

# PERMANENCY HEARING

(NO AGGRAVATED CIRCUMSTANCES)

## 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>

1. A review of the Department's past efforts to finalize the primary permanency plan in effect.
2. Review, approve, reject, or modify the permanency goal and plan proposed by the Department at the permanency hearing.

### WHEN

1. Prior to 12 months from the date the child is removed from the home or the date of the court's order taking jurisdiction under the Child Protection Act (CPA), whichever occurs first, and every 12 months thereafter.<sup>2</sup>
2. For a youth in the custody of the Department, within 90 days prior to the youth's 18<sup>th</sup> birthday.<sup>3</sup>
3. The permanency hearing may be combined with a review hearing.<sup>4</sup> (Note: Clerks must "result" both hearings.)
4. The Department must file and serve the permanency plan at least 5 days prior to the hearing.<sup>5</sup>
5. If not timely held, an otherwise eligible child will lose federal IV-E match funds on the last day of the month in which the finding of "reasonable efforts to finalize permanency" should have been made. IV-E funding will resume on the first day of the month in which the required "reasonable efforts to finalize permanency" finding is made.<sup>6</sup>
6. No statute or rule specifically addresses continuances in permanency hearings. But Note: If the permanency hearing is not timely held, an otherwise eligible child will lose federal IV-E match funds on the last day of the month that the finding should have been made.<sup>7</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>8</sup>
2. The Department shall provide notice of the permanency hearing to: 1) the foster parents; 2) pre-adoptive parents; 3) a relative who is providing care to a child who is in the custody of the Department; and 4) children age 8 and older. The Department shall confirm to the court that this notice was given.<sup>9</sup>
3. The child may be excluded from hearings at any time at the discretion of the court.<sup>10</sup>
4. Youth age 12 and older are required to attend permanency hearings in person or remotely, unless the youth declines in writing, declines through counsel, or the court finds good cause to excuse the youth from attending the hearing.<sup>11</sup>

### EVIDENCE

1. The Rules of Evidence do not apply.<sup>12</sup>
2. The foster parent, the pre-adoptive parent and/or the relative who is providing care to a child who is in the custody of the Department, each have the right to be heard at the permanency hearing.<sup>13</sup>
3. A child age 8 or older has the right to be heard, either in person or in writing.<sup>14</sup> If the child testifies, a counselor, friend, or other person shall be permitted to remain in the courtroom at the witness stand as the child testifies.<sup>15</sup>

# Permanency Hearing (NO AC) Bench Card

4. Privileges in effect at the permanency 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>16</sup>

## STIPULATIONS<sup>17</sup>

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.

## CONTENTS OF THE PERMANENCY PLAN

The permanency plan must include:

### *Placement*

1. The current foster care placement for the child.<sup>18</sup>
2. The prospective adoptive parents, if known.<sup>19</sup> (Note: In an adoption proceeding, if the person proposing to adopt the child is not the proposed adoptive parent named in the permanency plan, then the adoption judge must stay the adoption until the permanency plan is amended and approved by the court in the child protection case.<sup>20</sup>)
3. If a group of siblings was removed from the home but was not placed together, the Department must document: 1) the efforts to place the siblings together, 2) the reasons the siblings were not placed together, and 3) the 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.<sup>21</sup>

### *Services to the Child*

1. Services to identify and meet any educational, emotional, physical, or developmental needs the child may have, and to assist the child in adjusting to the placement or to ensure the stability of the placement.<sup>22</sup>
2. Options for maintaining the child's connection to the community. This includes people, schools, organizations, or activities with which the child has a significant connection.<sup>23</sup>
3. The plan to ensure educational stability for the child, including efforts to keep the child in the same school or reasons why keeping the child in the same school is not in the child's best interests.<sup>24</sup>
4. For youth age 14 and older, the permanency plan must include the information described in the *Transition to Successful Adulthood Bench Card*.<sup>25</sup>

### *ICWA (See the ICWA Bench Card)*

If there is reason to believe the child is an Indian child, and there has been no final determination of the child's status as an Indian child, the court shall:

1. Inquire about the efforts that have been made since the last hearing to determine whether the child is an Indian child;<sup>26</sup> and
2. Determine that the Department has exercised due diligence 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.<sup>27</sup>

# Permanency Hearing (NO AC) Bench Card

## *Permanency Goal and Plan*

1. The plan must include a permanency goal, which must be one of the following:<sup>28</sup>
  - a. Continued efforts at reunification;
  - b. Termination of parental rights and adoption;
  - c. Guardianship; or
  - d. For youth age 16 and older only, “another planned permanent living arrangement” (APPLA).
2. The plan may include both a primary goal and a concurrent goal.<sup>29</sup>

## *Permanency Goal of Reunification*

If the plan has a permanency goal of reunification, the plan must include:<sup>30</sup>

1. All issues that need to be addressed before the child can safely be returned home (or remain home) without Department supervision.
2. Tasks to be completed by the Department, each parent and others, including services to be provided by the Department and in which the parents are required to participate.
3. Deadlines for the completion of each task.
4. The role of the Department as to each parent.
5. A plan for achieving reunification within 12 months from the date the child was removed from the home. The court may approve an amendment to a plan extending the deadline for reunification for up to 3 months.<sup>31</sup>
6. A visitation plan, the need for supervision of visitation, and child support.<sup>32</sup>
7. Reasonable efforts to be made by the Department to make it possible for the child to return home.<sup>33</sup>
8. A period of protective supervision or an extended home visit<sup>34</sup> of not less than 90 days prior to vacating the case if one or more of the following circumstances exist:<sup>35</sup>
  - a. The circumstances that caused the child to be ordered into the legal custody of the Department resulted in a conviction for lewd and lascivious conduct;
  - b. The child has been in the legal custody of the Department for more than 6 months;
  - c. The child is at risk of repeated maltreatment or reentry into foster care because of a parent’s recent completion of substance abuse treatment or other compelling circumstance.
  - d. Extended home visit must be reapproved by the court every 6 months.<sup>36</sup>
9. If the child is an Indian child, active efforts by the Department to provide remedial services and rehabilitative programs to prevent the breakup of the Indian family. (*See the ICWA Bench Card*)

## *Other Permanency Goals*

If the plan has a permanency goal other than reunification, the plan must also include:

1. All options for permanent placement of the child, including in-state and out-of-state placement options.<sup>37</sup>
2. The advantages and disadvantages of each option, and a recommendation as to which option is in the child’s best interests.<sup>38</sup>
3. The actions necessary to implement the recommended option.<sup>39</sup>
4. A schedule for accomplishing the actions necessary to implement the permanency goal within the time frames in the Idaho Juvenile Rules:<sup>40</sup>
  - a. If the permanency goal is termination of parental rights and adoption, a schedule that has the objective of finalizing termination within 18 months from approval of the permanency plan and finalizing the adoption with 24 months from the date the child was removed.<sup>41</sup> Amendments to the plan to extend the time must be approved by the court.<sup>42</sup>

# Permanency Hearing (NO AC) Bench Card

- b. If the permanency goal is guardianship, a schedule that has the objective of finalizing the guardianship within 13 months from the date the child was removed.<sup>43</sup> Any amendment to the plan to extend the time must be approved by the court.<sup>44</sup>
5. If the permanency goal is termination of parental rights and adoption, the names of the proposed adoptive parents when known.<sup>45</sup>
6. If the permanency goal is APPLA, the plan must document:<sup>46</sup>
  - a. intensive, ongoing, and unsuccessful efforts the Department has made to place the youth with a parent, in an adoptive placement, in a guardianship, or in the custody of the Department in a placement with a fit and willing relative, including an adult sibling.
  - b. reasons why APPLA is the best permanency goal for the youth and compelling reasons why one of the other placements is not in the youth's best interests.
  - c. steps taken by the Department to ensure that the youth's foster parents or child care institution are following the reasonable and prudent parent standard when making decisions about the youth's participation in extracurricular, enrichment, cultural, and social activities.
  - d. opportunities provided to the youth to regularly engage in age or developmentally appropriate activities.
7. Identify further investigation necessary to identify or assess other options for permanent placement, to identify actions necessary to implement the recommended placement or to identify options for maintaining the child's significant connections.<sup>47</sup>

## QUESTIONS THE COURT MUST ASK AND FINDINGS THE COURT MUST MAKE

### *Reasonable efforts to finalize permanency*<sup>48</sup>

The court must make written, case-specific findings that the Department has made reasonable efforts to finalize the primary permanency goal for the child.

### *ICWA (See the ICWA Bench Card)*

1. If there is reason to believe that the child is an Indian child and there has not been a final determination of the child's status as an Indian child, the court shall:
  - a. inquire about the efforts that have been made since the last hearing to determine whether the child is an Indian child;<sup>49</sup> and
  - b. determine that the Department has exercised due diligence 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.<sup>50</sup>
2. 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>51</sup>

### *Placement*

1. 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) about 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.<sup>52</sup>
2. The hearing must include a review of the Department's consideration of options for in-state and out-of-state placement of the child. In the case of a child in an out-of-state placement, the court shall determine if the out-of-state placement continues to be in the best interests of the child.<sup>53</sup>

# Permanency Hearing (NO AC) Bench Card

## *Educational Stability* <sup>54</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.

## *Psychotropic Medication*

If a child placed in the Department's custody is 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.<sup>55</sup> The court may make any additional relevant inquiry.<sup>56</sup>

## *Youth Age 12 and Older* <sup>57</sup>

For youth age 12 and older, the Department must provide additional information and the court must ask additional questions and make additional findings regarding the permanency plan, including the plan for the youth's transition to successful adulthood. (*See Transition to Successful Adulthood Bench Card*)

## *Youth Age 14 and Older* <sup>58</sup>

For youth age 14 and older, the hearing shall include a determination of the services needed to assist the youth to make the transition from foster care to successful adulthood. (*See Transition to Successful Adulthood Bench Card*)

## *Youth Age 16 and Older* <sup>59</sup>

For youth with a proposed or current permanency goal of APPLA, the court shall make written case specific findings as of the date of the permanency hearing:

1. APPLA is the best permanency plan for the youth; and
2. There are compelling reasons why it is not in the youth's best interests to be placed with a parent, in an adoptive placement, in a guardianship, or in the legal custody of the Department in a placement with a fit and willing relative, including an adult sibling.

## **YOUTH AGING OUT OF CARE**

When a youth in the Department's custody is within 90 days of the youth's 18<sup>th</sup> birthday:

1. The Department shall file a report with the court that includes the Department's transition plan for the youth.<sup>60</sup>
2. The court will schedule a review or a permanency hearing at which the court will review and discuss the permanency plan with the youth and ensure that the plan provides the services necessary to allow the youth to transition to a successful adulthood.<sup>61</sup>

## **EXTENDED FOSTER CARE**<sup>62</sup>

If a youth wishes to remain in extended foster care beyond the age of 18, and meets eligibility criteria, refer to Idaho Juvenile Rules (I.J.R.) 59 and the *Extended Foster Care Bench Card* for guidance.

When the court orders extended foster care, the court shall continue to hold review and permanency hearings in accordance with I.C. § 16-1622. The court shall also determine whether

# Permanency Hearing (NO AC) Bench Card

the child continues to meet the eligibility requirements. If at any time the child no longer meets the requirements, the court shall terminate extended foster care.

## ORDER

1. The order must adopt, modify, or reject the permanency plan.<sup>63</sup>
2. The permanency plan approved by the court should be entered into the record as an order of the court.<sup>64</sup>
3. The court may approve a plan with a primary permanency goal and a concurrent permanency goal.<sup>65</sup>
4. If the permanency plan has a primary permanency goal of termination of parental rights and adoption, the Department must file a petition to terminate parental rights within 30 days of the approval of the plan.<sup>66</sup>
5. The court may authorize the Department to suspend further efforts at reunification, pending further order of the court, when the court approves a permanency plan that does not include a permanency goal of reunification.<sup>67</sup>
6. Deadline for achieving reunification:
  - a. If the child has been in the temporary or legal custody of the Department for 15 of the last 22 months, the Department must file a petition to terminate parental rights prior to the last day of the 15<sup>th</sup> month, unless the court makes one of these findings:<sup>68</sup>
    - The child is placed permanently with a relative.
    - There are compelling reasons why termination of parental rights is not in the child's best interests.
    - The Department has failed to provide reasonable efforts to reunify the child with the family.
  - b. If the deadline is approaching (or has passed), the court should enter orders as appropriate, which may include making the finding based on information already before the court, setting deadlines for further proceedings for the court to make the finding, or ordering the Department to file a petition to terminate parental rights, or a motion for relief from that responsibility.
7. Schedule the next hearing.

## RECOMMENDED QUESTIONS

1. What are the specific safety issues that caused the child to be removed from the home?
2. What progress have the parents made on the conditions for return home?
3. What is preventing the child from returning home today?
4. What progress have the parents made on the conditions for case closure?
5. Have the parents made sufficient progress on the case plan to warrant a short period of continued efforts at reunification, for up to 3 months?<sup>69</sup>
6. If the child is an Indian child, and the child is in the custody of the Department, does the child's placement comply with ICWA? (*See the ICWA Bench Card*)
7. Is the Department fully exploring placement options with a fit and willing relative? If so:
  - 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>70</sup>
8. Has the child been moved since the last hearing?<sup>71</sup> If so:
  - a. Why?

# Permanency Hearing (NO AC) Bench Card

- b. What further efforts are needed to ensure the child's placement stability?
  - c. Does the new placement support the child's cultural identity?
9. Parents:
- a. Do you understand what happened here today?
  - b. Do you understand what happens next in your case?
  - c. Do you understand what you must do before the next hearing?
  - d. Do you have any questions for the court?
10. 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

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<sup>1</sup> I.C. § 16-1622(2)(b).

<sup>2</sup> *Id.*

<sup>3</sup> I.C. § 16-1622(3).

<sup>4</sup> I.C. § 16-1622(2)(b).

<sup>5</sup> I.C. § 16-1629(9); I.J.R. 45(c).

<sup>6</sup> 45 C.F.R. § 1356.21(b)(2)(ii).

<sup>7</sup> 45 C.F.R. § 1356.21(b)(2)(i) and (ii).

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

<sup>9</sup> I.C. § 16-1620(5); I.J.R. 40(a) and (b).

<sup>10</sup> I.C. § 16-1613(1).

<sup>11</sup> I.J.R. 40(c).

<sup>12</sup> I.R.E. 101(e)(6); I.J.R. 51(b).

<sup>13</sup> I.J.R. 40(a) and (b).

<sup>14</sup> I.J.R. 40(b).

<sup>15</sup> I.C. § 16-1613(2).

<sup>16</sup> 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>17</sup> I.J.R. 38.

<sup>18</sup> I.J.R. 43(2).

<sup>19</sup> I.C. § 16-1622(2)(a).

<sup>20</sup> I.C. § 16-1506(2).

<sup>21</sup> I.C. § 16-1622(2)(h)(ii).

<sup>22</sup> I.C. § 16-1622(2)(a), § 16-1621(3)(a).

<sup>23</sup> I.C. § 16-1622(2)(a), § 16-1621(3)(d)(v).

<sup>24</sup> I.C. § 16-1622(2)(h)(i).

<sup>25</sup> I.C. § 16-1622(2)(a), § 16-1621(3)(a).

<sup>26</sup> I.C. § 16-1622(2)(i). 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(2)(b).

<sup>27</sup> 25 C.F.R. § 23.107(b).

<sup>28</sup> I.C. § 16-1622(2)(a).

<sup>29</sup> *Id.*

<sup>30</sup> I.C. § 16-1622(2)(a), § 16-1621(3)(c).

<sup>31</sup> I.J.R. 44(a)(1).

<sup>32</sup> I.C. § 16-1621(3)(b)(iii).

<sup>33</sup> I.C. § 16-1621(3).

# Permanency Hearing (NO AC) Bench Card

<sup>34</sup> I.C. § 16-1622(2)(a) refers to the court ordering a “trial home visit” and states that a “trial home visit means that a child is returned to the care of the parent or guardian from whom the child was removed with the department continuing to have legal custody of the child.” Trial home visit is the term used in the federal system but it is left up to the states to develop a definition. In other places in the CPA, the term “extended home visit” is used in place of “trial home visit.”

<sup>35</sup> I.C. § 16-1622(2)(a).

<sup>36</sup> I.J.R. 42.

<sup>37</sup> I.C. § 16-1622(2)(d), § 16-1622(2)(a), § 16-1621(3)(d)(i).

<sup>38</sup> I.C. § 16-1622(2)(a), § 16-1621(3)(d)(ii).

<sup>39</sup> I.C. § 16-1622(2)(a), § 16-1621(3)(d)(iii).

<sup>40</sup> I.C. § 16-1621(5).

<sup>41</sup> I.J.R. 46(a).

<sup>42</sup> *Id.*

<sup>43</sup> I.J.R. 44(a)(2).

<sup>44</sup> *Id.*

<sup>45</sup> I.C. § 16-1622(2)(a).

<sup>46</sup> I.C. § 16-1622(2)(a), § 16-1621(3)(d)(viii).

<sup>47</sup> I.C. § 16-1621(3)(d)(ix).

<sup>48</sup> I.C. § 16-1622(2)(c).

<sup>49</sup> I.C. § 16-1622(2)(i).

<sup>50</sup> 25 C.F.R. § 23.107(b).

<sup>51</sup> 25 C.F.R. § 23.107(2)(b).

<sup>52</sup> I.C. § 16-1622(2)(h)(ii).

<sup>53</sup> I.C. § 16-1622(2)(d).

<sup>54</sup> I.C. § 16-1622(2)(h)(i).

<sup>55</sup> I.C. § 16-1622(2)(j).

<sup>56</sup> *Id.*

<sup>57</sup> I.C. § 16-1622(2)(e).

<sup>58</sup> *Id.*

<sup>59</sup> I.C. § 16-1620(7).

<sup>60</sup> I.C. § 16-1622(3).

<sup>61</sup> *Id.*

<sup>62</sup> I.J.R. 59.

<sup>63</sup> I.C. § 16-1622(2)(b).

<sup>64</sup> I.C. § 16-1620(6) (providing that the plan shall be incorporated in an order of the court at a 30-day permanency hearing), § 16-1621(5) (providing that a case plan shall be incorporated in an order of the court), and § 16-1622(2) (making no provision with respect to annual permanency hearings).

<sup>65</sup> I.C. § 16-1622(2)(a).

<sup>66</sup> I.J.R. 46(b).

<sup>67</sup> I.C. § 16-1622(2)(k).

<sup>68</sup> I.C. § 16-1622(2)(g).

<sup>69</sup> I.J.R. 44(a).

<sup>70</sup> I.C. § 16-1629(11); 42 U.S.C. § 671(a)(29).

<sup>71</sup> I.J.R. 43(2).