

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).

Order to Prevent Removal

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PURPOSE

To remove an alleged offending parent, legal guardian, or legal custodian from the dwelling where the child resides when there are allegations of neglect or abuse by that parent, legal guardian, or legal custodian.

WHEN ¹

When one parent, legal guardian, or legal custodian is a danger to a child and the child is safe with another parent, legal guardian, or legal custodian, the court may issue an Order to Prevent Removal.

FINDINGS ²

The court must have reasonable cause to believe that a child would be safe in the child's present surroundings in the sole care of one parent, legal guardian, or legal custodian and neglect or abuse by another parent, legal guardian, or legal custodian has allegedly occurred.

COURT PROCESS

1. A motion shall be accompanied by a sworn affidavit from a law enforcement officer or the department, and the petition as required by Idaho Code § 16-1610.³
2. The court will open a new Child Protective Act case.
3. A copy of an Order to Prevent Removal along with a copy of the petition and summons shall be served personally on all parents, legal guardians, and legal custodians.⁴
4. Within 48 hours, excluding Saturdays, Sundays, and holidays, the court will hold a hearing on the Order to Prevent Removal.⁵
5. The hearing on the Order to Prevent Removal will replace the Shelter Care Hearing; subsequent hearings will remain unchanged.

RESTRICTIONS ON ALLEGED OFFENDER ⁶

The Order to Prevent Removal shall:

1. Exclude the alleged offending parent, legal guardian, or legal custodian from the dwelling where the child resides,
2. Restrain any contact or communication with the child, and
3. Restrain the alleged offending parent, legal guardian, or legal custodian from coming within one thousand five hundred (1,500) feet, or other appropriate distance, of the child until further order of the court.

ORDER TO PREVENT REMOVAL BENCH CARD

HEARING ON ORDER TO PREVENT REMOVAL ⁷

The court shall:

1. Continue an Order to Prevent Removal until further order of the court if, at a hearing on whether to continue the order, the prosecutor or attorney general shows:
 - a. A petition and summons have been issued pursuant to section 16-1611(1), Idaho Code;
 - b. There is reasonable cause to believe the child is safe in the child's current surroundings in the sole care of one parent, legal guardian, or legal custodian but has been neglected or abused by the other parent, legal guardian, or legal custodian; and
 - c. Continuation of the order is in the child's best interest.
2. Set an Adjudicatory Hearing on the Petition if it is not already set.

NONCOMPLIANCE ⁸

Any person who fails to abide by an Order to Prevent Removal may be subject to a charge of the misdemeanor crime of contempt, as described in section 18-1801, Idaho Code.

ENDNOTES

¹ I.C. § 16-1611(5)(a).

² *Id.*

³ I.C. § 16-1611(5)(b).

⁴ I.C. § 16-1612, § 16-1611(5)(c).

⁵ I.C. § 16-1611(5)(c).

⁶ I.C. § 16-1611(5)(a).

⁷ I.C. § 16-1611(5)(d).

⁸ I.C. § 16-1611(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;¹ 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.²

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.³
2. Continuances⁴
 - 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.⁵
2. The child may be excluded from hearings at any time at the discretion of the court.⁶ A counselor, friend, or other person may be permitted to remain in the courtroom at the witness stand as the child testifies.⁷

ADVISEMENT OF RIGHTS AND APPOINTMENT OF COUNSEL

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

EVIDENCE

1. The Rules of Evidence do not apply.¹¹
2. The evidentiary standard is reasonable cause. The court may consider "any evidence which is of the type which reasonable people may rely upon."¹²
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.¹³

MAKING THE RECORD

1. The hearing, in its entirety, must be on the record.¹⁴

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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.¹⁵

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.¹⁶
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;¹⁷ 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;¹⁸ and
 - c. The child could not be placed in the temporary sole custody of a parent having joint physical or legal custody.¹⁹
3. Required IV-E findings:
 - a. The Department made reasonable efforts to eliminate the need for shelter care but was not successful;²⁰ or
 - b. The Department made reasonable efforts to eliminate the need for shelter care but was not able to safely provide preventative services;²¹ and
 - c. It is contrary to the welfare of the child to remain in the home;²² and
 - d. It is in the child's best interests to remain in temporary shelter care.²³
4. Child does/does not come within the jurisdiction of the Indian Child Welfare Act (ICWA). (If yes, findings under ICWA must be made.²⁴ (*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.²⁵
6. Further efforts to reunify may be temporarily suspended if:²⁶
 - 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.²⁷

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.²⁸

*Sibling Placement*²⁹

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 ³⁰

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 ³¹

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

Contrary to the Welfare ³²

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

Best Interests ³³

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.³⁴
 - 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.³⁵ If there was an emergency removal of the child, the child shall be released.³⁶
 - 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.³⁷ The court may issue a protective order in addition to, or instead of, placing the child in temporary shelter care.³⁸
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.³⁹

ORDER

1. The shelter care order shall be issued within twenty (24) hours of the hearing.⁴⁰
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.⁴¹
3. Best practice: Direct the Department to exercise due diligence to contact extended family prior to the adjudicatory hearing.⁴² 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.⁴³
 - b. Adjudicatory: Within 30 days after filing the petition.⁴⁴

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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 they placement options?⁴⁵
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

¹ I.C. § 16-1603.

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

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

⁴ I.C. § 16-1615(4); I.J.R. 39(f).

⁵ I.C. § 16-1613(1); I.J.R. 39(h), I.J.R. 52(a).

⁶ I.C. § 16-1613(1).

⁷ I.C. § 16-1613(2).

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

⁹ I.C. § 16-1614(1); I.J.R. 39(g).

¹⁰ I.C. § 16-1614(2).

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

¹² I.C. § 16-1615(5); I.J.R. 39 (i).

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¹³ 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).

¹⁴ I.J.R. 39(h).

¹⁵ I.J.R. 38.

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

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

¹⁸ 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.

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

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

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

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

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

²⁴ 25 U.S.C. § 1903(4).

²⁵ I.C. § 16-1615(8); I.J.R. 39(j).

²⁶ I.J.R. 39(m).

²⁷ 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).

²⁸ 25 C.F.R. § 23.107(b)(2) and (c).

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

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

³¹ I.C. § 16-1615(5)(b).

³² I.C. § 16-1615(5)(d).

³³ I.C. § 16-1615(5)(e).

³⁴ I.C. § 16-1615(6).

³⁵ I.C. § 16-1615(9).

³⁶ *Id.*

³⁷ I.C. § 16-1615(8).

³⁸ I.J.R. 39(j).

³⁹ I.C. § 16-1615(10).

⁴⁰ I.C. § 16-1615(5)(e).

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

⁴² 42 U.S.C. § 671(a)(29).

⁴³ I.C. § 16-1619(2).

⁴⁴ I.C. § 16-1615(6).

⁴⁵ 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).¹
- Part II. Aggravated Circumstances: When appropriate, to determine if a parent has subjected the child to aggravated circumstances.² If found: (1) the Department does not have to make reasonable efforts to prevent the placement of the child in foster care;³ and, (2) the Department is not required to make reasonable efforts to reunify the child with the child's parent.⁴
- 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.⁵

WHEN

1. No later than 30 days after filing of the petition.⁶
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.⁷
 - 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.⁸
2. The child may be excluded from hearings at any time at the discretion of the court.⁹ A counselor, friend, or other person shall be permitted to remain in the courtroom at the witness stand as the child testifies.¹⁰

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:¹¹

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.¹²

Evidence: ¹³

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: ¹⁴

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: ¹⁵ (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.¹⁶

PART II: AGGRAVATED CIRCUMSTANCES

Evidence: ¹⁷

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: ¹⁸

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).¹⁹
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.²⁰

PART III: DISPOSITION

Evidence: ²¹

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: ²²

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) ²³

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: ²⁴

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? ²⁵
2. Educational stability: ²⁶
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: ²⁷
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: ²⁸
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: ²⁹

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 ³⁰

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: ³¹
 - 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.³² Order the Department to prepare a permanency plan.³³
 - 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.³⁴ Order the Department to prepare a case plan.³⁵

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?³⁶
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

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

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

³ I.C. § 16-1619(6)(d).

⁴ *Id.*

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

⁶ I.C. § 16-1619(1).

⁷ I.J.R. 41(b).

⁸ I.C. § 16-1613(1); I.J.R. 52(a).

⁹ I.C. § 16-1613(1).

¹⁰ I.C. § 16-1613(2).

¹¹ 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).

¹² 25 C.F.R. § 23.107(b)(2).

¹³ 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).

¹⁴ I.J.R. 38.

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

¹⁶ I.C. § 16-1619(11).

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

¹⁸ I.J.R. 38.

¹⁹ I.C. § 16-1602(6), § 16-1619(6)(d).

²⁰ I.C. § 16-1619(6)(d).

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

²² I.J.R. 38.

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

²⁴ I.C. § 16-1619(7)(b) and (c).

²⁵ I.C. § 16-1619(6)(a) and (b).

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

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

²⁸ I.C. § 16-1619(7)(c).

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

³⁰ I.J.R. 43(3).

³¹ I.C. § 16-1602(34), § 16-1619(10).

³² I.C. § 16-1619(6)(d), § 16-1620(1).

³³ I.C. § 16-1620(1); I.J.R. 41(i).

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

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

³⁶ 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.

PURPOSE¹

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.

WHEN²

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.³
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.⁴
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.⁵ The child may be excluded from hearings at any time at the discretion of the court.⁶ 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.⁷

EVIDENCE⁸

The Rules of Evidence apply.

STIPULATIONS⁹

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.¹⁰
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" - #2.¹¹

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).¹²
2. Schedule a permanency hearing within 30 days of the determination of aggravated circumstances.¹³
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.¹⁴

ENDNOTES

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

² I.C. § 16-1619(6)(d); I.J.R. 41(a).

³ I.C. § 16-1613(1); I.J.R. 52(a).

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

⁵ I.J.R. 40(b).

⁶ I.C. § 16-1613(1).

⁷ I.C. § 16-1613(2).

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

⁹ I.J.R. 38.

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

¹¹ I.J.R. 40(a) and (b).

¹² I.C. § 16-1620(1).

¹³ I.C. § 16-1619(6)(d), § 16-1620(1).

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

PERMANENCY HEARING

(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

1. Review, approve, reject, or modify the permanency goal/plan of termination of parental rights, adoption, placement with a legal guardian, or another planned permanent living arrangement (APPLA).¹
2. If this is the second or later permanency hearing, a review of the Department's past efforts to finalize the permanency plan in effect.²

WHEN

1. Within 30 days of the determination that the parent(s) subjected the child to aggravated circumstances.³
2. Every 12 months thereafter as long as the court has jurisdiction.⁴
 - a. To ensure the child's continuing eligibility for federal IV-E funding, the first annual permanency hearing should be scheduled for a date within 12 months from the date the child was removed or the date of the court's order finding jurisdiction, whichever comes first.⁵
 - b. 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.⁶

3. For a youth in the custody of the Department, within 90 days prior to the youth's 18th birthday.⁷
4. The permanency hearing may be combined with a review hearing.⁸ (Note: Clerks must "result" both hearings.)
5. The Department must file and serve the permanency plan at least 5 days prior to the hearing.⁹

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.¹⁰
2. The Department must provide notice of the permanency hearing to:
 - a. the foster parents;
 - b. pre-adoptive parents;
 - c. a relative who is providing care to a child who is in the custody of the Department; and
 - d. children age 8 and older.The Department must confirm to the court that this notice was given.¹¹
3. The child may be excluded from hearings at any time at the discretion of the court.¹²
4. Youth age 12 and older are required to attend permanency hearings in person or remotely, unless the youth declines in writing prior to the hearing, declines through counsel, or the court finds good cause to excuse the youth from attending the hearing.¹³

Permanency Hearing w/AC Bench Card

EVIDENCE

1. The Rules of Evidence do not apply.¹⁴
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.¹⁵
3. A child age 8 or older has the right to be heard, either in person or in writing.¹⁶ 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.¹⁷
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.¹⁸

STIPULATIONS¹⁹

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:

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:²⁰

1. The efforts made to determine whether the child is an Indian child; and
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.

Placement

1. The current foster care placement for the child.²¹
2. The prospective, adoptive parents, if known.²² (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 by the court in the child protection case.²³)
3. If a group of siblings was removed from the home but was not placed together, the Department must document:²⁴
 - a. the efforts to place the siblings together;
 - b. the reasons the siblings were not placed together; and
 - c. the plan to ensure frequent visitation or ongoing contact among the siblings, unless visitation or contact would be contrary to the well-being of one or more siblings.

Permanency Hearing w/AC Bench Card

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.²⁵
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.²⁶
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.²⁷
4. For youth age 14 and older, the case plan must include the information described in the *Transition to Successful Adulthood Bench Card*.²⁸

Permanency Goal and Plan

1. The plan must include a permanency goal, which must be one of the following:²⁹
 - a. Termination of parental rights and adoption.
 - b. Guardianship.
 - c. For youth age 16 and older only, "another planned permanent living arrangement" (APPLA).
2. Best Practice: The plan should include both a primary goal and a concurrent goal.³⁰

The plan must also include the following:

1. All options for permanent placement of the child, including in-state and out-of-state placement options.³¹
2. The advantages and disadvantages of each option, and a recommendation as to which option is in the child's best interests.³²
3. The actions necessary to implement the recommended option.³³
4. A schedule for accomplishing the actions necessary to implement the permanency goal within the time frames in the Idaho Juvenile Rules:
 - a. If the permanency goal is termination of parental rights and adoption, a schedule that has the objective of finalizing termination within 6 months from approval of the permanency plan and finalizing the adoption within 12 months from the date the child was removed.³⁴
 - b. If the permanency goal is guardianship, a schedule that has the objective of finalizing the guardianship within 5 months from the date of the determination of aggravated circumstances.³⁵
5. If the permanency goal is termination of parental rights and adoption, identify the names of the prospective adoptive parents, when known.³⁶
6. If the permanency goal is APPLA, the plan must document:³⁷
 - 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.

Permanency Hearing w/AC Bench Card

- c. steps taken by the Department to ensure that the youth's foster parents or childcare 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.

QUESTIONS THE COURT MUST ASK AND FINDINGS THE COURT MUST MAKE

Reasonable efforts to finalize permanency

At the annual permanency hearings, the court must make written, case-specific findings that the Department has made reasonable efforts to finalize the primary permanency goal for the child.³⁸

ICWA (See the ICWA Bench Card)

1. The court must ask:³⁹
 - a. Is there reason to believe that the child is an Indian child?
 - b. What efforts have been made since the last hearing to determine whether the child is an Indian child?
 - c. What efforts have been made by the Department 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?
2. The court must determine whether the Department is using active efforts to work with all tribes of which the child may be a member to verify whether the child is a member or eligible for membership.
3. If the court has reason to know the child is an Indian child, but the court does not have enough evidence to determine that the child is not an Indian child, the court must treat the child as an Indian child.⁴⁰

Placement

1. If a group of siblings was removed from the home but was not placed together, the court must ask about:⁴¹
 - a. the efforts to place the siblings together;
 - b. the reasons the siblings were not placed together; and
 - c. 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.
2. The hearing must include a review of the Department's consideration 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.⁴²

*Educational Stability*⁴³

The Department must document and 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.

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Psychotropic Medication ⁴⁴

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.

Youth Age 12 and Older ⁴⁵

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 ⁴⁶

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 ⁴⁷

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 ⁴⁸

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

1. The Department shall file a report with the court that includes the Department's transition plan for the youth.
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.

EXTENDED FOSTER CARE ⁴⁹

If a youth wishes to remain in extended foster care beyond the age of 18, and meets eligibility criteria, refer to 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 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.

Permanency Hearing w/AC Bench Card

ORDER

1. The order must adopt, modify or reject the plan.⁵⁰
2. The permanency plan as approved by the court must be entered into the record as an order of the court.⁵¹
3. At annual permanency hearings, the court may approve a plan with a primary permanency goal and a concurrent permanency goal.⁵²
4. If the permanency plan approved by the court has a 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.⁵³
5. The court should schedule the next hearing.

RECOMMENDED QUESTIONS

1. 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*)
2. Is the Department fully exploring placement options with a fit and willing relative:⁵⁴
 - 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 they placement options?
3. Does the child have a concurrent plan? If so, what is it?
4. Has the child been moved since the last 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?
5. 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

¹ I.C. § 16-1620(1).

² I.C. § 16-1622(2)(c).

³ I.C. § 16-1619(6)(d), § 16-1620(1).

⁴ I.C. § 16-1620(1).

⁵ I.C. § 16-1622(2)(b).

⁶ 45 C.F.R. § 1356.21(b)(2)(ii).

⁷ I.C. § 16-1622(3).

⁸ I.C. § 16-1622(2)(b).

⁹ I.C. § 16-1620(1), § 16-1629(9); I.J.R. 45(c).

¹⁰ I.C. § 16-1613(1); I.J.R. 52(a).

¹¹ I.C. § 16-1620(5); I.J.R. 40(a) and (b).

¹² I.C. § 16-1613(1).

¹³ I.J.R. 40(c).

¹⁴ I.R.E. 101(e)(6); I.J.R. 51(b).

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- ¹⁵ I.J.R. 40(a).
¹⁶ I.J.R. 40(b).
¹⁷ I.C. § 16-1613(2).
¹⁸ 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).
¹⁹ I.J.R. 38.
²⁰ I.C. § 16-1620(3)(j).
²¹ I.J.R. 43(2).
²² I.C. § 16-1620(3)(k), § 16-1622(2)(a).
²³ I.C. § 16-1506(2).
²⁴ I.C. § 16-1620(3)(g), § 16-1622(2)(h)(ii).
²⁵ I.C. § 16-1620(3)(a), § 16-1622(2)(a), cross-referencing § 16-1621(3)(a).
²⁶ I.C. § 16-1620(3)(f), § 16-1622(2)(a), cross-referencing § 16-1621(3)(d).
²⁷ *Id.*
²⁸ I.C. § 16-1620(3)(h), § 16-1622(2)(e).
²⁹ I.C. § 16-1620(2), § 16-1622(2)(a).
³⁰ I.C. § 16-1622(2)(a).
³¹ I.C. § 16-1620(3)(b), § 16-1622(2)(a), cross-referencing § 16-1621(3)(d).
³² I.C. § 16-1620(3)(c), § 16-1622(2)(a), cross-referencing § 16-1621(3)(d).
³³ I.C. § 16-1620(3)(d), § 16-1622(2)(a), cross-referencing § 16-1621(3)(a).
³⁴ I.J.R. 44(b)(2).
³⁵ I.J.R. 44(b)(1).
³⁶ I.C. § 16-1620(3)(k), § 16-1622(2)(a).
³⁷ I.C. § 16-1620(3)(i) and (7), § 16-1622(2)(a), cross-referencing § 16-1621(3)(d), § 16-1622(f).
³⁸ I.C. § 16-1622(2)(c).
³⁹ I.C. § 16-1620(4)(b). 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. 25 C.F.R. § 23.107(b).
⁴⁰ 25 C.F.R. § 23.107(b).
⁴¹ I.C. § 16-1622(2)(h)(ii). The court is required to inquire at annual permanency hearings, but recommended best practice is to also inquire at the 30-day permanency hearing.
⁴² I.C. § 16-1622(2)(d).
⁴³ I.C. § 16-1620(3)(f), § 16-1622(2)(h)(i). The court is required to inquire at annual permanency hearings, but recommended best practice is to also inquire at the 30-day permanency hearing.
⁴⁴ I.C. § 16-1620(4)(c), § 16-1622(2)(j).
⁴⁵ I.C. § 16-1620(4)(a).
⁴⁶ I.C. § 16-1622(2)(e).
⁴⁷ I.C. § 16-1620(7).
⁴⁸ I.C. § 16-1622(3).
⁴⁹ I.J.R. 59.
⁵⁰ I.C. § 16-1620(4), § 16-1622(2)(b).
⁵¹ I.C. § 16-1620(6).
⁵² I.C. § 16-1622(2)(a).
⁵³ I.C. § 16-1620(1); I.J.R. 44(b)(3).
⁵⁴ I.C. § 16-1629(11); 42 U.S.C. § 671(a)(29).

CASE PLAN HEARING

Bench Card

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PURPOSE

Where aggravated circumstances are not found, to determine whether the best interests of the child is served by adopting, modifying, or rejecting the case plan.¹ This includes cases where the child was placed in the custody of the Department and cases where the child was placed at home under the supervision of the Department.² (Where aggravated circumstances are found, see *Permanency Hearing – Aggravated Circumstances Bench Card*.)

WHEN³

1. The case plan hearing must be held within 30 days after the adjudicatory hearing.
2. The case plan must be filed no later than 5 days prior to the hearing.

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.⁴
2. The Department shall provide notice of the planning 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.⁵
3. The child may be excluded from hearings at any time at the discretion of the court.⁶

EVIDENCE

1. The Rules of Evidence do not apply.⁷
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 case plan hearing.⁸
3. A child age 8 or older has the right to be heard, either in person or in writing.⁹ 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.¹⁰
4. Privileges in effect at the case plan 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.¹¹

MAKING THE RECORD¹²

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.

EXTENDED FOSTER CARE¹³

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.

Case Plan Hearing Bench Card

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 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.

CONTENTS OF THE CASE PLAN

The case plan is the roadmap for achieving permanency for the child. Part One of the case plan, the Family Case Plan, identifies the threats of danger that prevent the child from safely returning home and the conditions that must be met before the child can safely return home. Part One also identifies the changes that must be made in the behavior, commitments and attitude of the parent(s) and the conditions that must be met in order for the case to be closed.

Part Two of the case plan, the Child's Case Plan, includes the information about the child that is required by the Child Protective Act.

If the child is placed in the legal custody of the Department, the case plan must include:

Placement

1. The current foster care placement for the child.¹⁴
2. 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.¹⁵

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.¹⁶
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.¹⁷
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.¹⁸
4. For youth age 14 and older, the case plan must include the information described in the *Transition to Successful Adulthood Bench Card*.¹⁹

ICWA (See the ICWA Bench Card)

1. 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:²⁰
 - a. The efforts made to determine whether the child is an Indian child; and
 - b. 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.
2. 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.²¹ 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.²²

Reunification

1. A reunification plan that includes:²³

Case Plan Hearing Bench Card

- a. Reasonable efforts to be made by the Department to make it possible for the child to return home.²⁴
 - b. All issues that need to be addressed before the child can safely be returned home (or remain home) without Department supervision.²⁵
 - c. Tasks to be completed by the Department, each parent and others, to address each issue, including services to be provided by the Department and in which the parents are required to participate.²⁶
 - d. Deadlines for completion of each task.²⁷
 - e. The role of the Department as to each parent.²⁸
 - f. A plan for achieving reunification within 12 months from the date the child was removed from the home.²⁹
2. A visitation plan, the need for supervision of visitation, and child support.³⁰

Concurrent Permanency Plan

A concurrent permanency plan is required when the court has placed the child in the custody of the Department.³¹

The concurrent plan must include:

1. A permanency goal, which must be one of the following:³²
 - a. Termination of parental rights and adoption.
 - b. Guardianship.
 - c. For youth age 16 and older only, “another planned permanent living arrangement” (APPLA.)
2. All options for permanent placement of the child, including in-state and out-of-state placement options.³³
3. The advantages and disadvantages of each option, and a recommendation as to which option is in the child’s best interests.³⁴
4. The actions necessary to implement the recommended option.³⁵
5. A schedule for accomplishing the actions necessary to implement the permanency goal within the time frames in the Idaho Juvenile Rules.³⁶
 - 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 the date the child was removed and finalizing the adoption within 24 months from the date the child was removed.³⁷
 - 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.³⁸
6. For youth age 14 and older, the services needed to assist the child to make the transition from foster care to successful adulthood.³⁹ (See *the Transition to Successful Adulthood Bench Card*)
7. For youth age 16 and older whose permanency goal is APPLA, the plan must include the information listed in the *Transition to Successful Adulthood Bench Card*.⁴⁰
8. 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.⁴¹
9. If the court approves a concurrent permanency plan with a goal of termination of parental rights and adoption, the plan must identify the names of the proposed adoptive parents, when known.⁴²

If the child is placed in protective supervision, the case plan must include:

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.⁴³

Case Plan Hearing Bench Card

- 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.⁴⁴
- For youth age 14 and older, the case plan must include the information described in the *Transition to Successful Adulthood Bench Card*.⁴⁵

Issues that Need to be Addressed: ⁴⁶

- All issues that need to be addressed to allow the child to remain at home without Department supervision;
- Tasks to be completed by the Department, each parent and others, to address each issue, including services to be made available by the Department and in which the parents are required to participate;
- The deadlines by which the tasks are to be completed; and
- The role of the Department as to each parent.

QUESTIONS THE COURT MUST ASK AND FINDINGS THE COURT MUST MAKE

Psychotropic Medication ⁴⁷

If the child is placed in the Department's custody and the child is treated with psychotropic medications, 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.

ICWA (See the ICWA Bench Card)

- The court must ask:
 - Is there reason to believe that the child is an Indian child? ⁴⁸
 - What efforts have been made since the last hearing to determine whether the child is an Indian child?⁴⁹
 - What efforts have been made by the Department 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?⁵⁰
- The court must determine whether the Department is using active efforts to work with all tribes of which the child may be a member to verify whether the child is a member or eligible for membership.⁵¹
- If there is reason to know the child is an Indian child, but the court does not have enough evidence to determine the child is not an Indian child, the court must treat the child as an Indian child.⁵²

CASE PLAN ORDER

The court's order must:

- adopt, modify, or reject the case plan.⁵³
- incorporate the case plan approved by the court.⁵⁴
- provide that reasonable efforts shall be made to reunify the family in a timely manner.⁵⁵
- require completion of the steps necessary to finalize the permanent placement of the child.⁵⁶
- schedule the next hearing.

RECOMMENDED QUESTIONS

- Does the case plan identify the specific threats of danger that caused the child to be removed from the home?
- What are the plans, tasks and services that will mitigate or eliminate the threats of danger?

Case Plan Hearing Bench Card

3. What are the conditions that must be met in order for the child to return or remain safely home?
4. What is preventing the child from returning home today?
5. 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 or eliminate the threats of danger and allow the child to return safely home?
6. Does the case plan identify the behaviors, commitments and beliefs that each parent must change?
7. What are the plans, tasks and services that will assist the parents in changing their behavior and beliefs?
8. What are the conditions for case closure?
9. 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*)
10. Is the Department fully exploring placement options with a fit and willing relative? If so: ⁵⁷
 - 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 they placement options?
11. Has the child been moved since the adjudicatory 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?
12. 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 accomplish before the next hearing?
 - d. Do you have any questions for the court?
13. Department and guardian *ad litem*:
 - a. Do you understand what is required of the Department and/or guardian *ad litem* prior to the review hearing?
 - b. Do you have any questions for the court?

ENDNOTES

¹ I.C. § 16-1621(1)(a).

² I.C. § 16-1621(3) and (4).

³ I.C. § 16-1621(1).

⁴ I.C. § 16-1613(1); I.J.R. 52(a).

⁵ I.C. § 16-1621(2); I.J.R. 40(a) and (b).

⁶ I.C. § 16-1613(1).

⁷ I.R.E. 101(e)(6); I.J.R. 51(b).

⁸ I.J.R. 40(a).

⁹ I.J.R. 40(b).

¹⁰ I.C. § 16-1613(2).

¹¹ 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).

¹² I.J.R. 38.

¹³ I.J.R. 59.

¹⁴ I.J.R. 43(2).

¹⁵ I.C. § 16-1621(3)(b)(iv).

¹⁶ I.C. § 16-1621(3)(a).

¹⁷ I.C. § 16-1621(3)(b)(i).

¹⁸ I.C. § 16-1621(3)(b)(ii).

¹⁹ I.C. § 16-1621(3)(a).

²⁰ I.C. § 16-1621(3)(b)(v).

²¹ 25 U.S.C. § 1912(d).

²² 25 C.F.R. § 23.107(b)(2).

²³ I.C. § 16-1621(3)(c).

²⁴ I.C. § 16-1621(3).

²⁵ I.C. § 16-1621(3)(c).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ I.J.R. 44(a)(1).

³⁰ I.C. § 16-1621(3)(b)(iii) and (c).

³¹ I.C. § 16-1621(3)(d).

³² *Id.*

³³ I.C. § 16-1621(3)(d)(i).

³⁴ I.C. § 16-1621(3)(d)(ii).

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³⁵ I.C. § 16-1621(3)(d)(iii).

³⁶ I.C. § 16-1621(3)(d)(iv).

³⁷ I.J.R. 46(a).

³⁸ I.J.R. 44(a)(2).

³⁹ I.C. § 16-1621(3)(a)(i).

⁴⁰ I.C. § 16-1621(3)(d)(viii).

⁴¹ I.C. § 16-1621(3)(d)(ix).

⁴² I.C. § 16-1621(3)(vi).

⁴³ I.C. § 16-1621(3)(a).

⁴⁴ I.C. § 16-1621(3)(b)(i).

⁴⁵ I.C. § 16-1621(3)(a).

⁴⁶ I.C. § 16-1621(4).

⁴⁷ I.C. § 16-1621(1)(c).

⁴⁸ I.C. § 16-1621(1)(b).

⁴⁹ I.C. § 16-1621(1)(b)(i).

⁵⁰ I.C. § 16-1621(1)(b)(ii).

⁵¹ *Id.*

⁵² 25 C.F.R. § 23.107(2)(b).

⁵³ I.C. § 16-1621(1)(a).

⁵⁴ I.C. § 16-1621(5).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ I.C. § 16-1629(11); 42 U.S.C. § 671(a)(29).

REDISPOSITION HEARING

(REMOVAL FROM PROTECTIVE SUPERVISION)

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.

PURPOSE¹

To determine whether to vest legal custody of a child who is removed from the home after being placed under protective supervision with the Department or other authorized agency.

WHEN

1. Within 48 hours of the child's removal from the child's home.²
2. The hearing may be continued for a reasonable time upon request of the parties.³

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.⁴
2. Notice must be given to the parent(s) or legal guardian from whom the child is removed in the same manner as required for a shelter care hearing.⁵
3. The child may be excluded from hearings at any time at the discretion of the court.⁶
4. After the adjudicatory hearing, 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, and the child (if age eight (8) years or older) each have the right to be heard. The Department must confirm to the court that this notice was given.⁷

EVIDENCE

1. The Rules of Evidence do not apply. The court may consider any information relevant to the redispotion of the child.⁸
2. The court may consider any information relevant to disposition, including Department/guardian *ad litem* reports.⁹
3. A child age eight (8) or older has the right to be heard, either in person or in writing.¹⁰ 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.¹¹
4. Privileges in effect at the redispotion 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.¹²

MAKING THE RECORD

1. Findings regarding reasonable efforts, contrary to the welfare, and best interests must be case-specific, written, and on the record.¹³
2. 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.¹⁴

Redisposition Hearing Bench Card

QUESTIONS THE COURT MUST ASK

ICWA (See the ICWA Bench Card)

1. If there is reason to believe the child is an Indian child, the court shall inquire about:¹⁵
 - a. the efforts made since the last hearing to determine whether the child is an Indian child.
 - b. 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.
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.¹⁶
3. If the child is an Indian child or there is reason to believe the child is an Indian child, even if the child's status as an Indian child has not been confirmed, the hearing after the removal from protective supervision is an emergency removal hearing and the ICWA requirements for emergency removal hearings must be met.¹⁷ *(See the ICWA Bench Card)*

*Questions the court must ask at disposition:*¹⁸

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

1. Educational stability:¹⁹

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.
2. Sibling placement:²⁰

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.
3. Psychotropic medications:²¹

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.

REQUIRED FINDINGS²²

1. The Department confirmed to the court that it provided notice as required by Idaho Juvenile Rule 40(a) and (b).²³
2. The court finds, as appropriate:
 - a. Continued residence in the home is contrary to the welfare of the child; and²⁴
 - b. Vesting custody with the Department is in the best interests of the child; and²⁵
 - c. The Department made reasonable efforts to prevent the placement of the child into foster care²⁶:
 - i. But was not successful in eliminating the need for foster care placement; or
 - ii. But was not able to safely provide preventative services; or
 - iii. But efforts to temporarily place the child with a related person were not successful; or
 - iv. Reasonable efforts were not required because the parent(s) subjected the child to aggravated circumstances.

Redisposition Hearing Bench Card

3. Legal custody of the child is vested with the Department or other authorized agency and may continue until the child's 18th birthday.²⁷

ORDER

1. The order returning legal custody to the Department shall be treated the same as the original adjudicatory order.²⁸
2. The court may order the Department to prepare a written case plan, to be filed with the court and served upon the parties five (5) days prior to the case plan hearing.²⁹ The court may hold a case plan hearing, to be held within 30 days of the redisposition hearing.³⁰
3. If aggravated circumstances are found, order the Department to prepare a written permanency plan to be filed with the court and served upon the parties five (5) days prior to the permanency hearing.³¹ A permanency hearing shall occur within 30 days of the redisposition hearing.³²

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? ³³
 - 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?
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?

Redisposition Hearing Bench Card

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

¹ I.C. § 16-1623(4); I.J.R. 47.

² I.C. § 16-1623(3).

³ I.C. § 16-1623(7).

⁴ I.C. § 16-1613(1); I.J.R. 52(a).

⁵ I.C. § 16-1623(6).

⁶ I.C. § 16-1613(1).

⁷ I.J.R. 40(a) and (b).

⁸ I.R.E. 101(e)(6); I.J.R. 51(b); I.C. § 16-1623(4).

⁹ I.C. § 16-1616(3).

¹⁰ I.J.R. 40(b).

¹¹ I.C. § 16-1613(2).

¹² 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).

¹³ I.C. § 16-1619(6), § 16-1623(4).

¹⁴ I.J.R. 38.

¹⁵ 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).

¹⁶ 25 C.F.R. § 23.107(b)(2).

¹⁷ 25 U.S.C. § 1922; 25 C.F.R. § 23.113.

¹⁸ At a redisposition hearing, the court is making the same decisions that it would make in the disposition portion of an adjudicatory hearing. Therefore, the court should make the same inquiry as at a redisposition hearing. I.C. § 16-1619(7)(b) and (c).

¹⁹ I.C. § 16-1619(7)(b)(i).

²⁰ I.C. § 16-1619(7)(b)(ii).

²¹ I.C. § 16-1619(7)(c).

²² 42 U.S.C. § 672(a)(2)(A)(ii), § 671(a)(15); 45 C.F.R. § 1356.21(b),(c), and (d); I.C. § 16-1619(6), § 16-1623(4).

²³ I.J.R. 40(b).

²⁴ I.C. § 16-1619(6).

²⁵ *Id.*

²⁶ I.C. § 16-1619(6)(a) and (d).

²⁷ I.C. § 16-1619(8) and (9).

²⁸ I.C. § 16-1623(5).

²⁹ I.C. § 16-1621(1), § 16-1623(5).

³⁰ *Id.*

³¹ I.C. § 16-1620(1); I.J.R. 41(i).

³² I.C. § 16-1620(1).

³³ I.C. § 16-1629(11); 42 U.S.C. § 671(a)(29).

REVIEW HEARINGS

Bench Card

Bench Cards have 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 ¹

The purpose of the review hearing is to determine:

1. the safety of the child;
2. the continuing necessity for and appropriateness of the child's placement;
3. the extent of compliance with the case or permanency plan; and
4. the extent of progress that has been made toward alleviating or mitigating the causes necessitating placement in foster care.

WHEN

1. No later than 6 months after entry of the court's order taking jurisdiction and at least every 2 months thereafter.²
2. The Department and the guardian *ad litem* must file progress reports with the court at least 5 days before each review hearing, excluding status hearings.³
3. For a youth in the legal custody of the Department, within 90 days prior to the youth's 18th birthday.⁴
4. A review hearing may be combined with a permanency hearing.⁵ (Note: Clerks must "result" both hearings.)
5. Continuances: The court may continue a review hearing for a short period of time to respond to substantive issues raised for the first time at a review hearing.⁶ The court may enter temporary orders, as appropriate, pending the hearing.⁷

WHO MAY BE PRESENT

1. The general public is excluded, and only such persons found by the court to have a direct interest in the case may be admitted.⁸
2. The Department must provide notice of the review 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 must confirm to the court that this notice was given.⁹
3. The child may be excluded from hearings at any time at the discretion of the court.¹⁰
4. Youth age 12 and older are required to attend review hearings in person or remotely, unless the youth declines in writing prior to the hearing, declines through counsel, or the court finds good cause to excuse the youth from attending the hearing.¹¹

EVIDENCE

1. The Rules of Evidence do not apply.¹²
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 review hearing.¹³
3. A child age 8 or older has the right to be heard, either in person or in writing.¹⁴ If the child or youth testifies, a counselor, friend or other person shall be permitted to remain in the courtroom at the witness stand as the child or youth testifies.¹⁵

Review Hearings Bench Card

4. Privileges in effect at the review 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.¹⁶

STIPULATIONS¹⁷

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.

EXTENDED FOSTER CARE¹⁸

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 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.

INFORMATION THE DEPARTMENT MUST PROVIDE/QUESTIONS THE COURT MUST ASK

ICWA (See the ICWA Bench Card)

1. The Department must document and the court must ask:¹⁹
 - a. Is there reason to believe that the child is an Indian child?
 - b. What efforts have been made since the last hearing to determine whether the child is an Indian child?
 - c. What efforts have been made by the Department 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?
2. The court must determine whether the Department exercised due diligence to work with all tribes of which the child may be a member to verify whether the child is a member or eligible for membership.²⁰
3. 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.²¹

Placement

1. The Department must include information about the child's placement in its report to the court.²²
2. If a group of siblings was removed from the home but was not placed together, the Department must document, and 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.²³

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APPLA

If the permanency goal is APPLA, the plan must document:²⁴

1. intensive, ongoing, and unsuccessful, as of the date of the hearing, efforts the Department made to place the youth 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.
2. 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.
3. 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.
4. opportunities provided to the youth to regularly engage in age or developmentally appropriate activities.

Educational Stability²⁵

The Department must document and 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 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.²⁶ The court may make any additional relevant inquiry.²⁷

Youth Age 12 and Older²⁸

The court shall ask each youth age 12 and older about the youth's desired permanency outcome and discuss with the youth the youth's current permanency plan. (*See Transition to Successful Adulthood Bench Card*)

Youth Age 14 and Older²⁹

For youth age 14 and older, the hearing shall include a review 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 Older³⁰

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.

OTHER FINDINGS³¹

1. Modify case plan or permanency plan, as appropriate.³²
2. Modify disposition, as appropriate.³³

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3. Extended Home Visits: Extended home visits must be approved by the court in writing prior to the extended home visit. An extended home visit is any period of unsupervised visitation between the parent and the child that exceeds 48 hours in duration.

The court may authorize an extended home visit for a period not to exceed 6 months from the date the order was filed. The court may authorize additional periods of extended home visit only after conducting a review hearing to determine the appropriateness of maintaining the child in the legal custody of the Department. In the event the court approves an extended home visit beyond 6 months, the court shall conduct a hearing to review the extended home visit no less than every 42 days to address the efforts and progress toward a change in legal custody.³⁴

4. If appropriate, the Department made/did not make reasonable efforts to finalize the permanency plan in effect.³⁵
5. When the child will not be returned home, review the Department's consideration of in-state and out-of-state placements.³⁶
6. If appropriate, a specific finding about the parent's progress on accomplishing the requirements of the case plan.³⁷

ORDER

1. Enter further orders as necessary to ensure the progress of the case toward achieving permanency for the child.³⁸
2. If the next review hearing is the annual permanency hearing, order the Department to prepare a written permanency plan to be filed and served 5 days prior to the hearing.³⁹
3. Deadline for achieving reunification:
If the child has been in the temporary or legal custody of the Department for 12 of the last 22 months, the Department must file a petition to terminate parental rights prior to the last day of the 15th month, unless the court makes one of these findings:⁴⁰
 - a. The child is placed permanently with a relative.
 - b. There are compelling reasons why termination of parental rights is not in the child's best interests.
 - c. The Department has failed to provide reasonable efforts to reunify the child with the family.
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.
4. Enter appropriate orders for youth age 12 and older. (*See Transition to Successful Adulthood Bench Card*)
5. Schedule the next hearing.

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?

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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? If so:⁴¹
 - 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 they placement options?
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. Child:
 - a. Do you want to attend the next hearing?
 - b. Do you understand what happened here today?
 - c. Do you understand what will happen next in your case?
 - d. Do you understand what you need to do before the next hearing?
 - e. Do you have any questions for the court?
11. 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?
12. 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

¹ I.C. § 16-1622(1)(a).

² I.C. § 16-1622(1)(a); I.J.R. 45(a).

³ I.C. § 16-1622(1)(a) and (b).

⁴ I.C. § 16-1622(3).

⁵ I.C. § 16-1622(2)(b).

⁶ I.J.R. 45(c).

⁷ *Id.*

⁸ I.C. § 16-1613(1); I.J.R. 52(a).

⁹ I.J.R. 40(a) and (b).

¹⁰ I.C. § 16-1613(1).

¹¹ I.J.R. 40(c).

¹² I.R.E. 101(e)(6); I.J.R. 51(b).

¹³ I.J.R. 40(a) and (b).

¹⁴ I.J.R. 40(b).

¹⁵ I.C. § 16-1613(2).

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¹⁶ I.R.E. 502, 505. *See also* I.R.E. 503(d)(4), 504(d)(1), 516(d)(3), 517(d)(3), and 518(d)(5).

¹⁷ I.J.R. 38.

¹⁸ I.J.R. 59.

¹⁹ I.C. § 16-1622(1)(a)(ii).

²⁰ 25 C.F.R. § 23.107(b)(1).

²¹ *Id.* 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(b)(2).

²² I.J.R. 43(2).

²³ I.C. § 16-1622(1)(a)(iv).

²⁴ I.C. § 16-1622(1)(a)(vi and vii).

²⁵ I.C. § 16-1622(1)(a)(iii).

²⁶ I.C. § 16-1622(1)(a)(ix).

²⁷ *Id.*

²⁸ I.C. § 16-1622(1)(a)(v).

²⁹ *Id.*

³⁰ I.C. § 16-1622(1)(a)(viii).

³¹ If the 12-month review hearing is combined with the permanency hearing, *see also Permanency Hearing Bench Card*. Findings for both the review hearing and the permanency hearing must be made.

³² I.J.R. 45(b)(1).

³³ I.J.R. 45(b)(2).

³⁴ I.J.R. 42.

³⁵ I.J.R. 45(b)(3).

³⁶ *Id.*

³⁷ I.C. § 16-1622(1)(a)(i).

³⁸ I.J.R. 45(b)(4).

³⁹ I.J.R. 45(d).

⁴⁰ I.C. § 16-1622(2)(g).

⁴¹ I.C. § 16-1629(11); 42 U.S.C. § 671(a)(29).

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.

PURPOSE¹

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.²
2. For a youth in the custody of the Department, within 90 days prior to the youth's 18th birthday.³
3. The permanency hearing may be combined with a review hearing.⁴ (Note: Clerks must "result" both hearings.)
4. The Department must file and serve the permanency plan at least 5 days prior to the hearing.⁵
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.⁶
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.⁷

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.⁸
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.⁹
3. The child may be excluded from hearings at any time at the discretion of the court.¹⁰
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.¹¹

EVIDENCE

1. The Rules of Evidence do not apply.¹²
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.¹³
3. A child age 8 or older has the right to be heard, either in person or in writing.¹⁴ 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.¹⁵

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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.¹⁶

STIPULATIONS¹⁷

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.¹⁸
2. The prospective adoptive parents, if known.¹⁹ (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.²⁰)
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.²¹

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.²²
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.²³
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.²⁴
4. For youth age 14 and older, the permanency plan must include the information described in the *Transition to Successful Adulthood Bench Card*.²⁵

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;²⁶ 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.²⁷

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Permanency Goal and Plan

1. The plan must include a permanency goal, which must be one of the following:²⁸
 - 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.²⁹

Permanency Goal of Reunification

If the plan has a permanency goal of reunification, the plan must include:³⁰

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.³¹
6. A visitation plan, the need for supervision of visitation, and child support.³²
7. Reasonable efforts to be made by the Department to make it possible for the child to return home.³³
8. A period of protective supervision or an extended home visit³⁴ of not less than 90 days prior to vacating the case if one or more of the following circumstances exist:³⁵
 - 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.³⁶
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.³⁷
2. The advantages and disadvantages of each option, and a recommendation as to which option is in the child’s best interests.³⁸
3. The actions necessary to implement the recommended option.³⁹
4. A schedule for accomplishing the actions necessary to implement the permanency goal within the time frames in the Idaho Juvenile Rules:⁴⁰
 - 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.⁴¹ Amendments to the plan to extend the time must be approved by the court.⁴²

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- 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.⁴³ Any amendment to the plan to extend the time must be approved by the court.⁴⁴
5. If the permanency goal is termination of parental rights and adoption, the names of the proposed adoptive parents when known.⁴⁵
6. If the permanency goal is APPLA, the plan must document:⁴⁶
 - 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.⁴⁷

QUESTIONS THE COURT MUST ASK AND FINDINGS THE COURT MUST MAKE

*Reasonable efforts to finalize permanency*⁴⁸

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;⁴⁹ 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.⁵⁰
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.⁵¹

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.⁵²
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.⁵³

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Educational Stability ⁵⁴

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.⁵⁵ The court may make any additional relevant inquiry.⁵⁶

Youth Age 12 and Older ⁵⁷

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 ⁵⁸

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 ⁵⁹

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 18th birthday:

1. The Department shall file a report with the court that includes the Department's transition plan for the youth.⁶⁰
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.⁶¹

EXTENDED FOSTER CARE⁶²

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

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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.⁶³
2. The permanency plan approved by the court should be entered into the record as an order of the court.⁶⁴
3. The court may approve a plan with a primary permanency goal and a concurrent permanency goal.⁶⁵
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.⁶⁶
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.⁶⁷
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 15th month, unless the court makes one of these findings:⁶⁸
 - 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?⁶⁹
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?⁷⁰
8. Has the child been moved since the last hearing?⁷¹ If so:
 - a. Why?

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- 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

¹ I.C. § 16-1622(2)(b).

² *Id.*

³ I.C. § 16-1622(3).

⁴ I.C. § 16-1622(2)(b).

⁵ I.C. § 16-1629(9); I.J.R. 45(c).

⁶ 45 C.F.R. § 1356.21(b)(2)(ii).

⁷ 45 C.F.R. § 1356.21(b)(2)(i) and (ii).

⁸ I.C. § 16-1613(1); I.J.R. 52(a).

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

¹⁰ I.C. § 16-1613(1).

¹¹ I.J.R. 40(c).

¹² I.R.E. 101(e)(6); I.J.R. 51(b).

¹³ I.J.R. 40(a) and (b).

¹⁴ I.J.R. 40(b).

¹⁵ I.C. § 16-1613(2).

¹⁶ 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).

¹⁷ I.J.R. 38.

¹⁸ I.J.R. 43(2).

¹⁹ I.C. § 16-1622(2)(a).

²⁰ I.C. § 16-1506(2).

²¹ I.C. § 16-1622(2)(h)(ii).

²² I.C. § 16-1622(2)(a), § 16-1621(3)(a).

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

²⁴ I.C. § 16-1622(2)(h)(i).

²⁵ I.C. § 16-1622(2)(a), § 16-1621(3)(a).

²⁶ 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).

²⁷ 25 C.F.R. § 23.107(b).

²⁸ I.C. § 16-1622(2)(a).

²⁹ *Id.*

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

³¹ I.J.R. 44(a)(1).

³² I.C. § 16-1621(3)(b)(iii).

³³ I.C. § 16-1621(3).

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³⁴ 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.”

³⁵ I.C. § 16-1622(2)(a).

³⁶ I.J.R. 42.

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

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

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

⁴⁰ I.C. § 16-1621(5).

⁴¹ I.J.R. 46(a).

⁴² *Id.*

⁴³ I.J.R. 44(a)(2).

⁴⁴ *Id.*

⁴⁵ I.C. § 16-1622(2)(a).

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

⁴⁷ I.C. § 16-1621(3)(d)(ix).

⁴⁸ I.C. § 16-1622(2)(c).

⁴⁹ I.C. § 16-1622(2)(i).

⁵⁰ 25 C.F.R. § 23.107(b).

⁵¹ 25 C.F.R. § 23.107(2)(b).

⁵² I.C. § 16-1622(2)(h)(ii).

⁵³ I.C. § 16-1622(2)(d).

⁵⁴ I.C. § 16-1622(2)(h)(i).

⁵⁵ I.C. § 16-1622(2)(j).

⁵⁶ *Id.*

⁵⁷ I.C. § 16-1622(2)(e).

⁵⁸ *Id.*

⁵⁹ I.C. § 16-1620(7).

⁶⁰ I.C. § 16-1622(3).

⁶¹ *Id.*

⁶² I.J.R. 59.

⁶³ I.C. § 16-1622(2)(b).

⁶⁴ 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).

⁶⁵ I.C. § 16-1622(2)(a).

⁶⁶ I.J.R. 46(b).

⁶⁷ I.C. § 16-1622(2)(k).

⁶⁸ I.C. § 16-1622(2)(g).

⁶⁹ I.J.R. 44(a).

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

⁷¹ I.J.R. 43(2).

TERMINATION OF PARENTAL RIGHTS

Bench Card

Bench Cards have 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.

***For consents to terminate parental rights see the Consent to Termination of Parental Rights Bench Card.**

PURPOSE

1. Provide for severance of the parent and child relationship.¹
2. Provide permanency for the child where the court has found the existence of aggravated circumstances or that reasonable efforts to return the child to the child's home have failed.²

WHEN

1. A petition may be filed at any time after the entry of a decree finding that the child is within the jurisdiction of the court under the Child Protective Act (CPA).³
2. A petition to terminate parental rights must be filed:
 - a. within 30 days of a judicial determination that an infant has been abandoned or reasonable efforts are not required because aggravated circumstances were present, unless there are compelling reasons why it would not be in the best interests of the child;⁴
 - b. within 30 days of an order approving a permanency plan with a permanency goal of termination of parental rights and adoption;⁵
 - c. thirty days after a child is delivered to a safe haven, or as soon as practicable thereafter;⁶ or,
 - d. if the child has been in the temporary and/or legal custody of the Department for 12 of the most recent 22 months, the Department shall file, prior to the last day of the 15th month, a petition to terminate parental rights, unless the court finds that: (i) the child is placed permanently with a relative; (ii) there are compelling reasons why termination of parental rights is not in the best interests of the child; or (iii) the Department has failed to provide reasonable efforts to reunify the child with her family.⁷

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.⁸
2. The child may be excluded from hearings at any time at the discretion of the court.

EVIDENCE

1. The Rules of Evidence apply.⁹
2. Standard is clear and convincing evidence.¹⁰ (*But see the ICWA Bench Card*)
3. No part of the court's record in the CPA proceeding may be used for purposes of meeting the petitioner's burden of proof, unless the part offered is admissible under the Idaho Rules of Evidence, or unless the parties stipulate to its admission.¹¹
4. Privileges in effect at the termination of parental rights 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 including, but not limited to the abuse, abandonment or neglect of a child.¹²

REQUIRED FINDINGS

Any order terminating parental rights must be in writing and must recite the findings upon which the order is based.¹³

1. The court has jurisdiction.¹⁴
2. Grounds:
 - a. In the best interests of the child and any one or more of the following:¹⁵
 - i. The parent has abandoned the child;¹⁶
 - ii. The parent has neglected the child: (1) as defined in I.C. § 16-1602 (31), or (2) the parent(s) has failed to comply with the court's orders or the case plan in a CPA case and: (i) the Department has had temporary or legal custody of the child for 12 of the most recent 22 months; and (ii) reunification has not been accomplished by the last day of the 15th month in which the child has been in the temporary or legal custody of the Department;¹⁷
 - iii. The parent has abused the child;¹⁸
 - iv. The presumptive parent is not the biological parent;¹⁹
 - v. The parent is unable to discharge parental responsibilities and such inability will continue for a prolonged indeterminate period of time and will be injurious to the child's health, morals, or well-being;²⁰ or
 - vi. The parent is incarcerated and is likely to remain incarcerated for a substantial period of time during the child's minority.²¹
 - b. The court may grant an order terminating the relationship and may rebuttably presume that such termination of parental rights is in the best interests of the child where:²²
 - i. The parent caused the child to be conceived as a result of rape, incest, lewd conduct with a minor under the age of 16, or sexual abuse of a minor under the age of 16;
 - ii. The following circumstances are present: (a) abandonment, chronic abuse or chronic neglect of the child; (b) sexual abuse against a child of the parent; (c) torture of a child; any conduct described in the Idaho Code § 18-8303(1); battery or an injury to a child that results in serious or great bodily injury to a child; voluntary manslaughter of a child, or aiding or abetting such voluntary manslaughter, soliciting such voluntary manslaughter or attempting or conspiring to commit such voluntary manslaughter; or (d) the parent has committed murder, aided or abetted a murder, solicited a murder or attempted or conspired to commit murder;
 - iii. The child is an abandoned infant except in a parental termination action brought by one (1) parent against another parent.
 - c. The court may grant termination of parental rights where it finds that termination is in the best interests of the parent and the child.²³
3. After grounds for termination of parental rights have been found, the court must next look at the best interests of the child. A non-exclusive list of factors has been provided by statute and case law. Examples are: ²⁴
 - a. Stability and permanency of the home;
 - b. Unemployment of the parent;
 - c. Improvement of the child while in foster care;
 - d. The parent's efforts to improve his or her situation;
 - e. The parent's continuing problems with the law;
 - f. Testimony from IDHW social workers and Guardians *ad Litem*;
 - g. The parent's history with substance abuse;
 - h. Whether the parent has provided financial support;

- i. The child's relationship with those currently caring for him or her;
 - j. The child's need for stability and certainty;
 - k. Failure of a parent to seek appropriate long-term mental health treatment;
 - l. If the parents have been given sufficient time to demonstrate they take parenting duties seriously, whether they complied with the case plan;
 - m. The parent's efforts to improve the parent's capacity to safely reunify with the child;
 - n. The parent's demonstrated ability to live a law-abiding life, excepting infraction violations; and
 - o. When the child has formed a strong and positive bond with the child's substitute caretaker, the strong and positive bond has existed for a substantial portion of the child's life, the removal of the child from the substitute caretaker would likely cause serious psychological harm to the child, and the parent lacks the capacity to meet the needs of the child upon removal.
4. Appoint an authorized agency as a guardian and vest legal custody in such agency.²⁵
 5. Fix responsibility for child support as appropriate.²⁶
 6. Set the review hearing at 6 months and every 2 months thereafter, and permanency every 12 months until adoption or final placement.²⁷
 7. In an ICWA case: (*See the ICWA Bench Card*)
Findings must include:
 - a. That continued custody of the child by the parent or Indian custodian is, beyond a reasonable doubt, including testimony by a qualified expert, likely to result in serious emotional or physical damage to the child²⁸; and
 - b. That the Department has made active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have been unsuccessful.²⁹

WRITTEN OPINION

Given the gravity of parental right termination cases, the Court has expressed their disapproval of the practice of having attorneys prepare the written findings of fact and conclusions of law.³⁰

Orders submitted by attorneys should be carefully reviewed and edited.

ENDNOTES

¹ I.C. § 16-2001(1)(a).

² I.C. § 16-2001(1)(b).

³ I.J.R. 48(a).

⁴ I.C. § 16-1624(3), § 16-1602(6).

⁵ I.C. § 16-1624(2); I.J.R. 46(b).

⁶ I.C. § 39-8205(5).

⁷ I.C. § 16-1622(2)(g); 42 U.S.C. § 675(5)(E).

⁸ I.C. § 16-2009(1); I.J.R. 52(a).

⁹ I.R.E. 101(e)(6); I.C. § 16-2009(3); I.J.R. 51(c).

¹⁰ I.C. § 16-2009(3).

¹¹ I.J.R. 48(e).

¹² I.R.E. 502 and 505. *See also*, I.R.E. 503(d)(4), 504(d)(1), 516(d)(3), 517(d)(3), and 518(d)(5).

¹³ I.C. § 16-2010(1).

¹⁴ I.C. § 16-2003, § 16-2010(1).

¹⁵ I.C. § 16-2005(1).

¹⁶ I.C. § 16-2002(5), § 16-2005(1)(a).

¹⁷ I.C. § 16-2002(3), § 16-2005(1)(b).

¹⁸ I.C. § 16-2002(4), § 16-1602(1), § 16-2005(1)(b).

¹⁹ I.C. § 16-2005(1)(a)(iii).

²⁰ I.C. § 16-2005(1)(a)(iv).

²¹ I.C. § 16-2005(1)(a)(v).

²² I.C. § 16-2005(2).

²³ I.C. § 16-2005(4).

²⁴ I.C. § 16-2005(1)(b).

²⁵ I.C. § 16-2010(2)(a)(iii), § 16-2002(9).

²⁶ I.C. § 16-2010(2)(b).

²⁷ I.C. § 16-2010(4), § 16-1622(1)(a) and (2)(b).

²⁸ 25 U.S.C. § 1912(f).

²⁹ 25 U.S.C. § 1912(d).

³⁰ See Idaho Dept. of Health & Welfare v. Doe, 161 Idaho 745, 750 fn 2, 390 P.3d 866, 871 (Ct. App. 2017).

CONSENT TO TERMINATION OF PARENTAL RIGHTS

Bench Card

Bench Cards have 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

Procedure for parent to voluntarily consent to termination of parental rights and for the court to enter an order and judgment terminating parental rights without a hearing on the merits.

WHEN AN ORDER MAY BE ENTERED WITHOUT A HEARING ON THE MERITS ¹

The court may grant an order terminating the parent child relationship with no subsequent hearing on the merits where:

- A consent to termination signed by the parent or parents of the child has been filed by an adoption agency licensed in the state of Idaho;
- A consent to termination is filed in conjunction with a petition for adoption of the child; or
- A consent to termination signed by the parent or parents of the child has been filed and the termination is initiated by the department pertaining to a child who is in legal custody of the department.

IDAHO PROCESS ²

At any time during a Child Protective Act case, a parent may consent to termination of parental rights. The consent to termination must be witnessed, on the record, by a district or magistrate judge, whether within or outside of the county where the case was initiated.

The consent shall be in the form prescribed in Appendix B of Idaho Juvenile Rules.

REVIEWING CONSENT FROM OUT OF STATE³

The court shall accept a consent, or a surrender and release executed in another state, if:

1. It is witnessed, on the record, by a magistrate or district judge of the state where signed, or
2. The court receives an affidavit or a certificate from a court of comparable jurisdiction stating that the consent or surrender and release was executed in accordance with the laws of the state in which it was executed, or the court is satisfied by other showing that the consent or surrender and release was executed in accordance with the laws of the state in which it was executed.

RECOMMENDED QUESTIONS TO VERIFY CONSENT

Questions the court should consider asking under oath:

- Do you understand why you are here today?
- Can you tell me in your own words why you are here?
- Are you the [birth] parent of the child named in the consent form?
- When and where was the child born? (It may be advisable to wait a reasonable period of time after birth, to establish that the parent is not under emotional duress.)
- How old are you? What is your educational background?
- Are you under the influence of any medicine, drug, alcohol, or any other substance that might affect your state of mind?

CONSENT TO TPR Bench Card

- Do you have any mental or physical illness that might affect your ability to decide what you want to do?
- Did you see the child after birth? Or, have you seen the child recently?
 - If not, did someone prevent you from seeing the child, or did you make your own decision not to see the child?
 - If so, did you have any concerns about your child's health? Did seeing the child make you change your mind about consenting to terminate your parental rights to the child?
- When did you decide to sign the consent to termination? Have you had enough time to think about it? Has anyone in any way tried to pressure you into signing the consent to terminate?
- Has anyone made any promises to you to influence your decision?
- Have you talked to a lawyer to get legal advice about this? If not, do you want to?
- Do you have a friend or family member who you talk to when you need to make an important decision? Did you talk to them? Is there someone you want to talk to before you do this?
- Do you understand that you will be giving up all your rights concerning this child? You will not have the right to contact the child, to be notified of anything concerning the child, or to be involved in any decisions concerning the child.
- Do you understand that you will be giving up all your rights to your child forever? Once you sign this document, if you later change your mind, it will be extremely difficult, and maybe impossible, to undo your decision to terminate your parental rights.
- Do you understand that by terminating your rights as a parent someone else may be able to adopt the child?
- Do you believe that agreeing to terminate your parental rights is in the child's best interests? Why?
- Do you think that agreeing to terminate your parental rights is in your best interests? Why?
- Are you a member of an Indian tribe, or are you eligible for membership in an Indian tribe or Alaska Native corporation? If so, which one(s)? If it is possible that the child might be of Indian or Alaska Native heritage, is there anyone who might have more information about the child's Indian or Alaska Native heritage? How can that person be contacted?
- Have you seen and carefully read the consent form? Would you read it again now? Take as much time as you need to read it carefully.
- Is there anything in the form that you don't understand or with which you do not agree?
- Do you still want to terminate your parental rights?

REQUIRED ELEMENTS OF THE ORDER ⁴

Any order terminating parental rights must be in writing and must recite the findings upon which the order is based.

1. Appoint an authorized agency as a guardian and vest legal custody in such agency.⁵
2. Fix responsibility for child support as appropriate.⁶
3. Where the termination case has been initiated by the department pertaining to a child who is in the legal custody of the department, set the review hearings at 6 months and every 2 months thereafter, and permanency every 12 months until adoption or final placement.⁷
4. In an ICWA case: (*See the ICWA Bench Card*)

FINDINGS

1. The court has jurisdiction.⁸
2. The consent has been filed in one of the following ways:

- a. A consent to termination signed by the parent or parents of the child has been filed by an adoption agency licensed in the state of Idaho;
 - b. A consent to termination is filed in conjunction with a petition for adoption of the child; or
 - c. A consent to termination signed by the parent or parents of the child has been filed and the termination is initiated by the department pertaining to a child who is in legal custody of the department.
3. Whether or not it is an ICWA case, and if so, consent conforms with ICWA requirements.⁹ In an ICWA case: (*See the ICWA Bench Card*)
 4. Consent is properly entered.

JUDGMENT¹⁰

A separate judgment is entered for each parent, and it contains the termination to the particular parent for each particular child.

ENDNOTES

¹ I.C. § 16-2005(8)(c); I.J.R. 48A(a).

² I.J.R. 48A(b) and (c).

³ I.J.R. 48A(d).

⁴ I.C. § 16-2010(1).

⁵ I.C. § 16-2010(2)(a)(iii), § 16-2002(9).

⁶ I.C. § 16-2010(2)(b).

⁷ I.C. § 16-2010(4), § 16-1622(1)(a) and (2)(b).

⁸ I.C. § 16-2010(1), § 16-2003.

⁹ 25 USC 1913.

¹⁰ I.R.C.P. 54(a).

CPA-RELATED ADOPTION

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

1. To establish a new legal parent-child relationship for a child who has been the subject of a CPA proceeding.¹
2. To establish permanency for the child.

NOTICE²

1. Any person whose consent to adoption is required pursuant to Idaho Code § 16-1504 and whose rights have not previously been terminated.³
2. Unwed fathers whose rights have not previously been terminated if the unwed father:
 - a. has registered notice of commencement of paternity proceedings pursuant to Idaho Code § 16-1513;⁴
 - b. is recorded on the birth certificate as the child's father;⁵
 - c. is living openly in the household of the child's mother and holding himself out as the child's father;⁶ or,
 - d. is married to the child's mother at the time she executes her consent to the child's adoption.⁷
3. The spouse of the petitioner if not joined in the petition.⁸

REQUIRED CONSENT⁹

1. The child to be adopted, if the child is over 12 years of age;
2. The spouse of the adoptive parent;¹⁰
3. Any legally-appointed custodian or guardian of the child;
4. The Director of the Department;¹¹
5. If parental rights have not been terminated:
 - a. Both parents or the surviving parent of an adoptee who was conceived or born within a marriage;
 - b. The mother of an adoptee born outside of marriage;
 - c. Any person who has been adjudicated to be the child's biological father prior to the mother's execution of consent;
 - d. An unmarried biological father who has complied with Idaho Code § 16-1504(2);
 - e. An unmarried biological father who has filed a voluntary acknowledgement of paternity with the vital statistics division of the Department pursuant to Idaho Code § 7-1106; and
 - f. The father of an illegitimate child who has adopted the child by acknowledgement.

PETITION AND WHO MAY ADOPT

1. Any adult who has resided in Idaho for the prior 6 months and who is 15 years older than the child or who is 25 years of age or older may adopt a child.¹²
2. 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 by the court in the child protection case.¹³
3. Petition must be filed by the person(s) proposing to adopt.¹⁴

CPA-Related Adoption Bench Card

4. Petition must be filed with the court having jurisdiction over the CPA, unless the court has relinquished jurisdiction.¹⁵
5. If the court has relinquished jurisdiction, the petition must be filed in the county where the prospective adoptive parents reside.¹⁶

WHO MUST BE PRESENT

1. The child to be adopted.¹⁷
2. The person adopting the child.¹⁸
3. The spouse of the petitioner, if a natural parent of the child.¹⁹

EVIDENCE

The court shall enter an order granting adoption if the requirements regarding consent and Idaho Code § 16-1501 are proven to the satisfaction of the court, and the court is also satisfied that the interests of the child will be promoted by the adoption.²⁰

REQUIRED FINDINGS

1. The social investigation conducted by, or submitted to, the Department for oversight prior to the placement for adoption must have a positive recommendation from the investigator and must be approved by the court, or a motion may be made to the court to dismiss the petition.²¹
 - a. In instances where the prospective adoptive parent is a grandparent or stepparent to the child, such social investigation shall be completed only upon order of the court.²²
2. Consent to adoption must be knowing and voluntary; the consent of all persons for whom consent is required has been given.²³
3. The requirements of Idaho Code § 16-1501 are proven to the satisfaction of the court.²⁴
4. The interests of the child will be promoted by the adoption. The court's authority is limited to granting the petition.²⁵

ENDNOTES

¹ I.C. § 16-1508.

² I.C. § 16-1505(1).

³ I.C. § 16-1505(1)(a).

⁴ I.C. § 16-1505(1)(b).

⁵ I.C. § 16-1505(1)(d).

⁶ I.C. § 16-1505(1)(e).

⁷ I.C. § 16-1505(f).

⁸ I.C. § 16-1505(1)(c).

⁹ I.C. § 16-1504.

¹⁰ I.C. § 16-1503.

¹¹ I.C. § 16-1504(7).

¹² I.C. § 16-1506(1), § 16-1502.

¹³ I.C. § 16-1506(2).

¹⁴ I.C. § 16-1506(1).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ I.C. § 16-1506(6), § 16-1507.

²¹ I.C. § 16-1506(4).

²² *Id.*

²³ I.C. § 16-1506(3) and (6).

²⁴ I.C. § 16-1506(6).

²⁵ I.C. § 16-1507.

INDIAN CHILD WELFARE ACT (ICWA)

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 ¹

To protect the best interests of Indian children and promote the stability and security of federally recognized Indian Tribes and families by establishing minimum federal standards - in addition to the Idaho CPA standards - for the removal of Indian children from their homes for placement in foster care or for adoption.

WHEN ICWA APPLIES ²

ICWA applies to emergency proceedings and child custody proceedings involving Indian children.

- **Emergency Proceedings:** any emergency removal of an Indian Child from her or his parents. In Idaho, the shelter care hearing in an ICWA case is the emergency proceeding.
- **Child Custody Proceeding:** foster care placement, termination of parental rights, pre-adoptive placements, guardianships and adoption but not custody disputes in divorce proceedings, placement of delinquent Indian children (except status offenses) or voluntary placements where the Indian parent can reclaim the child upon demand. The child custody proceeding starts at the adjudicatory hearing.
- **Indian Child:** An unmarried person under 18 who is either: (1) a member of a federally recognized Indian Tribe or (2) the biological child of a member and eligible for membership. Each Tribe determines its own rules for eligibility.

If there is reason to know the child is an Indian child, but the court does not have sufficient evidence to determine that the child is or is not an Indian child, the court must treat the child as an Indian child unless and until it is determined on the record that the child does not meet the definition of an Indian child.³

JURISDICTION⁴

1. **Exclusive Jurisdiction:** Pursuant to ICWA, the Tribe has exclusive jurisdiction if a child resides or is domiciled on the reservation, except where such jurisdiction is otherwise vested in the state by existing federal law. When an Indian child is a ward of a tribal court, the tribal court shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.
2. **Concurrent Jurisdiction:** All other ICWA cases have concurrent state and tribal court jurisdiction.
3. **Transfer Jurisdiction:** Upon request of a parent, the Indian custodian, or the Tribe, the state court must transfer jurisdiction to the tribal court unless: 1) a parent objects; 2) the tribal court declines; or 3) the state court finds good cause not to transfer. Request to transfer may be made orally or in writing at any stage of the proceedings.
4. **Emergency Jurisdiction:** A state court may take temporary, emergency jurisdiction of a child who resides on the reservation while a child is off reservation if clearly necessary to prevent imminent physical damage or harm to the child. Jurisdiction shall terminate immediately when it is no longer necessary to prevent imminent physical damage or harm to the child. If

the child cannot be transferred to the Tribe or returned safely to the parent, the case may proceed in state court in compliance with ICWA requirements for a child custody proceeding.⁵

5. Intervention: If the case remains in state court, the Indian custodian of the child and the Tribe can intervene at any stage of the proceedings.⁶

EMERGENCY PROCEEDING

1. State courts must ask each participant if the participant has reason to believe the child is an Indian child. This inquiry must be made of each party throughout the life of the case until the child's status is determined. All responses must be on the record.⁷
2. The State court must make a determination that the removal is necessary to prevent imminent physical damage or harm to the child.⁸
3. Any emergency removal or placement of an Indian child under state law must terminate immediately when the removal or placement is no longer necessary to prevent the imminent physical damage or harm to the child.⁹
4. If the court receives a petition from an Indian child's parent, Indian custodian or Tribe to transfer the proceeding to the jurisdiction of the child's Tribe, the state court must transfer the proceeding, unless the state court determines the transfer is not appropriate because either parent objects, the Tribe declines transfer or good cause exists for denying the transfer.¹⁰

NOTICE OF CHILD CUSTODY PROCEEDING¹¹

Where the court knows or has reason to know that the child is an Indian child, the court must ensure that the Department gives notice of the child custody proceeding as specified by ICWA, even if no conclusive determination has been made that ICWA is applicable.

1. Notice must be given to the child's parents, Indian custodian and each Tribe in which the child may be a member or eligible for membership, by registered mail with return receipt requested. Copies of notices must be given to the regional office of the BIA.¹²
2. The notice must identify the child, and include all of the information required in BIA Regulation Section 23.111(d).
3. Notice must be sent again if TPR is sought, unless the Tribe has previously responded that the child is not a member of or eligible for membership in the Tribe.¹³

TIMING¹⁴

No foster care placement or termination proceeding can be held until at least 10 days after receipt of notice by the parent, Tribe and Indian custodian. The adjudicatory hearing is the applicable proceeding regarding the 10-day requirement. Upon receiving notice of the proceedings, the Tribe, parent or Indian custodian has the right upon request to be granted 20 days from the date notice is received, to prepare for the proceeding.

APPOINTMENT OF COUNSEL¹⁵

1. Indigent parent(s) and indigent Indian custodian(s) have the right to appointed counsel in any removal, placement or termination proceeding.
2. Counsel for the child may be appointed at the discretion of the court upon a finding that such appointment is in the best interests of the child.

FINDINGS

In addition to any state law findings and federal findings required under ASFA, there are two additional findings the court must make in an ICWA case (in a CPA case at the adjudication and in a TPR case at the termination trial). If necessary, a separate ICWA hearing can be set to address these issues.

1. **Active Efforts Finding:** The state must show that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have been unsuccessful.¹⁶ “Active efforts” is defined in the BIA Regulations as “affirmative, active, thorough, and timely efforts to maintain or reunite a child with his or her family.”¹⁷ Active efforts must be documented in detail in the record.¹⁸
2. **Serious Physical or Emotional Harm Finding Supported by the Testimony of a Qualified Expert Witness:** The state must show, by clear and convincing evidence in a CPA case, and beyond a reasonable doubt in a termination of parental rights proceeding, including testimony of a qualified expert witness, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.¹⁹

Who qualifies as an expert?²⁰

- a. A person qualified to testify regarding whether the child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child and should be qualified to testify as to the prevailing social and cultural standards of the Indian child's Tribe.
- b. A person designated by the Indian child's Tribe as being qualified to testify to the prevailing social and cultural standards of the child's Tribe.

The social worker assigned to the case may not serve as a qualified expert witness.

PLACEMENT PREFERENCES²¹

ICWA sets forth placement preferences when placing Indian children in foster care or an adoptive placement. A Tribe may change the order of preference via tribal resolution.

1. **Foster Care or Pre-adoptive Placement:** The child must be placed in the least restrictive setting which most approximates a family, meets any special needs of the child and is in reasonable proximity to the Indian child's home, extended family, or siblings. A preference must be given, in absence of good cause to the contrary, to placement with (in the following order):
 - a. A member of the Indian child's extended family;
 - b. A foster home licensed or approved or specified by the Indian Tribe;
 - c. An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
 - d. An institution for children approved by an Indian Tribe.
2. **Adoptive Placement:** A preference must be given, in absence of good cause to the contrary, to placement with:
 - a. A member of the child's extended family;
 - b. Other members of the Indian child's Tribe;
 - c. Other Indian families.
3. **Good Cause to Deviate:** Good cause to deviate from the placement preferences includes:

- a. Request of a biological parent who attests that the parent has reviewed the actual placement options or a child of sufficient age and capacity;
- b. Presence of a sibling attachment maintained only through a particular placement;
- c. Extraordinary physical or emotional needs of the child (need expert testimony);
- d. Unavailability of suitable families for placement after diligent search.

The burden is on the party seeking deviation, who must show by clear and convincing evidence that there is “good cause” to depart from placement preferences.²²

ENDNOTES

¹ 25 U.S.C. § 1902, § 1903(8).

² 25 U.S.C. § 1903(1); 25 C.F.R. § 23.103.

³ 25 C.F.R. § 23.107(b).

⁴ 25 U.S.C. § 1911, § 1922; 25 C.F.R. § 23.110, §23.113 (b), § 23.115 - 23.119.

⁵ 25 U.S.C. § 1922; 25 C.F.R. § 23.113.

⁶ 25 U.S.C. § 1911(c).

⁷ 25 C.F.R. § 23.107(a); I.C. § 16-1615(6). Idaho Code provides that the court shall inquire whether there is reason to *believe* that 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.

⁸ 25 U.S.C. § 1922; 25 C.F.R. § 23.113.

⁹ *Id.*

¹⁰ 25 U.S.C. § 1911(b); 25 C.F.R. § 23.113(c), § 23.115, § 23.117, § 23.118.

¹¹ 25 U.S.C. § 1912; 25 C.F.R. § 23.112.

¹² 25 U.S.C. § 1912(a).

¹³ 25 C.F.R. § 23.111(a).

¹⁴ 25 C.F.R. § 23.112(a).

¹⁵ 25 U.S.C. § 1912(b).

¹⁶ 25 U.S.C. § 1912(d).

¹⁷ 25 C.F.R. § 23.2 (definition of “active efforts”).

¹⁸ 25 C.F.R. § 23.120(b).

¹⁹ 25 U.S.C. § 1912(e) and (f); 25 C.F.R. § 23.121(a) and (b).

²⁰ 25 C.F.R. § 23.122.

²¹ 25 U.S.C. § 1915; 25 C.F.R. § 23.129 – § 23.132.

²² 25 C.F.R. § 23.132.

INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

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.

PURPOSE¹

To meet the needs of children for safe and appropriate placements outside the state of Idaho and to facilitate cooperation between Idaho and other states to improve services and protection for children in need of placement.

WHEN

1. The consent of the court must be obtained whenever the Department makes a decision to place a child out of state.²
2. The Interstate Compact on the Placement of Children (ICPC) applies when the child is in the custody of the Department, the Department seeks to place the child out of state, and the child:³
 - a. is being placed with a parent or relative;
 - b. is entering foster care or a placement for the purpose of adoption; or
 - c. is being placed in a group home and/or residential facility.

JURISDICTION⁴

Idaho courts must retain jurisdiction sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in Idaho. The court's jurisdiction continues until the child is adopted, reaches majority or until the child is discharged with the concurrence of the appropriate authority in the receiving state.

ICPC REQUIREMENTS

1. The Department must provide written notice to the receiving state of its intent to send, bring, or place the child in the receiving state.⁵
2. The Department must respond to any requests from the receiving state for additional information supporting the out-of-state placement of the child.⁶
3. The Department must receive notification in writing by the appropriate public agency in the receiving state that the proposed placement does not appear to be contrary to the interests of the child prior to sending the child to the receiving state.⁷

PRIORITY PLACEMENTS

A party or the court on its own motion may request that the court enter an order for priority placement under the ICPC. To be valid, the order for priority placement must contain findings that placement is with a close relative, and:⁸

1. an unexpected dependency due to a sudden or recent incarceration, incapacitation,⁹ or death of a parent or guardian; or
2. one child in the sibling group is age 4 years or younger; or
3. the child is currently in an emergency placement; or

Interstate Compact on the Placement of Children Bench Card

4. the court finds that any child in the sibling group has a substantial relationship¹⁰ with the proposed placement.

If an appropriate order is entered and processed and the receiving state does not respond within 20 business days of receipt of the request, the Idaho court may inform an appropriate court in the receiving state, provide the court with copies of relevant documentation in the case, and request assistance.¹¹

When the court orders a priority placement under Regulation 7, a specific order and supporting affidavit is required.¹²

ADDITIONAL CONSIDERATIONS

1. To ensure stability for the child, the court should monitor whether there is a possibility of an out-of-state placement and status of placement options for the child as early in the case as possible.
2. ICPC placements are often invoked so children may be placed with relatives. Courts should be especially conscious of the possibility of out-of-state placement with kin.

EXTENDED FOSTER CARE¹³

ICPC only applies to youth under the age of 18. Therefore, the requirements under the Compact are not applicable where the court has extended foster care beyond the age of 18.

ENDNOTES

¹ I.C. § 16-2101.

² I.C. § 16-1629(8).

³ I.C. § 16-2102.

⁴ I.C. § 16-2102 Art. V.

⁵ I.C. § 16-2102 Art. III(b).

⁶ I.C. § 16-2102 Art. III(c).

⁷ I.C. § 16-2102 Art. III(d).

⁸ I.C.P.C. Reg. No. 7.

⁹ Incapacitation means a parent or guardian is unable to care for a child due to a medical, mental or physical condition of a parent or guardian. I.C.P.C. Reg. No. 7(5)(a).

¹⁰ Substantial relationship means the proposed placement has a familial or mentoring role with the child, has spent more than cursory time with the child, and has established more than a minimal bond with the child. I.C.P.C. Reg. No. 7(5)(c).

¹¹ I.C.P.C. Reg. No. 7.

¹² *Id.*

¹³ I.J.R. 59.

IJR 16 EXPANSION FOR CP JUDGES

(CASES COMING FROM JUVENILE CORRECTIONS TO CP PROCEEDINGS)

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.

PURPOSE¹

To conduct the initial and subsequent hearings in a child protection case that was expanded from a Juvenile Corrections Act (JCA) case.

WHEN

1. If a JCA proceeding is expanded, the JCA court may, in its discretion, order the juvenile placed in shelter care.² The CPA court must then hold a shelter care hearing within 48 hours of the child being placed in shelter care, excluding Saturdays, Sundays, and holidays.³
2. The CPA court must hold an adjudicatory hearing within 30 days of the JCA court's determination to expand the proceedings.⁴

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.⁵
2. The child may be excluded from hearings at any time at the discretion of the court.⁶
3. The Department of Juvenile Corrections has standing as an interested party in the CPA case if the juvenile is in the custody of the Department of Juvenile Corrections.⁷

EVIDENCE

1. The Rules of Evidence do not apply to shelter care hearings held after the expansion of a JCA proceeding to a CPA proceeding; they do apply in the CPA proceeding only to that part of the adjudicatory hearing where jurisdiction and/or aggravated circumstances is/are determined.⁸
2. A counselor, friend, or other person may be permitted to remain in the courtroom at the witness stand as the child testifies.⁹
3. The burden going forward with the evidence at the adjudicatory hearing remains with the prosecutor.¹⁰

CPA PETITION

1. The order expanding the JCA proceeding to a CPA proceeding serves as the petition in the CPA case.¹¹ No further petition is required.¹² The expansion order must be given to the juvenile's parent(s), guardian(s), or legal custodian(s), the Department of Health and Welfare, the prosecuting attorney or deputy attorney general and other counsel of record, and the Department of Juvenile Corrections, if the juvenile is currently under commitment.¹³
2. Notice of hearing will be served on the parents(s), the Department of Health and Welfare, the juvenile, the Department of Juvenile Corrections, if the juvenile is currently under commitment, as though a petition under the CPA has been filed.¹⁴
3. A petition may be filed in the CPA proceeding, to include other children that come within the jurisdiction of the CPA but who were not before the JCA court.¹⁵

IJR 16 EXPANSION FOR CP JUDGES

(CASES COMING FROM JUVENILE CORRECTIONS TO CP PROCEEDINGS)

Bench Card

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CONSOLIDATING HEARINGS¹⁶

The court may consolidate hearings under both the JCA and the CPA if the purposes of both acts can be served and the rights of the participants are not prejudiced.

ENDNOTES

¹ I.J.R. 16.

² I.J.R. 16(f).

³ I.J.R. 16(f); I.C. § 16-1608(2).

⁴ I.J.R. 16(h); I.C. § 16-1619(1).

⁵ I.C. § 16-1613(1); I.J.R. 39(h), I.J.R. 52(a).

⁶ I.C. § 16-1613(1).

⁷ I.J.R. 16(j).

⁸ I.R.E. 101(e)(6); I.J.R. 39(e), I.J.R. 41(c), I.J.R. 51(b).

⁹ I.C. § 16-1613(2).

¹⁰ I.J.R. 16(h).

¹¹ *Id.*

¹² *Id.*

¹³ I.J.R. 16(g).

¹⁴ I.J.R. 16(h).

¹⁵ I.C. § 16-1603(2); I.J.R. 16(h).

¹⁶ I.J.R. 16(i).

Qualified Residential Treatment Program

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

When the Department has placed a child in a qualified residential treatment program.

DEFINITIONS¹

Qualified Residential Treatment Program (QRTP): A program that has a trauma informed treatment model designed to address the needs of the child with serious emotional or behavioral disorders or disturbances, is able to implement the treatment identified for the child by the assessment of the child required under I.C. § 16-1619A(2), and is licensed and accredited in accordance with state and federal law.

Qualified Individual (QI): A trained professional or licensed clinician who is not connected to or affiliated with any placement setting in which a child is placed by the Department and who is not an employee of child and family services, unless a waiver has been approved by the authorized agency.

WHEN²

Legal custody is vested in the Department and the Department has placed the child in a QRTP, then within 60 days of a placement in a QRTP, the court shall enter an order approving or disapproving the placement in accordance with the following timeline:

1. The Department shall file notice of the placement with the court within 7 days of the placement. The notice shall identify the placement and the date of the placement.
2. Within 30 days of the placement, a QI shall conduct an assessment and prepare a written assessment report.
3. The Department shall file an amendment to the case plan with a copy of the assessment report within 5 days of the receipt of the assessment report but not later than 35 days from the date of the placement.
4. Within 7 days of the filing of the assessment, any party may file a written response to the assessment report or amendment to the case plan.
5. The court will hold a hearing within 14 days of the filing of the assessment and rule on the matter unless the hearing is waived by the parties.
6. Within 60 days of the start of each placement in a QRTP, the court shall approve or disapprove the placement and enter an order to that effect.

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.³
2. The child may be excluded from hearings at any time at the discretion of the court.⁴ A counselor, friend, or other person may be permitted to remain in the courtroom at the witness stand as the child testifies.⁵

EVIDENCE

1. The Rules of Evidence do not apply.⁶
2. The court will approve the Department's placement unless the court finds by a preponderance of the evidence that the placement is not in the best interest of the child.⁷

MAKING THE RECORD

*Contents of the Assessment:*⁸

The assessment must be conducted by a QI and must specify:

1. Why the needs of the child cannot be met by the family of the child or in a foster home;
2. Why the recommended placement in a QRTP is the setting that will provide the most effective and appropriate level of care in the least restrictive environment; and
3. How that placement is consistent with the short-term and long-term goals for the child, as set forth in the case plan or the permanency plan currently in effect.

*Findings (must be written and case specific):*⁹

Within 60 days of the start of each placement in a QRTP, the court shall:

1. Consider the assessment, determination, and documentation made by the QI;
2. Determine whether the needs of the child can be met through placement in a foster family home or, if not, whether placement in a QRTP provides the most effective and appropriate level of care for the child in the least restrictive environment and whether that placement is consistent with the short-term and long-term goals for the child, as specified in the permanency plan for the child;
3. Approve or disapprove the placement; and
4. The assessment by the QI and the court's determination to approve or disapprove the placement in a QRTP shall be made part of the case plan for the child. If the court approves the placement in a QRTP, the court shall order the amended case plan for the child.

ORDER¹⁰

1. The order approving or disapproving the placement must be entered not later than 60 days from the date of placement. If the court does not approve the placement, placement will be decided by the legal custodian.
2. If the court approves the placement, the court shall order the amended case plan for the child.

REVIEW AND PERMANENCY HEARINGS

(See Review and Permanency Hearing Bench Cards for additional information)

When legal custody of a child is vested in the Department and the court has approved placement of the child in a QRTP, then at each review¹¹ and permanency hearing,¹² the Department shall document:

1. That ongoing assessment of the strengths and needs of the child continues to support the determination that the needs of the child cannot be met through placement in a foster family home, that the placement in a QRTP provides the most effective and appropriate level of care for the child that is in the least restrictive environment, and that the placement is consistent with the short- and long-term goals for the child, as specified in the permanency plan for the child;
2. The specific treatment or service needs that will be met for the child in the placement and the length of time the child is expected to need the treatment or services; and
3. The efforts made by the Department to prepare the child to return home or to be placed with a fit and willing relative, with a legal guardian, with an adoptive parent, or in a foster family home.

ENDNOTES

¹ Effective as of 10/1/2021. the Department has received a waiver from Administration on Children Youth and Families (ACYF) to allow a QI clinician to be an employee of the Department.

² I.C. §§ 16-1619(5)(b); 16-1619A.

³ I.C. § 16-1613(1); I.J.R. 39(h), I.J.R. 52(a).

⁴ I.C. § 16-1613(1).

⁵ I.C. § 16-1613(2).

⁶ I.R.E. 101(e)(6).

⁷ I.J.R. 43(3).

⁸ I.C. § 16-1619A(2)(e).

⁹ I.C. § 16-1619A.

¹⁰ I.J.R 43(6).

¹¹ I.C. § 16-1622.

¹² I.C. § 16-1620(4).

PSYCHOTROPIC MEDICATIONS FOR CHILDREN IN CARE

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 monitor psychotropic medication use in children diagnosed with a mental health disorder.

WHAT¹

Psychotropic medications are prescribed to manage psychiatric and mental health disorders or issues. They include mood stabilizers, antipsychotics, anti-anxiety medications, and stimulants.

WHO²

Youth in care who have been diagnosed with a mental health disorder and have been prescribed medication to manage issues and symptoms. Common school-age child and adolescent diagnoses include:

1. Mood disorders including depression, depression with psychotic features and bipolar disorder;
2. Anxiety disorders including obsessive-compulsive disorder, PTSD, and generalized anxiety disorder;
3. Thought disorders including schizophrenia and psychotic disorders;
4. Attention deficit and disruptive behavior disorders;
5. Elimination disorders; and/or
6. Other disorders of infancy, childhood or adolescence including separation anxiety disorder (SAD), reactive attachment disorder (RAD), anorexia and bulimia.

RED FLAG WARNINGS³

The following circumstances may warrant further investigation:

1. **Black Box Warning** – The FDA places black box warning labels on prescription medications with a high potential for adverse effects. This is the strongest warning the FDA can impose. Medicines with black box warnings are still FDA approved, but their use requires particular attention and caution regarding potentially dangerous or life-threatening side effects.
NOTE: All antidepressant medications carry a black box warning that using the drugs can increase the risk of suicidal tendencies and behaviors in children and adolescents.
2. **Polypharmacy** – The prescribing of more than one psychotropic medication can result in increased side-effects and risks. Whenever multiple medications are used, there should be a rationale provided as to why each is prescribed.
3. **Medication in Children under Five** – Young children are often more sensitive to medication side effects compared to older youth. Any consideration of such medication in a child or infant below the age of five (5) should be very carefully evaluated by a clinician with special training and experience with this young age group.

PSYCHOTROPIC MEDICATIONS FOR CHILDREN IN CARE

Bench Card

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OTHER CONSIDERATIONS⁴

Off-Label Use – Many medications used with children are often used off label, meaning they are used to treat symptoms which they were not FDA approved to treat. Using medications off label is legal; however, concerns have been raised about risks of widespread off-label use.

RECOMMENDED QUESTIONS

1. What is the child's diagnosis that warrants medication?
2. For what is the medication needed?
3. Who prescribed the medication? (e.g. adequate credentials)
4. What other modes of treatment or intervention will also be provided?
5. Was an accurate medical, behavioral, and psychological history obtained from parents and past providers?
 - a. What else has been tried?
 - b. Has counseling been tried over a substantial period of time?
 - c. Has the child had a psychiatric and/or medical examination?
6. Who will monitor the ongoing use of this medication and how often will the youth be seen?
7. What are the possible side effects of this medication and how will they be handled?
8. What evidence supports the use of this medication with children?
 - a. What do we know about how this medication works in children?
9. How will this child be able to comply with the prescribed medication?
10. Does this child agree with taking this medication?
11. Who gave permission to place this child on medication?
12. How will this medication help improve this child's functioning?
13. Is a second opinion warranted in this case?

ENDNOTES

¹ For more information on commonly prescribed psychotropic medication and side effects see: pgs. 9-11, Practice and Policy Brief. Psychotropic Medication and Children in Foster Care: Tips for Advocates and Judges. JoAnne Solchany, PhD, ARNP. October, 2011. Adapted from National Alliance on Mental Illness. Commonly Prescribed Psychotropic Medications, available at www.nami.org (last visited June 1, 2020).

² Practice and Policy Brief. Psychotropic Medication and Children in Foster Care: Tips for Advocates and Judges. JoAnne Solchany, PhD, ARNP. October, 2011.

³ A Guide for Public Child Serving Agencies on Psychotropic Medications for Children and Adolescents. American Academy of Child and Adolescent Psychiatry, February 2012.

⁴ Practice and Policy Brief. Psychotropic Medication and Children in Foster Care: Tips for Advocates and Judges. JoAnne Solchany, PhD, ARNP. October, 2011, p. 17.

EXTENDED FOSTER CARE

Bench Card

Bench Cards have 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 provide the option for a youth who turns 18 while in the legal custody of the Department and who meets the eligibility criteria, to remain in foster care up to age 23.

WHEN¹

1. The court shall hold a hearing no later than 60 days prior to the youth's 18th birthday to discuss and review the youth's Transition to Successful Adulthood plan.² The hearing may be combined with a permanency or review hearing.
2. The Department shall file the youth's transition plan no later than 7 days prior to the hearing.
3. The extension of foster care shall be for a fixed period of time and shall not extend past the youth's 23rd birthday.

WHO MAY BE PRESENT

1. The general public is excluded, and only such persons found by the court to have a direct interest in the case may be admitted.
2. The Department must provide notice of the hearing, and confirm to the court that the notice was given, to:
 - a. the youth;
 - b. the foster parents; and
 - c. a relative who is providing care to a child who is in the custody of the Department.³
3. The youth is required to attend the hearing, in person or remotely, unless the youth declines in writing prior to the hearing, declines through counsel, or the court finds good cause to excuse the youth from attending the hearing.⁴

EVIDENCE⁵

The Rules of Evidence do not apply.

FINDINGS⁶

The court must find that the youth meets the criteria for eligibility and that extended foster care will help the youth achieve a successful transition to adulthood. The extension shall be for a fixed period of time and shall not extend past the youth's 23rd birthday. The appointment of the youth's attorney(s) shall remain in effect throughout the extension, unless otherwise ordered by the court.⁷

CRITERIA FOR ELIGIBILITY⁸

The transition plan shall include the youth's desire regarding extended foster care. If the youth wishes to remain in foster care beyond age 18, the court may extend foster care if:

1. The youth will be in the custody of the Department until the youth's 18th birthday; and
2. The youth meets one or more of the following criteria set forth in 42 U.S.C. 675(8)(B)(iv):
 - a. is completing secondary education or a program leading to an equivalent credential;

Extended Foster Care Bench Card

- b. is enrolled in an institution which provides post-secondary or vocational education;
- c. is participating in a program or activity designed to promote, or remove barriers to, employment;
- d. is employed for at least 80 hours per month; or
- e. is incapable of doing any of the activities described above due to a medical condition, which incapability is supported by regularly updated information in the case plan of the youth.

If at any time the youth no longer meets the requirements the court shall terminate extended foster care.⁹

ICWA

After the age of 18, ICWA no longer applies. It is recommended that the Department continue to contact the tribe regarding available services for the youth.

ENDNOTES

¹ I.J.R. 59.

² The Department's transition plan may come in the form of an Affidavit for Review of Transition Plan and Notice of Extended Foster Care. The plan shall include the youth's desire regarding extended foster care. I.J.R. 59(b).

³ I.J.R. 40 (a) and (b).

⁴ I.J.R. 40(c).

⁵ I.R.E. 101(e)(6); I.J.R. 51(b).

⁶ I.C. § 16-1622(5); I.J.R. 59. *See also Order for Extended Foster Care.*

⁷ I.C. § 16-1614.

⁸ I.C. § 16-1622(5); I.J.R. 59.

⁹ I.J.R. 59(c).

TRANSITION TO SUCCESSFUL ADULTHOOD

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 ensure that the needs of youth in care, age 12 and over, are met regarding:

- Permanency.
- Planning and skills necessary for transition to successful adulthood.
- Engaging in age or developmentally appropriate extracurricular, enrichment, cultural, or social activities.

WHEN¹

At every review and permanency hearing for youth age 12 and older.

WHO MAY BE PRESENT

In addition to the individuals identified in the Review Hearing or Permanency Hearing Bench Cards:

1. Youth age 12 and older are required to attend their review and permanency hearings unless they decline to do so in writing, decline through counsel, or the court excuses them for good cause.²
2. Youth age 14 and older may have up to two individuals identified by the youth who have been involved in case planning for the youth, but who are not the foster parent or caseworker for the child.³

EVIDENCE

See Review Hearing/Permanency Hearing Bench Cards.

STIPULATIONS

See Review Hearing/Permanency Hearing Bench Cards.

QUESTIONS THE COURT MUST ASK AND FINDINGS THE COURT MUST MAKE

FOR YOUTH AGE 12 AND OLDER

1. Permanency
 - a. Ask the youth about the youth's desired permanency outcome and discuss with the youth the current permanency plan.⁴ (Another planned permanency living arrangement (APPLA) is not an available permanency goal for youth under age 16.)⁵
 - b. If a group of siblings is removed from the home but is not placed together, the Department must document, and the court must ask about:⁶
 - i. the Department's efforts to place the siblings together,
 - ii. the reasons the siblings were not placed together, and
 - iii. the Department's plan to ensure frequent visitation or ongoing contact among the siblings, unless visitation or contact would be contrary to the well-being of one or more siblings.

Transition to Successful Adulthood Bench Card

2. Normalcy

- a. Is the youth being provided opportunities to engage in age or developmentally appropriate activities?⁷
- b. Best practice: Ask the youth and other participants about ongoing opportunities for the youth to engage in age or developmentally appropriate activities.⁸

FOR YOUTH AGE 14 AND OLDER – ALL PREVIOUS QUESTIONS PLUS:

1. Permanency

Review and discuss with youth the progress made on services needed to finalize the permanency goal and to assist the youth in transitioning successfully to adulthood.⁹
(APPLA is not an available permanency goal for youth under age 16.)¹⁰

2. Skills for Transition to Successful Adulthood

- a. Confirm that the Department has invited youth to participate in the development of the case plan.¹¹
- b. Confirm that the Department has provided the youth with a written document identifying the youth's rights regarding education, health, visitation, court participation, and receipt of an annual credit report.¹²
- c. Review the portion of the case or permanency plan that sets forth the plan for the youth's transition to successful adulthood.¹³
- d. Best practice: Confirm that the youth understands the youth's rights.¹⁴
- e. Best practice: For eligible youth age 14 and older, confirm that the Department developed the youth's transition to successful adulthood plan. The court should review the plan with the youth.¹⁵

FOR YOUTH AGE 16 AND OLDER – ALL PREVIOUS QUESTIONS PLUS:

1. Permanency where the goal is APPLA

- a. Determine whether the Department has documented sufficient intensive, ongoing, unsuccessful efforts to achieve reunification, adoption, guardianship, or placement with a fit and willing relative, including an adult sibling, while remaining in the custody of the Department.¹⁶
- b. Make written, case specific findings that:¹⁷
 - i. APPLA is the best permanency goal for the youth, and
 - ii. There are compelling reasons why it is not in the best interests of the youth to be placed permanently 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.
- c. Best practice: Consider specific details of APPLA placement to ensure that the placement:¹⁸
 - i. provides placement stability;
 - ii. is in the least restrictive setting;
 - iii. provides ongoing connection with family and other important adults;
 - iv. includes services and support that meet the youth's needs.
- d. At a permanency hearing, make a written, case specific finding that the Department is making reasonable efforts to finalize the youth's specific APPLA permanency goal.¹⁹

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2. Normalcy

- a. Confirm that the Department has sufficiently documented the steps it has taken to ensure that the youth's foster parents or childcare institution is following the reasonable and prudent parent standard when making decisions about the youth participating in extracurricular, enrichment, cultural, or social activities.²⁰
- b. Confirm that the Department has documented ongoing opportunities for the youth to participate in age or developmentally appropriate extracurricular, enrichment, cultural, or social activities.²¹

FOR YOUTH AGE 17 AND OLDER – ALL PREVIOUS QUESTIONS PLUS:

1. Permanency

- a. Best Practice: Beginning at age 17, review and discuss with the youth the youth's Transition Plan, developed by the Department with direction from the youth. The Transition Plan should be in alignment with the youth's case plan and transition to successful adulthood plan.²²
- b. The Transition Plan should be specific to the needs of the youth and at a minimum address housing, health insurance, education, local opportunities for continued support and employment services.²³
- c. Ninety (90) days prior to the youth's 18th birthday at a review or permanency hearing, the court must review and discuss the transition plan with the youth for the purpose of ensuring that the plan provides the services necessary to allow the youth to transition to a successful adulthood.²⁴
 - i. The Department shall file a report that includes the Department's transition plan for the youth;
 - ii. The court shall discuss the transition plan with the youth;
 - iii. The court shall review the transition plan with the youth to ensure the plan provides the services necessary to allow the youth to transition to successful adulthood.
- d. Best Practice: Confirm that prior to the youth's 18th birthday, the Department has or will provide the youth with an original or copy of: ²⁵
 - i. The youth's birth certificate;
 - ii. Social security card;
 - iii. State identification card or driver's license;
 - iv. Health insurance information and cards used to access medical care;
 - v. Medical records.

ORDER

See Review Hearing/Permanency Hearing Bench Cards.

RECOMMENDED QUESTIONS

1. Have arrangements been made in the following areas:
 - a. Health care power of attorney?
 - b. Educational training vouchers (ETVs) for those planning to attend college or post-secondary education?
 - c. Support structure and contacts in the community?
2. If the youth has a developmental or physical disability, or a serious mental health diagnosis:

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- a. What has been completed to ensure the youth has the skills necessary to live independently?
- b. Has SSI been applied for?
- c. Has the youth been referred to adult services for disabilities?
3. Ask the youth:
 - a. What are your future educational plans?
 - b. Where are you going to live when you turn 18?
 - c. How do you plan to access health care when you turn 18?
 - d. Are you getting the help you need?
 - e. Who will you call when you need help? Do you have that person's contact information?

ENDNOTES

¹ This Bench Card is to be used in conjunction with the Review and Permanency Bench Cards for youth age 12 and older.

² I.C. § 16-1620(4)(a), § 16-1622(1)(a)(v), § 16-1622(2)(e); IJR 40(c).

³ 42 U.S.C. § 675(1)(B).

⁴ I.C. § 16-1620(4)(a), § 16-1622(1)(a)(v), § 16-1622(2)(e).

⁵ I.C. § 16-1622(2)(f).

⁶ I.C. § 16-1622(1)(a)(iv), § 16-1622(2)(h)(ii).

⁷ I.C. § 16-1602(37), § 16-1620(3)(i)(iii), § 16-1621(3)(d)(viii)(3) and (4), § 16-1622(1)(a)(vi).

⁸ ABA Center on Children and the Law, *Issue Brief: The Role of the Courts in Implementing the Strengthening Families Act*, Juvenile Law Center, Feb. 2016, at 22; I.C. § 16-1602(37), § 16-1620(3)(i)(iii), § 16-1621(3)(d)(viii)(3) and (4), § 16-1622(1)(a)(vi).

⁹ I.C. § 16-1620(4)(a), § 16-1622(1)(a)(v), § 16-1622(2)(e).

¹⁰ I.C. § 16-1622(2)(f).

¹¹ 42 U.S.C. § 675(5)(C)(iv).

¹² I.C. § 16-1620(3)(h)(ii), § 16-1621(3)(a)(ii); 42 USC § 675(1).

¹³ I.C. § 16-1621(3)(a)(i), § 16-1622(3)(b).

¹⁴ 42 USC § 675A(b)(2).

¹⁵ IDHW Standard for Working with Older Youth, pg. 6,

<http://www.healthandwelfare.idaho.gov/Portals/0/Children/AdoptionFoster/WorkingOlderYouth.pdf> (last visited May 2020).

¹⁶ I.C. § 16-1620(3)(i)(i), § 16-1621(3)(d)(viii)(1), § 16-1622(1)(a)(vii)(1), § 16-1622(2)(f)(ii).

¹⁷ I.C. § 16-1622(1)(a)(viii), § 16-1622(2)(f).

¹⁸ ABA Center on Children and the Law, *Issue Brief: The Role of the Courts in Implementing the Strengthening Families Act*, Juvenile Law Center, Feb. 2016, at 6.

¹⁹ I.C. § 16-1622(2)(c).

²⁰ I.C. § 16-1602(37), § 16-1620(3)(i)(iii), § 16-1621(3)(d)(viii)(3) and (4), § 16-1622(1)(a)(vi).

²¹ I.C. § 16-1620(3)(i)(iv), § 16-1621(3)(d)(viii)(3) and (4), § 16-1622(1)(a)(vi).

²² 42 USC § 675(5)(H); IDHW Standard for Working with Older Youth, Pg. 9,

<http://www.healthandwelfare.idaho.gov/Portals/0/Children/AdoptionFoster/WorkingOlderYouth.pdf> (last visited May 2020).

²³ 42 USC § 675(5)(H); IDHW Standard for Working with Older Youth, pg. 9,

<http://www.healthandwelfare.idaho.gov/Portals/0/Children/AdoptionFoster/WorkingOlderYouth.pdf> (last visited May 2020).

²⁴ I.C. § 16-1622(3).

²⁵ 42 USC § 675(5)(I); IDHW Standard for Working with Older Youth, pg. 13,

<http://www.healthandwelfare.idaho.gov/Portals/0/Children/AdoptionFoster/WorkingOlderYouth.pdf> (last visited May 2020).