.C. § 16-1615(6). The U.S. Bureau of Indian Affairs regulations provide that state courts ask each participant in an emergency or voluntary or involuntary child-custody proceeding whether the participant knows or has reason to know that the child is an Indian child; however, Idaho law requires that the court inquire whether there is *reason to believe* that the child is an Indian child. 25 C.F.R. § 23.107(a).

<sup>28</sup> 25 C.F.R. § 23.107(b)(2) and (c).

<sup>29</sup> I.C. § 16-1615(7)(b); 42 U.S.C. § 671(a)(31).

<sup>30</sup> I.C. § 16-1615(7)(a); 42 U.S.C. § 675(1)(G).

<sup>31</sup> I.C. § 16-1615(5)(b).

<sup>32</sup> I.C. § 16-1615(5)(d).

<sup>33</sup> I.C. § 16-1615(5)(e).

<sup>34</sup> I.C. § 16-1615(6).

<sup>35</sup> I.C. § 16-1615(9).

<sup>36</sup> *Id.*

<sup>37</sup> I.C. § 16-1615(8).

<sup>38</sup> I.J.R. 39(j).

<sup>39</sup> I.C. § 16-1615(10).

<sup>40</sup> I.C. § 16-1615(5)(e).

<sup>41</sup> I.C. § 16-1616(2), § 16-1633(1) and (2), § 16-1619(2).

<sup>42</sup> 42 U.S.C. § 671(a)(29).

<sup>43</sup> I.C. § 16-1619(2).

<sup>44</sup> I.C. § 16-1615(6).

<sup>45</sup> I.C. § 16-1629(11); 42 U.S.C. § 671(a)(29).