

# ADJUDICATORY 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**

- Part I. Adjudication: To determine whether the child is within jurisdiction of the court under the Child Protective Act (CPA.)<sup>1</sup>
- Part II. Aggravated Circumstances: When appropriate, to determine if a parent has subjected the child to aggravated circumstances.<sup>2</sup> If found: (1) the Department does not have to make reasonable efforts to prevent the placement of the child in foster care;<sup>3</sup> and, (2) the Department is not required to make reasonable efforts to reunify the child with the child's parent.<sup>4</sup>
- Part III. Disposition: If jurisdiction is found, to determine if the child should be placed in the custody of the Department (or other authorized agency), or in the child's own home under the protective supervision of the Department.<sup>5</sup>

### **WHEN**

1. No later than 30 days after filing of the petition.<sup>6</sup>
2. Continuances:
  - a. The hearing may not be continued more than 60 days from the date of removal, unless the court has made the "reasonable efforts to prevent removal" finding.<sup>7</sup>
  - b. A best practice recommendation is to make findings regarding contrary-to-the-welfare, best interests, and reasonable efforts to prevent the placement of the child in foster care.

### **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>8</sup>
2. The child may be excluded from hearings at any time at the discretion of the court.<sup>9</sup> A counselor, friend, or other person shall be permitted to remain in the courtroom at the witness stand as the child testifies.<sup>10</sup>

### **PART I: ADJUDICATION**

*ICWA (See the ICWA Bench Card)*

If there is reason to believe the child is an Indian child, the court shall inquire about:<sup>11</sup>

1. the efforts made, since the last hearing, to determine whether the child is an Indian child.
2. the Department's efforts to work with all tribes of which the child may be a member and to verify whether the child is a member or eligible for membership.

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>12</sup>

*Evidence:*<sup>13</sup>

1. The Rules of Evidence apply.
2. The evidentiary standard is preponderance of the evidence.
3. The court cannot consider the Department/guardian *ad litem* investigatory reports.
4. The only privileges in effect at the adjudicatory hearing are the lawyer/client privilege and the clergy privilege. There is no other privilege as to a communication relevant to an issue concerning

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the physical, mental or emotional condition of or injury to a child, or concerning the welfare of a child.

## *Making the Record:*<sup>14</sup>

Stipulations must be on the record and are subject to court approval. 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.

## *Findings:*<sup>15</sup> (Must be written and case-specific)

1. Child comes within the jurisdiction of the CPA:
  - a. The child lives or was found in Idaho; and
  - b. The child is abused, abandoned, neglected, homeless, or has an unstable home environment; or, the child is living or having custodial visitation in the same household as a child already under the jurisdiction of the court and is exposed to or at risk of being a victim of abuse, neglect, or abandonment.
2. Facts and conclusions of law upon which court exercises jurisdiction must be in the record.
3. Written, case-specific findings regarding contrary-to-welfare, best interests, and reasonable efforts to prevent the placement of a child in foster care.
4. If the child does not come under the jurisdiction of the CPA, the case is dismissed.<sup>16</sup>

## **PART II: AGGRAVATED CIRCUMSTANCES**

### *Evidence:*<sup>17</sup>

1. The Rules of Evidence apply.
2. The Department/guardian *ad litem* reports may be admitted into evidence at the adjudicatory hearing for purposes other than determining whether the child comes under the jurisdiction of the CPA. However, the reports must be admitted under the rules of evidence to be considered in determining the presence of aggravated circumstances.

### *Making the Record:*<sup>18</sup>

Stipulations must be on the record and are subject to court approval. 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.

### *Findings:* (Must be written and case specific)

1. Parent(s) subjected the child to aggravated circumstances as defined in Idaho Code § 16-1602(6).<sup>19</sup>
2. The Department is not required to make reasonable efforts to prevent placement of the child in foster care or to reunify the child with the child's family.<sup>20</sup>

## **PART III: DISPOSITION**

### *Evidence:*<sup>21</sup>

1. The Rules of Evidence do not apply.
2. The court may consider any information relevant to disposition, including Department/guardian *ad litem* reports.

### *Making the Record:*<sup>22</sup>

Stipulations must be on the record and are subject to court approval. The court may enter orders or decrees based upon stipulations only upon a reasonable inquiry by the court to confirm that the

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stipulation is: knowing and voluntary, has a reasonable basis in fact, and is in the best interests of the child.

*Findings: (Must be written and case specific)* <sup>23</sup>

1. Continued residence in the home is contrary to the welfare of the child; and
2. Vesting custody with the Department is in the best interests of the child; and
3. The Department made reasonable efforts to prevent the placement of the child into foster care:
  - a. but was not successful in eliminating the need for foster care placement; or,
  - b. but was not able to safely provide preventative services; or,
  - c. but efforts to temporarily place the child with related persons were not successful; or,
  - d. reasonable efforts were not required because the parent subjected the child to aggravated circumstances.

*Questions the court must ask:* <sup>24</sup>

If the court vests legal custody of the child in the Department or other authorized agency, the court must ask about these issues:

1. Did the Department make reasonable efforts to prevent the removal of the child from the child's home? <sup>25</sup>
2. Educational stability: <sup>26</sup>  
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.
3. Sibling placement: <sup>27</sup>  
If a group of siblings was removed from the home but was not placed together, 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.
4. Psychotropic medications: <sup>28</sup>  
If the child is placed in the Department's custody and the child is being treated with psychotropic medications, the Department must document and the court must inquire about the type of medication, the dosage and the medical professional who prescribed the medication. The court may make any additional relevant inquiry.

**EFFORTS TO REUNIFY MAY BE SUSPENDED IF:** <sup>29</sup>

1. A petition to terminate parental rights has been filed with regard to the child; or,
2. A petition or motion has been filed in a CPA case seeking a determination of aggravated circumstances; or,
3. The permanency plan and permanency goal approved does not include reunification.

**CONTESTED MATTERS** <sup>30</sup>

Motions contesting matters relating to the placement of the child by the Department are governed by Idaho Juvenile Rule 43.

**ADJUDICATORY ORDERS**

1. A protective order may be issued if: <sup>31</sup>
  - a. it is in the best interests of the child;
  - b. there is continued danger to the child.

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2. Scheduling Orders:
  - a. If aggravated circumstances exist, a permanency hearing must be held within 30 days.<sup>32</sup> Order the Department to prepare a permanency plan.<sup>33</sup>
  - b. In other cases, a case plan hearing must be held within 30 days after the adjudicatory hearing, or no later than 60 days after the child was removed from the home, whichever occurs first.<sup>34</sup> Order the Department to prepare a case plan.<sup>35</sup>

## 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>36</sup>
8. What is the concurrent plan for this child? What steps has the Department taken to implement the concurrent plan? What additional steps need to be taken before the next hearing?
9. Has the child been moved since the shelter care hearing? If so:
  - a. Why?
  - b. What further efforts are needed to ensure the child's placement stability?
  - c. Does the new placement support the child's cultural identity?
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 next hearing?
  - b. Do you have any questions for the court?

## ENDNOTES

<sup>1</sup> I.C. § 16-1602(4)(a), § 16-1603, § 16-1619(4); I.J.R. 41(a).

<sup>2</sup> I.C. § 16-1602(6), § 16-1619(6)(d); I.J.R. 41(a).

<sup>3</sup> I.C. § 16-1619(6)(d).

<sup>4</sup> *Id.*

<sup>5</sup> I.C. § 16-1602(4)(b), § 16-1619(5); I.J.R. 41(a).

<sup>6</sup> I.C. § 16-1619(1).

<sup>7</sup> I.J.R. 41(b).

<sup>8</sup> I.C. § 16-1613(1); I.J.R. 52(a).

<sup>9</sup> I.C. § 16-1613(1).

<sup>10</sup> I.C. § 16-1613(2).

<sup>11</sup> I.C. § 16-1619(7)(a). Idaho Code provides that if there is reason to *believe* that a child is an Indian child, the court must inquire about efforts made to determine the child's status and make a determination that the Department is making active efforts to verify whether the child is an Indian child. The U.S. Bureau of Indian Affairs regulations, however, provide that where the court has reason to *know* the child is an Indian child, the court must inquire about efforts made to make the determination. The regulations also provide that if the court does not have sufficient evidence to determine that the child is not an Indian child, the court must proceed as if the child is an Indian child. 25 C.F.R. § 23.107 (a) and (b).

<sup>12</sup> 25 C.F.R. § 23.107(b)(2).

<sup>13</sup> I.C. § 16-1616(3), § 16-1619(4), § 16-1633(2); I.R.E. 101(e)(6); I.J.R. 41(c) and 51(b); I.R.E. 502, I.R.E. 505. 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. 38.

<sup>15</sup> I.C. § 16-1603, § 16-1619(4) and (6); I.J.R. 41(d) and (f).

<sup>16</sup> I.C. § 16-1619(11).

<sup>17</sup> I.C. § 16-1616(3), § 16-1633(2); I.R.E. 101(e)(6); I.J.R. 41(c), I.J.R. 51(b).

<sup>18</sup> I.J.R. 38.

<sup>19</sup> I.C. § 16-1602(6), § 16-1619(6)(d).

<sup>20</sup> I.C. § 16-1619(6)(d).

<sup>21</sup> I.C. § 16-1616(3), § 16-1633(2); I.R.E. 101(e)(6); I.J.R. 41(c), I.J.R. 51(b).

<sup>22</sup> I.J.R. 38.

<sup>23</sup> I.C. § 16-1619(6); I.J.R. 41(e) and (f).

<sup>24</sup> I.C. § 16-1619(7)(b) and (c).

<sup>25</sup> I.C. § 16-1619(6)(a) and (b).

<sup>26</sup> I.C. § 16-1619(7)(b)(i); 42 U.S.C. § 675(1)(G).

<sup>27</sup> I.C. § 16-1619(7)(b)(ii); 42 U.S.C. § 671(a)(31).

<sup>28</sup> I.C. § 16-1619(7)(c).

<sup>29</sup> I.C. § 16-1619(6)(d), § 16-1620(8), § 16-1622 (2)(k).

<sup>30</sup> I.J.R. 43(3).

<sup>31</sup> I.C. § 16-1602(34), § 16-1619(10).

<sup>32</sup> I.C. § 16-1619(6)(d), § 16-1620(1).

<sup>33</sup> I.C. § 16-1620(1); I.J.R. 41(i).

<sup>34</sup> I.C. § 16-1621(1); I.J.R. 41(b); 45 C.F.R. § 1356.21(g)(2).

<sup>35</sup> I.C. § 16-1621(1); I.J.R. 41(g) and (h); 45 C.F.R. § 1356.21(g)(2).

<sup>36</sup> I.C. § 16-1629(11); 42 U.S.C. § 671(a)(29).