

# REDISPOSITION HEARING

(REMOVAL FROM PROTECTIVE SUPERVISION)

*Bench Card*

## **PURPOSE<sup>1</sup>**

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.<sup>2</sup>
2. The hearing may be continued for a reasonable time upon request of the parties.<sup>3</sup>

## **WHO MAY BE PRESENT**

1. The general public shall be excluded, and only such persons shall be admitted as are found by the court to have a direct interest in the case.<sup>4</sup>
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.<sup>5</sup>
3. The child may be excluded from hearings at any time at the discretion of the court.<sup>6</sup>
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.<sup>7</sup>

## **EVIDENCE**

1. The Rules of Evidence do not apply. The court may consider any information relevant to the redispotion of the child.<sup>8</sup>
2. The court may consider any information relevant to disposition, including Department/guardian *ad litem* reports.<sup>9</sup>
3. A child age eight (8) or older has the right to be heard, either in person or in writing.<sup>10</sup> If the child testifies, a counselor, friend, or other person shall be permitted to remain in the courtroom at the witness stand as the child testifies.<sup>11</sup>
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.<sup>12</sup>

## **MAKING THE RECORD**

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

# 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:<sup>15</sup>
  - 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.<sup>16</sup>
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.<sup>17</sup> (*See the ICWA Bench Card*)

### *Questions the court must ask at disposition:*<sup>18</sup>

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

1. Educational stability:<sup>19</sup>

The court must ask about the Department's efforts to ensure educational stability for the child, including efforts made to keep the child in the same school or the reasons why staying in the same school is not in the child's best interests.
2. Sibling placement:<sup>20</sup>

If a group of siblings was removed from the home but was not placed together, the court must ask about:

  - 1) the Department's efforts to place the siblings together, 2) the reasons the siblings were not placed together, and 3) the Department's plan to ensure frequent visitation or ongoing contact among the siblings, unless visitation or contact would be contrary to the wellbeing of one or more siblings.
3. Psychotropic medications:<sup>21</sup>

If the child is placed in the Department's custody and the child is being treated with psychotropic medications, the Department must document and the court must inquire about the type of medication, the dosage and the medical professional who prescribed the medication. The court may make any additional relevant inquiry.

## REQUIRED FINDINGS<sup>22</sup>

1. The Department confirmed to the court that it provided notice as required by Idaho Juvenile Rule 40(a) and (b).<sup>23</sup>
2. The court finds, as appropriate:
  - a. Continued residence in the home is contrary to the welfare of the child; and<sup>24</sup>
  - b. Vesting custody with the Department is in the best interests of the child; and<sup>25</sup>
  - c. The Department made reasonable efforts to prevent the placement of the child into foster care<sup>26</sup>:
    - 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 18<sup>th</sup> birthday.<sup>27</sup>

## ORDER

1. The order returning legal custody to the Department shall be treated the same as the original adjudicatory order.<sup>28</sup>
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.<sup>29</sup> The court may hold a case plan hearing, to be held within 30 days of the redisposition hearing.<sup>30</sup>
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.<sup>31</sup> A permanency hearing shall occur within 30 days of the redisposition hearing.<sup>32</sup>

## RECOMMENDED QUESTIONS

1. What are the specific threats of danger that caused the child to be removed from the home?
2. Is the child vulnerable to the threats of danger? In what way?
3. Do the parent(s) have sufficient protective capacities to protect the child from the threats of danger at home?
4. What is preventing the child from returning home today? How are the conditions for return home in your report related to the threats of danger? How will satisfying those conditions allow the child to return safely home?
5. Is there an in-home safety plan that will allow the child to remain or return safely home? If so, is there at least one caregiver in the home? Is the home calm enough for services to be provided? Are the adults willing to cooperate in the implementation of the in-home plan? Are there sufficient appropriate, reliable resources available and willing to provide services to the family?
6. Will the issuance of a protective order in this case allow the child to return safely home? What conditions need to be included in the protective order to manage the threats of danger and allow the child to return safely home?
7. Is the Department fully exploring placement options with a fit and willing relative? <sup>33</sup>
  - 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. 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*:

# Redisposition Hearing Bench Card

- a. Do you understand what is required of the Department and/or guardian *ad litem* prior to the next hearing?
- b. Do you have any questions for the court?

## ENDNOTES

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<sup>1</sup> I.C. § 16-1623(4); I.J.R. 47.

<sup>2</sup> I.C. § 16-1623(3).

<sup>3</sup> I.C. § 16-1623(7).

<sup>4</sup> I.C. § 16-1613(1); I.J.R. 52(a).

<sup>5</sup> I.C. § 16-1623(6).

<sup>6</sup> I.C. § 16-1613(1).

<sup>7</sup> I.J.R. 40(a) and (b).

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

<sup>9</sup> I.C. § 16-1616(3).

<sup>10</sup> I.J.R. 40(b).

<sup>11</sup> I.C. § 16-1613(2).

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

<sup>13</sup> I.C. § 16-1619(6), § 16-1623(4).

<sup>14</sup> I.J.R. 38.

<sup>15</sup> I.C. § 16-1619(7)(a). Idaho Code provides that if there is reason to *believe* that a child is an Indian child, the court must inquire about efforts made to determine the child's status and make a determination that the Department is making active efforts to verify whether the child is an Indian child. The U.S. Bureau of Indian Affairs regulations, however, provide that where the court has reason to *know* the child is an Indian child, the court must inquire about efforts made to make the determination. The regulations also provide that if the court does not have sufficient evidence to determine that the child is not an Indian child, the court must proceed as if the child is an Indian child. 25 C.F.R. § 23.107(a) and (b).

<sup>16</sup> 25 C.F.R. § 23.107(b)(2).

<sup>17</sup> 25 U.S.C. § 1922; 25 C.F.R. § 23.113.

<sup>18</sup> 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).

<sup>19</sup> I.C. § 16-1619(7)(b)(i).

<sup>20</sup> I.C. § 16-1619(7)(b)(ii).

<sup>21</sup> I.C. § 16-1619(7)(c).

<sup>22</sup> 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).

<sup>23</sup> I.J.R. 40(b).

<sup>24</sup> I.C. § 16-1619(6).

<sup>25</sup> *Id.*

<sup>26</sup> I.C. § 16-1619(6)(a) and (d).

<sup>27</sup> I.C. § 16-1619(8) and (9).

<sup>28</sup> I.C. § 16-1623(5).

<sup>29</sup> I.C. § 16-1621(1), § 16-1623(5).

<sup>30</sup> *Id.*

<sup>31</sup> I.C. § 16-1620(1); I.J.R. 41(i).

<sup>32</sup> I.C. § 16-1620(1).

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