

# 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;<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

#### **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.<sup>5</sup>

**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.<sup>6</sup>

**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.<sup>7</sup>

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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.<sup>8</sup>

**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.<sup>9</sup> 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,<sup>10</sup>
  - b. issue an order adjudicating that the child is in need of protection or services.<sup>11</sup>
  - c. may proceed without your presence and you may forfeit your rights,<sup>12</sup>
  - d. issue an order transferring permanent legal or physical custody of your child to another,<sup>13</sup>
  - 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.<sup>14</sup>
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.<sup>15</sup>

## ENDNOTES

<sup>1</sup> I.J.R. 39(a) and (g).

<sup>2</sup> I.C. § 16-1603(1).

<sup>3</sup> I.C. § 16-1615(5)(e) and (8).

<sup>4</sup> I.C. § 16-1615(9) and (10).

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

<sup>6</sup> I.J.R. 39(g).

<sup>7</sup> I.C. § 16-1602(7).

<sup>8</sup> I.C. § 16-1625, § 16-1613(1).

<sup>9</sup> 25 U.S.C. § 1901-1923.

<sup>10</sup> I.J.R. 39(g).

<sup>11</sup> *Id.*

<sup>12</sup> I.J.R. 33(b).

<sup>13</sup> I.J.R. 39(g).

<sup>14</sup> I.C. § 1-1901, § 1-1902, § 7-610.

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

# SHELTER CARE HEARING

## *Bench Card*

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### **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).





# ADJUDICATORY HEARING

## *Bench Card*

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### **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).



# AGGRAVATED CIRCUMSTANCES DETERMINATION

(NOT TO BE USED IN AN ICWA CASE)

## *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 determine whether the parent(s) subjected the child to aggravated circumstances, and if so, that reasonable efforts to prevent placement of the child in foster care and to reunify are not required.

### **WHEN<sup>2</sup>**

At the adjudicatory hearing or at any time in the case upon motion and notice.

### **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>3</sup>
2. If the State raises the aggravated circumstances issue subsequent to the adjudicatory hearing, the Department shall provide notice of the 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 eight (8) and older. The Department shall confirm to the court that this notice was given.<sup>4</sup>
3. If the aggravated circumstances issue is raised subsequent to the adjudicatory hearing, a child age eight (8) or older and the foster parents have the right to be heard.<sup>5</sup> The child may be excluded from hearings at any time at the discretion of the court.<sup>6</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>7</sup>

### **EVIDENCE<sup>8</sup>**

The Rules of Evidence apply.

### **STIPULATIONS<sup>9</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 (WRITTEN AND CASE SPECIFIC)**

1. Parent(s) subjected the child to aggravated circumstances as defined in the CPA.
2. The Department is not required to make reasonable efforts to prevent removal or to reunify the child with the child's parents.<sup>10</sup>
3. If the State raises the issue after the adjudicatory hearing, that the Department confirmed notice was provided to the individuals identified above in "Who May Be Present" - #2.<sup>11</sup>

# AGGRAVATED CIRCUMSTANCES DETERMINATION

(NOT TO BE USED IN AN ICWA CASE)

## *Bench Card*

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### ORDER

1. Order the Department to prepare a written permanency plan that includes the information set forth in Idaho Code § 16-1620 and Idaho Juvenile Rule 44(b).<sup>12</sup>
2. Schedule a permanency hearing within 30 days of the determination of aggravated circumstances.<sup>13</sup>
3. Order the Department either to file the petition to terminate parental rights no later than 30 days from the date of the aggravated circumstance finding or file a motion requesting the court find compelling reasons why termination of parental rights would not be in the best interests of the child.<sup>14</sup>

### ENDNOTES

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<sup>1</sup> I.C. § 16-1602(6), § 16-1619(6)(d), § 16-1620; I.J.R. 41(a) and (i), I.J.R. 44(b).

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

<sup>3</sup> I.C. § 16-1613(1); I.J.R. 52(a).

<sup>4</sup> I.C. § 16-1620(1); I.J.R. 40(a) and (b), I.J.R. 41(a).

<sup>5</sup> I.J.R. 40(b).

<sup>6</sup> I.C. § 16-1613(1).

<sup>7</sup> I.C. § 16-1613(2).

<sup>8</sup> I.R.E. 101(e)(6); I.J.R. 41(c), I.J.R. 51(b).

<sup>9</sup> I.J.R. 38.

<sup>10</sup> I.C. § 16-1602(6), § 16-1619(6)(d), § 16-1620(1).

<sup>11</sup> I.J.R. 40(a) and (b).

<sup>12</sup> I.C. § 16-1620(1).

<sup>13</sup> I.C. § 16-1619(6)(d), § 16-1620(1).

<sup>14</sup> I.C. § 16-1620(1), § 16-1624(2) and (3).