

CHAPTER 1: Introduction

1.1 PURPOSE OF THIS MANUAL

This manual is published by the Idaho Supreme Court Child Protection Committee (Committee). The Committee was convened to study ways to strengthen and enhance Idaho court processes in the area of child protection and to work with judges, the Idaho Department of Health and Welfare (IDHW), guardians *ad litem*, the Idaho Department of Juvenile Corrections, the Idaho Attorney General's Office, prosecutors, and public defenders to improve outcomes for children in the child protection system in Idaho. The committee's membership is both professionally and geographically diverse.¹

1.2 KEY PRINCIPLES GUIDING CHILD PROTECTION CASES IN IDAHO

The work of the Committee has been guided by state and federal law governing child protection cases and is informed by the following principles:

1. *Ensure the Safety, Permanency and Well-Being of the Child.* The policy of the State of Idaho is that “[a]t all times the health and safety of the child shall be the primary concern” in Child Protective Act (CPA) cases.² Judges, attorneys, social workers, guardians *ad litem* and others working in the child protection system are responsible for ensuring the physical, mental and emotional health, and educational success of all children under the supervision of the court.
2. *Keep Families Together.* Consistent with the Idaho Child Protective Act, “[t]he state of Idaho shall . . . seek to preserve, protect, enhance and reunite the family relationship.”³ It is also the policy of the state of Idaho to “maintain sibling bonds by placing siblings in the same home when possible. . . unless such contact is not in the best interest of one (1) or more of the children.”⁴ The child's family - barring insurmountable safety issues - is the first choice for permanency. When return to a parent is inappropriate, placement with kin or a responsible person with a significant relationship with the child is the first priority. The court system and other stakeholders should use their authority to ensure that social and protective services are immediately available to families whose children may be abused or neglected so that parents have a fair opportunity to become competent and safe

Note re Terminology: In this manual, “prosecutor” refers to both a county prosecutor and/or a deputy attorney general; “Indian child” refers to all native children as defined by the Indian Child Welfare Act (ICWA); and “IDHW” and “the Department” are used interchangeably to refer to the Idaho Department of Health and Welfare.

¹ Information on Child Protection Committee, Idaho Supreme Court, <http://isc.idaho.gov> (last visited on March 30, 2018).

² I.C. § 16-1601 (2009).

³ I.C. § 16-1601 (2009).

⁴ I.C. § 16-1601(5) (Supp. 2018),.

caretakers. The services should be easily accessible, adequate, appropriate, and delivered in a culturally competent framework. No child should exit foster care without a life-long connection to a caring and responsible adult.

3. *Provide Judicial Oversight.* The best practice is that one judge presides over the entire child protection case from the shelter care hearing through permanency. Following a case from start to finish offers the judge an opportunity to monitor the impact of decisions on the child, creates the best possibility of ensuring that case plans are family-centered, and helps ensure that the needs of the child and family are met in a timely way. Judges have a responsibility to provide individual case oversight as well as system oversight and leadership. The judge must hold all stakeholders, including the court, responsible to ensure safe, timely permanency and well-being for children and families. Judges must provide fair, equal, effective and timely justice for children and families throughout the life of the case. The court is the focal point for ensuring that all participants in the proceedings, including IDHW and other agencies, are accountable for providing reasonable and necessary services to children and families.
4. *Ensure Competent Representation.* In child protection proceedings, attorneys for the state, the parents, the guardian *ad litem*, and the children should be well trained and culturally competent.⁵ Representation should be available to parents, the child's guardian *ad litem*, and to the child at the earliest opportunity (preferably upon filing of the petition but no later than the first hearing). The magistrate judge in a CPA case should take active steps to ensure that the parties have access to competent representation. Attorneys and other advocates identify key legal issues and determine, to a large extent, what information is presented to a judge. Attorneys must provide competent and diligent representation in order for juvenile and family courts to function effectively.
5. *Ensure Access to Justice.* Judges must ensure that the courtroom is a place where all who appear are treated with respect, patience, dignity, courtesy, and as part of the problem-solving process. Courts must be child and family centered. Children and parents must have the opportunity to be present in court and meaningfully participate in their case planning and court process. It is the responsibility of judges to see that all children and each parent are afforded their constitutional rights to due process.
6. *Cultivate Cultural Responsiveness.* Courts must be welcoming and respectful to people of all races, legal, ethnic, and socio-economic statuses, honoring family in all its forms. All members of the court system must recognize, respect, and seek to preserve the ethnic and cultural traditions, mores, and strengths of those who appear before the court. Judges must become aware of, and remediate to the extent possible, their own implicit biases that may adversely affect decision-making.
7. *Avoid Delay.* The court should ensure timely decision making at all stages of the child

⁵ The Idaho State Bar provides an opportunity for attorneys to obtain a Child Welfare Law Specialist certification through the National Association of Counsel for Children (NACC). Additional information on this certification can be found at their website, Child Welfare Law Specialist Certification, National Association of Counsel for Children, <https://www.naccchildlaw.org> (last visited on February 5, 2019).

protection case, from shelter care through the reunification or implementation of another permanency plan. Placement in foster care often has long-term negative consequences for children. Methods to reduce unnecessary delays in achieving permanency include:

- *Avoiding Continuances.* The court should avoid granting continuances, ensuring efficient management of the case and timely decision making on behalf of the child.
 - *Ensuring Early Identification of Family Members.* Early identification of parents and extended family members helps to ensure timely permanency for children. Failure to timely engage parents can delay the court process. In addition, such family members may provide the most appropriate placement for the child.
 - *Monitoring Concurrent Planning.* Idaho law requires IDHW to engage in concurrent planning.⁶ Such planning is crucial to reduce delays in achieving permanency for a child should reunification efforts fail. It is the responsibility of the court to ensure that IDHW is actively pursuing concurrent planning throughout the life of the case.
8. *Front Load Services.* For children, the prolonged uncertainty of not knowing whether they will be removed from home, whether and when they will return home, when they might be moved to another foster home, or whether and when they may be placed in a new permanent home is frightening. This uncertainty can seriously and permanently damage a child’s mental health and emotional development. All stakeholders in the child protection system should be attentive to the statutory time deadlines in child protection cases and should move cases forward as expeditiously as possible. To achieve better outcomes in cases, the services should be “front-loaded.” This means that all stakeholders must move quickly to assess the facts of the case, identify the appropriate parties, and provide the appropriate services for the family at the earliest possible stage. Effective practice includes early identification and involvement of parents and other relatives, early engagement of parents in the court process, as well as early voluntary involvement of the family in remedial services. Other important court practices include establishing firm court dates and times with tight control over continuances and rapid distribution of the court’s orders to all parties.
9. *Recognize Permanency Priorities.* Reunification is usually the primary goal in a child protection case. If a child cannot be safely reunified with his/her parents, the options which provide the most permanency for children, in descending order, are:
- a. Termination of parental rights and adoption
 - b. Long-term guardianship
 - c. Another permanent planned living arrangement (APPLA)
10. *Identify Indian Children as Quickly as Possible to Ensure Compliance with the Indian Child Welfare Act.* Permanency delays for children can often be caused because the child is not identified as an Indian child early in the case. When an Indian child is not identified, the Indian Child Welfare Act requirements are not complied with and

⁶ I.C. § 16-1621(3)(d) (Supp. 2014). Concurrent planning is defined as “a planning model that prepares for and implements different outcomes at the same time.” § 16-1602(14) (Supp. 2014).

permanency for the child is at risk. Throughout this manual, the ICWA requirements are discussed. Chapter 11 provides a thorough overview of the ICWA.

11. *Ensure the Availability of IV-E Federal Match Funds.* From the outset of the case, judges should make timely, accurate, and complete IV-E findings to ensure the availability of federal IV-E funding for each eligible child. Chapter 12 discusses Federal IV-E finding requirements in detail.
12. *Ensure Frequent Review after Termination of Parental Rights to Achieve Timely Permanency.* When parental rights have been terminated, the court should continue to frequently review the case until permanency for the child has been achieved.
13. *Understand the Need for Post-Adoptive Subsidies and Services.* Separating from family and finding permanency with a new family are difficult processes for children. As a result, children and adoptive families often have unique needs. The availability of post-adoptive subsidies and services can be the determining factor in the long-term success of many adoptions. To support adoptive families, participants in the child protection case should be aware of the availability of post-adoptive resources.
14. *Expedite Appeals.* An expedited appeals process for cases involving termination of parental rights and adoption is crucial to permanency. Idaho Appellate Rules 11.1, 12.1 and 12.2 provide a framework for expedited appeals directly to the Supreme Court in Child Protective Act cases and in related matters involving children. Attorneys and judges should strive to process appeals within the expedited timeframes established by these rules and to avoid continuances or extensions of time whenever possible.
15. *Demonstrate Leadership and Foster Collaboration.* The court should encourage and promote collaboration, cross-training, and mutual respect among key stakeholders in the child welfare system, including IDHW, other social service agencies, attorneys, guardians *ad litem*, tribal representatives and staff, community members, court staff, foster parents, and any other relevant participants. Judges and other professionals in the system should help the larger community to understand that child protection is a community responsibility.
16. *Gather, Analyze, and Use Data to Improve Court and Child Welfare Processes.* Decisions regarding processes in the Idaho child protection system should be based on accurate information and thorough study and research. Information gathered from the Idaho courts' case management system and from the Idaho Department of Health and Welfare should be analyzed to assist the child welfare system in strengthening and enhancing outcomes for children. These systems must be continually monitored and enhanced to ensure compliance with statutory time limits, track compliance with goals, analyze trends, and evaluate the effectiveness of programs and policies.

1.3 ORGANIZATION OF THIS MANUAL

The manual follows a child protection action through each step in the statutory process and

provides substantive information on important issues that may arise in child protection cases. The flowchart at the conclusion of this chapter illustrates the major steps in a typical child protection case. Corresponding chapters are noted on the chart.

Chapters 2 through 10 correspond with the normal process of a child protection case:

- Chapter 2: Referral and Investigation
- Chapter 3: Initiating a Child Protective Act Case
- Chapter 4: Shelter Care
- Chapter 5: The Adjudicatory Hearing
- Chapter 6: The Case Plan and Case Plan Hearing
- Chapter 7: The Permanency Plan and Permanency Hearing
- Chapter 8: Review Hearings
- Chapter 9: Termination of Parental Rights
- Chapter 10: Adoption

Chapter 11 provides information on the specific requirements of the Indian Child Welfare Act that can arise at any step of the proceeding.

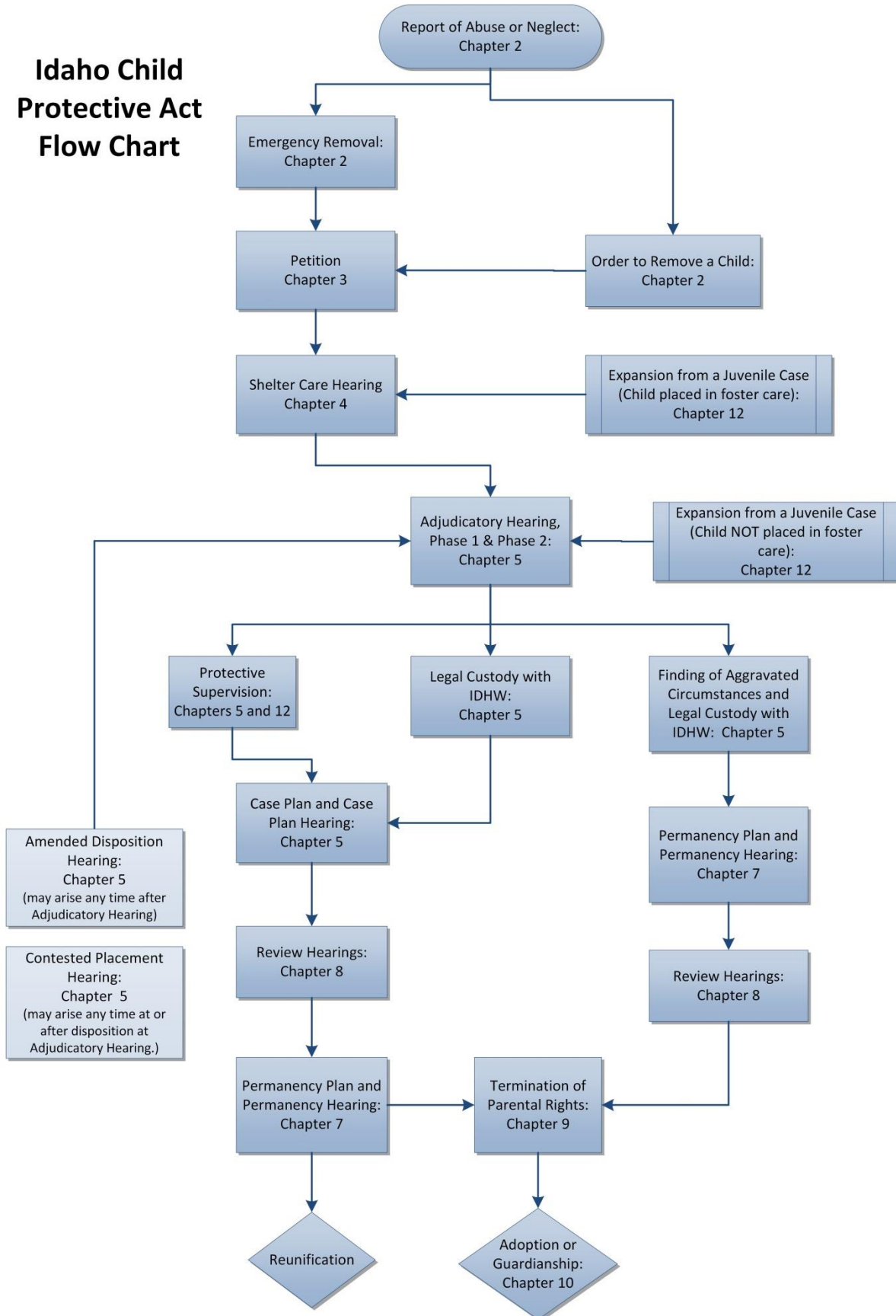
Chapter 12 focuses on specific substantive issues that may arise in CPA cases:

- Timeline for Relevant Federal Statutes
- Idaho Juvenile Rule Expansions
- Notifying and Including Unwed Fathers in Child Protective Act Proceedings
- The Idaho Safe Haven Statute
- *De Facto* Custodians and Child Protective Act Proceedings
- Findings Required to Establish and/or Maintain a Child's Eligibility for IV-E Funding
- Interstate Compact on the Placement of Children
- Idaho Juvenile Rule 40: Involving Children and Foster Parents in Court
- Educational Needs of Children
- Transition to Successful Adulthood
- Guardianships

The Idaho Child Protection Manual, the Idaho Child Protection Bench Cards, and the Idaho Child Protection Court Forms are updated as statutes and best practices change. The most up-to-date versions of these materials are available in the Child Protection section of the Idaho State Judiciary website at:

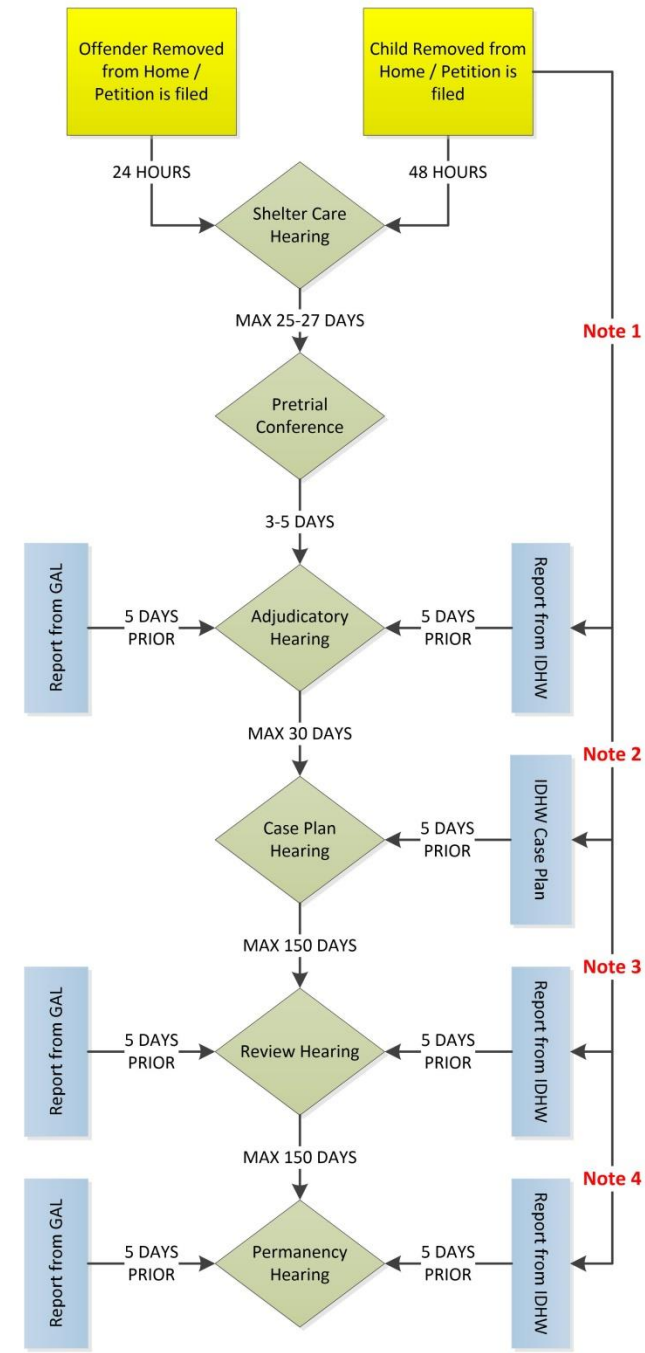
isc.idaho.gov/child-protection/resource

Idaho Child Protective Act Flow Chart

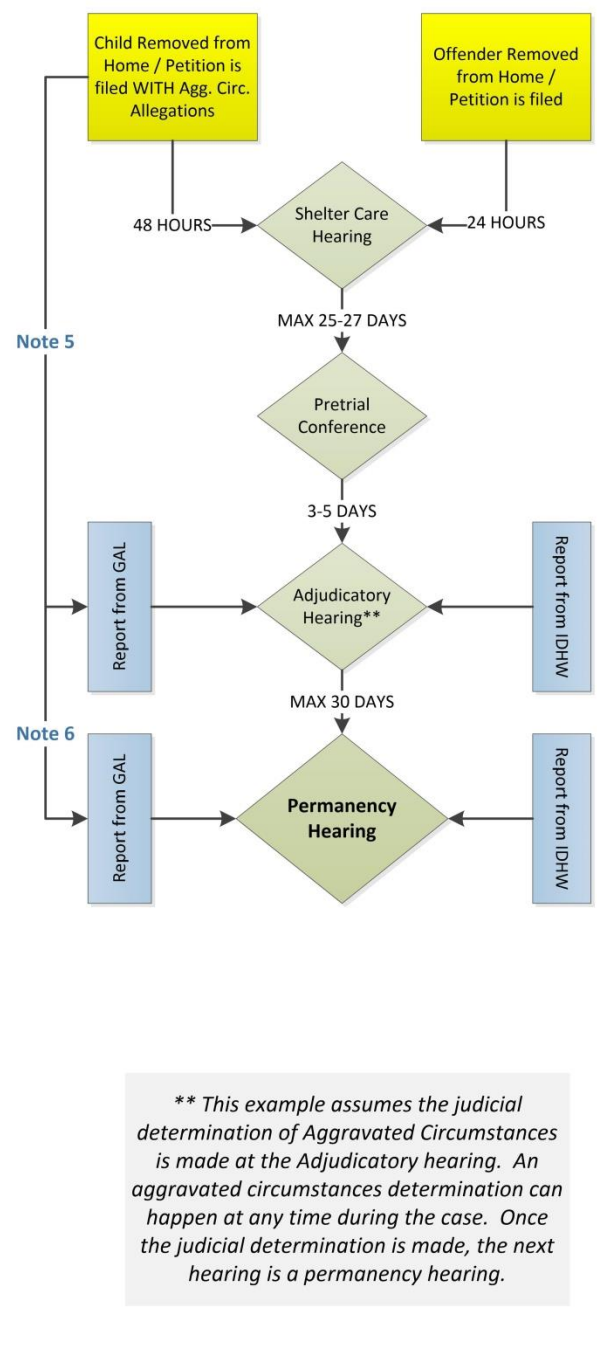


Child Protective Act Case Timelines

without Aggravated Circumstances



w/Aggravated Circumstances



**** This example assumes the judicial determination of Aggravated Circumstances is made at the Adjudicatory hearing. An aggravated circumstances determination can happen at any time during the case. Once the judicial determination is made, the next hearing is a permanency hearing.**

- Note 1:** No more than 30 DAYS after filing of the petition. (Idaho Code section 16-1619(1)).
- Note 2:** No more than 30 DAYS after the Adjudicatory hearing (16-1621(1)) or 60 DAYS from date of petition filed.
- Note 3:** No more than 6 MONTHS after entry of the court's order taking jurisdiction and every 6 months thereafter. (16-1622(1)) Best practice is every 60-90 DAYS.
- Note 4:** No more than 12 MONTHS from removal and every 12 Months thereafter.

- Note 5:** No more than 30 DAYS after filing of the petition. (Idaho Code section 16-1619(1)).
- Note 6:** No more than 30 DAYS after the judicial determination of Aggravated Circumstances is made. (16-1620(1))