

Order to Prevent Removal

Bench Card

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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 REMOVAL⁷

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.

NONCOMPLIANCE⁸

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).