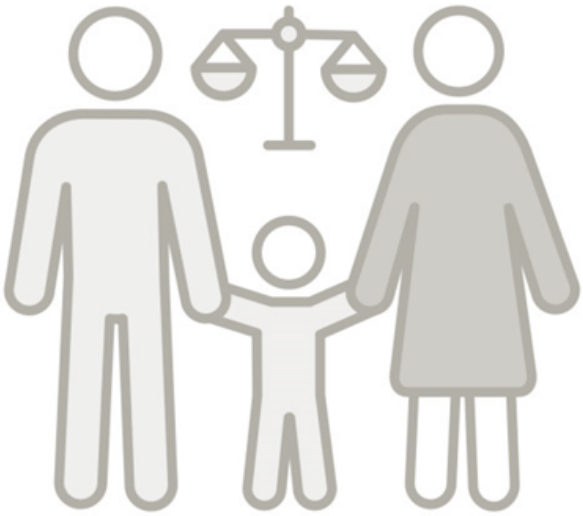
2025

Idaho Child Protective Act:
Statutes and Rules

Mini-Reference Guide

Current through October 1, 2025



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Introduction

This mini reference is intended to be an aid for judges, attorneys, social workers, guardian *ad litem* volunteers, and others practicing under Idaho's Child Protective Act (CPA). Child protection cases are some of the most important cases heard in Idaho courts, as they are one of the key safeguards to the well-being of Idaho's children and families.

This reference compiles the Idaho statutes and rules relevant to a CPA case. Several pieces of federal legislation regulate child protection cases, particularly the Adoption and Safe Families Act (ASFA), Fostering Connections, Indian Child Welfare Act (ICWA), and Family First Prevention Services Act (FFPSA). These statutes are particularly important because they impose mandatory timeframes and required findings that courts must follow to ensure timely permanence for children and youth. Following ASFA requirements is key to ensuring federal funding for children and youth in out-of-home placements.

This mini-rule book has been created by the Administrative Office of the Courts as reference material only. This resource does not represent statements of law by the Idaho Supreme Court and any contents or links do not constitute legal advice.

For more information regarding the policies, procedures, and practices of child welfare cases, see the Idaho Child Protection Manual and Idaho Child Protection Bench Cards, available on the Idaho State Supreme Court's website.
(https://www.isc.idaho.gov/child-protection/resource)

Thank you for your efforts to keep Idaho's children safe.

Statutes and Rules Relevant to Child Protective Act Proceedings

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Idaho Guardians of Minors Statute

§15-5-201. Status of guardian of minor – General

A person becomes a guardian of a minor by acceptance of a testamentary appointment or upon appointment by the court. The guardianship status continues until terminated, without regard to the location from time to time of the guardian and minor ward.

(as added, 1971)

§15-5-202. Testamentary appointment of guardian of minor

A parent of a minor may appoint a guardian of an unmarried minor by will, subject to the right of the minor under section 15-5-203, Idaho Code. The termination of parental rights of a parent as to the minor shall also terminate the right of that parent to appoint a guardian for the minor. A testamentary appointment becomes effective upon the filing of the guardian's acceptance in the court in which the will is probated, if, at the decedent's death, no parent of the minor was alive who had a right to appoint a guardian for the minor. This state recognizes a testamentary appointment effected by the guardian's acceptance under a will probated in another state which is the testator's domicile. Written notice of acceptance of the appointment must be given by the guardian to the minor and to the person having his custody, or if none, his care, or if none, to his nearest adult relation immediately upon acceptance of appointment. The parent may appoint by will one (1) or more alternate guardians, in order of priority. If a guardian appointed by will fails to accept guardianship within thirty (30) days after the will is probated, or files a notice of declination to accept appointment prior to the running of the thirty (30) day period, or is deceased, or ceases to act after acceptance, then the alternate guardian next in priority becomes the appointed guardian and may file a written notice of acceptance in the court in which the will is probated.

(most recent amendment, 2014)

§15-5-203. Objection by minor of fourteen or older to testamentary appointment

A minor of fourteen (14) or more years may prevent an appointment of his testamentary guardian from becoming effective, or may cause a previously accepted appointment to terminate, by filing with the court in which the will is probated a written objection to the appointment before it is accepted or within thirty (30) days after notice of its acceptance. An objection may be withdrawn. In the event of such objection, the alternate guardian next in priority named in the will may accept appointment as set forth in section 15-5-202, Idaho Code minor shall have the same right of objection. An objection does not preclude appointment by the court in a proper proceeding of the testamentary nominee, or any other suitable person.

(most recent amendment, 2014)

§15-5-204. Court appointment of guardian of minor – Conditions for appointment

(1) The court may appoint a guardian for an unmarried minor if all parental rights of custody have been terminated by prior court order or upon a finding that the child has been neglected, abused, or abandoned or whose parents are unable to provide a stable home environment. "Abandoned" means the failure of the parent to maintain a normal parental relationship with the child including, but not limited to, reasonable support or regular contact. Failure to maintain a normal parental relationship with the child without just cause for a period of six (6) months shall constitute prima facie evidence of abandonment. Except in those circumstances described in subsections (2) and (3) of this section and where a temporary guardianship has been created at the request of a parent on active duty in or deployment with the United States armed forces, the court shall consider the best interests of the child as the primary factor in the determination whether to appoint, and whom to appoint, as a guardian for such child. In determining the choice of a guardian for an unmarried minor, the advanced age or disability of a potential guardian shall not, in and of itself, be used as a criterion of the suitability of the potential guardian as long as the

potential guardian is otherwise suitable. A guardian appointed by will as provided in section 15-5-202, Idaho Code, whose appointment has not been prevented or nullified under section 15-5-203, Idaho Code, has priority over any guardian who may be appointed by the court, but the court may proceed with an appointment nonetheless upon a finding that the testamentary guardian has failed to accept the testamentary appointment within thirty (30) days after notice of the guardianship proceeding.

(2) The extended absence of a parent due to active duty in or deployment with the United States armed forces shall not by itself constitute neglect, abuse, abandonment, or failure to provide a stable home environment.

(3) Any guardianship granted at the request of or required by the United States armed forces or at the request of a parent while on active duty in or deployment with the United States armed forces, which duty or deployment does not constitute neglect, abuse, abandonment, or failure to provide a stable home environment, shall be terminated immediately upon the conclusion of the original circumstances necessitating the creation of the temporary guardianship or the filing of a termination report by the parent indicating the parent's intent to resume all care, custody, and control of the minor.

(most recent amendment, 2020)

§15-5-205. Court appointment of guardian of minor – Venue
The venue for guardianship proceedings for a minor is in the place where the minor resides or is present.

(as added, 1971)

§15-5-206. Court appointment of guardian of minor – Qualifications – Priority of minor's nominee
The court may appoint as guardian any person whose appointment would be in the best interests of the minor. The court shall appoint a

person nominated by the minor, if the minor is fourteen (14) years of age or older, unless the court finds the appointment contrary to the best interests of the minor.

(as added, 1971)

§15-5-207. Court appointment of guardian of minor – Procedure

(1) Proceedings for the appointment of a guardian or co-guardians may be initiated by the following persons:

(a) Any relative of the minor;

(b) The minor if he is fourteen (14) or more years of age;

(c) Any person who comes within section 15-5-213(1), Idaho Code; or

(d) Any person interested in the welfare of the minor.

(2) Notice of the time and place of hearing of a petition under this section is to be given by the petitioner in the manner prescribed by section 15-1-401, Idaho Code to:

(a) The minor, if he is fourteen (14) or more years of age;

(b) The person who has had the principal care and custody of the minor during the sixty (60) days preceding the date of the petition;

(c) Any person who comes within section 15-5-213(1), Idaho Code; and

(d) Any living parent of the minor; provided however, that the court may waive notice to a living parent of the minor who is, or is alleged to be, the father of the minor if:

(i) The father was never married to the mother of the minor and has failed to register his paternity as provided in section 16-1504(5), Idaho Code; or

(ii) The court has been shown to its satisfaction circumstances that would allow the entry of an order of termination of parental rights pursuant to section 16-2005, Idaho Code, even though termination of parental rights is not being sought as to such father.

(3) (a) As an alternative to appointing one (1) guardian for a minor, the court may appoint no more than two (2) persons as co-guardians for a minor if the court finds:

(i) The appointment of co-guardians will best serve the interests of the minor; and

(ii) The persons to be appointed as co-guardians will work together cooperatively to serve the best interests of the minor.

(b) If the court appoints co-guardians, the court shall also determine whether the guardians:

(i) May act independently;

(ii) May act independently but must act jointly in specified matters; or

(iii) Must act jointly.

This determination by the court must be stated in the order of appointment and in the letters of guardianship.

(4) If the court finds, upon hearing, that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of section 15-5-204, Idaho Code have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases the court may dismiss the proceedings, or make any other disposition of the matter that will best serve the interests of the minor.

(5) Prior to the appointment of a guardian:

(a) The court may appoint a temporary guardian for the minor if it finds by a preponderance of evidence that:

(i) A petition for guardianship under this section has been filed, but a guardian has not yet been appointed;

(ii) The appointment is necessary to protect the minor's health, safety or welfare until the petition can be heard; and

(iii) No other person appears to have the ability, authority and willingness to act.

(b) A temporary guardian may be appointed without notice or hearing if the minor is in the physical custody of the petitioner or proposed temporary guardian and the court finds from a statement

made under oath that the minor may be immediately and substantially harmed before notice can be given or a hearing held.

(c) Notice of the appointment of a temporary guardian must be given to those designated in subsection (2) of this section within seventy-two (72) hours after the appointment. The notice must inform interested persons of the right to request a hearing. The court must hold a hearing on the appropriateness of the appointment within fourteen (14) days after request by an interested person. In all cases, either a hearing on the temporary guardianship or on the petition for guardianship itself must be held within ninety (90) days of the filing of any petition for guardianship of a minor.

(d) The temporary guardian's authority may not exceed six (6) months unless extended for good cause. Only one (1) such extension may be made, and the extension period must not last longer than six (6) additional months. The powers of the temporary guardian shall be limited to those necessary to protect the immediate health, safety or welfare of the minor until a hearing may be held and must include the care and custody of the minor.

(e) A temporary guardian must make reports as the court requires.

(6) When a minor is under guardianship:

(a) The court may appoint a temporary guardian if it finds:

(i) Substantial evidence that the previously appointed guardian is not performing the guardian's duties; and

(ii) The appointment of a temporary guardian is necessary to protect the minor's health, safety or welfare.

(b) A temporary guardian may be appointed without notice or hearing if the court finds from a statement made under oath that the minor may be immediately and substantially harmed before notice can be given or a hearing held.

(c) Notice of the appointment of a temporary guardian must be given to those designated in subsection (2) of this section within seventy-two (72) hours after the appointment. The notice must inform interested persons of the right to request a hearing. The court shall hold a hearing on the appropriateness of the appointment within fourteen (14) days after request by an interested person.

(d) The authority of a previously appointed guardian is suspended as long as a temporary guardian has authority. The court must hold a hearing before the expiration of the temporary guardian's authority and may enter any appropriate order. The temporary guardian's authority may not exceed six (6) months unless extended for good cause as provided in subsection (5)(d) of this section. Prior to the end of an extension period, the court must appoint a guardian other than a temporary guardian or take other appropriate action, but in no event may a temporary guardianship last longer than twelve (12) months in total.

(e) A temporary guardian must make reports as the court requires.

(7) The court shall appoint an attorney to represent the minor if the court determines that the minor possesses sufficient maturity to direct the attorney. If the court finds that the minor is not mature enough to direct an attorney, the court shall appoint a guardian ad litem for the minor. The court may decline to appoint an attorney or guardian ad litem if it finds in writing that such appointment is not necessary to serve the best interests of the minor or if the Idaho department of health and welfare has legal custody of the child.

(8) Letters of guardianship must indicate whether the guardian was appointed by will or by court order.

(most recent amendment, 2021)

§15-5-208. Consent to service by acceptance of appointment – Notice

By accepting a testamentary or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding shall be delivered to the guardian, or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner.

(as added, 1971)

§15-5-209. Powers and duties of guardian of minor

A guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of his minor and unemancipated child, except that a guardian is not legally obligated to provide from his own funds for the ward and is not liable to third persons by reason of the parental relationship for acts of the ward. In particular, and without qualifying the foregoing, a guardian has the following powers and duties:

(1) He must take reasonable care of his ward's personal effects and commence protective proceedings if necessary to protect other property of the ward.

(2) He may receive money payable for the support of the ward to the ward's parent, guardian or custodian under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, conservatorship or custodianship. He also may receive money or property of the ward paid or delivered by virtue of section 15-5-103, Idaho Code. Any sums so received shall be applied to the ward's current needs for support, care and education. He must exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in which case the excess shall be paid over at least annually to the conservator. Sums so received by the guardian are not to be used for compensation for his services except as approved by order of the court or as determined by a duly appointed conservator other than the guardian. A guardian may institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.

(3) The guardian is empowered to facilitate the ward's education, social, or other activities and to authorize medical or other professional care, treatment, or advice. A guardian is not liable by reason of this consent for injury to the ward resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented. A guardian may consent to the marriage or adoption of his ward.

(4) A guardian shall report to the court at least annually on the status of the ward and the ward's estate which has been subject to his possession or control. All reports shall be under oath or affirmation and shall comply with the Idaho supreme court rules.

(most recent amendment, 2014)

§15-5-210. Termination of appointment of guardian – General

A guardian's authority and responsibility terminates upon the death, resignation or removal of the guardian, termination of the guardianship or upon the minor's death, adoption, marriage or attainment of majority, but termination does not affect his liability for prior acts, nor his obligation to account for funds and assets of his ward. Resignation of a guardian without the appointment of a successor guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.

(most recent amendment, 2016)

§15-5-211. Proceedings subsequent to appointment – Venue

(a) The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian, or in which acceptance of a testamentary appointment was filed, over resignation, removal, accounting and other proceedings relating to the guardianship.

(b) If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, if in this state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever is in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed. If the court in which acceptance of appointment is filed is in

another state, the court in this state shall proceed in accordance with chapters 9, 10 and/or 11, Title 15, Idaho Code, as appropriate.

(most recent amendment, 2006)

§15-5-212. Resignation, removal, modification or termination proceedings.

(1) Any person interested in the welfare of a ward, or the ward if fourteen (14) or more years of age, may petition for removal of a guardian, or for modification or termination of the guardianship, on the ground that such removal, modification or termination would be in the best interest of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for appointment of a successor guardian.

(2) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

(3) If, at any time in the proceeding, the court determines that the interests of the ward are, or may be, inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is fourteen (14) or more years of age.

(most recent amendment, 2016)

§15-5-212A. Guardianships arising in connection with a proceeding under the child protective act

Where a minor is within the jurisdiction of a court under the child protective act, or where a guardianship proceeding arose in connection with a permanency plan for a minor who was the subject of a proceeding under the child protective act:

(1) The court having jurisdiction over the proceeding under the child protective act shall have exclusive jurisdiction and venue over any guardianship proceeding involving such minor unless, in furtherance of the permanency plan, the court declines to exercise such jurisdiction

and venue, notwithstanding sections 15-5-205 and 15-5-211, Idaho Code.

(2) In any action connected to a guardianship governed by this section, in addition to notice or service upon interested parties pursuant to section 15-1-401, Idaho Code, notice of the following shall be served upon the department of health and welfare in the manner prescribed in Idaho rule of civil procedure 4(d)(5):

(a) Any petition for the appointment of a guardian of a minor;

(b) Any pleading filed in connection with such guardianship;

(c) Any proceeding of any nature in such guardianship; or

(d) The time and place of any hearing in connection with such guardianship.

(3) In any action governed by this section, the department of health and welfare shall have the right to appear and be heard at any hearing, and shall have the right to intervene at any stage of the action.

(4) A guardian appointed in an action governed by this section may not consent to the adoption of the minor without providing prior notice of the action of adoption to the department of health and welfare in a manner prescribed in section 15-1-401, Idaho Code.

(5) Any person who moves to terminate a guardianship governed by this section has the burden of proving, by clear and convincing evidence, that:

(a) There has been a substantial and material change in the circumstances of the parent or the minor since the establishment of the guardianship; and

(b) Termination of the guardianship would be in the best interests of the minor.

(6) In any action governed by this section, any person who moves to remove a guardian or modify a guardianship has the burden of proving, by clear and convincing evidence, that:

(a) There has been a substantial and material change in the circumstances of the parent or the minor since the establishment of the guardianship; and

(b) Removal of the guardian or modification of the guardianship would be in the best interests of the minor.

(as added, 2007)

§15-5-213. De facto custodian

(1) "De facto custodian" means a person who has either been appointed the de facto custodian pursuant to section 32-1705, Idaho Code, or if not so appointed, has been the primary caregiver for, and primary financial supporter of, a child who, prior to the filing of a petition for guardianship, has resided with the person for a period of six (6) months or more if the child is under three (3) years of age and for a period of one (1) year or more if the child is three (3) years of age or older.

(2) If a court determines by clear and convincing evidence that a person meets the definition of a de facto custodian, and that recognition of the de facto custodian is in the best interests of the child, the court shall give the person the same standing that is given to each parent in proceedings for appointment of a guardian of a minor. In determining whether recognition of a de facto custodian is in the child's best interests, the court shall consider:

(a) Whether the child is currently residing with the person seeking such standing; and

(b) If the child is not currently residing with the person seeking such standing, the length of time since the person served as the child's primary caregiver and primary financial supporter.

(most recent amendment, 2010)

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Idaho Adoption of Children Statute

§ 16-1501. Minors and adults may be adopted

Any minor child may be adopted by any adult person residing in and having residence in Idaho, in the cases and subject to the rules prescribed in this chapter.

(1) Persons not minors may be adopted by a resident adult in cases where the person adopting has sustained the relation of parent to such adopted person:

(a) For a period in excess of one (1) year while the person was a minor; or

(b) For such period of time or in such manner that the court after investigation finds a substantial family relationship has been created.

(2) Adoptions shall not be denied solely on the basis of the disability of a prospective adoptive parent. As used in this chapter:

(a) "Adaptive equipment" means any piece of equipment or any item that is used to increase, maintain, or improve the parenting capabilities of a parent with a disability.

(b) "Disability" means, with respect to an individual, any mental or physical impairment which substantially limits one (1) or more major life activities of the individual including, but not limited to, self-care, manual tasks, walking, seeing, hearing, speaking, learning or working or a record of such an impairment, or being regarded as having such an impairment. Disability shall not include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, other sexual behavior disorders, or substance use disorders, compulsive gambling, kleptomania or pyromania. Sexual preference or orientation is not considered an impairment or disability. Whether an impairment substantially limits a major life activity shall be determined without consideration of the effect of corrective or mitigating measures used to reduce the effects of the impairment.

(c) "Supportive services" means services which assist a parent with a disability to compensate for those aspects of their disability which affect their ability to care for their child and which will enable them to discharge their parental responsibilities. The term includes specialized

or adapted training, evaluations, or assistance with effective use of adaptive equipment, and accommodations which allow a parent with a disability to benefit from other services, such as Braille texts or sign language interpreters.

(3) If applicable, nothing in this chapter shall modify the requirements of the Indian child welfare act of 1978, 25 U.S.C. 1901, et seq.

(most recent amendment, 2014)

§ 16-1501A. Rights and responsibilities of parties in adoption proceedings

(1) The legislature finds that the rights and interests of all parties affected by an adoption proceeding must be considered and balanced in determining what constitutional protections and processes are necessary and appropriate.

(2) The legislature finds that:

(a) The state has a compelling interest in providing stable and permanent homes for adoptive children in a prompt manner, in preventing the disruption of adoptive placements, and in holding parents accountable for meeting the needs of children;

(b) An unmarried mother, faced with the responsibility of making crucial decisions about the future of a newborn child, is entitled to privacy, and has the right to make timely and appropriate decisions regarding her future and the future of the child, and is entitled to assurance regarding the permanence of an adoptive placement;

(c) Adoptive children have a right to permanence and stability in adoptive placements;

(d) Adoptive parents have a constitutionally protected liberty and privacy interest in retaining custody of an adopted child; and

(e) An unmarried biological father has an inchoate interest that acquires constitutional protection only when he demonstrates a timely and full commitment to the responsibilities of parenthood, both during pregnancy and upon the child's birth. The state has a compelling interest in requiring unmarried biological fathers to demonstrate that commitment by providing appropriate medical care and financial

support and by establishing legal paternity, in accordance with the requirements of this chapter.

(3) (a) The legislature prescribes the conditions for determining whether an unmarried biological father's action is sufficiently prompt and substantial to require constitutional protection pursuant to sections 16-1504 and 16-1513, Idaho Code.

(b) If an unmarried biological father fails to grasp the opportunities to establish a relationship with his child that are available to him, his biological parental interest may be lost entirely, or greatly diminished in constitutional significance by his failure to timely exercise it, or by his failure to strictly comply with the available legal steps to substantiate it.

(c) A certain degree of finality is necessary in order to facilitate the state's compelling interest. Thef legislature finds that the interest of the state, the mother, the child, and the adoptive parents described in this section outweigh the interest of an unmarried biological father who does not timely grasp the opportunity to establish and demonstrate a relationship with his child in accordance with the requirements of this chapter.

(d) An unmarried biological father has the primary responsibility to protect his rights.

(e) An unmarried biological father is presumed to know that the child may be adopted without his consent unless he strictly complies with the provisions of this chapter, manifests a prompt and full commitment to his parental responsibilities, and establishes paternity.

(4) The legislature finds that an unmarried mother has a right of privacy with regard to her pregnancy and adoption plan, and therefore has no legal obligation to disclose the identity of an unmarried biological father prior to or during an adoption proceeding, and has no obligation to volunteer information to the court with respect to the father.

(as added, 2000)

§ 16-1501B. Right of parent with disability to present evidence and information

If the prospective adoptive parent has a disability as defined in this chapter, the prospective adoptive parent shall have the right to provide evidence to the court regarding the manner in which the use of adaptive equipment or supportive services will enable the parent to carry out the responsibilities of parenting the child. Nothing in this chapter shall be construed to create any new or additional obligation on state or local governments to purchase or provide adaptive equipment or supportive services for parents with disabilities.

(as added, 2002)

§ 16-1502. Restrictions as to comparative age

The person adopting a child must be at least fifteen (15) years older than the person adopted, or twenty-five (25) years of age or older, except such age restrictions or requirements shall not apply in cases where the adopting parent is a spouse of a natural parent, and except that such age restrictions or requirements shall not apply when the person adopting an adult shows to the satisfaction of the court that a substantial relationship as a parent has been maintained for a period in excess of one (1) year.

(most recent amendment, 1991)

§ 16-1503. Consent of husband and wife necessary

A married man, not lawfully separated from his wife, cannot adopt a child without the consent of his wife; nor can a married woman, not thus separated from her husband, without his consent, provided the husband or wife, not consenting, is capable of giving such consent.

(as added, 1879)

§ 16-1504. Necessary consent to adoption

(1) Consent to adoption of a child is required from:

(a) The adoptee, if he is more than twelve (12) years of age, unless

he does not have the mental capacity to consent;

(b) Both parents or the surviving parent of an adoptee who was conceived or born within a marriage;

(c) The mother of an adoptee born outside of marriage;

(d) Any biological parent who has been adjudicated to be the child's biological father by a court of competent jurisdiction prior to the mother's execution of consent;

(e) An unmarried biological father of an adoptee only if the requirements and conditions of subsection (3)(a) or (b) of this section have been proven;

(f) Any legally appointed custodian or guardian of the adoptee;

(g) The adoptee's spouse, if any;

(h) An unmarried biological father who has filed a voluntary acknowledgment of paternity with the vital statistics unit of the department of health and welfare pursuant to section 7-1106, Idaho Code; and

(i) The father of an illegitimate child who has adopted the child by acknowledgment.

(2) Consent to adoption of an adult is required from:

(a) The adoptee, or the guardian or conservator of an incapacitated adoptee, if a guardian or conservator has been appointed; and

(b) The adoptee's spouse, if any.

(3) In accordance with subsection (1) of this section, the consent of an unmarried biological father is necessary only if the father has strictly complied with all requirements of this section.

(a) (i) With regard to a child who is placed with adoptive parents more than six (6) months after birth, an unmarried biological father shall have developed a substantial relationship with the child, taken some measure of responsibility for the child and the child's future, and demonstrated a full commitment to the responsibilities of parenthood by financial support of the child, of a fair and reasonable sum and in accordance with the father's ability, when not prevented from doing so by the person or authorized agency having lawful custody of the child, and either:

1. Visiting the child at least monthly when physically and financially able to do so, and when not prevented from doing so by the person or authorized agency having lawful custody of the child; or

2. Having regular communication with the child or with the person or agency having the care or custody of the child, when physically and financially unable to visit the child, and when not prevented from doing so by the person or authorized agency having lawful custody of the child.

(ii) The subjective intent of an unmarried biological father, whether expressed or otherwise, unsupported by evidence of acts specified in this subsection shall not preclude a determination that the father failed to meet any one (1) or more of the requirements of this subsection.

(iii) An unmarried biological father who openly lived with the child for a period of six (6) months within the one (1) year period after the birth of the child and immediately preceding placement of the child with adoptive parents, and who openly held himself out to be the father of the child during that period, shall be deemed to have developed a substantial relationship with the child and to have otherwise met all of the requirements of this subsection.

(b) With regard to a child who is under six (6) months of age at the time he is placed with adoptive parents, an unmarried biological father shall have manifested a full commitment to his parental responsibilities by performing all of the acts described in this subsection and prior to the date of the filing of any proceeding to terminate the parental rights of the birth mother; the filing of any proceeding to adopt the child; or the execution of a consent to terminate the birth mother's parental rights under the provisions of section 16-2005(5), Idaho Code, whichever occurs first. The father shall have strictly complied with all of the requirements of this subsection by:

(i) Filing proceedings to establish paternity under section 7-1111, Idaho Code, and filing with that court a sworn affidavit stating that he is fully able and willing to have full custody of the child, setting forth his plans for the care of the child, and agreeing to a court order of child support and the payment of expenses incurred in connection

with the mother's pregnancy and the child's birth;

(ii) Filing a notice of the proceedings to establish his paternity of the child with the vital statistics unit of the department of health and welfare pursuant to section 16-1513, Idaho Code; and

(iii) If he had actual knowledge of the pregnancy, paying a fair and reasonable amount of the expenses incurred in connection with the mother's pregnancy and the child's birth, in accordance with his means, and when not prevented from doing so by the person or authorized agency having lawful custody of the child.

(4) An unmarried biological father whose consent is required under subsection (1) or (3) of this section may nevertheless lose his right to consent if the court determines, in accordance with the requirements and procedures of the termination of parent and child relationship act, sections 16-2001 through 16-2015, Idaho Code, that his rights should be terminated, based on the petition of any party as set forth in section 16-2004, Idaho Code.

(5) In any adoption proceeding pertaining to a child born out of wedlock, if there is no showing that an unmarried biological father has consented to or waived his rights regarding a proposed adoption, the petitioner shall file with the court a certificate from the vital statistics unit of the department of health and welfare, signed by the state registrar of vital statistics, stating that a diligent search has been made of the registry of notices from putative fathers, of a child born out of wedlock, and that the putative father involved has not filed notice of the proceedings to establish his paternity or, if a filing is found, stating the name of the putative father and the time and date of filing. That certificate shall be filed with the court prior to the entrance of the final decree of adoption.

(6) An unmarried biological father who does not fully and strictly comply with each of the conditions provided in this section is deemed to have waived and surrendered any right in relation to the child, including the right to notice of any judicial proceeding in connection with the adoption of the child, or for termination of parental rights and

his consent to the adoption of the child is not required unless he proves, by clear and convincing evidence, all of the following:

(a) It was not possible for him, prior to the filing of a proceeding to terminate parental rights of the birth mother; the filing of any proceeding to adopt the child; or the execution of a consent to terminate the birth mother's parental rights under the provisions of section 16-2005(5), Idaho Code, whichever occurs first, to:

(i) Commence proceedings to establish paternity of his child in accordance with section 7-1111, Idaho Code; and

(ii) File notice of the filing of proceedings to establish his paternity of the child with the vital statistics unit of the department of health and welfare in accordance with section 16-1513, Idaho Code;

(b) His failure to timely file notice of the filing of proceedings to establish his paternity of the child with the vital statistics unit of the department of health and welfare in accordance with section 16-1513, Idaho Code, and his failure to commence timely proceedings to establish paternity of his child in accordance with section 7-1111, Idaho Code, were through no fault of his own; and

(c) He filed notice of the filing of proceedings to establish paternity of his child in accordance with section 7-1111, Idaho Code, with the vital statistics unit of the department of health and welfare in accordance with section 16-1513, Idaho Code, and filed proceedings to establish his paternity of the child within ten (10) days after the birth of the child. Lack of knowledge of the pregnancy is not an acceptable reason for his failure to timely file notice of the commencement of proceedings or for his failure to commence timely proceedings.

(7) A minor parent has the power to consent to the adoption of his or her child. That consent is valid and has the same force and effect as a consent executed by an adult parent. A minor parent, having executed a consent, cannot revoke that consent upon reaching the age of majority or otherwise becoming emancipated.

(8) No consent shall be required of, nor notice given to, any person whose parental relationship to such child shall have been terminated in accordance with the provisions of either chapter 16 or 20, title 16,

Idaho Code, or by a court of competent jurisdiction of a sister state under like proceedings, or in any other manner authorized by the laws of a sister state. Where a voluntary child placement agency licensed by the state in which it does business is authorized to place a child for adoption and to consent to such child's adoption under the laws of such state, the consent of such agency to the adoption of such child in a proceeding within the state of Idaho shall be valid and no further consents or notices shall be required.

(9) The legislature finds that an unmarried biological father who resides in another state may not, in every circumstance, be reasonably presumed to know of and strictly comply with the requirements of this chapter. Therefore, when all of the following requirements have been met, that unmarried biological father may contest an adoption prior to finalization of the decree of adoption and assert his interest in the child:

(a) The unmarried biological father resides and has resided in another state where the unmarried mother was also located or resided;

(b) The mother left that state without notifying or informing the unmarried biological father that she could be located in the state of Idaho;

(c) The unmarried biological father has, through every reasonable means, attempted to locate the mother but does not know or have reason to know that the mother is residing in the state of Idaho; and

(d) The unmarried biological father has complied with the most stringent and complete requirements of the state where the mother previously resided or was located in order to protect and preserve his parental interest and rights in the child in cases of adoption.

(10) An unmarried biological father may, under the provisions of section 7-1107, Idaho Code, file a proceeding to establish his paternity prior to the birth of the child; however, such paternity proceeding must be filed prior to the date of the filing of any proceeding to terminate parental rights of the birth mother; the filing of any proceeding to adopt the child; or the execution of a consent to terminate the birth mother's parental rights under the provisions of section 16-2005(5), Idaho Code, whichever occurs first.

(most recent amendment, 2023)

§ 16-1505. Notice of adoption proceedings

(1) Notice of an adoption proceeding shall be served on each of the following persons:

(a) Any person or agency whose consent or relinquishment is required under section 16-1504, Idaho Code, unless that right has been terminated by waiver, relinquishment, consent or judicial action, or the person's parental rights have been previously terminated;

(b) Any person who has registered notice of the commencement of paternity proceedings pursuant to section 16-1513, Idaho Code;

(c) The petitioner's spouse, if any, only if he or she has not joined in the petition;

(d) Any person who is recorded on the birth certificate as the child's father, with the knowledge and consent of the mother, unless such right to notice or parental rights have been previously terminated;

(e) Any person who is openly living in the same household with the child at the time the mother's consent is executed or relinquishment made, and who is holding himself out to be the child's father, unless such rights to notice or parental rights have been previously terminated; and

(f) Any person who is married to the child's mother at the time she executes her consent to the adoption or relinquishes the child for adoption.

(2) An unmarried biological father, by virtue of the fact that he has engaged in a sexual relationship with a woman, is deemed to be on notice that a pregnancy and an adoption proceeding regarding that child may occur, and that he has a duty to protect his own rights and interests. He is therefore entitled to actual notice of a birth or an adoption proceeding with regard to that child only as provided in this section.

(3) Notice provided in accordance with this section need not disclose the name of the mother of the child who is the subject of an adoption proceeding.

(4) The notice required by this section may be served immediately after commencement of proceedings to adopt a child but shall be served at least twenty-one (21) days prior to the final dispositional hearing. The notice shall specifically state that the person served must respond to the petition for adoption within twenty-one (21) days of service if he intends to intervene in or contest the adoption.

(5)(a) Any person who has been served with notice of an adoption proceeding and who wishes to contest the adoption shall file a written objection to the adoption in the adoption proceeding within twenty-one (21) days after service. The written objection shall set forth specific relief sought and be accompanied by a memorandum specifying the factual and legal grounds upon which the written objection is based.

(b) Any person who fails to file a written objection to the adoption within twenty-one (21) days after service of notice waives any right to further notice in connection with the adoption, forfeits all rights in relation to the adoptee, and is barred from thereafter bringing or maintaining any action to assert any interest in the adoptee.

(6) Service of notice under this section shall be made as follows:

(a) With regard to a person whose consent is necessary under section 16-1504, Idaho Code, notice shall be given by personal service. Where reasonable efforts to effect personal service have been unsuccessful, the court shall order service by registered or certified mail to the last known address of the person to be notified and by publication once a week for three (3) successive weeks in a newspaper or newspapers to be designated by the court as most likely to give notice to the person to be served. The hearing shall take place no sooner than twenty-one (21) days after service of notice or, where service is by registered or certified mail and publication, the hearing shall take place no sooner than twenty-one (21) days after the date of last publication. Notice and appearance may be waived by any person in writing before the court or in the presence of, and witnessed by, a clerk of court or a representative of an authorized agency, provided that such parent has been apprised by the court or by such person of the meaning and consequences of the

adoption proceeding. Where the person entitled to notice resides outside the state, the waiver shall be acknowledged before a notary of the state and shall contain the current address of said person. The person who has executed such a waiver shall not be required to appear. If service is by publication, the court shall designate the content of the notice regarding the identity of the parties. The notice may not include the name of the person or persons seeking to adopt the adoptee.

(b) As to any other person for whom notice is required under this section, service by certified mail, return receipt requested, is sufficient. If that service cannot be completed after two (2) attempts, the court may issue an order providing for service by publication, posting, or by any other manner of service.

(c) Notice to a person who has registered a notice of his commencement of paternity proceedings with the vital statistics unit of the department of health and welfare in accordance with the requirements of section 16-1513, Idaho Code, shall be served by certified mail, return receipt requested, at the last address filed with the department.

(7) Proof of service of notice on all persons for whom notice is required by this section shall be filed with the court before the final dispositional hearing on the adoption.

(8) Notwithstanding any other provision of law, neither the notice of an adoption proceeding nor any process in that proceeding is required to contain the name of the person or persons seeking to adopt the adoptee.

(9) Except as to those persons whose consent to an adoption is required under section 16-1504, Idaho Code, the sole purpose of notice under this section is to enable the person served to present evidence to the court relevant to the best interest of the child.

(most recent amendment, 2020)

§ 16-1506. Proceedings on adoption

(1) Proceedings to adopt a child shall be commenced by the filing of a petition together with a copy thereof. The petition shall be initiated by the person or persons proposing to adopt the child and shall be filed with the district court of the county in which said person or persons reside, unless the adoption concerns a child who is the subject of a child protection case. If the adoption concerns a child who is the subject of a child protection case, the petition shall be filed in the court having jurisdiction over the child protection case, unless that court relinquishes jurisdiction over the adoption proceeding. The petitioners shall have resided and maintained a dwelling within the state of Idaho for at least six (6) consecutive months prior to the filing of a petition, unless the adoption concerns a child who is the subject of a child protection case. In order for a nonresident petitioner to adopt a child who is the subject of a child protection case, the child must have lived with the petitioner continuously for at least six (6) months immediately preceding the filing of the petition. The petition shall set forth the name and address of the petitioner or petitioners, the name of the child proposed to be adopted and the name by which the person to be adopted shall be known if and when adopted, the degree of relationship of the child, if any, to the petitioner or petitioners, and the names of any person or agency whose consent to said adoption is necessary. At the time fixed for hearing such petition, the person adopting a child and the child adopted, and the spouse of the petitioner if a natural parent of the child, must appear before the court of the county wherein the petition was filed. The petitioner shall at such time execute an agreement to the effect that the child shall be adopted and treated in all respects as his own lawful child should be treated.

(2) If the adoption concerns a child who is the subject of a child protection case, then, in addition to the petition filed pursuant to subsection (1) of this section, the department of health and welfare shall file the permanency plan prepared pursuant to section 16-1620 or 16-1622, Idaho Code, associated with the child protection case. If the court determines that the person proposing to adopt the child is not the proposed adoptive parent named in the permanency plan, then the judge shall stay the proceeding pending the department

preparing and filing an amended permanency plan pursuant to section 16-1620 or 16-1622, Idaho Code, and the approval of the amended permanency plan by the judge presiding over the child protection case.

(3) Any person or persons whose consent is required shall execute such consent in writing, in a form consistent with the provisions of section 16-2005(5), Idaho Code, which consent being filed in the court where the application is made shall be deemed a sufficient appearance on the part of such person or persons. If any adoptive parent, or a person not a minor being adopted by a resident adult under the provisions of section 16-1501, Idaho Code, is a member of the armed services and is unable to attend the hearing, his appearance and testimony shall be received by means of deposition, which shall be filed in the court at the time of the hearing.

(4) Prior to the placement for adoption of any child in the home of prospective adoptive parents, a thorough social investigation of the prospective adoptive family and all of its members, consistent with the rules regarding such investigations promulgated by the department of health and welfare, shall be completed and a positive recommendation for adoptive placement shall have been made. The social investigation may be performed by any individual who meets the requirements of the law. A copy of the study must be submitted to the department and the department may impose a reasonable fee, not to exceed fifty dollars ($50.00), for oversight of such privately conducted studies. If the prospective adoptive parent has a disability as defined in this chapter, the prospective adoptive parent shall have the right, as a part of the social study, to provide information regarding the manner in which the use of adaptive equipment or supportive services will enable the parent to carry out the responsibilities of parenting the child. The person performing the social investigation shall advise the prospective adoptive parent of such right and shall consider all such information in any findings or recommendations. The social investigation of any prospective adoptive parent with a disability shall be conducted by, or with the assistance of, an individual with expertise in the use of such equipment and services. Nothing in this chapter shall be construed to

create any new or additional obligation on state or local governments to purchase or provide adaptive equipment or supportive services for parents with disabilities. In those instances where the prospective adoptive parent is married to the birth parent or is the grandparent of the child to be adopted, such social investigation shall be completed with regard to the prospective adoptive parent only upon order of the court. In exigent circumstances where the prospective adoptive parents are determined by the court to have been unable to complete a social investigation of the family with a positive recommendation prior to the time the child is placed in the home, the child shall remain in the home unless the court determines the best interests of the child are served by other placement. If exigent circumstances exist, a social investigation shall be initiated within five (5) days of placement. Once initiated, all studies shall be completed within sixty (60) days. Upon the filing of a petition to adopt a minor child by a person unrelated to the child or unmarried to a natural parent of the child, and at the discretion of the court upon the filing of any other petition for adoption, a copy of such petition, together with a statement containing the full names and permanent addresses of the child and the petitioners, shall within five (5) days be served by the court receiving the petition on the director of the department of health and welfare by registered mail or personal service. If no private investigation is conducted, it shall then be the duty of the director, through the personnel of the department or through such qualified child-placing children's adoption agency incorporated under chapter 30, title 30, Idaho Code, as the director may designate, to verify the allegations of the petition and, as soon as possible not exceeding thirty (30) days after service of the petition on the director, to make a thorough investigation of the matter to include in all cases information as to the alleged date and place of birth and as to parentage of the child to be adopted as well as the source of all such information and to report his findings in writing to the court. The investigative report shall include reasonably known or available medical and genetic information regarding both natural parents and sources of such information as well as reasonably known or available providers of medical care and services to the natural parents. A copy of all medical and genetic information compiled in the investigation shall be made

available to the adopting family by the department or other investigating children's adoption agency prior to entry of the final order of adoption. The petition, statement and all other papers, records or files relating to the adoption, including the preplacement investigation and recommendation, shall be returned to the court with the investigative report. The department of health and welfare or other children's adoption agency may require the petitioner to pay all or any part of the costs of the investigation. If the report disapproves of the adoption of the child, motion may be made to the court to dismiss the petition.

(5) Proceedings for termination of parent-child relationship in accordance with chapter 20, title 16, Idaho Code, and proceedings for adoption may be consolidated and determined at one (1) hearing, provided that all of the requirements of this chapter as well as chapter 20, title 16, Idaho Code, be fully complied with. Nothing in either chapter shall be construed as limiting the initiation of any petition for approval of a verified financial plan for adoption expenses pursuant to section 18-1511, Idaho Code, prior to the birth of the child who is the subject of any adoption proceeding. In all disputed matters under this chapter or chapter 20, title 16, Idaho Code, the paramount criterion for consideration and determination by the court shall be the best interests of the child.

(6) Proceedings for the adoption of an adult shall be as provided in subsection (1) of this section, and any consents required shall be executed as provided in subsection (3) of this section. Upon a finding by the court that the consent of all persons for whom consent is required has been given and that the requirements of section 16-1501, Idaho Code, have been proven to the satisfaction of the court, the court shall enter an order granting the adoption. In cases where the adult proposed to be adopted is incapacitated or disabled, the court may require that an investigation be performed. The form and extent of the investigation to be undertaken may be as provided in subsection (4) of this section, or as otherwise ordered by the court. If an investigation is performed, the

court must review and approve the findings of the investigation before issuing an order approving the adoption.

(most recent amendment, 2024)

§ 16-1507. Order of adoption

The judge must examine all persons appearing before him pursuant to this chapter, each separately, and any report of the investigation provided pursuant to the last section and if satisfied that the interests of the child will be promoted by the adoption, he must in the adoption of all foreign born persons make a finding of facts as to the true or probable date and place of birth of the foreign born child to be adopted and make an order declaring that the child shall thenceforth be regarded and treated in all respects as the child of the person adopting.

(most recent amendment, 1996)

§ 16-1508. Effect of adoption

A child or adult, when adopted, may take the name of the person adopting, and the two (2) shall thenceforth sustain toward each other the legal relation of parent and child, and shall have all the rights and shall be subject to all the duties of that relation, including all of the rights of a child of the whole blood to inherit from any person, in all respects, under the provisions of section 15-2-103, Idaho Code, and to the same extent as a child of the whole blood.

(most recent amendment, 2020)

§ 16-1509. Release of child's parents from obligation – Termination of rights of parents and children

Unless the decree of adoption otherwise provides, the natural parents of an adopted child are, from the time of the adoption, relieved of all parental duties toward, and all responsibilities for, the child so adopted, and have no right over it, and all rights of such child from and through such natural parents including the right of inheritance, are hereby terminated unless specifically provided by will.

(most recent amendment, 1969)

§ 16-1509A. Dissolution of adoption

An adoption may be dissolved, upon petition, with the agreement of both the adoptee and the adopting parent, when the adopting parent was the spouse of a natural parent, and the marriage of the natural parent and adoptive parent was terminated. If the petition for dissolution occurs after the death of the adoptive parent, the court shall, in the finding of dissolution, specify the effect upon rights of inheritance. The court must determine that avoidance of statutory care is not the purpose of the dissolution, unless the court finds grounds to waive this finding. An action to obtain a decree of dissolution of adoption may be commenced at any time after the adoptee reaches twenty-one (21) years of age.

(as added, 1998)

§ 16-1511. Sealing record of proceedings

Upon the motion of petitioners, or upon its own motion the court shall order that the record of its proceedings in any adoption proceeding shall be sealed. When such order has been made and entered the court shall seal such record and thereafter the seal shall not be broken except upon the motion of petitioners or the person adopted; provided, however, that such record may be sealed again as in this section provided.

(most recent amendment, 1996)

§ 16-1512. Appeal from order – Binding effect of adoption order

(1) Any appeal from an order granting or refusing to grant an order of adoption shall be taken to the supreme court.

(2) After the order of adoption by the court becomes final, no party to an adoption proceeding, nor anyone claiming under such party, may later question the validity of the adoption proceedings by reason of any

defect or irregularity therein, jurisdiction or otherwise, but shall be fully bound by the order, except for such appeal as may be allowed in subsection (1) of this section. In no event, for any reason, other than fraud on the part of the party adopting a child, shall an adoption be overturned by any court or collaterally attacked by any person or entity after six (6) months from the date the order of adoption becomes final. This provision is intended as a statute of repose.

(most recent amendment, 2010)

§ 16-1513. Registration of notice of filing of paternity proceedings

(1) A person who is the father or claims to be the father of a child born out of wedlock may claim rights pertaining to his paternity of the child by commencing proceedings to establish paternity under section 7-1111, Idaho Code, and by filing with the vital statistics unit of the department of health and welfare notice of his filing of proceedings to establish his paternity of the child born out of wedlock. The vital statistics unit of the department of health and welfare shall provide forms for the purpose of filing the notice of filing of paternity proceedings, and the forms shall be made available through the vital statistics unit of the Idaho department of health and welfare and in the office of the county clerk in every county of this state. The forms shall include a written notification that filing pursuant to this section shall not satisfy the requirements of chapter 82, title 39, Idaho Code, and the notification shall also include the following statements:

(a) A parent may make a claim of parental rights of an abandoned child, abandoned pursuant to the provisions of chapter 82, title 39, Idaho Code, as provided by section 39-8206, Idaho Code, by filing a notice of claim of parental rights with the vital statistics unit of the department of health and welfare on a form as prescribed and provided by the vital statistics unit of the department of health and welfare;

(b) The vital statistics unit of the department of health and welfare shall maintain a separate registry for claims to abandoned children, abandoned pursuant to the provisions of chapter 82, title 39, Idaho Code;

(c) The department shall provide forms for the purpose of filing a claim of parental rights of an abandoned child, abandoned pursuant to the provisions of chapter 82, title 39, Idaho Code, and the forms shall be made available through the vital statistics unit of the Idaho department of health and welfare and in the office of the county clerk in every county of this state;

(d) To be valid, a claim of parental rights of an abandoned child, abandoned pursuant to the provisions of chapter 82, title 39, Idaho Code, must be filed before an order terminating parental rights is entered by the court. A parent that fails to file a claim of parental rights prior to entry of an order terminating their parental rights is deemed to have abandoned the child and waived and surrendered any right in relation to the child, including the right to notice of any judicial proceeding in connection with the termination of parental rights or adoption of the child;

(e) Registration of notice of filing of paternity proceedings pursuant to chapter 15, title 16, Idaho Code, shall not satisfy the requirements of chapter 82, title 39, Idaho Code. To register a parental claim to an abandoned child, abandoned pursuant to the provisions of chapter 82, title 39, Idaho Code, an individual must file an abandoned child registry claim with the vital statistics unit of the department of health and welfare and comply with all other provisions of chapter 82, title 39, Idaho Code, in the time and manner prescribed, in order to preserve parental rights to the child.

When filing a notice of the filing of paternity proceedings, a person who claims to be the father of a child born out of wedlock shall file with the vital statistics unit of the department of health and welfare the completed form prescribed by the vital statistics unit of the department of health and welfare. Said form will be filled out completely, signed by the person claiming paternity, and witnessed before a notary public.

(2) The notice of the filing of paternity proceedings may be filed prior to the birth of the child, but must be filed prior to the date of the filing of any proceeding to terminate the parental rights of the birth mother. The notice of the filing of paternity proceedings shall be signed by the

person filing the notice and shall include his name and address, the name and last address of the mother, and either the birth date of the child or the probable month and year of the expected birth of the child. The vital statistics unit of the department of health and welfare shall maintain a central registry for this purpose that shall be subject to disclosure according to chapter 1, title 74, Idaho Code. The department shall record the date and time the notice of the filing of proceedings is filed with the department. The notice shall be deemed to be duly filed with the department as of the date and time recorded on the notice by the department.

(3) If the unmarried biological father does not know the county in which the birth mother resides, he may initiate his action in any county, subject to a change in venue.

(4) Except as provided in section 16-1504(6), Idaho Code, any father of a child born out of wedlock who fails to file and register his notice of the commencement of paternity proceedings pursuant to section 7-1111, Idaho Code, prior to the date of the filing of any proceeding to terminate the parental rights of the birth mother; the filing of any proceeding to adopt the child; or the execution of a consent to terminate the birth mother's parental rights under the provisions of section 16-2005(5), Idaho Code, whichever occurs first, is deemed to have waived and surrendered any right in relation to the child and of any notice to proceedings for adoption of the child or for termination of parental rights of the birth mother. His consent to the adoption of the child shall not be required and he shall be barred from thereafter bringing or maintaining any action to establish his paternity of the child. Failure of such filing or registration shall constitute an abandonment of said child and shall constitute an irrevocable implied consent in any adoption or termination proceeding.

(5) The filing and registration of an unrevoked notice of the commencement of paternity proceedings by a putative father shall constitute prima facie evidence of the fact of his paternity in any contested proceeding under chapter 11, title 7, Idaho Code. The filing

of a notice of the commencement of paternity proceedings shall not be a bar to an action for termination of his parental rights under chapter 20, title 16, Idaho Code.

(6) An unmarried biological father of a child born out of wedlock who has filed and registered a notice of the filing of paternity proceedings may at any time revoke notice of intent to claim paternity previously filed. Upon receipt of written revocation, the effect shall be as if no notice of the filing of paternity proceedings had been filed or registered.

(7) In any adoption proceeding pertaining to a child born out of wedlock, if there is no showing that the putative father has consented to the adoption, a certificate shall be obtained from the vital statistics unit of the department of health and welfare, signed by the state registrar of vital statistics, which certificate shall state that a diligent search has been made of the registry of notices from putative fathers, and that no filing has been found pertaining to the father of the child in question, or if a filing is found, stating the name of the putative father and the time and date of filing. That certificate shall be filed with the court prior to entry of a final decree of adoption.

(8) Identities of putative fathers can only be released pursuant to procedures contained in chapter 1, title 74, Idaho Code.
(9) To cover the cost of implementing and maintaining said central registry, the vital statistics unit of the department of health and welfare shall charge a filing fee of ten dollars ($10.00) at the time the putative father files his notice of his commencement of proceedings. The department shall also charge a reasonable fee to cover all costs incurred in a search of the Idaho putative father registry and for furnishing a certificate in accordance with the provisions of this section and section 16-1504, Idaho Code. It is the intent of the legislature that the fee shall cover all direct and indirect costs incurred pursuant to this section and section 16-1504, Idaho Code. The department shall annually review the fees and expenses incurred pursuant to administering the provisions of this section and section 16-1504, Idaho Code.

(10) Consistent with its authority denoted in the vital statistics act, section 39-242(c), Idaho Code, the board of health and welfare shall adopt, amend and repeal rules for the purpose of carrying out the provisions of this section.

(11) The department shall produce and distribute, within the limits of continuing annual appropriations duly made available to the department by the legislature for such purposes, a pamphlet or publication informing the public about the Idaho putative father registry, printed in English and Spanish. The pamphlet shall indicate the procedures to be followed in order to receive notice of any proceeding for the adoption of a child that an unmarried biological father claims to have fathered and of any proceeding for termination of his parental rights, voluntary acknowledgment of paternity, the consequences of acknowledgment of paternity, the consequences of failure to acknowledge paternity and the address of the Idaho putative father registry. Within the limits of continuing annual appropriations duly made available to the department by the legislature for such purposes, such pamphlets or publications shall be made available for distribution to the public at all offices of the department of health and welfare. Upon request, the department shall also provide such pamphlets or publications to hospitals, libraries, medical clinics, schools, colleges, universities, providers of child-related services and children's agencies licensed in the state of Idaho or advertising services in the state of Idaho.

(12) Within the limits of continuing annual appropriations duly made available to the department by the legislature for such purposes, each county clerk, branch office of the department of motor vehicles, all offices of the department of health and welfare, hospitals and local health districts shall post in a conspicuous place a notice that informs the public about the purpose and operation of the Idaho putative father registry. The notice must include information regarding the following:

(a) Where to obtain a registration form;

(b) Where to register;

(c) The procedures to follow in order to file proceedings to establish paternity of a child born out of wedlock;

(d) The consequences of a voluntary acknowledgment of paternity; and

(e) The consequences of failure to acknowledge paternity.

(13) The department shall host on the department's web page a public service announcement (PSA) informing the public about the Idaho putative father registry, printed in English and Spanish. The PSA shall indicate the procedures to be followed in order to receive notice of any proceeding for the adoption of a child that an unmarried biological father claims to have fathered and of any proceeding for termination of his parental rights, voluntary acknowledgment of paternity, the consequences of acknowledgment of paternity, the consequences of failure to acknowledge paternity and the address of the Idaho putative father registry.

(14) Failure to post a proper notice under the provisions of this section does not relieve a putative father of the obligation to file notice of the filing of proceedings to establish his paternity pursuant to this section or to commence proceedings to establish paternity pursuant to section 7-1111, Idaho Code, prior to the filing of any proceeding to terminate parental rights of the birth mother.

(15) A person who knowingly or intentionally falsely files or registers as a putative father is guilty of a misdemeanor.

(most recent amendment, 2023)

§ 16-1514. Petition for adoption of foreign born child

(1) Proceedings to adopt a foreign born child who has been allowed to enter the United States for the purpose of adoption shall be commenced by the filing of a petition under this section. A petition under this section shall be initiated by the person or persons proposing to adopt the child and shall be filed with the district court of the judicial district in which said person or persons reside. The petitioner shall have

resided and maintained a dwelling within the state of Idaho for at least six (6) consecutive months prior to the filing of a petition. The petition shall set forth the following:

(a) The name and address of the petitioner or petitioners;

(b) The name of the child proposed to be adopted and the name by which he or she shall be known when adopted;

(c) The degree of relationship of the child, if any, to the petitioner or petitioners;

(d) The child's country of origin, and date of birth, if known;

(e) That the child has been issued a visa or other document authorizing entry into the United States as an immigrant or for the purpose of adoption or for humanitarian reasons relating to adoption in the United States and the date of the person's entry into the United States;

(f) That a home study of the petitioner or petitioners was prepared and the name of the person or agency performing the home study. A copy of the home study shall be attached to the petition;

(g) That, to the information and belief of the petitioners, the biological parents of the child to be adopted are residents of another country;

(h) That the adoption of such child is in the child's best interests.

(2) At the time fixed for the hearing on a petition for adoption under this section, the person or persons adopting the child and the child to be adopted must appear before the court where the petition was filed. The judge shall examine the petitioner or petitioners at the hearing and, if satisfied that the proposed adoption is in the best interests of the child to be adopted, shall enter a decree of adoption. The petitioner or petitioners shall at such time execute an agreement to the effect that the child shall be adopted and treated in all respects as the petitioner's own lawful child.

(3) This section governs the adoption of all foreign born children who have entered the United States to be adopted. Notwithstanding any other provision of this chapter, no consent shall be required from the biological parents of the child to be adopted if the child has been granted permission by the United States department of state or United

States department of homeland security to enter the United States for the purpose of adoption or for humanitarian reasons relating to adoption by United States citizens. A visa or other document from the United States department of state or United States department of homeland security authorizing entry into the United States for the purpose of adoption, or for humanitarian reasons relating to adoption by United States citizens, shall be deemed conclusive evidence of the termination of the parental rights of the biological parents and compliance with the laws of the country of the child's birth. The provisions of chapter 20, title 16, Idaho Code, shall not apply to adoptions under this section.

(4) The decisions and orders of foreign courts and government agencies, authorized to approve adoptions, shall be accorded judicial comity or the same full faith and credit accorded a judgment of a sister state without additional proceedings or documentation, provided the United States department of state or United States department of homeland security has allowed the child to enter the United States as set forth in subsection (3) of this section.

(most recent amendment, 2006)

§ 16-1514A. International adoption

(1) When an Idaho resident adopts a child in a foreign country in accordance with the laws of the foreign country, and such adoption is recognized as full and final by the United States government, such resident may file with a petition a copy of the decree, order or certificate of adoption which evidences finalization of the adoption in the foreign country, together with a certified translation thereof if it is not in English, and proof of full and final adoption from the United States government with the clerk of the court of any county in this state having jurisdiction over the person or persons filing such documents.

(2) The court shall assign a docket number and file and enter the documents referenced in subsection (1) of this section with an order recognizing the foreign adoption without the necessity of a hearing. Such order, along with the final decree, order or certificate from the

foreign country shall have the same force and effect as if a final order of adoption were granted in accordance with the provisions of this chapter.

(3) When such order is filed and entered, the adoptive parents may request a report of adoption as provided in section 39-259, Idaho Code.

(as added, 2006)

§ 16-1515. Revocation of adoption – Payment of expenses of adoptive parents

(1) If a natural parent withdraws or revokes a consent to adoption and the court orders that the custody of the child be returned to the natural parent upon the petition of a natural parent, whether or not the order of adoption has been entered, the court shall order the natural parent who so petitioned to reimburse the adoptive or prospective adoptive parents for all adoption expenses including, but not limited to, all medical fees and costs and all legal fees and costs, and all other reasonable costs and expenses including, but not limited to, expenses for food and clothing incurred by the adoptive or prospective adoptive parents in connection with the care and maintenance of the child while the child was living with the adoptive or prospective adoptive parents. The court shall determine the amount of the reimbursement owing and shall enter the same as a money judgment in favor of the adoptive or prospective adoptive parents.

(2) If the natural parent agrees to consent to the adoption and the adoption proceedings have been initiated by the prospective adoptive parents in accordance with that agreement but the natural parent thereafter refuses to execute the consent to adoption, the prospective adoptive parents may file a motion for restitution in the adoption action and the court may order reimbursement as provided in subsection (1) of this section, or the prospective adoptive parents may file a suit independent of the adoption proceedings for damages which may include those items described in subsection (1) of this section.

(3) For purposes of this section, "prospective adoptive parents" shall include foster parents who have initiated adoption proceedings with respect to the child for whom foster care is being provided, but shall not include foster parents who are wholly or partially reimbursed by the state of Idaho for the care of the child.

(as added, 1998)

Idaho Child Protective Act (C.P.A.)

§ 16-1601. Policy

The policy of the state of Idaho is hereby declared to be the establishment of a legal framework conducive to the judicial processing including periodic review of child abuse, abandonment and neglect cases, and the protection of any child whose life, health or welfare is endangered. At all times, the health and safety of the child shall be the primary concern. Each child coming within the purview of this chapter shall receive, preferably in his own home, the care, guidance and control that will promote his welfare and the best interest of the state of Idaho, and if he is removed from the control of one (1) or more of his parents, guardian or other custodian, the state shall secure adequate care for him; provided, however, that the state of Idaho shall, to the fullest extent possible, seek to preserve, protect, enhance and reunite the family relationship. Nothing in this chapter shall be construed to allow discrimination on the basis of disability. This chapter seeks to coordinate efforts by state and local public agencies, in cooperation with private agencies and organizations, citizens' groups, and concerned individuals, to:

(1) Preserve the privacy and unity of the family whenever possible;

(2) Take such actions as may be necessary and feasible to prevent the abuse, neglect, abandonment or homelessness of children;

(3) Take such actions as may be necessary to provide the child with permanency including concurrent planning;

(4) Clarify for the purposes of this act the rights and responsibilities of parents with joint legal or joint physical custody of children at risk; and

(5) Maintain sibling bonds by placing siblings in the same home when possible, and support or facilitate sibling visitation when not, unless such contact is not in the best interest of one (1) or more of the children.

(most recent amendment, 2018)

§ 16-1602. Definitions

For purposes of this chapter:

(1) "Abused" means any case in which a child has been the victim of:

(a) Conduct or omission resulting in skin bruising, bleeding, malnutrition, burns, fracture of any bone, head injury, soft tissue swelling, failure to thrive or death, and such condition or death is not justifiably explained, or where the history given concerning such condition or death is at variance with the degree or type of such condition or death, or the circumstances indicate that such condition or death may not be the product of an accidental occurrence; or

(b) Sexual conduct, including rape, molestation, incest, commercial sexual activity, obscene or pornographic photographing, filming or depiction for commercial purposes, human trafficking as defined in chapter 86, title 18, or other similar forms of sexual exploitation harming or threatening the child's health or welfare or mental injury to the child.

(2) "Abandoned" means the failure of the parent to maintain a normal parental relationship with his child including, but not limited to, reasonable support or regular personal contact. Failure to maintain this relationship without just cause for a period of one (1) year shall constitute prima facie evidence of abandonment.

(3) "Adaptive equipment" means any piece of equipment or any item that is used to increase, maintain or improve the parenting capabilities of a parent with a disability.

(4) "Adjudicatory hearing" means a hearing to determine:

(a) Whether the child comes under the jurisdiction of the court pursuant to the provisions of this chapter;

(b) Whether continuation of the child in the home would be contrary to the child's welfare and whether the best interest of the child requires protective supervision or vesting legal custody of the child in an authorized agency.

(5) "Age of developmentally appropriate" means:

(a) Activities that are generally accepted as suitable for children of the same chronological age or level of maturity or that are determined to be developmentally appropriate for a child, based on the development of cognitive, emotional, physical and behavioral capacities that are typical for an age or age group; and

(b) In the case of a specific child, activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical and behavioral capacities of the child.

(6) "Aggravated circumstances" includes, but is not limited to:

(a) Circumstances in which the parent has engaged in any of the following:

(i) Abandonment, chronic abuse or chronic neglect of the child. Chronic neglect or chronic abuse of a child shall consist of abuse or neglect that is so extreme or repetitious as to indicate that return of the child to the home would result in unacceptable risk to the health and welfare of the child.

(ii) Sexual abuse against a child of the parent. Sexual abuse, for the purposes of this section, includes any conduct described in section 18-1506, 18-1506A, 18-1507, 18-1508, 18-1508A, 18-6101, or 18-6604, or chapter 86, title 18, Idaho Code.

(iii) Torture of a child. Any conduct listed in section 18-8303(1), Idaho Code; 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;

(b) The parent has committed murder, aided or abetted a murder, solicited a murder or attempted or conspired to commit murder; or

(c) The parental rights of the parent to another child have been terminated involuntarily.

(7) "Authorized agency" means the department, a local agency, a person, an organization, corporation, benevolent society or association

licensed or approved by the department or the court to receive children for control, care, maintenance or placement.

(8) "Caregiver" means a foster parent with whom a child in foster care has been placed or a designated official for a child care institution in which a child in foster care has been placed.

(9) "Case plan hearing" means a hearing to approve, modify or reject the case plan as provided in section 16-1621, Idaho Code.

(10) "Child" means an individual who is under the age of eighteen (18) years.

(11) "Child advocacy center" or "CAC" means an organization that adheres to national best practice standards established by the national membership and accrediting body for children's advocacy centers and that promotes a comprehensive and coordinated multidisciplinary team response to allegations of child abuse by maintaining a child-friendly facility at which appropriate services are provided. These services may include forensic interviews, forensic medical examinations, mental health services and other related victim services.

(12) "Circumstances of the child" includes, but is not limited to, the joint legal custody or joint physical custody of the child.

(13) "Commit" means to transfer legal and physical custody.

(14) "Concurrent planning" means a planning model that prepares for and implements different outcomes at the same time.

(15) "Court" means district court or magistrate division thereof or, if the context requires, a magistrate or judge thereof.

(16) "Custodian" means a person, other than a parent or legal guardian, to whom legal or joint legal custody of the child has been given by court order.

(17) "Department" means the department of health and welfare and its authorized representatives.

(18) "Disability" means, with respect to an individual, any mental or physical impairment that substantially limits one (1) or more major life activities of the individual including, but not limited to, self-care, manual tasks, walking, seeing, hearing, speaking, learning or working, or a record of such an impairment, or being regarded as having such an impairment. Disability shall not include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, other sexual behavior disorders, or substance use disorders, compulsive gambling, kleptomania or pyromania. Sexual preference or orientation is not considered an impairment or disability. Whether an impairment substantially limits a major life activity shall be determined without consideration of the effect of corrective or mitigating measures used to reduce the effects of the impairment.

(19) "Family or household member" shall have the same meaning as in section 39-6303(6), Idaho Code.

(20) "Foster care" means twenty-four (24) hour substitute parental care for children placed away from their parents or guardians by persons who may or may not be related to the children and for whom the state agency has placement and care responsibility.

(21) "Foster parent" means a person or persons licensed to provide foster care.

(22) "Grant administrator" means the supreme court or any organization or agency as may be designated by the supreme court in accordance with such procedures as may be adopted by the supreme court. The grant administrator shall administer funds from the guardian ad litem account in accordance with the provisions of this chapter.

(23) "Guardian ad litem" means a person appointed by the court pursuant to a guardian ad litem volunteer program to act as special advocate for a child under this chapter.

(24) "Guardian ad litem coordinator" means a person or entity receiving moneys from the grant administrator for the purpose of carrying out any of the duties set forth in section 16-1632, Idaho Code.

(25) "Guardian ad litem program" means the program to recruit, train and coordinate volunteer persons to serve as guardians ad litem for abused, neglected or abandoned children.

(26) "Homeless," as used in this chapter, shall mean that the child is without adequate shelter or other living facilities, and the lack of such shelter or other living facilities poses a threat to the health, safety or well-being of the child.

(27) "Idaho network of children's advocacy centers" means an organization that provides education and technical assistance to child advocacy centers and to interagency multidisciplinary teams developed pursuant to section 16-1617, Idaho Code.

(28) "Law enforcement agency" means a city police department, the prosecuting attorney of any county, state law enforcement officers, or the office of a sheriff of any county.

(29) "Legal custody" means a relationship created by court order, which vests in a custodian the following rights and responsibilities:

(a) To have physical custody and control of the child, and to determine where and with whom the child shall live.

(b) To supply the child with food, clothing, shelter and incidental necessities.

(c) To provide the child with care, education and discipline.

(d) To authorize ordinary medical, dental, psychiatric, psychological, or other remedial care and treatment for the child, including care and treatment in a facility with a program of services for

children; and to authorize surgery if the surgery is deemed by two (2) physicians licensed to practice in this state to be necessary for the child.

(e) Where the parents share legal custody, the custodian may be vested with the custody previously held by either or both parents.

(30) "Mental injury" means a substantial impairment in the intellectual or psychological ability of a child to function within a normal range of performance and/or behavior, for short or long terms.

(31) "Neglected" means a child:

(a) Who is without proper parental care and control, or subsistence, medical or other care or control necessary for his well-being because of the conduct or omission of his parents, guardian or other custodian or their neglect or refusal to provide them; however, no child whose parent or guardian chooses for such child treatment by prayers through spiritual means alone in lieu of medical treatment shall be deemed for that reason alone to be neglected or lack parental care necessary for his health and well-being, but this subsection shall not prevent the court from acting pursuant to section 16-1627, Idaho Code; or

(b) Whose parent, guardian or other custodian is unable to discharge the responsibilities to and for the child and, as a result of such inability, the child lacks the parental care necessary for his health, safety or well-being; or

(c) Who has been placed for care or adoption in violation of law; or

(d) Who is without proper education because of the failure to comply with section 33-202, Idaho Code.

(32) "Order to prevent removal," as described in section 16-1611(5), Idaho Code,
means an order to allow a child to remain in the child's present surroundings when there is reasonable cause to believe the child is safe in the sole care of one (1) parent, legal guardian, or legal custodian and when there is alleged neglect or abuse by another parent, legal guardian, or legal custodian.

(33) "Permanency hearing" means a hearing to review, approve, reject or modify the permanency plan of the department and to review reasonable efforts in accomplishing the permanency plan.

(34) "Permanency plan" means a plan for a continuous residence and maintenance of nurturing relationships during the child's minority.

(35) "Protective supervision" is a legal status created by court order a child protective case whereby the child is in the legal custody of his or her parent(s), guardian(s) or other legal custodian(s), subject to supervision by the department.

(36) "Psychotropic medication" means a drug prescribed to affect psychological functioning, perception, behavior or mood. Psychotropic medications include, but are not limited to, antidepressants, mood stabilizers, antipsychotics, antianxiety medications, sedatives and stimulants.

(37) "Qualified individual" means a trained professional or licensed clinician who is not connected to or affiliated with any placement setting in which children are 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.

(38) "Qualified residential treatment program" means a program that has a trauma-informed treatment model designed to address the needs of children 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 section 16-1619A(2), Idaho Code, and is licensed and accredited in accordance with state and federal law.

(39) "Reasonable and prudent parent standard" means the standard of care characterized by careful and sensible parental decisions that maintain the health, safety and best interests of a child while simultaneously encouraging the emotional and developmental growth

of the child, that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the state to participate in extracurricular, enrichment, cultural or social activities.

(40) "Relative" means a child's grandparent, great grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, first cousin, sibling and half-sibling.

(41) "Residual parental rights and responsibilities" means those rights and responsibilities remaining with the parents after the transfer of legal custody including, but not necessarily limited to, the right of visitation, the right to consent to adoption, the right to determine religious affiliation, the right to family counseling when beneficial, and the responsibility for support.

(42) "Shelter care" means places designated by the department for temporary care of children pending court disposition or placement.

(43) "Supportive services," as used in this chapter, shall mean services that assist parents with a disability to compensate for those aspects of their disability that affect their ability to care for their child and that will enable them to discharge their parental responsibilities. The term includes specialized or adapted training, evaluations or assistance with effectively using adaptive equipment and accommodations that allow parents with a disability to benefit from other services including, but not limited to, Braille texts or sign language interpreters.

(most recent amendment, 2025)

§ 16-1603. Jurisdiction of the courts

(1) Except as otherwise provided herein, the court shall have exclusive original jurisdiction in all proceedings under this chapter concerning any child living or found within the state:

(a) Who is neglected, abused or abandoned by his parents, guardian or other legal custodian, or who is homeless; or

(b) Whose parents or other legal custodian fails to provide a stable home environment.

(2) If the court has taken jurisdiction over a child under subsection (1) of this section, it may take jurisdiction over another child living or having custodial visitation in the same household without the filing of a separate petition if it finds all of the following:

(a) The other child is living or is found within the state;

(b) The other child has been exposed to or is at risk of being a victim of abuse, neglect or abandonment;

(c) The other child is listed in the petition or amended petition;

(d) The parents or legal guardians of the other child have notice as provided in section 16-1611, Idaho Code.

(most recent amendment, 2005)

§ 16-1604. Retention of jurisdiction

(1) Jurisdiction obtained by the court under this chapter shall be retained until the child's eighteenth birthday, unless terminated prior thereto or extended by the court pursuant to section 16-1622(5), Idaho Code. Jurisdiction of the court shall not be terminated by an order of termination of parental rights if guardianship and/or custody of the child is placed with the department of health and welfare.

(2) The parties have an ongoing duty to inquire concerning, and inform the court as soon as possible about, any other pending actions or current orders involving the child. In the event there are conflicting orders from Idaho courts concerning the child, the child protection order is controlling.

(most recent amendment, 2021)

§ 16-1605. Reporting of abuse, abandonment or neglect

(1) Any physician, resident on a hospital staff, intern, nurse, coroner, school teacher, day care personnel, social worker, or other person having reason to believe that a child under the age of eighteen (18) years has been abused, abandoned or neglected or who observes the child being subjected to conditions or circumstances that would

reasonably result in abuse, abandonment or neglect shall report or cause to be reported within twenty-four (24) hours such conditions or circumstances to the proper law enforcement agency or the department. The department shall be informed by law enforcement of any report made directly to it. If the department knows or has reason to know that an adult in the home has been convicted of lewd and lascivious conduct or felony injury to a child in the past or that the child has been removed from the home for circumstances that resulted in a conviction for lewd and lascivious conduct or felony injury to a child, then the department shall investigate. When the attendance of a physician, resident, intern, nurse, day care worker, or social worker is pursuant to the performance of services as a member of the staff of a hospital or similar institution, he shall notify the person in charge of the institution or his designated delegate who shall make the necessary reports.

(2) For purposes of subsection (3) of this section, the term "duly ordained minister of religion" means a person who has been ordained or set apart, in accordance with the ceremonial, ritual or discipline of a church or religious organization which has been established on the basis of a community of religious faith, belief, doctrines and practices, to hear confessions and confidential communications in accordance with the bona fide doctrines or discipline of that church or religious organization.

(3) The notification requirements of subsection (1) of this section do not apply to a duly ordained minister of religion, with regard to any confession or confidential communication made to him in his ecclesiastical capacity in the course of discipline enjoined by the church to which he belongs if:

(a) The church qualifies as tax-exempt under 26 U.S.C. 501(c)(3);

(b) The confession or confidential communication was made directly to the duly ordained minister of religion; and

(c) The confession or confidential communication was made in the manner and context that places the duly ordained minister of religion specifically and strictly under a level of confidentiality that is considered inviolate by canon law or church doctrine. A confession or

confidential communication made under any other circumstances does not fall under this exemption.

(4) Failure to report as required in this section shall be a misdemeanor.

(most recent amendment, 2018)

§ 16-1606. Immunity

Any person who has reason to believe that a child has been abused, abandoned or neglected and, acting upon that belief, makes a report of abuse, abandonment or neglect as required in section 16-1605, Idaho Code, shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any such judicial proceeding resulting from such report. Any person who reports in bad faith or with malice shall not be protected by this section. Any privilege between husband and wife, or between any professional person except the lawyer-client privilege, including but not limited to physicians, counselors, hospitals, clinics, day care centers and schools and their clients shall not be grounds for excluding evidence at any proceeding regarding the abuse, abandonment or neglect of the child or the cause thereof.

(most recent amendment, 2005)

§ 16-1607. Reporting in bad faith – Civil damages

Any person who makes a report or allegation of child abuse, abandonment or neglect knowing the same to be false or who reports or alleges the same in bad faith or with malice shall be liable to the party or parties against whom the report was made for the amount of actual damages sustained or statutory damages of two thousand five hundred dollars ($2,500), whichever is greater, plus attorney's fees and costs of suit. If the court finds that the defendant acted with malice or oppression, the court may award treble actual damages or treble statutory damages, whichever is greater.

(most recent amendment, 2007)

§ 16-1608. Emergency removal

(1) A child may be taken into shelter care by a peace officer without an order issued pursuant to subsection (4) of section 16-1611 or section 16-1619, Idaho Code, only where the child is endangered in his surroundings and prompt removal is necessary to prevent serious physical or mental injury to the child or where the child is an abandoned child pursuant to the provisions of chapter 82, title 39, Idaho Code.

(2) When a child is taken into shelter care under subsection (1) of this section, he may be held for a maximum of forty-eight (48) hours, excluding Saturdays, Sundays and holidays, unless a shelter care hearing has been held pursuant to section 16-1615, Idaho Code, and the court orders an adjudicatory hearing.

(most recent amendment, 2025)

§ 16-1609. Emergency removal – Notice

(1) A peace officer who takes a child into shelter care under section 16-1608, Idaho Code, shall immediately:

(a) Take the child to a place of shelter; and

(b) Notify the court of the action taken and the place to which the child was taken; and

(c) With the exception of a child abandoned pursuant to the provisions of chapter 82, title 39, Idaho Code, notify each of the parents, guardian or other legal custodian that the child has been taken into shelter care, the type and nature of shelter care, and that the child may be held for a maximum of forty-eight (48) hours, excluding Saturdays, Sundays and holidays, within which time there must be a shelter care hearing.

(2) A peace officer who takes a child into shelter care under section 16-1608, Idaho Code, shall not be held liable either criminally or civilly

unless the action of taking the child was exercised in bad faith and/or the requirements of subsection (1) of this section are not complied with.

(most recent amendment, 2005)

§ 16-1610. Petition

(1) A petition invoking the jurisdiction of the court under this chapter shall be filed in the manner provided in this section:

(a) A petition must be signed by the prosecutor or deputy attorney general before being filed with the court.

(b) Any person or governmental body of this state having evidence of abuse, abandonment, neglect or homelessness of a child may request the attorney general or prosecuting attorney to file a petition. The prosecuting attorney or the attorney general may file a petition on behalf of any child whose parent, guardian, or custodian has been accused in a criminal complaint of the crime of cruel treatment or neglect as defined in section 18-1501, Idaho Code.

(2) Petitions shall be entitled "In the Matter of....., a child under the age of eighteen (18) years" and shall be verified and set forth with specificity:

(a) The facts which bring the child within the jurisdiction of the court upon the grounds set forth in section 16-1603, Idaho Code, with the actions of each parent described therein;

(b) The name, birth date, sex, and residence address of the child;

(c) The name, birth date, sex, and residence address of all other children living at or having custodial visitation at the home where the injury to the subject child occurred;

(d) The names and residence addresses of both the mother and father, guardian or other custodian. If neither of his parents, guardian or other custodian resides or can be found within the state, or if their residence addresses are unknown, the name of any known adult relative residing within the state;

(e) The names and residence addresses of each person having sole or joint legal custody of the children described in this section;

(f) Whether or not there exists a legal document including, but not limited to, a divorce decree, stipulation or parenting agreement controlling the custodial status of the children described in this section;

(g) Whether the child is in shelter care, and, if so, the type and nature of the shelter care, the circumstances necessitating such care and the date and time he was placed in such care;

(h) When any of the facts required by this section cannot be determined, the petition shall so state. The petition may be based on information and belief but in such case the petition shall state the basis of such information and belief;

(i) If the child has been or will be removed from the home, the petition shall state that:

(i) Remaining in the home was contrary to the welfare of the child;

(ii) Vesting legal custody of the child in the department or other authorized agency is in the best interests of the child; and

(iii) Reasonable efforts have been made prior to the placement of the child in care to prevent the removal of the child from his home or, if such efforts were not provided, that reasonable efforts to prevent placement were not required because aggravated circumstances were found;

(j) The petition shall state with specificity whether a parent with joint legal custody or a noncustodial parent has been notified of placement;

(k) The petition shall state whether a court has adjudicated the custodial rights of the parents and shall set forth the custodial status of the child;

(l) The court may combine petitions and hearings where multiple petitions have been filed involving related children, parents or guardians.

(most recent amendment, 2013)

§ 16-1611. Summons

(1) After a petition has been filed, the clerk of the court may issue a summons requiring the person or persons who have custody of the child to bring the child before the court at the adjudicatory hearing held in

accordance with section 16-1619, Idaho Code. Each parent or guardian shall also be notified in the manner hereinafter provided of the pendency of the case and the time and place set for the hearing. A summons shall be issued and served requiring the appearance of each parent and legal guardian, and a summons may be issued and served for any other person whose presence is required by the child, either of his parents or guardian or any other person whose presence, in the opinion of the court, is necessary.

(2) A copy of the petition shall be attached to each summons.

(3) The summons shall notify each of the parents, guardian or legal custodian of their right to retain and be represented by counsel. Each parent or legal guardian of each child named in the petition shall be notified by the court of the case and of the time and place set for the hearing.

(4) If based on facts presented to the court, it appears that the court has jurisdiction upon the grounds set forth in section 16-1603, Idaho Code, and the court finds that the child should be removed from his present condition or surroundings because continuation in such condition or surroundings would be contrary to the welfare of the child and vesting legal custody with the department or other authorized agency would be in the child's best interests, the court shall include on the summons an order to remove the child. The order to remove the child shall specifically state that continuation in the present condition or surroundings is contrary to the welfare of the child and shall require a peace officer or other suitable person to take the child at once to a place of shelter care designated by the authorized agency which shall provide shelter care for the child.

(5) (a) If there is reasonable cause to believe that a child would be safe in the child’s present surroundings in the sole care of one (1) parent, legal guardian, or legal custodian and neglect or abuse by another parent, legal guardian, or legal custodian is alleged, then a prosecutor or the attorney general may file a motion with the court for an order to prevent removal of the child that excludes the alleged offending parent,

legal guardian, or legal custodian from the residence where the child resides. If the court finds reasonable cause to believe that such elements have been demonstrated, the court shall issue an order that shall exclude the alleged offending parent, legal guardian, or legal custodian from the dwelling where the child resides, restrain any contact or communication with the child, and 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.

(b) A motion filed pursuant to paragraph (a) of this subsection shall be accompanied by a sworn affidavit from a law enforcement officer or the department.

(c) A copy of an order to prevent removal along with a copy of the petition and summons shall be served on the alleged offending parent, legal guardian, or legal custodian, and all parents, legal guardians, or legal custodians shall receive notice of a hearing on whether to continue an order within forty-eight (48) hours, excluding Saturdays, Sundays, and holidays.

(d) The court shall 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:

(i) A petition and summons have been issued pursuant to subsection (1) of this section;

(ii) There is reasonable cause to believe the child is safe in the child's current surroundings in the sole care of one (1) parent, legal guardian, or legal custodian but has been neglected or abused by the other parent, legal guardian, or legal custodian; and

(iii) Continuation of the order is in the child's best interest.

(e) Any person who fails to abide by an order to prevent removal shall be guilty of misdemeanor criminal contempt, as described in section 18-1801, Idaho Code.

(most recent amendment, 2025)

§ 16-1612. Service of summons – Travel expenses – Necessary witnesses

(1) Service of summons shall be made personally by delivery of an attested copy thereof to the person summoned; provided that if the court is satisfied that it is impracticable to serve personally such summons or the notice provided for in the preceding section, he may order service by registered mail addressed to the last known address, or by publication thereof, or both. It shall be sufficient to confer jurisdiction if service is effected at least forty-eight (48) hours before the time fixed in the summons for the hearing.

(2) When publication is used the summons shall be published once a week for two (2) consecutive weeks in a newspaper of general circulation in the county; such newspaper to be designated by the court in the order for publication of the summons, and such publication shall have the same force and effect as though such person had been personally served with said summons.

(3) Service of summons, process or notice required by this chapter shall be made by the sheriff or other person appointed by the court, and a return must be made on the summons showing that service has been made.

(4) The court may authorize payment of any necessary travel expenses incurred by any person summoned or otherwise required to appear at the hearing of any case coming within the purview of this chapter, and such expenses when approved by the court shall be a charge upon the county, except that not more than five (5) witnesses on behalf of any parent or guardian may be required to attend such hearing at the expense of the county.

(5) The court may summon the appearance of any person whose presence is deemed necessary as a witness.

(6) The child, each of his parents, guardian or custodian shall be notified as soon as practicable after the filing of a petition and prior to the start of a hearing of their right to be represented by counsel.

(7) If any person summoned as herein provided shall, without reasonable cause, fail to appear, the court may proceed in such person's absence or such person may be proceeded against for contempt of court.

(8) Where the summons cannot be served, or the parties served fail to obey the same, or in any case when it shall be made to appear to the court that the service will be ineffectual, or that the welfare of the child requires that he be brought forthwith into the custody of the court, a warrant or capias may be issued for the parent, guardian or the child.

(most recent amendment, 2005)

§ 16-1613. Hearings under the child protective act

(1) Proceedings under this chapter shall be dealt with by the court at hearings separate from those for adults and without a jury. The hearings shall be conducted in an informal manner and may be adjourned from time to time. 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. The child may be excluded from hearings at any time at the discretion of the court. If the parent or guardian is without counsel, the court shall inform them of their right to be represented by counsel and to appeal from any disposition or order of the court.

(2) When a child is summoned as a witness in any hearing under this act, notwithstanding any other statutory provision, parents, a counselor, a friend, or other person having a supportive relationship with the child shall, if available, be permitted to remain in the courtroom at the witness stand with the child during the child's testimony unless, in written findings made and entered, the court finds that the constitutional right of the child's parent(s), guardian(s) or other custodian(s) to a fair hearing will be unduly prejudiced.

(3) At any stage of a proceeding under this chapter, if the court determines that it is in the best interests of the child or society, the court may cause the proceeding to be expanded or altered to include full or

partial consideration of the cause under the juvenile corrections act without terminating the original proceeding under this chapter.

(most recent amendment, 2005)

§ 16-1614. Appointment of guardian ad litem, counsel for guardian ad litem, counsel for child

(1) In any proceeding under this chapter for a child under the age of twelve (12) years, the court shall appoint a guardian ad litem for the child or children and shall appoint counsel to represent the guardian ad litem, unless the guardian ad litem is already represented by counsel. If a court does not have available to it a guardian ad litem program or a sufficient number of guardians ad litem, the court shall appoint counsel for the child. In appropriate cases, the court may appoint a guardian ad litem for the child and counsel to represent the guardian ad litem and may, in addition, appoint counsel to represent the child.

(2) In any proceeding under this chapter for a child twelve (12) years of age or older, the court:

(a) Shall appoint counsel to represent the child and may, in addition, appoint a guardian ad litem; or

(b) Where appointment of counsel is not practicable or not appropriate, may appoint a guardian ad litem for the child and shall appoint counsel to represent the guardian ad litem, unless the guardian ad litem is already represented by counsel.

(3) Counsel appointed for the child under the provisions of this section shall be paid for by the office of the state public defender unless the party for whom counsel is appointed has an independent estate sufficient to pay such costs.

(4) (a) The legislature finds that guardian ad litem representation has been addressed differently throughout the state, with some counties providing representation through their public defense office or public defense contracts, or in other areas of the state with pro bono representation. The legislature finds that providing guardian ad litem

representation through the office of the state public defender would create numerous costly conflicts of interest that would detract from the office's mission. Therefore, it is the intent of the legislature to keep guardian ad litem representation administered locally with reimbursement provided by state funds when needed. It is not the intent of the legislature to disrupt, terminate, or otherwise inhibit any pro bono programs that now exist or may hereinafter be created to provide counsel for guardians ad litem.

(b) Counsel appointed for a guardian ad litem shall first come from volunteer attorneys willing to represent the guardian ad litem pro bono unless the party for whom counsel is appointed has an independent estate sufficient to pay such costs. Absent available volunteer pro bono counsel, attorneys for the guardian ad litem shall be paid by the county, and the county shall be reimbursed for the actual, verified costs of guardian ad litem representation the county incurred from the attorney costs for guardian ad litem account, as established in section 57-828, Idaho Code, by submitting a request to the office of the state public defender.

(most recent amendment, October 1, 2024)

§ 16-1615. Shelter care hearing

(1) Notwithstanding any other provision of this chapter, when a child is taken into shelter care pursuant to section 16-1608 or 16-1611, Idaho Code, a hearing to determine whether the child should be released shall be held according to the provisions of this section.

(2) Each of the parents or custodian from whom the child was removed shall be given notice of the shelter care hearing. Such notice shall include the time, place, and purpose of the hearing; and, that such person is entitled to be represented by legal counsel. Notice as required by this subsection shall be given at least twenty-four (24) hours before the shelter care hearing.

(3) Notice of the shelter care hearing shall be given to the parents or custodian from whom the child was removed by personal service and

the return of service shall be filed with the court and to any person having joint legal or physical custody of the subject child. Provided, however, that such service need not be made where the undelivered notice is returned to the court along with an affidavit stating that such parents or custodian could not be located or were out of the state.

(4) The shelter care hearing may be continued for a reasonable time upon request by the parent, custodian or counsel for the child.

(5) If, upon the completion of the shelter care hearing, it is shown that:

(a) A petition has been filed; and

(b) There is reasonable cause to believe the child comes within the jurisdiction of the court under this chapter and either:

(i) The department made reasonable efforts to eliminate the need for shelter care but the efforts were unsuccessful; or

(ii) The department made reasonable efforts to eliminate the need for shelter care but was not able to safely provide preventive services; and

(c) The child could not be placed in the temporary sole custody of a parent having joint legal or physical custody; and

(d) It is contrary to the welfare of the child to remain in the home; and

(e) It is in the best interests of the child to remain in temporary shelter care pending the conclusion of the adjudicatory hearing.

The court shall issue, within twenty-four (24) hours of such hearing, a shelter care order placing the child in the temporary legal custody of the department or other authorized agency. Any evidence may be considered by the court which is of the type which reasonable people may rely upon.

(6) Upon finding reasonable cause pursuant to subsection (5)(b) of this section, the court shall order an adjudicatory hearing to be held as soon as possible, but in no event later than thirty (30) days from the date the petition was filed. In addition, the court shall inquire whether there is reason to believe that the child is an Indian child.

(7) Upon entry of an order of shelter care, the court shall inquire:

(a) If the child is of school age, about the department's efforts to keep the child in the school at which the child is currently enrolled; and

(b) If a sibling group was removed from their home, about the department's efforts to place the siblings together, or if the department has not placed or will not be placing the siblings together, about a plan to ensure frequent visitation or ongoing interaction among the siblings, unless visitation or ongoing interaction would be contrary to the safety or well-being of one (1) or more of the siblings.

(8) If the court does not find that the child should be placed in or remain in shelter care under subsection (5) of this section, the child shall be released.

(9) If the court does not find reasonable cause pursuant to subsection (5)(b) of this section, the court shall dismiss the petition.

(most recent amendment, 2025)

§ 16-1616. Investigation

(1) After a petition has been filed, the department shall investigate the circumstances of the child and his family and prepare a written report to the court.

(2) The report shall be delivered to the court with copies to each of the parties prior to the pretrial conference for the adjudicatory hearing. If delivered by mail the report must be received by the court and the parties prior to the pretrial conference for the adjudicatory hearing. The report shall contain a social evaluation of the child and the parents or other legal custodian and such other information as the court shall require.

(3) The report shall not be considered by the court for purposes of determining whether the child comes within the jurisdiction of the act. The report may be admitted into evidence at the adjudicatory hearing for other purposes.

(most recent amendment, 2005)

§ 16-1617. Investigation by multidisciplinary teams

(1) The prosecuting attorney in each county shall be responsible for the development of an interagency multidisciplinary team or teams for investigation of child abuse and neglect referrals within each county. The teams shall consist of, but not be limited to, law enforcement personnel, department of health and welfare child protection risk assessment staff, child advocacy center staff where such staff is available in the county, a representative of the prosecuting attorney's office, and any other person deemed to be necessary due to his or her special training in child abuse investigation. Other persons may participate in investigation of particular cases at the invitation of the team and as determined necessary, such as medical personnel, school officials, mental health workers, personnel from domestic violence programs, persons knowledgeable about adaptive equipment and supportive services for parents or guardians with disabilities or the guardian ad litem program.

(2) The teams shall develop a written protocol for investigation of child abuse cases and for interviewing alleged victims of such abuse or neglect, including protocols for investigations involving a family member with a disability. Each team shall develop written agreements signed by member agencies, specifying the role of each agency, procedures to be followed to assess risks to the child and criteria and procedures to be followed to ensure the child victim's safety including removal of the alleged offender.

(3) Each team member shall be trained in his or her respective role, including risk assessment, dynamics of child abuse and interviewing and investigatory techniques. Such training may be provided by the Idaho network of children's advocacy centers or by the member's respective agency.

(4) Each team shall classify, assess and review a representative selection of cases referred to either the department or to law enforcement entities for investigation of child abuse or neglect.

(5) Each multidisciplinary team shall develop policies that provide for an independent review of investigation procedures utilized in cases upon completion of any court actions on those cases. The procedures shall include independent citizen input. Nonoffending parents of child abuse victims shall be notified of the review procedure.

(6) Prosecuting attorneys of the various counties may determine that multidisciplinary teams may be most effectively established through the use of joint exercise of powers agreements among more than one (1) county and such agreements are hereby authorized.

(7) Lack of review by a multidisciplinary team of a particular case does not defeat the jurisdiction of the court.

(most recent amendment, 2014)

§ 16-1618. Investigative interviews of alleged child abuse victims

Unless otherwise demonstrated by good cause, all investigative or risk assessment interviews of alleged victims of child abuse will be documented by audio or video taping whether conducted by personnel of law enforcement entities, the department of health and welfare or child advocacy centers. The absence of such audio or video taping shall not limit the admissibility of such evidence in any related court proceeding.

(most recent amendment, 2014)

§ 16-1618A. Investigation based upon immunization status prohibited

No investigation may be conducted pursuant to this chapter if it is based upon a child's immunization status.
(as added, 2023)

§ 16-1619. Adjudicatory hearing – Conduct of hearing – Consolidation

(1) When a petition has been filed, the court shall set an adjudicatory hearing to be held no later than thirty (30) days after the filing of the petition.

(2) A pretrial conference shall be held outside the presence of the court within three (3) to five (5) days before the adjudicatory hearing. Investigative reports required under section 16-1616, Idaho Code, shall be delivered to the court with copies to each of the parents and other legal custodians, guardian ad litem and attorney for the child prior to the pretrial conference.

(3) At the adjudicatory hearing, parents or guardians with disabilities shall have the right to introduce admissible evidence regarding how use of adaptive equipment or supportive services may enable the parent or guardian to carry out the responsibilities of parenting the child by addressing the reason for the removal of the child.

(4) If a preponderance of the evidence at the adjudicatory hearing shows that the child comes within the court's jurisdiction under this chapter upon the grounds set forth in section 16-1603, Idaho Code, the court shall so decree and in its decree shall make a finding on the record of the facts and conclusions of law upon which it exercises jurisdiction over the child.

(5) Upon entering its decree, the court shall consider any information relevant to the disposition of the child but in any event shall:

(a) Place the child under the protective supervision of the department for an indeterminate period not to exceed the child's eighteenth birthday; or

(b) Vest legal custody in the department or other authorized agency subject to residual parental rights and subject to full judicial review by the court and, when contested by any party, judicial approval of all matters relating to the custody of the child by the department or other

authorized agency. If the department has placed the child in a qualified residential treatment program, the court shall approve or disapprove the placement within sixty (60) days of placement in accordance with section 16-1619A, Idaho Code.

(6) If the court vests legal custody in the department or other authorized agency, the court shall make detailed written findings based on facts in the record, that, in addition to the findings required in subsection (4) of this section, continuation of residence in the home would be contrary to the welfare of the child and that vesting legal custody with the department or other authorized agency would be in the best interests of the child. In addition the court shall make detailed written findings based on facts in the record as to whether the department made reasonable efforts to prevent the placement of the child in foster care, including findings, when appropriate, that:

(a) Reasonable efforts were made but were not successful in eliminating the need for foster care placement of the child;

(b) The department made reasonable efforts to prevent removal but was not able to safely provide preventive services;

(c) Reasonable efforts to temporarily place the child with related persons were made but were not successful; or

(d) Reasonable efforts to reunify the child with one (1) or both parents were not required because aggravated circumstances were present. If aggravated circumstances are found, a permanency hearing for the child shall be held within thirty (30) days of the determination of aggravated circumstances.

(7) (a) The court shall also inquire regarding:

(i) Whether there is reason to believe that the child is an Indian child;

(ii) The efforts that have been made since the last hearing to determine whether the child is an Indian child; and

(iii) The department's 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.

(b) In addition, if the court vests legal custody of the child in the department or other authorized agency, the court shall inquire as to:

(i) If the child is of school age, the department's efforts to keep the child in the school at which the child is currently enrolled; and

(ii) If a sibling group was removed from the home, the department's efforts to place the siblings together, or if the department has not placed or will not be placing the siblings together, about a plan to ensure frequent visitation or ongoing interaction among the siblings, unless visitation or ongoing interaction would be contrary to the safety or well-being of one (1) or more of the siblings.

(c) If the court vests legal custody of the child in the department or other authorized agency and the child is being treated with psychotropic medication, these additional requirements shall apply:

(i) The department shall report to the court the medications and dosages prescribed for the child and the medical professional who prescribed the medication; and

(ii) The court shall inquire about and may make any additional inquiry relevant to the use of psychotropic medications.

(8) A decree vesting legal custody in the department shall be binding upon the department and may continue until the child's eighteenth birthday.

(9) A decree vesting legal custody in an authorized agency other than the department shall be for a period of time not to exceed the child's eighteenth birthday, and on such other terms as the court shall state in its decree to be in the best interests of the child and which the court finds to be acceptable to such authorized agency.

(10) If the court does not find that the child comes within the jurisdiction of this chapter pursuant to subsection (4) of this section, it shall dismiss the petition.

(11) Where legal custody of a child is vested in the department, any party or counsel for a child may, at or after the disposition phase of an

adjudicatory hearing, file and serve a written motion to contest matters relating to the placement of the child by the department. The hearing must be held no later than thirty (30) days from the date the motion was filed. If the court approves the placement, the court shall enter an order denying the motion. If the court does not approve the placement, the court shall enter an order directing the department to identify and implement an alternative placement in accordance with applicable law. The court shall consider everything necessary or proper in the best interests of the children. The court shall consider all relevant factors, which may include:

(a) The wishes of the child regarding the child's custodian;

(b) The wishes of the child's parent or parents regarding the child's custody, if appropriate;

(c) The interaction and interrelationship of the child with his parent or parents or foster parent or foster parents, and the child's siblings;

(d) The child's adjustment to his home, school and community;

(e) The character and circumstances of all individuals involved;

(f) The need to promote continuity and stability in the life of the child; and

(g) A history of domestic violence as defined in section 39-6303, Idaho Code, whether or not in the presence of the child, or a conviction for lewd and lascivious conduct or felony injury to a child.

(most recent amendment, 2025)

§ 16-1619A. Placement of a Child in a Qualified Residential Treatment Program.

(1) Where legal custody of a child is vested in the department, and the department places the child in a qualified residential treatment program, the department shall file a notice of the placement with the court within seven (7) days of the placement. The notice shall identify the placement and the date of the placement.

(2) Within thirty (30) days of the date of placement, a qualified individual shall conduct a placement assessment and prepare a written assessment report. The qualified individual shall:

(a) Assess the strengths and needs of the child using an age-appropriate, evidence-based, validated, and functional assessment tool;

(b) Determine whether the needs of the child can be met with family members or through placement in a foster family home or, if not, the specialized setting that will provide the most effective and appropriate level of care for the child in the least restrictive environment and be consistent with the short-term and long-term goals for the child, as set forth in the case plan or permanency plan currently in effect;

(c) Develop a list of child-specific short-term and long-term mental and behavioral health goals;

(d) Work in conjunction with the family of, and the permanency team for, the child while conducting the assessment; and

(e) Prepare an assessment specifying:

(i) Why the needs of the child cannot be met by the family of the child or in a foster home; and

(ii) Why the recommended placement in a qualified residential treatment program is the setting that will provide the most effective and appropriate level of care in the least restrictive environment and 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.

(3) The department shall prepare a written case plan for the child or amend the case plan if it has been previously ordered by the court and shall include the assessment report of the qualified individual.

(4) Within sixty (60) days of the start of each placement in a qualified residential treatment program, the court shall:

(a) Consider the assessment, determination, and documentation made by the qualified individual;

(b) Determine whether the needs of the child can be met through placement in a foster family home or, if not, whether placement in a qualified residential treatment program 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; and

(c) Approve or disapprove the placement.

(5) The assessment by the qualified individual and the court's determination to approve or disapprove the placement in a qualified residential treatment program shall be made part of the case plan for the child. If the court approves the placement in a qualified residential treatment program, the court shall order the amended case plan for the child.

(as added, 2021)

§ 16-1619B. Placement of a child in congregate care settings – Regular Comprehensive Review of Placement.

(1) Where legal custody of a child is vested in the department and the department places the child in a short-term rental, temporary shelter care, or congregate care setting, the department shall file a notice of such placement with the court within seven (7) days of the placement. The notice shall identify the type of placement and the date of the placement.

(2) No child twelve (12) years of age or younger shall be placed in a short-term rental, temporary shelter care, or congregate care setting unless the director of the department has granted express written approval of such placement. Written approval may be given by the director only when:

(a) The child is three (3) years of age or older; the child is a part of a sibling group placed in the same short-term rental, temporary shelter care, or congregate care setting; and at least one (1) of the members of the sibling group is thirteen (13) years of age or older;

(b) The child is six (6) years of age or older and has been taken into shelter care through the emergency removal process pursuant to section 16-1608, Idaho Code; or

(c) The child's teenage mother is placed in the same short-term rental, temporary shelter, or congregate care setting.

(3) Children who do not meet the eligibility requirements set forth in section 16-1619A, Idaho Code, shall not be placed in a qualified residential treatment program or a short-term rental, temporary shelter care, or congregate care setting for more than two (2) weeks, except for documented emergency circumstances.

(4) The director of the department shall undertake a comprehensive review of the placement of each child who is in the legal custody of the department, which shall be conducted on the following schedule:

(a) For any child placed in a short-term rental or other facility that is not licensed by the state of Idaho or another entity with the lawful authority to grant a license to provide care to children, the review shall be completed fourteen (14) days after placement and every fourteen (14) days thereafter; and

(b) For any child placed in a facility that is licensed by the state of Idaho or another entity with the lawful authority to grant a license to provide care to children, the review shall be completed ninety (90) days after placement and every ninety (90) days thereafter. For the purposes of this subsection, licensed facilities include but are not limited to qualified residential treatment programs and licensed children's institutions as defined by section 39-1202, Idaho Code.

(5) Each review pursuant to subsection (4) of this section shall include an assessment of the following:

(a) The safety of the child in the facility;

(b) The child's treatment needs and the facility's capacity to treat those needs;

(c) The child's treatment plan and the child's progress on that treatment plan;

(d) The child's discharge plan and progress made toward discharge planning; and

(e) Whether a less restrictive placement could be safely made.

(6) Where a review pursuant to subsection (4) of this section shows that a placement is appropriate, the director shall approve that placement. If such review shows that the placement is not appropriate, the director shall take steps to end that placement within fourteen (14) days.

(7) The provisions of subsections (4), (5), and (6) of this section shall not apply to a child placed in:

(a) A foster home or relative foster home;

(b) The home of a parent, guardian, or custodian; or

(c) A correctional facility, as that term is defined in section 18-101A, Idaho Code.

(most recent amendment, 2025)

§ 16-1620. Finding of aggravated circumstances – Permanency plan – Hearing

(1) After a judicial determination that reasonable efforts to return the child to his home are not required because aggravated circumstances were found to be present, the court shall hold a permanency hearing within thirty (30) days after the finding and every twelve (12) months thereafter for as long as the court has jurisdiction. The department shall prepare a permanency plan and file the permanency plan with the court at least five (5) days prior to the permanency hearing. If the permanency plan has a goal of termination of parental rights and adoption, the department shall file the petition to terminate as required in section 16-1624(2), Idaho Code. Copies of the permanency plan shall be delivered to the parents and other legal guardians, prosecuting attorney or deputy attorney general, the guardian ad litem and attorney for the child.

(2) The permanency plan shall have a permanency goal of termination of parental rights and adoption, guardianship or, for youth age sixteen (16) years and older only, another planned permanent living arrangement and shall set forth the reasonable efforts necessary to finalize the permanency goal.

(3) The permanency plan shall also:

(a) Identify the services to be provided to the child, including services to identify and meet any educational, emotional, physical or

developmental needs the child may have, to assist the child in adjusting to the placement or to ensure the stability of the placement;

(b) Address all options for permanent placement of the child, including consideration of options for in-state and out-of-state placement of the child;

(c) Address the advantages and disadvantages of each option and include a recommendation as to which option is in the child's best interest;

(d) Specifically identify the actions necessary to implement the recommended option;

(e) Specifically set forth a schedule for accomplishing the actions necessary to implement the permanency goal;

(f) Address the options for maintaining the child's connection to the community, including individuals with a significant relationship to the child, and organizations or community activities with which the child has a significant connection. This shall also include the efforts made to ensure educational stability for the child, the efforts to keep the child in the school in which the child is enrolled at the time of placement or the reasons why remaining in that school is not in the best interests of the child;

(g) Document that siblings were placed together or, if siblings were not placed together, document the efforts made to place siblings together, the reasons why siblings were not placed together, and a plan for ensuring frequent visitation or ongoing interaction between the siblings, unless visitation or ongoing interaction would be contrary to the safety or well-being of one (1) or more of the siblings;

(h) For youth age fourteen (14) years and older:

(i) Identify the services needed to assist the youth to make the transition from foster care to successful adulthood; and

(ii) Document the youth's rights in regard to education, health, visitation, court participation and receipt of an annual credit report, including a signed acknowledgment by the department that the youth was provided with a written copy of these rights and that the rights were explained to the youth in an age-appropriate or developmentally appropriate manner;

(i) For youth age sixteen (16) years and older with a proposed permanency goal of another planned permanent living arrangement, document:

(i) The intensive, ongoing, and, as of the date of the hearing, unsuccessful efforts 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;

(ii) Why another planned permanent living arrangement is the best permanency plan for the youth and compelling reasons why, as of the date of the permanency hearing, it would not be 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;

(iii) The steps that the department has taken to ensure that the youth's foster parents or child care institution are following the reasonable and prudent parent standard when determining whether to allow the youth in their care to participate in extracurricular, enrichment, cultural and social activities; and

(iv) The opportunities provided to the youth to engage in age-appropriate or developmentally appropriate activities;

(j) If there is reason to believe the child is an Indian child and there has been no final determination as to the child's status as an Indian child, document:

(i) The efforts made to determine whether the child is an Indian child; and

(ii) The department's 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.

(k) Identify the prospective adoptive parents, if known; if the prospective adoptive parents are not known, the department shall amend the plan to name the proposed adoptive parents as soon as such persons become known.

(4) The court shall hold a permanency hearing to determine whether the best interests of the child are served by adopting, rejecting or

modifying the permanency plan proposed by the department. At each permanency hearing:

(a) For youth age twelve (12) years and older, unless good cause is shown, the court shall ask the youth about his desired permanency outcome and consult with the youth about his current permanency plan;

(b) If there is reason to believe that the child is an Indian child and there has not been a final determination regarding the child's status as an Indian child, the court shall:

(i) Inquire about the efforts that have been made since the last hearing to determine whether the child is an Indian child; and

(ii) Determine that 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;

(c) If the child is being treated with psychotropic medication, these additional requirements shall apply:

(i) The department shall report to the court the medication and dosage prescribed for the child and the medical professional who prescribed the medication; and

(ii) The court shall inquire as to, and may make any additional inquiry relevant to, the use of psychotropic medication; and

(d) If a child is in the legal custody of the department and the court has approved placement of the child in a qualified residential treatment program, then at each hearing pursuant to this section and each hearing held pursuant to section 16-1622, Idaho Code, the department shall document:

(i) 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 qualified residential treatment program 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;

(ii) 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

(iii) 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.

(5) Notice of the permanency hearing shall be provided to the parents and other legal guardians, prosecuting attorney or deputy attorney general, guardian ad litem, attorney for the child, the department and foster parents; provided however, that foster parents are not thereby made parties to the child protective act action.

(6) The permanency plan as approved by the court shall be entered into the record as an order of the court. The order may include interim and final deadlines for implementing the permanency plan and finalizing the permanency goal.

(7) For youth with a proposed or current permanency goal of another planned permanent living arrangement, at each permanency hearing the court shall make written, case-specific findings that as of the date of the permanency hearing, another planned permanent living arrangement is the best permanency plan for the youth and that there are compelling reasons why it is not in the youth's best interests 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.

(8) The court may authorize the department to suspend further efforts to reunify the child with the child's parent, pending further order of the court, when a petition or other motion is filed in a child protection proceeding seeking a determination of the court that aggravated circumstances were present.

(most recent amendment, 2021)

§ 16-1621. Case plan hearing – No finding of aggravated circumstances

(1) In every case in which the child is determined to be within the jurisdiction of the court, and there is no judicial determination that aggravated circumstances were present, the department shall prepare a written case plan, including cases in which the parent(s) is incarcerated. The court shall schedule a case plan hearing to be held within thirty (30) days after the adjudicatory hearing. The case plan shall be filed with the court no later than five (5) days prior to the case plan hearing. Copies of the case plan shall be delivered to the parents and other legal guardians, the prosecuting attorney or deputy attorney general, the guardian ad litem and attorney for the child.

(a) The court shall hold a case plan hearing to determine whether the best interests of the child are served by adopting, rejecting or modifying the case plan proposed by the department.

(b) If there is reason to believe that the child is an Indian child and there has not been a final determination regarding the child's status as an Indian child, the court shall:

(i) Inquire about the efforts that have been made since the last hearing to determine whether the child is an Indian child; and

(ii) Determine that 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.

(c) If the child is being treated with psychotropic medication, the court shall inquire as to, and may make any additional inquiry relevant to, the use of psychotropic medication.

(2) Notice of the case plan hearing shall be provided to the parents and other legal guardians, the prosecuting attorney or deputy attorney general, guardian ad litem, attorney for the child, the department, and foster parents. Although foster parents are provided notice of this hearing, they are not parties to the child protective act action.

(3) If the child is placed in the legal custody of the department, the case plan filed by the department shall set forth reasonable efforts that will

be made to make it possible for the child to return home. The case plan shall also:

(a) Identify the services to be provided to the child, including 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. For youth age fourteen (14) years and older:

(i) Identify the services needed to assist the youth in making the transition to successful adulthood; and

(ii) Document the youth's rights in regard to education and health, visitation, court participation and receipt of an annual credit report, including a signed acknowledgment by the department that the youth was provided with a written copy of these rights and that the rights were explained to the youth in an age-appropriate or developmentally appropriate manner;

(b) Address the options for maintaining the child's connection to the community:

(i) Include connections to individuals with a significant relationship to the child, and organizations or community activities with which the child has a significant connection;

(ii) Ensure educational stability for the child, including the efforts to keep the child in the school in which the child is enrolled at the time of placement or the reasons why remaining in that school is not in the best interests of the child;

(iii) Include a visitation plan and identify the need for supervision of visitation and child support;

(iv) Either document that siblings were placed together or, if siblings were not placed together, document the efforts made to place the siblings together, the reasons why siblings were not placed together and a plan for ensuring frequent visitation or other ongoing interaction among siblings, unless visitation or ongoing interaction would be contrary to the safety or well-being of one (1) or more of the siblings; and

(v) If there is reason to believe the child is an Indian child and there has been no final determination as to the child's status as an Indian child, document:

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 to verify whether the child is a member or eligible for membership;

(c) Include a goal of reunification and a plan for achieving that goal. The reunification plan shall identify all issues that need to be addressed before the child can safely be returned home without department supervision. The court may specifically identify issues to be addressed by the plan. The reunification plan shall specifically identify the tasks to be completed by the department, each parent or others to address each issue, including services to be made available by the department to the parents and in which the parents are required to participate, and deadlines for completion of each task. The case plan shall state with specificity the role of the department toward each parent. When appropriate, the reunification plan should identify terms for visitation, supervision of visitation and child support;

(d) Include a concurrent permanency goal and a plan for achieving that goal. The concurrent permanency goal may be one (1) of the following: termination of parental rights and adoption, guardianship or for youth age sixteen (16) years or older only, another planned permanent living arrangement. The concurrent plan shall:

(i) Address all options for permanent placement of the child, including consideration of options for in-state and out-of-state placement of the child;

(ii) Address the advantages and disadvantages of each option and include a recommendation as to which option is in the child's best interests;

(iii) Specifically identify the actions necessary to implement the recommended option;

(iv) Specifically set forth a schedule for accomplishing the actions necessary to implement the concurrent permanency goal;

(v) Address options for maintaining the child's connection to the community, including individuals with a significant relationship to the child, and organizations or community activities with which the child has a significant connection;

(vi) Identify the names of the proposed adoptive parents when known if the permanency goal is termination of parental rights and adoption;

(vii) In the case of a child who has attained the age of fourteen (14) years, include the services needed to assist the child to make the transition from foster care to successful adulthood;

(viii) For youth with a proposed permanency goal of another permanent planned living arrangement, document:

1. The intensive, ongoing and, as of the date of the hearing, unsuccessful efforts 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. Why another planned permanent living arrangement is the best permanency goal for the youth and a compelling reason why, as of the date of the case plan hearing, it would not be in the best interests of the child 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;

3. The 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 whether the youth can engage in extracurricular, enrichment, cultural and social activities; and

4. The opportunities provided to the youth to regularly engage in age-appropriate or developmentally appropriate activities; and

(ix) 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.

(4) If the child has been placed under protective supervision of the department, the case plan, filed by the department, shall:

(a) Identify the services to be provided to the child, including 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. For youth age fourteen (14) years and older, identify the services needed to assist the youth in making the transition to successful adulthood and document the youth's rights in regard to education and health, visitation, court participation and receipt of an annual credit report, including a signed acknowledgment by the department that the youth was provided with a written copy of the youth's rights and that the rights were explained to the youth in an age-appropriate or developmentally appropriate manner. The plan shall also address options for maintaining the child's connection to the community, including individuals with a significant relationship to the child and organizations or community activities with which the child has a significant connection;

(b) Identify all issues that need to be addressed to allow the child to remain at home without department supervision. The court may specifically identify issues to be addressed by the plan. The case plan shall specifically identify the tasks to be completed by the department, the parents or others to address each issue, including services to be made available by the department to the parents and in which the parents are required to participate, and deadlines for completion of each task. The plan shall state with specificity the role of the department toward each parent.

(5) If the child is placed in a qualified residential treatment program, then the case plan shall include the assessment report of the qualified individual.

(6) The case plan, as approved by the court, shall be entered into the record as an order of the court. The order may include interim and final deadlines for implementing the case plan and finalizing the permanency goal. The court's order shall provide that reasonable efforts shall be made to reunify the family in a timely manner in accordance with the case plan. Unless the child has been placed under

the protective supervision of the department, the court's order shall also require the department to simultaneously take steps to accomplish the goal of reunification and the concurrent permanency goal.

(most recent amendment, 2021)

§ 16-1622. Review hearings – Status hearings – Annual permanency hearings

(1) Review hearing.

(a) A hearing for review of the child's case and permanency plan shall be held no later than six (6) months after entry of the court's order taking jurisdiction under this act and every two (2) months thereafter. The department and the guardian ad litem shall file reports to the court no later than five (5) days prior to the two (2) month review hearing. The purpose of the review hearing is:

(i) To determine:

1. The safety of the child;

2. The continuing necessity for and appropriateness of the placement;

3. The extent of compliance with the case plan; and

4. The extent of progress that has been made toward alleviating or mitigating the causes necessitating placement in foster care;

(ii) To determine or continue to investigate whether the child is an Indian child. If there is reason to believe that the child is an Indian child and there has not been a final determination regarding the child's status as an Indian child:

1. The department shall document and the court shall inquire about the efforts that have been made since the last hearing to determine whether the child is an Indian child; and

2. The department shall document and the court shall determine that 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;

(iii) To inquire regarding the child's educational stability. The department shall document and the court shall inquire as to the

efforts made to ensure educational stability for the child, including the efforts made to keep the child in the school in which the child is enrolled at the time of placement or the reason that remaining in the school is not in the child's best interests;

(iv) To inquire regarding sibling placement. The department shall document and the court shall inquire whether siblings were placed together or, if siblings were not placed together, the efforts made to place siblings together, the reasons why siblings were not placed together, and a plan for ensuring frequent visitation or ongoing interaction between the siblings, unless visitation or ongoing interaction would be contrary to the safety or well-being of one (1) or more of the siblings;

(v) To inquire regarding permanency. The court shall ask each youth age twelve (12) years and older about his desired permanency outcome and discuss with the youth his current permanency plan. For a youth age fourteen (14) years 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;

(vi) To document efforts related to the reasonable and prudent parent standard. For a youth whose permanency goal is another planned permanent living arrangement, the department shall document:

1. That the youth's foster parents or child care institution is following the reasonable and prudent parent standard when deciding whether the child may participate in extracurricular, enrichment, cultural and social activities; and

2. The regular, ongoing opportunities to engage in age- or developmentally appropriate activities that have been provided to the youth;

(vii) To document efforts made to find a permanent placement other than another planned permanent living arrangement. For a youth whose permanency goal is another planned permanent living arrangement, the department shall document:

1. The intensive, ongoing, and, as of the date of the hearing, unsuccessful efforts 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; and

2. Why another planned permanent living arrangement is the best permanency plan for the youth and a compelling reason why, as of the date of the review hearing, it would not be in the best interest of the child 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;

(viii) To make findings regarding a permanency goal of another planned permanent living arrangement. For youth whose permanency goal is another planned permanent living arrangement, the court shall make written, case-specific findings, as of the date of the hearing, that:

1. Another planned permanent living arrangement is the best permanency goal for the youth; and

2. There are compelling reasons why it is not in the best interest 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;

(ix) To document and inquire regarding psychotropic medication. At each review hearing, if the child is being treated with psychotropic medication, these additional requirements shall apply:

1. The department shall report to the court the medication and dosage prescribed for the child and the medical professional who prescribed the medication; and

2. The court shall inquire as to, and may make any additional inquiry relevant to, the use of psychotropic medication; and

(x) To project, when reasonable, a likely date by which the child may be safely returned to and maintained in the home or placed in another permanent placement.

(b) A status hearing is a review hearing that does not address all or most of the purposes identified in paragraph (a) of this subsection and may be held at the discretion of the court. Neither the department nor

the guardian ad litem is required to file a report with the court prior to a status hearing, unless ordered otherwise by the court.

(c) A motion for revocation or modification of an order issued under section 16-1619, Idaho Code, may be filed by the department or any party; provided that no motion may be filed by the respondents under this section within three (3) months of a prior hearing on care and placement of the child. Notice of a motion for review of a child's case shall be provided to the parents and other legal guardians, the prosecuting attorney or deputy attorney general, the guardian ad litem, the attorney for the child, the department and foster parents.

(d) If the motion filed under (c) of this subsection alleges that the child's best interests are no longer served by carrying out the order issued under section 16-1619, Idaho Code, or that the department or other authorized agency has failed to provide adequate care for the child, the court shall hold a hearing on the motion.

(e) The department or authorized agency may move the court at any time to vacate any order placing a child in its custody or under its protective supervision.

(2) Permanency plan and hearing.

(a) The permanency plan shall include a permanency goal. The permanency goal may be one (1) of the following: continued efforts at reunification, in the absence of a judicial determination of aggravated circumstances; or termination of parental rights and adoption, guardianship or, for youth age sixteen (16) years and older only, another planned permanent living arrangement. Every permanency plan shall include the information set forth in section 16-1621(3)(a) and (b), Idaho Code. If the permanency plan has reunification as a permanency goal, the plan shall include information set forth in section 16-1621(3)(c), Idaho Code; however, if the circumstances that caused the child to be placed into protective custody resulted in a conviction for lewd and lascivious conduct or felony injury to a child, if the child has been in protective custody for more than six (6) months, or if a high risk of repeat maltreatment or reentry into foster care exists due to a parent's recent completion of substance abuse treatment or other compelling circumstances, then the permanency plan shall include a

period of protective supervision or trial home visit period of no less than ninety (90) days prior to the court vacating the case. During the protective supervision or trial home visit period, the department shall make regular home visits. During the protective supervision or trial home visit period, the court shall hold one (1) or more review hearings for each permanency plan where a period of protective supervision or a trial home visit has been imposed and may require participation in supportive services, including community home visiting and peer-to-peer mentoring. Families reunified following a period of protective supervision or a trial home visit should be encouraged by the department or the court to continue to participate in supportive services when beneficial and appropriate. If the permanency plan has a permanency goal other than reunification, the plan shall include the information set forth in section 16-1621(3)(d), Idaho Code, and if the permanency goal is termination of parental rights and adoption, then in addition to the information set forth in section 16-1620(3), Idaho Code, the permanency plan shall also name the proposed adoptive parents when known. If the adoptive parents are not known at the time the permanency plan is prepared, then the department shall amend the plan to name the proposed adoptive parents as soon as such person or persons become known. The court may approve a permanency plan that includes a primary goal and a concurrent goal. As used in this paragraph, "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.

(b) A permanency hearing shall be held no later than twelve (12) months from the date the child is removed from the home or the date of the court's order taking jurisdiction under this chapter, whichever occurs first, and at least every twelve (12) months thereafter, as long as the court has jurisdiction over the child. The court shall approve, reject or modify the permanency plan of the department and review progress in accomplishing the permanency goal. The permanency plan, as approved by the court, shall be entered into the record as an order of the court. A permanency hearing may be held at any time and may be combined with the review hearing required under subsection (1) of this section.

(c) The court shall make written, case-specific findings whether the department made reasonable efforts to finalize the primary permanency goal in effect for the child. Lack of reasonable efforts to reunify may be a basis for an order approving a permanency plan with a permanency goal of reunification.

(d) Where the permanency goal is not reunification, the hearing shall 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 whether the out-of-state placement continues to be appropriate and in the best interest of the child.

(e) The court shall ask each youth age twelve (12) years and older about his desired permanency outcome and discuss with the youth his current permanency plan. In the case of a child who has attained the age of fourteen (14) years 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.

(f) The court may approve a primary permanency goal of another planned permanent living arrangement only for youth age sixteen (16) years or older and only upon written, case-specific findings that, as of the date of the hearing:

(i) Another planned permanent living arrangement is the best permanency goal for the youth; and

(ii) There are compelling reasons why it is not in the best interest 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.

(g) If the child has been in the temporary or legal custody of the department for twelve (12) of the most recent twenty-two (22) months, the department shall file, prior to the last day of the fifteenth 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 his family.

(h) The department shall document and the court shall inquire:

(i) As to the efforts made to ensure educational stability for the child, including the efforts made to keep the child in the school in which the child is enrolled at the time of placement or that remaining in the school is not in the child's best interests; and

(ii) That siblings were placed together, or, if siblings were not placed together, the efforts made to place siblings together, the reasons why siblings were not placed together or why a joint placement would be contrary to the safety or well-being of one (1) or more of the siblings, and a plan for ensuring frequent visitation or ongoing interaction among siblings, unless visitation or ongoing interaction would be contrary to the safety or well-being of one (1) or more of the siblings.

(i) If there is reason to believe that the child is an Indian child and there has not been a final determination regarding the child's status as an Indian child, the department shall document and the court shall:

(i) Inquire about the efforts that have been made since the last hearing to determine whether the child is an Indian child; and

(ii) Determine that the department has made 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.

(j) At each permanency hearing, if the child is being treated with psychotropic medication, these additional requirements shall apply:

(i) The department shall report to the court the medication and dosage prescribed for the child and the medical professional who prescribed the medication; and

(ii) The court shall inquire as to, and may make any additional inquiry relevant to, the use of psychotropic medication.

(k) The court may authorize the department to suspend further efforts to reunify the child with the child's parent, pending further order of the court, when a permanency plan is approved by the court and the permanency plan does not include a permanency goal of reunification.

(3) If a youth is in the legal custody of the department or other authorized agency and is within ninety (90) days of his eighteenth birthday, the department shall file a report with the court that includes the department's transition plan for the youth. The court shall have a review or permanency hearing at which the court shall:

(a) Discuss with the youth his or her transition plan; and

(b) Review the transition plan with the youth for purposes of ensuring that the plan provides the services necessary to allow the youth to transition to a successful adulthood.

(4) If a child is in the legal custody of the department and the court has approved placement of the child in a qualified residential treatment program, then at each review hearing pursuant to subsection (1)(a) of this section and at each permanency hearing pursuant to subsection (2)(b) of this section the department shall document:

(a) 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 qualified residential treatment program 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-term and long-term goals for the child, as specified in the permanency plan for the child;

(b) 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

(c) The efforts made by the department to prepare the child to return home or to be placed with a fit and willing relative, a legal guardian, or an adoptive parent or in a foster family home.

(5) Notwithstanding any provision of law to the contrary, the court may order extended foster care for a person between the ages of eighteen (18) and twenty-three (23) years to help such person achieve a successful transition to adulthood, provided such person must have been in the custody of the department until his eighteenth birthday and must meet the criteria set forth in 42 U.S.C. 675(8) (B) (iv). The

extension shall be for a fixed period of time and shall not extend past the person's twenty-third birthday.

(most recent amendment, 2025)

§ 16-1623. Amended disposition – Removal during protective supervision

(1) Where the child has been placed under the protective supervision of the department pursuant to section 16-1619, Idaho Code, the child may be removed from his or her home under the following circumstances:

(a) A peace officer may remove the child where the child is endangered in his surroundings and prompt removal is necessary to prevent serious physical or mental injury to the child; or

(b) The court has ordered, based upon facts presented to the court, that the child should be removed from his or her present conditions or surroundings because continuation in such conditions or surroundings would be contrary to the welfare of the child and vesting legal custody in the department or other authorized agency would be in the child's best interests.

(2) Upon removal, the child shall be taken to a place of shelter care.

(3) When a child under protective supervision is removed from his home pursuant to subsection (1)(a) or (b) of this section without a hearing, a redisposition hearing shall be held within forty-eight (48) hours of the child's removal from the home, except for Saturdays, Sundays and holidays. At the hearing, the court shall determine whether to vest legal custody in the department or other authorized agency pursuant to section 16-1619(5)(b), Idaho Code. When a child under protective supervision is removed from his home pursuant to subsection (1)(b) of this section and the facts supporting the removal are presented to the court at a hearing, the hearing at which the court orders the child's removal is the redisposition hearing.

(4) In determining whether to vest legal custody in the department or other authorized agency, the court shall consider any information relevant to the redisposition of the child, and in any event shall make detailed written findings based upon facts in the record as required by section 16-1619(6), Idaho Code.

(5) An order vesting legal custody with the department or other authorized agency under this section shall be treated for all purposes as if such an order had been part of the court's original decree under section 16-1619, Idaho Code. The court may order the department to prepare a written case plan. The court may hold a case plan hearing. The case plan hearing shall be held within thirty (30) days of the redisposition hearing pursuant to section 16-1621, Idaho Code.

(6) Each of the parents or legal guardians from whom the child was removed shall be given notice of the redisposition hearing in the same time and manner as required for notice of a shelter care hearing under section 16-1615(2) and (3), Idaho Code.

(7) The redisposition hearing may be continued for a reasonable time upon the request of the parties.

(most recent amendment, 2016)

§ 16-1624. Termination of parent-child relationship

(1) If the child has been placed in the legal custody of the department or under its protective supervision pursuant to section 16-1619, Idaho Code, the department may petition the court for termination of the parent and child relationship in accordance with chapter 20, title 16, Idaho Code. A petition to terminate parental rights shall be filed in the child protective act case.

(2) A petition to terminate parental rights shall be filed within thirty (30) days of an order approving a permanency plan with a permanency goal of termination of parental rights and adoption.

(3) Unless there are compelling reasons it would not be in the best interest of the child, the department shall be required to file a petition to terminate parental rights within thirty (30) days of a judicial determination that an infant has been abandoned or that reasonable efforts are not required because aggravated circumstances were present.

(4) The department shall join as a party to the petition if such a petition to terminate is filed by another party; as well as to concurrently identify, recruit, process and approve a qualified family for adoption unless it is determined that such actions would not be in the best interest of the child, or the child is placed with a fit and willing relative.

(5) If termination of parental rights is granted and the child is placed in the guardianship or legal custody of the department, the court, upon petition, shall conduct a hearing as to the future status of the child within twelve (12) months of the order of termination of parental rights, and every twelve (12) months subsequently until the child is adopted or is in a placement sanctioned by the court.

(6) The court may authorize the department to suspend further efforts to reunify the child with the child's parent, pending further order of the court, when a petition to terminate parental rights has been filed with regard to the child.

(most recent amendment, 2013)

§ 16-1625. Appeal – Effect on custody

(1) An aggrieved party may appeal the following orders or decrees of the court to the district court, or may seek a direct permissive appeal to the supreme court as provided by rules adopted by the supreme court:

(a) An adjudicatory decree entered pursuant to section 16-1619, Idaho Code;

(b) Any order subsequent to the adjudicatory decree that vests legal custody of the child in the department or other authorized agency;

(c) Any order subsequent to the adjudicatory decree that authorizes or mandates the department to cease reasonable efforts to make it possible to return the child to his home, including an order finding aggravated circumstances; or

(d) An order of dismissal.

(2) Where the order affects the custody of a child, the appeal shall be heard at the earliest practicable time. The pendency of an appeal shall not suspend the order of the court regarding a child, and it shall not discharge the child from the legal custody of the authorized agency to whose care he has been committed, unless otherwise ordered by the district court. No bond or undertaking shall be required of any party appealing to the district court under the provisions of this section. Any final order or judgment of the district court shall be appealable to the supreme court of the state of Idaho in the same manner as appeals in other civil actions. The filing of the notice of appeal shall not, unless otherwise ordered, stay the order of the district court.

(most recent amendment, 2013)

§ 16-1626. Court records

The court shall keep a record of all court proceedings under this chapter. The records shall be available only to parties to the proceeding, persons having full or partial custody of the subject child and authorized agencies providing protective supervision or having legal custody of the child. Any other person may have access to the records only upon permission by the court and then only if it is shown that such access is in the best interests of the child; or for the purpose of legitimate research. If the records are released for research purposes, the person receiving them must agree not to disclose any information which could lead to the identification of the child.

(most recent amendment, 2005)

§ 16-1627. Authorization of emergency medical treatment

(1) At any time whether or not a child is under the authority of the court, the court may authorize medical or surgical care for a child when:

(a) A parent, legal guardian or custodian is not immediately available and cannot be found after reasonable effort in the circumstances of the case; or

(b) A physician informs the court orally or in writing that in his professional opinion, the life of the child would be greatly endangered without certain treatment and the parent, guardian or other custodian refuses or fails to consent.

(2) If time allows in a situation under subsection (1)(b) of this section, the court shall cause every effort to be made to grant each of the parents or legal guardian or custodian an immediate informal hearing, but this hearing shall not be allowed to further jeopardize the child's life.

(3) In making its order under subsection (1) of this section, the court shall take into consideration any treatment being given the child by prayer through spiritual means alone, if the child or his parent, guardian or legal custodian are adherents of a bona fide religious denomination that relies exclusively on this form of treatment in lieu of medical treatment.

(4) After entering any authorization under subsection (1) of this section, the court shall reduce the circumstances, finding and authorization to writing and enter it in the records of the court and shall cause a copy of the authorization to be given to the physician or hospital, or both, that was involved.

(5) Oral authorization by the court is sufficient for care or treatment to be given by and shall be accepted by any physician or hospital. No physician or hospital nor any nurse, technician or other person under the direction of such physician or hospital shall be subject to criminal or civil liability for performance of care or treatment in reliance on the court's authorization, and any function performed thereunder shall be regarded as if it were performed with the child's and the parent's authorization.

(most recent amendment, 2005)

§ 16-1628. Support of committed child

(1) Whenever legal custody of a child is vested in someone other than his parents, after due notice to the parent or other persons legally obligated to care for and support the child, and after a hearing, the court may order and decree that the parent or other legally obligated person shall pay in such a manner as the court may direct a reasonable sum that will cover in whole or in part the support and treatment of the child after an order of temporary custody, if any, or the decree is entered. If the parent or other legally obligated person willfully fails or refuses to pay such sum, the court may proceed against him for contempt, or the order may be filed and shall have the effect of a civil judgment.

(2) All child support orders shall notify the obligor that the order will be enforced by income withholding pursuant to chapter 12, title 32, Idaho Code.

(3) Failure to include these provisions does not affect the validity of the support order or decree. The court shall require that the social security numbers of both the obligor and obligee be included in the order or decree.

(most recent amendment, 2012)

§ 16-1629. Powers and duties of the department

The department, working in conjunction with the court and other public and private agencies and persons, shall have the primary responsibility to implement the purpose of this chapter. To this end, the department is empowered and shall have the duty to do all things reasonably necessary to carry out the purpose of this chapter, including, but not limited to, the following:

(1) The department shall administer treatment programs for the protection and care of neglected, abused and abandoned children, and in so doing may place in foster care, shelter care, or other diagnostic, treatment, or care centers or facilities children of whom it has been

given custody. The department is to be governed by the standards found in chapter 12, title 39, Idaho Code.

(2) On December 1, the department shall make an annual statistical report to the governor covering the preceding fiscal year showing the number and status of persons in its custody and including such other data as will provide sufficient facts for sound planning in the conservation of children and youth. All officials and employees of the state and of every county and city shall furnish the department, upon request, such information within their knowledge and control as the department deems necessary. Local agencies shall report in such uniform format as may be required by the department.

(3) The department shall be required to maintain a central registry for the reporting of child neglect, abuse and abandonment information. Provided however, that the department shall not retain any information for this purpose relating to a child, or parent of a child, abandoned pursuant to chapter 82, title 39, Idaho Code.

(4) The department shall make periodic evaluation of all persons in its custody or under its protective supervision for the purpose of determining whether existing orders and dispositions in individual cases shall be modified or continued in force. Evaluations may be made as frequently as the department considers desirable and shall be made with respect to every person at intervals not exceeding six (6) months. Reports of evaluation made pursuant to this section shall be filed with the court that has jurisdiction. Reports of evaluation shall be provided to persons having full or partial legal or physical custody of a child. Failure of the department to evaluate a person or to reevaluate him within six (6) months of a previous examination shall not of itself entitle the person to a change in disposition but shall entitle him, his parent, guardian or custodian or his counsel to petition the court pursuant to section 16-1622, Idaho Code.

(5) In a consultive capacity, the department shall assist communities in the development of constructive programs for the protection, prevention and care of children and youth.

(6) The department shall keep written records of investigations, evaluations, prognoses and all orders concerning disposition or treatment of every person over whom it has legal custody or under its protective supervision. Department records shall be subject to disclosure according to chapter 1, title 74, Idaho Code, unless otherwise ordered by the court, the person consents to the disclosure, or disclosure is necessary for the delivery of services to the person. Notwithstanding the provisions restricting disclosure or the exemptions from disclosure provided in chapter 1, title 74, Idaho Code, all records pertaining to investigations, the rehabilitation of youth, the protection of children, evaluation, treatment and/or disposition records pertaining to the statutory responsibilities of the department shall be disclosed to any duly elected state official carrying out his official functions.

(7) The department shall establish appropriate administrative procedures for the processing of complaints of child neglect, abuse and abandonment received and for the implementation of the protection, treatment and care of children formally or informally placed in the custody of the department or under its protective supervision under this chapter including, but not limited to:

(a) Department employees whose job duties are related to the child protective services system under this chapter shall first be trained as to their obligations under this chapter regarding the protection of children whose health and safety may be endangered. The curriculum shall include information regarding their legal duties, how to conduct their work in conformity with the requirements of this chapter, information regarding applicable federal and state laws with regard to the rights of the child, parent and others who may be under investigation under the child protective services system, and the applicable legal and constitutional parameters within which they are to conduct their work.

(b) Department employees whose job duties are related to the child protective services system shall advise the individual of the complaints

or allegations made against the individual at the time of the initial contact, consistent with protecting the identity of the referent.
(8) The department, having been granted legal custody of a child, shall have the right to determine where and with whom the child shall live, provided that the child shall not be placed outside the state without the court's consent. The court shall retain jurisdiction over the child, which jurisdiction shall be entered on any order or petition granting legal custody to the department, and the court shall have jurisdiction over all matters relating to the child. The department shall not place the child in the home from which the court ordered the child removed without first obtaining the approval of the court. Notwithstanding the provisions of this subsection, all other determinations relating to where and with whom the child shall live shall be subject to judicial review by the court and, when contested by any party, judicial approval.

(9) The department shall give to the court any information concerning the child that the court may at any time require, but in any event shall report the progress of the child under its custody or under its protective supervision at intervals of not to exceed six (6) months. The department shall file with the court at least five (5) days prior to the permanency hearing either under section 16-1622, Idaho Code, or, in the case of a finding of aggravated circumstances, section 16-1620, Idaho Code, the permanency plan and recommendations of the department.

(10) The department shall establish appropriate administrative procedures for the conduct of administrative reviews and hearings as required by federal statute for all children committed to the department and placed in out-of-the-home care.

(11) At any time the department is considering a placement pursuant to this chapter, the department shall make a reasonable effort to place the child in the least restrictive environment to the child and in so doing shall consider, consistent with the best interest and special needs of the child, placement priority of the child in the following order:
(a) A fit and willing relative;

(b) A fit and willing nonrelative with a significant relationship with the child;

(c) Foster parents and other persons licensed in accordance with chapter 12, title 39, Idaho Code, with a significant relationship with the child;

(d) Foster parents and other persons licensed in accordance with chapter 12, title 39, Idaho Code.

(12) If the caseworker assigned to a foster care case recommends removing the child from a foster home in which the child has been placed for sixty (60) or more days, for placement in another foster home, then the case worker's supervisor shall conduct a review of the foster care case and must approve such recommendation before a change in foster home placement occurs. The supervisor shall consider the best interests and special needs of the child, including:

(a) The clearly stated reasons for the recommended change in placement;

(b) The number of times the child's placement has been changed since removal from the child's home and the reasons for each change;

(c) Whether the child will change schools as a result of the change in placement; and

(d) Whether the change in placement will separate or reunite siblings or affect sibling visitation.

(13) If the supervisor determines that the recommended change in foster care placement is in the best interests of the child, then the department may change the placement of the child; provided that, the department shall give the foster parents and the court written notice of the planned change at least seven (7) days before the change in placement.

(14) If the caseworker determines that there is abuse or neglect or a substantial risk of abuse or neglect in the foster home, then the department may change the placement of the child without a supervisor's review; provided that, the department shall give the foster parents and the court written notice of the unplanned change within seven (7) days after the change in placement.

(15) In its written notice of a planned or unplanned change required under this section, the department shall clearly state the reasons for the change in placement of the child.

(most recent amendment, 2018)

§ 16-1630. Other duties of the department – Exceptions

(1) Nothing in this chapter shall be construed as modifying duties of the department as described in sections 56-204A and 56-204B, Idaho Code.

(2) Nothing in this chapter shall be construed as assigning or imposing duties or responsibilities on the department by those provisions of this chapter relating to guardian ad litem.

(most recent amendment, 2005)

§ 16-1631. Authorization for department to act

(1) Upon receiving information that a child may be abused, neglected or abandoned, the department shall cause such investigation to be made in accordance with this chapter as is appropriate. In making the investigation the department shall use its own resources, and may enlist the cooperation of peace officers for phases of the investigation for which they are better equipped. Upon satisfying itself as to the course of action which should be pursued to best accord with the purpose of this chapter, the department shall:

(a) Resolve the matter in such informal fashion as is appropriate under the circumstances; or

(b) Seek to enter a voluntary agreement with all concerned persons to resolve the problem in such a manner that the child will remain in his own home; or

(c) Refer the matter to the prosecutor or attorney general with recommendation that appropriate action be taken under this chapter; or

(d) Refer the matter to the prosecutor or attorney general with recommendation that appropriate action be taken under other laws.

(2) In the event that the department concludes that a voluntary agreement pursuant to subsection (1)(b) of this section should be used,

the agreement shall be in writing, shall state the behavioral basis of each parent and necessary third person, shall contain such other terms as the department and each parent having joint custody shall deem appropriate under the circumstances, shall utilize such resources as are available to the department from any source and are considered appropriate to the situation, shall specify the services or treatment to be undertaken, shall be signed by all persons, including:

(a) The child if appropriate;

(b) Every parent having joint custody of the subject child;

(c) Any other full or part-time resident of the home;

(d) All other persons the department considers necessary to the agreement's success;

and shall specify the responsibilities of each party to the agreement, which responsibilities shall be thoroughly explained to each person orally. The agreement shall not run for more than one (1) year. Copies shall be given to all signatories.

(most recent amendment, 2005)

§ 16-1632. Guardian ad litem coordinator – Duties – Annual report

(1) Under rules, policies and procedures adopted by the Idaho supreme court which may include, but are not limited to, provisions establishing fiscal controls and requiring compliance with all or part of the standards adopted by the national court appointed special advocate association, the persons or entities receiving moneys from the grant administrator to coordinate a guardian ad litem program in a judicial district may be required by the terms of the grant to perform any or all of the following duties:

(a) To establish, maintain and coordinate a districtwide guardian ad litem program consistent with the provisions of this chapter;

(b) To furnish the necessary administrative and staffing services as may from time to time be required;

(c) To act as a coordinator for the purpose of providing guardians ad litem for children brought within the purview of this chapter;

(d) To seek to have each child brought within the purview of this chapter available to him a guardian ad litem throughout each stage of any child protective proceeding;

(e) To establish a program for attorneys to represent guardians ad litem, whether or not appointed by the court in conjunction with the local, districtwide, and state bar associations;

(f) To the extent possible to establish a districtwide program to recruit volunteer guardians ad litem sufficient to provide services in each county of the judicial district;

(g) In conjunction with the department, prosecuting attorneys and city and county law enforcement officials, mental health professionals, social workers, school counselors and the medical community, the coordinators may assist in the development and implementation of a statewide uniform protocol for the investigation of allegations of abuse, neglect or abandonment pursuant to the provisions of this chapter;

(h) To develop uniform criteria to screen, select, train and remove guardians ad litem;

(i) To establish a priority list of those proceedings under this chapter in which a guardian ad litem shall be appointed in districts where there are insufficient numbers of guardians ad litem.

(2) Each guardian ad litem coordinator shall submit an annual report for the preceding fiscal year to the grant administrator for delivery to the legislature no later than ten (10) days following the start of each regular session. Such report shall contain the number and type of proceedings filed in the district under this chapter, the number of children subject to proceedings in the district under this chapter and the number of appointed guardians ad litem, the nature of services the guardians ad litem provided, the number of guardians ad litem trained in each district, the number of hours of service provided by guardians ad litem and attorneys and a complete financial statement for the past year and financial support requirements for the next fiscal year.

(3) The coordinators and staff members of any guardian ad litem program receiving moneys from the grant administrator, and any persons volunteering to serve as guardians ad litem in such programs,

shall submit to a fingerprint-based criminal history check through any law enforcement office in the state providing such service. The criminal history check shall include a statewide criminal identification bureau check, federal bureau of investigation criminal history check, and statewide sex offender registry check. A record of all background checks shall be maintained in the office of the supreme court of the state of Idaho with a copy going to the applicant.

(most recent amendment, 2007)

§ 16-1633. Guardian ad litem – Duties

Subject to the direction of the court, the guardian ad litem shall advocate for the best interests of the child and shall have the following duties which shall continue until resignation of the guardian ad litem or until the court removes the guardian ad litem or no longer has jurisdiction, whichever first occurs:

(1) To conduct an independent factual investigation of the circumstances of the child including, without limitation, the circumstances described in the petition.

(2) To file with the court prior to any adjudicatory, review or permanency hearing a written report stating the results of the investigation, the guardian ad litem's recommendations and such other information as the court may require. In all post-adjudicatory reports, the guardian ad litem shall inquire of any child capable of expressing his or her wishes regarding permanency and, when applicable, the transition from foster care to independent living and shall include the child's express wishes in the report to the court. The guardian ad litem's written report shall be delivered to the court, with copies to all parties to the case at least five (5) days before the date set for the hearing. The report submitted prior to the adjudicatory hearing shall not be admitted into evidence at the hearing and shall be used by the court only for disposition if the child is found to be within the purview of the act.

(3) To act as an advocate for the child for whom appointed at each stage of proceedings under this chapter. To that end, the guardian ad litem shall participate fully in the proceedings and to the degree necessary to

adequately advocate for the child's best interests, and shall be entitled to confer with the child, the child's siblings, the child's parents and any other individual or entity having information relevant to the child protection case.

(4) To monitor the circumstances of a child and to assure that the terms of the court's orders are being fulfilled and remain in the best interest of the child.
(5) To maintain all information regarding the case confidential and to not disclose the same except to the court or to other parties to the case.

(6) Such other and further duties as may be expressly imposed by the court order.

(most recent amendment, 2010)

§ 16-1634. Guardian ad litem – Rights and powers
The guardian ad litem will have the following rights and powers, which shall continue until resignation of the guardian ad litem or until the court removes the guardian ad litem or no longer has jurisdiction, whichever first occurs:

(1) The guardian ad litem, if represented by counsel, may file pleadings, motions, memoranda and briefs on behalf of the child, and shall have all of the rights of a party whether conferred by statute, rule of court or otherwise.

(2) All parties to any proceeding under this chapter shall promptly notify the guardian ad litem and the guardian's attorney of all hearings, staffings, investigations, depositions and significant changes of circumstances of the child.
(3) Except to the extent prohibited or regulated by federal law or by the provisions of chapter 82, title 39, Idaho Code, upon presentation of a copy of the order appointing guardian ad litem, any person or agency, including, without limitation, any hospital, school, organization, department of health and welfare, doctor, nurse, or other health care

provider, psychologist, psychiatrist, police department or mental health clinic shall permit the guardian ad litem to inspect and copy pertinent records necessary for the proceeding for which the guardian is appointed relating to the child and parent without consent of the child or parents.

(most recent amendment, 2005)

§ 16-1635. Immunity from liability

Any person appointed as a guardian ad litem, the coordinator, or a guardian ad litem volunteer program employee shall be personally immune from any liability for acts, omissions or errors in the same manner as if such person were a volunteer officer or director under the provisions of section 6-1605, Idaho Code.

(most recent amendment, 2005)

§ 16-1636. Compliance with federal law

For the purposes of the child abuse prevention and treatment act, 42 U.S.C. sections 5101 et seq., grant to this state under public law no. 93-247, or any related state or federal legislation, a guardian ad litem or other person appointed pursuant to section 16-1614, Idaho Code, shall be deemed a guardian ad litem to represent the interests of the minor in proceedings before the court. Any provisions of this chapter which shall cause this state to lose federal funding shall be considered null and void.

(most recent amendment, 2005)

§ 16-1637. Exemption

Any person appointed as a guardian ad litem by court order shall be exempt from the provisions of chapter 32, title 54, Idaho Code.
(most recent amendment, 2005)

§ 16-1638. Guardian ad litem account – Creation

(1) There is hereby created an account in the agency asset fund in the state treasury to be designated the guardian ad litem account.

(2) The account shall consist of:

(a) Moneys appropriated to the account;

(b) Donations, gifts and grants to the account from any source; and

(c) Any other moneys which may hereafter be provided by law.

(3) Moneys in the account may be expended for the purposes provided in sections 16-1632 through 16-1638, Idaho Code. Interest earned on the investment of idle money in the guardian ad litem account shall be returned to the guardian ad litem account.

(4) Disbursements of moneys from the account shall be by appropriation from the legislature to the supreme court, which moneys shall be used for the payment of grants to qualified recipients and for expenses incurred for carrying out the provisions of this chapter.

(most recent amendment, 2007)

§ 16-1639. Guardian ad litem grants

The grant administrator is hereby authorized and directed to award and administer grants from the money which shall be from time to time available to the grant administrator from the guardian ad litem account. The foregoing power and authorization shall be subject to requirements imposed by the supreme court and the following provisions:

(1) Grants may be made available to any person, organization, corporation, or agency for any of the following purposes:

(a) To enable such entity to act as the guardian ad litem coordinator in any judicial district.

(b) To enable such entity to recruit, organize and administer a panel of guardians ad litem and volunteer lawyers to represent guardians ad litem.

(c) To enable such entity to recruit, organize, train and support persons or entities to act as guardian ad litem coordinators in judicial districts which do not yet have guardian ad litem coordinators.

(d) To enable such entity to pay the administrative and other miscellaneous expenses incurred in carrying out the provisions of the guardian ad litem program.

(2) The grant administrator shall endeavor in allocating available funds to foster the development and operation of a guardian ad litem program in each judicial district in the state; provided, however, the grant administrator shall have no obligation to seek out or organize guardian ad litem coordinators or persons willing to act as such in judicial districts lacking a guardian ad litem coordinator.

(3) Funds available to the grant administrator from the guardian ad litem account may be also used to pay the grant administrator's cost of performing its duties and obligations pursuant to this chapter.

(most recent amendment, 2007)

§ 16-1640. Repealed

(Repealed, 2025)

§ 16-1641. Construction

This chapter shall be liberally construed to accomplish the purposes herein set forth.

(most recent amendment, 2005)

§ 16-1642. Short title

This chapter shall be known and cited as the "Child Protective Act."

(most recent amendment, 2005)

§ 16-1643. Severability

The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this chapter.

(most recent amendment, 2005)

§ 16-1644. Limitations on caregiver liability

(1) For purposes of this section:

(a) "Age or developmentally appropriate" means:

(i) Activities that are generally accepted as suitable for children of the same chronological age or level of maturity or that are determined to be developmentally appropriate for a child, based on the development of cognitive, emotional, physical and behavioral capacities that are typical for an age or age group; and

(ii) In the case of a specific child, activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical and behavioral capacities of the child.

(b) "Reasonable and prudent parent standard" means the standard of care characterized by careful and sensible parental decisions that maintain the health, safety and best interest of a child while simultaneously encouraging the emotional and developmental growth of the child when determining whether to allow a child in foster care under the responsibility of the state to participate in extracurricular, enrichment, cultural or social activities.

(2) A caregiver shall use the reasonable and prudent parent standard in determining whether to permit a child to participate in an activity while in foster care. A caregiver shall also consider whether the activity is age or developmentally appropriate.

(3) A caregiver shall not be liable for harm caused to a child in an out-of-home placement if the child participates in an activity approved by

the caregiver when the caregiver has acted in accordance with subsection (2) of this section.

(4) This section does not remove or limit any existing liability protection otherwise provided by law.

(as added, 2016)

§ 16-1645. Exemption

Notwithstanding any other provision of law, nothing in this chapter modifies or supersedes the requirements of the Indian child welfare act of 1978, 25 U.S.C. 1901, et seq.

(most recent amendment, 2017)

§ 16-1646. State department of health and welfare annual report

The state department of health and welfare shall submit an annual report regarding the foster care program to the germane standing committees of the legislature no later than ten (10) days following the start of each regular session. On or before February 15 of each year, the state department of health and welfare shall appear before the germane standing committees to present the report. Such report shall include, but need not be limited to, the number of children that are in the department's legal custody pursuant to this chapter, the number of such children who have been placed in foster care, how many times such children have been moved to different foster care homes and the reasons for such moves, best practices in foster care, goals to improve the foster care system in Idaho to ensure best practices are adhered to, a description of progress made with regard to the previous year's goals to improve the foster care system and any other information relating to foster care that the legislature requests. If a member of the legislature requests additional information between the time the report is received by the legislature and the time the department appears to present the report, then the department shall supplement its report to include such additional information.

(most recent amendment, 2017)

§ 16-1647. Citizen review panels -- child protection legislative review panel

(1) Each public health district, as set forth in section 39-408, Idaho Code, shall establish a citizen review panel for the purposes of evaluating and providing recommendations for the improvement of the child protection system within its respective health district.

(2) Each citizen review panel shall be comprised of up to seven (7) members. Members shall reside within the boundaries of the public health district.

(3) The public health districts shall develop an application and process for selecting citizen review panel members. The public health districts shall be responsible for convening the meetings of the citizen review panels and providing administrative support to coordinate meeting times and reports. Panel members shall be volunteers broadly representative of the community in which the panel is established and include members who have expertise in the prevention and treatment of child abuse and neglect and may include adult former victims of child abuse or neglect. An effort shall be made to create a panel comprised of members from diverse professional backgrounds who demonstrate a strong motivation to improve the lives of children. Panel members must pass a criminal background check.

(4) Each citizen review panel shall review all cases brought under the child protective act that have been open in the corresponding district court, or other appropriate local jurisdiction, longer than one hundred twenty (120) days.

(5) Citizen review panel members shall be granted access to copies of all records in the department's custody related to the child and case under review including all information pertaining to prior referrals, prior safety assessments, all court filings and any police reports. The department shall give citizen review panel members access to copies of any additional records within the department's custody upon

request. The department shall develop a memorandum of understanding addressing delivery, maintenance and destruction of all records, which must be signed by the panel member before accessing department records.

(6) Representative members from each of the seven (7) citizen review panels shall meet at least quarterly to discuss trends and concerns arising in different areas of the state. Meetings may take place telephonically, electronically or in person.
(7) Each citizen review panel shall produce a quarterly report containing a summary of the activities of the panel and offering recommendations to improve the child protection system experience for children. Reports shall be provided to the department and presented to the child protection legislative review panel established in subsection (9) of this section during its next meeting. Reports shall be exempt from public disclosure in the same manner as are records of investigations prepared by the department pursuant to section 74-105 (7), Idaho Code.

(8) The department shall submit an annual written response to citizen review panel reports. This response shall be made available to the public and presented to the child protection legislative review panel established in subsection (9) of this section.

(9) A child protection legislative review panel is hereby established. The panel shall be comprised of four (4) members of the house of representatives chosen by the speaker of the house, with one (1) such member chosen from the house health and welfare committee and one (1) such member chosen from the house judiciary, rules and administration committee and four (4) members of the senate chosen by the president pro tempore, with one (1) such member chosen from the senate health and welfare committee and one (1) such member chosen from the senate judiciary and rules committee. The child protection legislative review panel shall meet as needed, but at least twice annually, to review citizen review panel reports and the department's annual response and for other purposes related to child

protection. The child protection legislative review panel shall prepare an annual report summarizing citizen review panel recommendations and the department's response and shall submit that report to the United States department of health and human services annually.

(as added, 2018)

§ 16-1648. Prohibition on religious discrimination.

(1) As used in this section:

(a) "Adoption or foster care" or "adoption or foster care services" means social services provided to or on behalf of children, including services:

(i) Promoting foster parenting;

(ii) Providing foster homes, residential care, group homes, or temporary group shelters for children;

(iii) Recruiting foster parents;

(iv) Placing children in foster homes;

(v) Licensing or certifying foster homes;

(vi) Promoting adoption or recruiting adoptive parents;

(vii) Assisting adoptions or supporting adoptive families;

(viii) Performing or assisting home studies;

(ix) Assisting kinship guardianships or kinship caregivers;

(x) Providing family support services; and

(xi) Providing temporary family reunification services.

(b) "Discriminatory action" means any action taken by the state government to:

(i) Alter in any way the tax treatment of, or cause any tax, penalty, or payment to be assessed against, or deny, delay, revoke, or otherwise make unavailable an exemption from taxation of any person referred to in subsections (2) and (3) of this section;

(ii) Disallow, deny, or otherwise make unavailable a deduction for state tax purposes of any charitable contribution made to or by any person referred to in subsections (2) and (3) of this section;

(iii) Withhold, reduce, exclude, terminate, materially alter the terms or conditions of, or otherwise make unavailable or deny any state grant, contract, subcontract, cooperative agreement, guarantee, loan, scholarship, or other similar benefit from or to any person referred to in subsections (2) and (3) of this section;

(iv) Withhold, reduce, exclude, terminate, adversely alter the terms or conditions of, or otherwise make unavailable or deny any entitlement or benefit under a state benefit program from or to any person referred to in subsections (2) and (3) of this section;

(v) Impose, levy, or assess a monetary fine, fee, penalty, damages award, or injunction;

(vi) Withhold, reduce, exclude, terminate, materially alter the terms or conditions of, or otherwise make unavailable or deny any license, certification, accreditation, custody award or agreement, diploma, grade, recognition, or other similar benefit, position, or status from or to any person; or

(vii) Refuse to hire or promote, force to resign, terminate, demote, sanction, discipline, adversely alter the terms or conditions of employment of, or retaliate or take other adverse employment action against a person employed or commissioned by the state government.

(c) "State benefit program" means any program administered, controlled, or funded by the state, or by any agent on behalf of the state, providing cash, payments, grants, contracts, loans, or in-kind assistance.

"State government" means:

(i) The state or a political subdivision of the state;

(ii) Any agency of the state or of a political subdivision of the state, including a department, bureau, board, commission, council, or court;

(iii) Any city, county, urban county government, charter county government, unified local government, consolidated local government, special district, or any combination thereof;

(iv) Any person acting under color of state law; and

(v) Any private person suing under or attempting to enforce a law, rule, or regulation adopted by the state or a political subdivision of the state.

(2) The state government shall not take any discriminatory action against a person that advertises, provides, or facilitates adoption or foster care services wholly or partially on the basis that the person has provided or declined to provide any adoption or foster care service or related service based on or in a manner consistent with a sincerely held religious belief.

(3) The state government shall not take any discriminatory action against a person who the state grants custody of a foster or adoptive child wholly or partially on the basis that the person guides, instructs, or raises a child, or intends to guide, instruct, or raise a child, based on or in a manner consistent with a sincerely held religious belief. The state government may consider whether a person shares the same religious or faith tradition as a foster or adoptive child when considering placement of the child in order to prioritize placement with a person of the same religious or faith tradition.

(4) The state government shall consider any person as accredited, licensed, or certified who would otherwise be accredited, licensed, or certified, respectively, for any purposes under state law if not for a determination against such person wholly or partially on the basis that the person believes, maintains policies and procedures, or acts in accordance with a sincerely held religious belief.

(5) The state government shall consider any person for a contract, grant, or agreement that would otherwise be considered for a contract, grant, or agreement if not for a determination against such person wholly or partially on the basis that the person believes, maintains policies and procedures, or acts in accordance with a sincerely held religious belief.

(6) A person may assert a violation of the provisions of this section as a claim against the state government in any judicial or administrative proceeding or as a defense in any judicial or administrative proceeding without regard to whether the proceeding is brought by or in the name of the state government, any private person, or any other party.

(7) Notwithstanding any other provision of law to the contrary, an action under this section may be commenced, and relief may be granted, without regard to whether the person commencing the action has sought or exhausted available administrative remedies.

(8) A person shall bring an action to assert a claim under this section no later than two (2) years after the date that the person knew or should have known that a discriminatory action was taken against that person.

(9) Any person who successfully asserts a claim or defense under this section may recover:

(a) Declaratory relief;

(b) Injunctive relief to prevent or remedy a violation of this section or the effects of such a violation;

(c) Compensatory damages;

(d) Reasonable attorney's fees and costs; and

(e) Any other appropriate relief, except that declaratory relief and injunctive relief shall be available against a private person not acting under color of state law upon a successful assertion of a defense under this section.

(10) Sovereign, governmental, and qualified immunities to suit and from liability are waived and abolished to the extent of liability pursuant to subsection (9) of this section, and a person may sue the state government, except state courts, for damages allowed pursuant to subsection (9) of this section.

(As added, 2024)

§ 16-1649. Notification of rights

(1) When the department, in accordance with this chapter, commences an investigation after having received information that a child may be abused, neglected, or abandoned and in the course of such investigation contacts, directly and in person, the parents, guardians, or any persons having legal custody of the child, then the department shall notify such parents, guardians, or persons that they have the right to:

(a) Refuse to answer questions;

(b) Obtain an attorney at their own expense, consult with such attorney, and have such attorney present during an investigation; provided, however, that the department is not authorized to appoint or obtain an attorney for such parents, guardians, or persons;

(c) Refuse entry to their home or other real property; and

(d) Refuse the questioning of any minor children in their home or on their property, unless there is an order issued by a court of competent jurisdiction authorizing a particular entry or particular questioning or examination.

(2) The notification required by subsection (1) of this section shall be made in writing at the time of or within seventy-two (72) hours after the department makes the first contact directly and in person with the parents, guardians, or other persons having legal custody of the child.

(3) A parent, guardian, or other person having legal custody of the child may expressly assert the rights provided in this section.

(4) The notification required by subsection (1) of this section shall be made in writing on a form prescribed by the department. Such notification shall state that if the safety of the child cannot be determined, the department may request assistance from a law enforcement agency or seek a court order.

(5) Failure by the department to provide the notification required by this section in a specific investigation shall not affect the department's ability to conduct such investigation or to carry out the department's duties as provided in this chapter.

(as redesignated, 2025)

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Idaho Termination of Parent-Child Relationship Statute

§ 16-2001. Purpose

(1) The purpose of this chapter is to:

(a) Provide for voluntary and involuntary severance of the parent and child relationship and for substitution of parental care and supervision by judicial process, thereby safeguarding the rights and interests of all parties concerned and promoting their welfare and that of the state of Idaho; and

(b) Provide permanency for children who are under the jurisdiction of the court through the child protective act, chapter 16, title 16, Idaho Code, where the court has found the existence of aggravated circumstances or that reasonable efforts to return the child to his or her home have failed.

(2) Implicit in this chapter is the philosophy that wherever possible family life should be strengthened and preserved and that the issue of severing the parent and child relationship is of such vital importance as to require a judicial determination in place of attempts at severance by contractual arrangements, express or implied, for the surrender and relinquishment of children. Nothing in this chapter shall be construed to allow discrimination in favor of, or against, on the basis of disability.

(most recent amendment, 2005)

§ 16-2002. Definitions

When used in this chapter, unless the text otherwise requires:

(1) "Court" means the district court or magistrate's division thereof or, if the context requires, a judge or magistrate thereof.

(2) "Child" or "minor" means any individual who is under the age of eighteen (18) years.

(3) "Neglected" means:

(a) Conduct as defined in section 16-1602(31), Idaho Code; or

(b) The parent(s) has failed to comply with the court's orders or the case plan in a child protective act case and:

(i) The department has had temporary or legal custody of the child for twelve (12) of the most recent twenty-two (22) months; and

(ii) Reunification has not been accomplished by the last day of the fifteenth month in which the child has been in the temporary or legal custody of the department.

(4) "Abused" means conduct as defined in section 16-1602(1), Idaho Code.

(5) "Abandoned" means the parent has willfully failed to maintain a normal parental relationship, including but not limited to reasonable support or regular personal contact. Failure of the parent to maintain this relationship without just cause for a period of one (1) year shall constitute prima facie evidence of abandonment under this section; provided however, where termination is sought by a grandparent seeking to adopt the child, the willful failure of the parent to maintain a normal parental relationship as provided herein without just cause for six (6) months shall constitute prima facie evidence of abandonment.

(6) "Legal custody" means status created by court order that vests in a custodian the following rights and responsibilities:

(a) To have physical custody and control of the child and to determine where and with whom the child shall live;

(b) To supply the child with food, clothing, shelter and incidental necessities;

(c) To provide the child with care, education and discipline; and

(d) To authorize medical, dental, psychiatric, psychological and other remedial care and treatment for the child, including care and treatment in a facility with a program of services for children. However, such rights and responsibilities shall be exercised subject to the powers, rights, duties and responsibilities of the guardian of the person.

(7) "Guardianship of the person" means those rights and duties imposed upon a person appointed as guardian of a minor under the laws of Idaho. It includes but is not necessarily limited either in number or kind to:

(a) The authority to consent to marriage, to enlistment in the armed forces of the United States, and to major medical, psychiatric and surgical treatment; to represent the minor in legal actions; and to make other decisions concerning the child of substantial legal significance;

(b) The authority and duty of reasonable visitation, except to the extent that such right of visitation has been limited by court order;

(c) The rights and responsibilities of legal custody, except where legal custody has been vested in another individual or in an authorized child placement agency; and

(d) When the parent and child relationship has been terminated by judicial decree with respect to the parents, or only living parent, or when there is no living parent, the authority to consent to the adoption of the child and to make any other decision concerning the child which the child's parents could make.

(8) "Guardian ad litem" means a person appointed by the court pursuant to section 16-1614 or 5-306, Idaho Code.

(9) "Authorized agency" means the department, a local agency, a person, an organization, corporation, benevolent society or association licensed or approved by the department or the court to receive children for control, care, maintenance or placement.

(10) "Department" means the department of health and welfare and its authorized representatives.

(11) "Parent" means:

(a) The birth mother or the adoptive mother;

(b) The adoptive father;

(c) The biological father of a child conceived or born during the father's marriage to the birth mother; and

(d) The unmarried biological father whose consent to an adoption of the child is required pursuant to section 16-1504, Idaho Code.

(12) "Presumptive father" means a man who is or was married to the birth mother and the child is born during the marriage or within three hundred (300) days after the marriage is terminated.

(13) "Parent and child relationship" includes all rights, privileges, duties and obligations existing between parent and child, including inheritance rights, and shall be construed to include adoptive parents.

(14) "Parties" includes the child and the petitioners.

(15) "Unmarried biological father," as used in this chapter and chapter 15, title 16, Idaho Code, means the biological father of a child who was not married to the child's mother at the time the child was conceived or born.

(16) "Unmarried biological mother," as used in this chapter, means the biological mother of a child who was not married to the child's biological father at the time the child was conceived or born.

(17) "Disability" means, with respect to an individual, any mental or physical impairment that substantially limits one (1) or more major life activities of the individual, including but not limited to self-care, manual tasks, walking, seeing, hearing, speaking, learning, or working, or a record of such an impairment, or being regarded as having such an impairment. Disability shall not include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, other sexual behavior disorders, or substance use disorders, compulsive gambling, kleptomania, or pyromania. Sexual preference or orientation is not considered an impairment or disability. Whether an impairment substantially limits a major life activity shall be determined without consideration of the effect of corrective or mitigating measures used to reduce the effects of the impairment.

(18) "Adaptive equipment" means any piece of equipment or any item that is used to increase, maintain, or improve the parenting abilities of a parent with a disability.

(19) "Supportive services" means services that assist a parent with a disability to compensate for those aspects of their disability that affect their ability to care for their child and that will enable them to discharge their parental responsibilities. The term includes specialized or adapted training, evaluations, or assistance with effective use of adaptive equipment and accommodations that allow a parent with a disability to benefit from other services, such as Braille texts or sign language interpreters.

(most recent amendment, 2025)

§ 16-2003. Jurisdiction

The court shall have exclusive original jurisdiction, other than as provided in title 32, Idaho Code, to hear petitions to terminate the parent and child relationship when the child is present in the state. When a court has jurisdiction over the child under the child protective act, chapter 16, title 16, Idaho Code, that court shall have exclusive jurisdiction of the action to terminate parental rights unless it consents to a different venue or jurisdiction in the best interests of the child.

(most recent amendment, 2005)

§ 16-2004. Petition – Who may file

A petition may be filed by:

a. Either parent when termination is sought with respect to the other parent.

b. The guardian of the person or the legal custodian of the child or person standing in loco parentis to the child.

c. An authorized agency.

d. Any other person possessing a legitimate interest in the matter.

(as added, 1963)

§ 16-2005. Conditions under which termination may be granted

(1) (a) The court may grant an order terminating the relationship where it finds that termination of parental rights is in the best interests of the child and that one (1) or more of the following conditions exist:

(i) The parent has abandoned the child;

(ii) The parent has neglected or abused the child;

(iii) The presumptive parent is not the biological parent of the child;

(iv) The parent is unable to discharge parental responsibilities and such inability will continue for a prolonged indeterminate period and will be injurious to the health, morals or well-being of the child; or

(v) The parent has been incarcerated and is likely to remain incarcerated for a substantial period of time during the child's minority.

(b) For terminations arising from a case filed pursuant to chapter 16, title 16, Idaho Code, additional factors that inform what is in the best interest of the child, beyond those otherwise identified by the courts, include:

(i) The parent's efforts to improve the parent's capacity to safely reunify with the child;

(ii) The parent's demonstrated ability to live a law-abiding life, excepting infraction violations; and

(iii) 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.

(2) The court may grant an order the relationship and may rebuttably presume that such termination of parental rights is in the best interests of the child where:

(a) The parent caused the child to be conceived as a result of rape, incest, lewd conduct with a minor child under the age of sixteen (16) years, or sexual abuse of a child under the age of sixteen (16) years, as

defined in sections 18-6101, 18-1508, 18-1506, and 18-6601, Idaho Code;

(b) The following circumstances are present:

(i) Abandonment, chronic abuse or chronic neglect of the child. Chronic neglect or chronic abuse of a child shall consist of abuse or neglect that is so extreme or repetitious as to indicate continuing the relationship would result in unacceptable risk to the health and welfare of the child;

(ii) Sexual abuse against a child of the parent. Sexual abuse, for the purposes of this section, includes any conduct described in section 18-1506, 18-1506A, 18-1507, 18-1508, 18-1508A, 18-6101, or 18-6604, Idaho Code;

(iii) Torture of a child; any conduct described in the code sections listed in section 18-8303(1), Idaho Code; 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;

(iv) The parent has committed murder, aided or abetted a murder, solicited a murder or attempted or conspired to commit murder; or

(c) The court determines the child to be an abandoned infant, except in a parental termination action brought by one (1) parent against another parent.

(3) The court shall not grant an order terminating the relationship based on the child's immunization status.

(4) The court may grant an order terminating the relationship if termination is found to be in the best interest of the parent and child.

(5) The court may grant an order terminating the relationship where a consent to termination in the manner and form prescribed by this chapter has been filed by the parent or parents of the child in conjunction with a petition for adoption initiated by the person or persons proposing to adopt the child, where the consent to termination

has been filed by a licensed adoption agency, or where the termination is initiated by the department pertaining to a child who is in the legal custody of the department, and no subsequent hearing on the merits of the petition shall be held. Consents required by this chapter must be witnessed by a district judge or magistrate of a district court, or equivalent judicial officer of the state, where a person consenting resides or is present, whether within or without the county, and shall be substantially in the following form:

IN THE DISTRICT COURT OF THE.... JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF....
In the matter of the termination)
of the parental rights of)
.....)
.....)

I (we), the undersigned, being the.... of...., do hereby give my (our) full and free consent to the complete and absolute termination of my (our) parental right(s), to the said...., who was born....,...., unto...., hereby relinquishing completely and forever, all legal rights, privileges, duties and obligations, including all rights of inheritance to and from the said...., and I (we) do hereby expressly waive my (our) right(s) to hearing on the petition to terminate my (our) parental relationship with the said...., and respectfully request the petition be granted.

DATED:...., 20.....

STATE OF IDAHO)
) ss.
COUNTY OF....)

On this.... day of...., 20.., before me, the undersigned....,.... (Judge or Magistrate) of the District Court of the.... Judicial District of the state of Idaho, in and for the county of...., personally appeared...., known to me (or proved to me on the oath of....) to be the person(s) whose name(s) is (are) subscribed to the within instrument, and acknowledged to me that he (she, they) executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

..... (District Judge or Magistrate)

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

(a) It is witnessed by a magistrate or district judge of the state where signed; or

(b) The court receives an affidavit or a certificate from a court of comparable jurisdiction stating that the consent or the 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.

(7) The court shall accept a termination or relinquishment from a sister state that has been ordered by a court of competent jurisdiction under like proceedings or in any other manner authorized by the laws of a sister state. In a state where the father has failed to file notice of claim to paternity and willingness to assume responsibility as provided for pursuant to the laws of such state, and where such failure constitutes an abandonment of such child and constitutes a termination or relinquishment of the rights of the putative father, the court shall accept such failure as a termination in this state without further hearing on the merits if the court is satisfied that such failure constitutes a termination or relinquishment of parental rights pursuant to the laws of that state.

(8) The court shall hold a hearing unless:

(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 was 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.

(9) If the parent has a disability, as defined in this chapter, the parent shall have the right to provide evidence to the court regarding the manner in which the use of adaptive equipment or supportive services will enable the parent to carry out the responsibilities of parenting the child. Nothing in this section shall be construed to create any new or additional obligation on state or local governments to purchase or provide adaptive equipment or supportive services for parents with disabilities.

(most recent amendment, 2025)

§ 16-2006. Content of petition

The petition for the termination of the parent and child relationship shall include, to the best information and belief of the petitioner:

a. The name and place of residence of the petitioner;

b. The name, sex, date and place of birth, and residence of the child;

c. The basis for the court's jurisdiction;

d. The relationship of the petitioner to the child, or the fact that no relationship exists;

e. The names, addresses, and dates of birth of the parents; and where the child is illegitimate, the names, addresses and dates of birth of both parents, if known to the petitioner;

f. Where the child's parent is a minor, the names and addresses of said minor's parents or guardian of the person; and where the child has no parent or guardian, the relatives of the child to and including the second degree of kindred;

g. The name and address of the person having legal custody or guardianship of the person or acting in loco parentis to the child or authorized agency having legal custody or providing care for the child;

h. The grounds on which termination of the parent and child relationship is sought;

i. The names and addresses of the persons and authorized agency or officer thereof to whom or to which legal custody or guardianship of the person of the child might be transferred;

j. A list of the assets of the child together with a statement of the value thereof.

(as added, 1963)

§ 16-2007. Notice – Waiver – Guardian ad litem

(1) After a petition has been filed, the court shall set the time and place for hearing. The petitioner shall give notice to any person entitled to notice under section 16-1505, Idaho Code, the authorized agency having legal custody of the child and the guardian ad litem of the child and of a parent. The petitioner shall give notice to the Idaho department of health and welfare if the petition for termination was not filed in conjunction with a petition for adoption or by an adoption agency licensed by the state of Idaho.

(2) Notice shall be given by personal service on the parents or guardian. Where reasonable efforts to effect personal service have been unsuccessful or are impossible because the whereabouts of parties entitled to notice are not known or reasonably ascertainable, the court shall order service by registered or certified mail to the last known address of the person to be notified and by publication once a week for three (3) successive weeks in a newspaper or newspapers to be designated by the court as most likely to give notice to the person to be served. The hearing shall take place no sooner than ten (10) days after service of notice, or where service is by registered or certified mail and publication, the hearing shall take place no sooner than ten (10) days after the date of last publication.

(3) Notice and appearance may be waived by a parent in writing and witnessed by a district judge or magistrate of a district court, or equivalent judicial officer of the state, where a person waiving notice and appearance resides or is present, whether within or without the county, and shall be substantially in the following form:

IN THE DISTRICT COURT OF THE... JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF...

In the Matter of the termination)
of the parental rights to)
.....)
.....)
(a) minor child(ren)

I (we), the undersigned, being the... of..., do hereby waive my (our) right to notice and my (our) right to appear in any action seeking termination of my (our) parental rights. I (we) understand that by waiving notice and appearance my (our) parental right(s), to the said..., who was born...,..., unto..., may be completely and forever terminated, including all legal rights, privileges, duties and obligations, including all rights of inheritance to and from the said..., and I (we) do hereby expressly waive my (our) right(s) to notice of or appearance in any such action.

DATED:..., 20..

STATE OF IDAHO)
) ss.
COUNTY OF....)

On this... day of..., 20.., before me, the undersigned..., ... (Judge or Magistrate) of the District Court of the... Judicial District of the state of Idaho, in and for the county of..., personally appeared..., known to me (or proved to me on the oath of...) to be the person(s) whose name(s) is (are) subscribed to the within instrument, and acknowledged to me that he (she, they) executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

.....

(District Judge or Magistrate)

(4) The court shall accept a waiver of notice and appearance executed in another state if:

(a) It is witnessed by a magistrate or district judge of the state where signed; or

(b) The court receives an affidavit or a certificate from a court of comparable jurisdiction stating that the waiver of notice and appearance 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 waiver of notice and appearance was executed in accordance with the laws of the state in which it was executed.

(5) When the termination of the parent and child relationship is sought and the parent is determined to be incompetent to participate in the proceeding, the court shall appoint a guardian ad litem for the alleged incompetent parent. The court may in any other case appoint a guardian ad litem, as may be deemed necessary or desirable, for any party. Except as provided in section 16-1504(6), Idaho Code, where a putative father has failed to timely commence proceedings to establish paternity under section 7-1111, Idaho Code, or has failed to timely file notice of his filing of proceedings to establish his paternity of his child born out of wedlock under section 16-1513, Idaho Code, with the vital statistics unit of the department of health and welfare, notice under this section is not required unless such putative father is one of those persons specifically set forth in section 16-1505(1), Idaho Code.

(6) If a parent fails to file a claim of parental rights pursuant to the provisions of chapter 82, title 39, Idaho Code, for a child left with a safe haven pursuant thereto, prior to entry of an order terminating their parental rights, that parent is deemed to have abandoned the child and waived and surrendered any right in relation to the child, including the right to notice of any judicial proceeding in connection with the termination of parental rights.

(most recent amendment, 2020)

§ 16-2008. Investigation prior to disposition

(1) If a petition for adoption is not filed in conjunction with a petition for termination, or the petition for termination was not filed by a children's adoption agency licensed by the state of Idaho upon the filing of a petition for termination, the court shall direct the department of health and welfare, bureau of child support services, to submit a written financial analysis report within thirty (30) days from date of notification, detailing the amount of any unreimbursed public assistance moneys paid by the state of Idaho on behalf of the child. The financial analysis shall include recommendations regarding repayment of unreimbursed public assistance and provisions for future support for the child and the reasons therefor.

(2) Upon the filing of a petition, the court may direct, in all cases where written consent to termination has not been given as provided in this chapter, that an investigation be made by the department of health and welfare, division of family and community services, or a licensed children's adoption agency, and that a report in writing of such study be submitted to the court prior to the hearing, except that where the department of health and welfare or a licensed children's adoption agency is a petitioner, either in its own right or on behalf of a parent, a report in writing of the investigation made by such agency shall accompany the petition. The department of health and welfare or the licensed children's adoption agency shall have thirty (30) days from notification by the court during which it shall complete and submit its investigation unless an extension of time is granted by the court upon application by the agency. The court may order additional investigation as it deems necessary. The social study shall include the circumstances of the petition, the investigation, the present condition of the child and parents, proposed plans for the child, and such other facts as may be pertinent to the parent and child relationship, and the report submitted shall include a recommendation and the reasons therefor as to whether or not the parent and child relationship should be terminated. If the parent has a disability as defined in this chapter, the parent shall have the right, as a part of the social study, to provide information regarding

the manner in which the use of adaptive equipment or supportive services will enable the parent to carry out the responsibilities of parenting the child. The person performing the social investigation shall advise the parent of such right and shall consider all such information in any findings or recommendations. The social study shall be conducted by, or with the assistance of, an individual with expertise in the use of such equipment and services. Nothing in this section shall be construed to create any new or additional obligations on state or local governments to purchase or provide adaptive equipment or supportive services for parents with disabilities. Where the parent is a minor, if the report does not include a statement of contact with the parents of said minor, the reasons therefor shall be set forth. The purpose of the investigation is to aid the court in making disposition of the petition and shall be considered by the court prior thereto.

(3) Except as provided in section 16-1504(6), Idaho Code, no social study or investigation as provided for in subsection (2) of this section shall be directed by the court with respect to the putative father who has failed to timely commence proceedings to establish paternity under section 7-1111, Idaho Code, or who has failed to timely file notice of his filing of proceedings to establish his paternity of his child born out of wedlock under section 16-1513, Idaho Code, with the vital statistics unit of the department of health and welfare, unless such putative father is one of those persons specifically set forth in section 16-1505(1), Idaho Code.

(most recent amendment, 2020)

§ 16-2009. Hearing

(1) Cases under this act shall be heard by the court without a jury. The hearing may be conducted in an informal manner and may be adjourned from time to time. Stenographic notes or mechanical recording of the hearing shall be required. The general public shall be excluded and only such persons admitted whose presence is requested by any person entitled to notice under the provisions of section 16-2007, Idaho Code, or as the judge shall find to have a direct interest in the case or in the

work of the court; provided that persons so admitted shall not disclose any information secured at the hearing which would identify an individual child or parent. The court may require the presence of witnesses deemed necessary to the disposition of the petition, except that a parent who has executed a waiver pursuant to section 16-2007, Idaho Code, shall not be required to appear at the hearing.

(2) The parent or guardian ad litem shall be notified as soon as practicable after the filing of a petition and prior to the start of a hearing of his right to have counsel and, if counsel is requested and the parent or guardian is financially unable to employ counsel, counsel shall be provided only if such representation is constitutionally required. The prosecuting attorneys of the several counties shall represent the department at all stages of the hearing.

(3) The court's finding with respect to grounds for termination shall be based upon clear and convincing evidence under rules applicable to the trial of civil causes, provided that relevant and material information of any nature, including that contained in reports, studies or examinations, may be admitted and relied upon to the extent of its probative value. When information contained in a report, study or examination is admitted in evidence, the person making such report, study or examination shall be subject to both direct and cross-examination.

(most recent amendment, 2025)

§ 16-2010. Decree

(1) Every order of the court terminating the parent and child relationship or transferring legal custody or guardianship of the person of the child shall be in writing and shall recite the findings upon which such order is based, including findings pertaining to the court's jurisdiction.

(2) (a) If the court finds sufficient grounds exist for the termination of the parent and child relationship, it shall so decree and:

(i) Appoint an individual as guardian of the child's person, or

(ii) Appoint an individual as guardian of the child's person and vest legal custody in another individual or in an authorized agency, or

(iii) Appoint an authorized agency as guardian of the child's person and vest legal custody in such agency.

(b) The court shall also make an order fixing responsibility for the child's support. The parent and child relationship may be terminated with respect to one (1) parent without affecting the relationship between the child and the other parent.

(3) Where the court does not order termination of the parent and child relationship, it shall dismiss the petition; provided however, that where the court finds that the best interest of the child requires substitution or supplementation of parental care and supervision, it shall make an order placing the child under protective supervision, or vesting temporary legal custody in an authorized agency, fixing responsibility for temporary child support, and designating the period of time during which the order shall remain in effect.

(4) If termination of parental rights is granted and the child is placed in the guardianship or legal custody of the department of health and welfare, the court, upon petition, shall conduct a hearing as to the future status of the child within twelve (12) months of the order of termination of parental rights, and every twelve (12) months subsequently until the child is adopted or is in a placement sanctioned by the court.

(most recent amendment, 2005)

§ 16-2011. Effect of decree

An order terminating the parent and child relationship shall divest the parent and the child of all legal rights, privileges, duties, and obligations, including rights of inheritance, with respect to each other.

(as added, 1963)

§ 16-2012. Court costs

All court costs of giving notice and advertising shall be paid by the petitioners, except when the petitioner is an authorized agency. The court, however, may suspend such costs where payment would work a hardship on the petitioner or would be otherwise inappropriate.

(as added, 1963)

§ 16-2013. Records

The files and records of the court in any proceedings had under this act shall be kept in a separate locked file and shall be withheld from public inspection, but shall be open to inspection on special order of the court by persons having a legitimate interest in the case and their attorneys, and by an authorized agency to which legal custody of the child has been transferred. As used in this section, the words "files and records" include the court docket and entries therein, the petitions and other papers filed in any case, transcripts of testimony taken by the court, and findings, orders, and decrees, and other writings filed in proceedings before the court, other than social records. Social records shall be withheld from public inspection except that information from such records may be furnished to persons and agencies having a legitimate interest in the protection, welfare and treatment of the child, in such manner as the court determines. As used in this section, the words "social records" include the social service records of the court, the investigation and reports referred to in Section 16-2008, and related papers and correspondence, including medical, psychological and psychiatric studies and reports, either in the possession of the court or authorized agency.

No person shall be entitled to make copies of such files and records or social records or parts thereof unless the court so orders. It shall be unlawful, except for purposes for which files and records or social records or parts thereof or information therefrom have been released pursuant to this section, or except for purposes permitted by special order of the court, for any person to disclose, receive, or make use of, or authorize, knowingly permit, participate in, or acquiesce in the use

of any information concerning any person before the court directly or indirectly derived from the files and records or communications of the court, or social records, or acquired in the course of the performance of official duties. Any person who shall disclose information in violation of the provisions of this section shall be guilty of a misdemeanor.

(as added, 1963)

§ 16-2014. Appeals

Any appeal from an order or decree of the court granting or refusing to grant a termination shall be taken to the supreme court, provided however, pendency of an appeal or application therefor shall not suspend the order of the court relative to termination of the parent-child relationship.

(most recent amendment, 2010)

§ 16-2015. Construction

This act shall be liberally construed to accomplish the purposes herein set forth.

(as added, 1963)

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Interstate Compact on the Placement of Children

§ 16-2101. Legislative findings and policy

It is hereby found and declared:

(1) that the needs of children requiring placement and of adults seeking to receive them cannot be met by restricting child placement services and supervision to the territory of a single state;

(2) that the cooperation of this state with other states is necessary to improve services and protection for children in need of placement.

It shall therefore be the policy of this state, in adopting the Interstate Compact on the Placement of Children, to cooperate fully with other states:

(1) in furnishing public authorities in a receiving state with notice of the intention to place a child in the receiving state;

(2) in placing a child in a receiving state only after receiving notification from that receiving state as to suitability of the placement; and

(3) in conforming with the applicable laws of the receiving state governing the placement of children therein.

Nothing in this act shall be interpreted as limiting the jurisdiction of the courts under chapter [chapters] 16 and 18, title 16, Idaho Code.

(as added, 1976)

§ 16-2102. Execution of compact

The governor is hereby authorized and directed to execute a compact on behalf of this state with any other state or states legally joining therein in the form substantially as follows:

ARTICLE I. PURPOSE AND POLICY

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to

provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

ARTICLE II. DEFINITIONS

As used in this compact:

(a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.

(b) "Sending agency" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought, any child to another party state.

(c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(d) "Placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

ARTICLE III. CONDITIONS FOR PLACEMENT

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state, any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) The name, date and place of birth of the child.

(2) The identity and address or addresses of the parents or legal guardian.

(3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child.

(4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear

to be contrary to the interests of the child.

ARTICLE IV. PENALTY FOR ILLEGAL PLACEMENT

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

ARTICLE V. RETENTION OF JURISDICTION

(a) The sending agency shall retain jurisdiction over the child 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 the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or the child's transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed herein.

(b) When the sending agency is a public agency it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private

charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

ARTICLE VI. INSTITUTIONAL CARE OF DELINQUENT CHILDREN

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

(1) Equivalent facilities for the child are not available in the sending agency's jurisdiction; and

(2) Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

ARTICLE VII. COMPACT ADMINISTRATOR

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE VIII. LIMITATIONS

This compact shall not apply to:

(a) The sending or bringing of a child into a receiving state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state.

(b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the

force of law.

ARTICLE IX. ENACTMENT AND WITHDRAWAL

This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico and, with the consent of Congress, the government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two (2) years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

ARTICLE X. CONSTRUCTION AND SEVERABILITY

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

(as added, 1976)

§ 16-2103. Compact administrator

Pursuant to said compact, the governor is hereby authorized and empowered to designate an officer who shall be the compact administrator and who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms of

the compact. Said compact administrator shall serve subject to the pleasure of the governor. The compact administrator is hereby authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state thereunder.

(as added, 1976)

§ 16-2104. Supplementary agreements

The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to the compact. In the event that such supplementary agreement shall require or contemplate the use of any institution or facility of this state or require or contemplate the provision of any service of this state, said supplementary agreement shall have no force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service.

(as added, 1976)

§ 16-2105. Financial arrangements

The compact administrator, subject to the approval of the board of examiners, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement entered into thereunder.

(as added, 1976)

§ 16-2106. Financial responsibility of parents and guardians of estate

The compact administrator shall take appropriate action to effect the recovery from relevant parents or guardians of estate, at the option of said administrator, of any and all costs expended by the state, or any of its subdivisions, with respect to Idaho children handled under said compact.

(as added, 1976)

§ 16-2107. Responsibilities of enforcement

The courts, departments, agencies and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions.

(as added, 1976)

ICPC Regulation No. 7. Priority Placement

> **NOTE:** ICPC Regulations adopted by the Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC) and are available at https://aphsa.org/ISM/AAICPC/ICPC_Regulations.aspx. The regulations have adopted pursuant to the authority conferred by the Compact and codified in Idaho at Idaho Code § 16-2103. Although there are a number of Regulations, only Regulation 7 is included here because it confers an important role on courts in securing priority placements.

Regulation 7

Expedited Placement Decision

The following regulation adopted by the Association of Administrators of the Interstate Compact on the Placement of Children as Regulation No. 7, Priority Placement, as first adopted in 1996, is amended to read as follows:

1. Words and phrases used in this regulation shall have the same meanings as those ascribed to them in the Interstate Compact on the Placement of Children (ICPC). A word or phrase not appearing in ICPC shall have the meaning ascribed to it by special definition in this regulation or, where not so defined, the meaning properly ascribed to it in common usage.

2. This regulation shall hereafter be denoted as Regulation No. 7 for Expedited Placement Decision.

3. Intent of Regulation No. 7: The intent of this regulation is to expedite ICPC approval or denial by a receiving state for the placement of a child with a parent, stepparent, grandparent, adult uncle or aunt, adult brother or sister, or the child's guardian, and to:

(a) Help protect the safety of children while minimizing the potential trauma to children caused by interim or multiple placements while ICPC approval to place with a parent or relative is being sought through a more comprehensive home study process.

(b) Provide the sending state court and/or sending agency with expedited approval or denial. An expedited denial would underscore the urgency for the sending state to explore alternative placement resources.

4. This regulation shall not apply if:

(a) the child has already been placed in violation of the ICPC in the receiving state, unless a visit has been approved in writing by the receiving state Compact Administrator and a subsequent order entered by the sending state court authorizing the visit with a fixed return date in accordance with Regulation No. 9.

(b) the intention of the sending state is for licensed or approved foster care or adoption. In the event the intended placement [must be parent, stepparent, grandparent, adult aunt or uncle, adult brother or sister, or guardian as per Article VIII(a)] is already licensed or approved in the receiving state at the time of the request, such licensing or approval would not preclude application of this regulation.

(c) the court places the child with a parent from whom the child was not removed, the court has no evidence the parent is unfit, does not seek any evidence from the receiving state the parent is either fit or unfit, and the court relinquishes jurisdiction over the child immediately upon placement with the parent.

5. Criteria required before Regulation No. 7 can be requested: Cases involving a child who is under the jurisdiction of a court as a result of action taken by a child welfare agency, the court has the authority to

determine custody and placement of the child or has delegated said authority to the child welfare agency, the child is no longer in the home of the parent from whom the child was removed, and the child is being considered for placement in another state with a parent, stepparent, grandparent, adult uncle or aunt, adult brother or sister, or the child's guardian, must meet at least one of the following criteria in order to be considered a Regulation No. 7 case:

(a) unexpected dependency due to a sudden or recent incarceration, incapacitation or death of a parent or guardian. 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, or

(b) the child sought to be placed is four years of age or younger, including older siblings sought to be placed with the same proposed placement resource; or

(c) the court finds that any child in the sibling group sought to be placed has a substantial relationship with the proposed placement resource. 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; or

(d) the child is currently in an emergency placement.

6. Provisional approval or denial:

(a) Upon request of the sending agency and agreement of the receiving state to make a provisional determination, the receiving state may, but is not required to, provide provisional approval or denial for the child to be placed with a parent or relative, including a request for licensed placement if the receiving state has a separate licensing process available to relatives that includes waiver of non-safety issues.

Upon receipt of the documentation set forth in Section 7 below, the receiving state shall expedite provisional determination of the appropriateness of the proposed placement resource by:

1. performing a physical "walk through" by the receiving state's caseworker of the prospective placement's home to assess the residence for risks and appropriateness for placement of the child,

2. searching the receiving state's child protective services data base for prior reports/investigations on the prospective placement as required by the receiving state for emergency placement of a child in its custody,
3. performing a local criminal background check on the prospective placement,
4. undertaking other determinations as agreed upon by the sending and receiving state Compact Administrators, and
5. providing a provisional written report to the receiving state Compact Administrator as to the appropriateness of the proposed placement.

(b) A request by a sending state for a determination for provisional approval or denial shall be made by execution of an Order of Compliance by the sending state court that includes the required findings for a Regulation No. 7 request and a request for provisional approval or denial.

(c) Determination made under a request for provisional approval or denial shall be completed within seven (7) calendar days of receipt of the completed request packet by the receiving state Compact Administrator. A provisional approval or denial shall be communicated to the sending state Compact Administrator by the receiving state Compact Administrator in writing. This communication shall not include the signed Form 100A until the final decision is made pursuant to Section 9 below.

(d) Provisional placement, if approved, shall continue pending a final approval or denial of the placement by the receiving state or until the receiving state requires the return of the child to the sending state pursuant to paragraph 12 of this regulation.

(e) If provisional approval is given for placement with a parent from whom the child was not removed, the court in the sending state may direct its agency to request concurrence from the sending and receiving state Compact Administrators to place the child with the parent and relinquish jurisdiction over the child after final approval is given. If such concurrence is not given, the sending agency shall retain jurisdiction over the child as otherwise provided under Article V of the ICPC.

(f) A provisional denial means that the receiving state cannot approve a provisional placement pending the more comprehensive home study or assessment process due to issues that need to be resolved.

7. Sending agency steps before sending court enters Regulation No. 7 Order of Compliance: In order for a placement resource to be considered for an ICPC expedited placement decision by a receiving state, the sending agency shall take the following minimum steps prior to submitting a request for an ICPC expedited placement decision:

(a) Obtain either a signed statement of interest from the potential placement resource or a written statement from the assigned case manager in the sending state that following a conversation with the potential placement resource, the potential placement resource confirms appropriateness for the ICPC expedited placement decision process. Such statement shall include the following regarding the potential placement resource:

1. s/he is interested in being a placement resource for the child and is willing to cooperate with the ICPC process.
2. s/he fits the definition of parent, stepparent, grandparent, adult brother or sister, adult aunt or uncle, or his or her guardian, under Article VIII(a) of the ICPC.
3. the name and correct address of the placement resource, all available telephone numbers and other contact information for the potential placement resource, and the date of birth and social security number of all adults in the home.
4. a detail of the number and type of rooms in the residence of the placement resource to accommodate the child under consideration and the number of people, including children, who will be residing in the home.
5. s/he has financial resources or will access financial resources to feed, clothe and care for the child.
6. if required due to age and/or needs of the child, the plan for child care, and how it will be paid for.
7. s/he acknowledges that a criminal records and child abuse history check will be completed on any persons residing in the home

required to be screened under the law of the receiving state and that, to the best knowledge of the placement resource, no one residing in the home has a criminal history or child abuse history that would prohibit the placement.

8. whether a request is being made for concurrence to relinquish jurisdiction if placement is sought with a parent from whom the child was not removed.

(b) The sending agency shall submit to the sending state court:

1. the signed written statement noted in 7a, above, and
2. a statement that based upon current information known to the sending agency, that it is unaware of any fact that would prohibit the child being placed with the placement resource and that it has completed and is prepared to send all required paperwork to the sending state ICPC office, including the ICPC-100A and ICPC Form 101.

8. Sending state court orders: The sending state court shall enter an order consistent with the Form Order for Expedited Placement Decision adopted with this modification of Regulation No. 7 subject to any additions or deletions required by federal law or the law of the sending state. The order shall set forth the factual basis for a finding that Regulation No. 7 applies to the child in question, whether the request includes a request for a provisional approval of the prospective placement and a factual basis for the request. The order must also require completion by the sending agency of ICPC Form 101 for the expedited request.

9. Time frames and methods for processing of ICPC expedited placement decision:

(a) Expedited transmissions: The transmission of any documentation, request for information under paragraph 10, or decisions made under this regulation shall be by overnight mail, facsimile transmission, or any other recognized method for expedited communication, including electronic transmission, if acceptable. The receiving state shall recognize and give effect to any such expedited transmission of an ICPC-100A and/or supporting documentation provided it is legible and appears to be a complete representation of the

original. However, the receiving state may request and shall be entitled to receive originals or duly certified copies if it considers them necessary for a legally sufficient record under its laws. Any state Compact Administrator may waive any requirement for the form of transmission of original documents in the event he or she is confident in the authenticity of the forms and documents provided.

(b) Sending state court orders to the sending state agency: The sending state court shall send a copy of its signed order of compliance to the sending state agency within two (2) business days of the hearing or consideration of the request. The order shall include the name, mailing address, e-mail address, telephone number and FAX number of the clerk of court or a designated court administrator of the sending state court exercising jurisdiction over the child.

(c) Sending agency sends ICPC request to sending state ICPC office: The sending state court shall direct the sending agency to transmit to the sending state Compact Administrator within three (3) business days of receipt of the signed Order of Compliance, a completed ICPC-100A and Form 101, the statement required under Paragraph 7 above and supporting documentation pursuant to ICPC Article.

(d) Sending State ICPC office sends ICPC Request to Receiving State ICPC office: Within two (2) business days after receipt of a complete Regulation 7 request, the sending state Compact Administrator shall transmit the complete request for the assessment and for any provisional placement to the receiving state Compact Administrator. The request shall include a copy of the Order of Compliance rendered in the sending state.

(e) Timeframe for receiving state ICPC office to render expedited placement decision: no later than twenty (20) business days from the date that the forms and materials are received by the receiving state Compact Administrator, the receiving state Compact Administrator shall make his or her determination pursuant to Article III(d) of the ICPC and shall send the completed 100-A to the sending state Compact Administrator by expedited transmission.

(f) Timeframe for receiving state ICPC office to send request packet to receiving local agency: The receiving state Compact Administrator

shall send the request packet to the local agency in the receiving state for completion within two (2) business days of receipt of the completed packet from the sending state Compact Administrator.

(g) Timeframe for receiving state local agency to return completed home study to central office: The local agency in the receiving state shall return the completed home study to the receiving state Compact Administrator within fifteen (15) business days (including date of receipt) of receipt of the packet from the receiving state Compact Administrator.

(h) Timeframe for receiving state ICPC Compact Administrator to return completed home study to sending state: Upon completion of the decision process under the timeframes in this regulation, the receiving state Compact Administrator shall provide a written report, a 100A approving or denying the placement, and a transmittal of that determination to the sending state Compact Administrator as soon as possible, but no later than three (3) business days after receipt of the packet from the receiving state local agency and no more than twenty (20) business days from the initial date that the complete documentation and forms were received by the receiving state Compact Administrator from the sending state Compact Administrator.

10. Recourse if sending or receiving state determines documentation is insufficient:

(a) In the event the sending state Compact Administrator finds that the ICPC request documentation is substantially insufficient, s/he shall specify to the sending agency what additional information is needed and request such information from the sending agency.

(b) In the event the receiving state Compact Administrator finds that the ICPC request documentation is substantially insufficient, he or she shall specify what additional information is needed and request such information from the sending state Compact Administrator. Until receipt of the requested information from the sending state Compact Administrator, the receiving state is not required to continue with the assessment process.

(c) In the event the receiving state Compact Administrator finds that the ICPC request documentation is lacking needed information but is

otherwise sufficient, s/he she shall specify what additional information is needed and request such information from the sending state Compact Administrator. If a provisional placement is being pursued, the provisional placement evaluation process shall continue while the requested information is located and provided.

(d) Failure by a Compact Administrator in either the sending state or the receiving state to make a request for additional documentation or information under this paragraph within two (2) business days of receipt of the ICPC request and accompanying documentation by him or her shall raise a presumption that the sending agency has met its requirements under the ICPC and this regulation.

11. Failure of receiving state ICPC office or local agency to comply with ICPC Regulation No. 7: Upon receipt of the Regulation No. 7 request, if the receiving state Compact Administrator determines that it will not be possible to meet the timeframes for the Regulation No. 7 request, whether or not a provisional request is made, the receiving state Compact Administrator shall notify the sending state Compact Administrator as soon as practical and set forth the receiving state's intentions in completing the request, including an estimated time for completion or consideration of the request as a regular ICPC request. Such information shall also be transmitted to the sending agency by the sending state Compact Administrator for it to consider other possible alternatives available to it.

If the receiving state Compact Administrator and/or local state agency in the receiving state fail(s) to complete action for the expedited placement request as prescribed in this regulation within the time period allowed, the receiving state shall be deemed to be out of compliance with this regulation and the ICPC. If there appears to be a lack of compliance, the sending state court that sought the provisional placement and expedited placement decision may so inform an appropriate court in the receiving state, provide that court with copies of relevant documentation and court orders entered in the case, and request assistance. Within its jurisdiction and authority, the requested court may render such assistance, including the holding of hearings,

taking of evidence, and the making of appropriate orders, for the purpose of obtaining compliance with this regulation and the ICPC.

12. Removal of a child: Following any approval and placement of the child, if the receiving state Compact Administrator determines that the placement no longer meets the individual needs of the child, including the child's safety, permanency, health, well-being, and mental, emotional, and physical development, then the receiving state Compact Administrator may request the sending state Compact Administrator arrange for the immediate return of the child or make alternative placement as provided in Article V (a) of the ICPC. The receiving state request for removal may be withdrawn if the sending state arranges services to resolve the reason for the requested removal and the receiving and sending state Compact Administrators mutually agree to the plan. If no agreement is reached, the sending state shall expedite return of the child to the sending state within five (5) business days unless otherwise agreed in writing between the sending and receiving state Compact Administrators.

13. This regulation as first effective October 1, 1996, and readopted pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting of April 1999, is amended pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting of May 1, 2011; the regulation, as amended was approved on May 1, 2011 and is effective as of October 1, 2011.

Selected Children's Mental Health Services Act

§ 16-2426A. Serious behavioral health conditions – Prevention of removal from custody

(1) The department shall not make a substantiated disposition that a child has been abused, neglected, or abandoned by a parent or guardian under the child protective act, chapter 16, title 16, Idaho Code, because of a request for inpatient hospital treatment or an out-of-home placement for the child, if the child's recent mental health condition demonstrates that the child is likely to cause harm to himself or to suffer substantial mental or physical deterioration, and/or is likely to cause harm to others, and if the risk cannot be eliminated before returning the child to the child's family.

(2) In order to intercept and divert children at risk of being removed from their parent's or guardian's custody under chapter 16, title 16, Idaho Code, the department, within one hundred eighty (180) days after the effective date of this section, shall enter into an interagency agreement with appropriate agencies for the purpose of preventing children who are not otherwise abused or neglected from entering the custody of the department for purposes of receiving services for serious emotional disturbance. The interagency agreement shall require the department to establish an interagency clinical team to review cases of children who are at the hospital or another similar treatment facility and to connect the child and his family with the appropriate services, treatment, and support in order to stabilize the child's serious emotional disturbance and to prevent removal by the department under chapter 16, title 16, Idaho Code.

(as added, 2021)

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Selected Juvenile Corrections Act

§20-511A. Mental health assessments and plans of treatment

(1) A judge of any court shall order the department of health and welfare to submit appropriate mental health assessments and a plan of treatment for the court's approval if at any stage of a proceeding under this chapter or the child protective act, chapter 16, title 16, Idaho Code, a judge has reason to believe, based upon the record and proceedings of the court or upon an affidavit of a party, state or county agency or any person having physical custody of the juvenile or juvenile offender, that he or she:

(a) Is suffering a substantial increase or persistence of a serious emotional disturbance as defined in section 16-2403, Idaho Code, which impairs his or her ability to comply with the orders and directives of the court, or which presents a risk to his or her safety or well-being or the safety of others; and

(b) Such condition has not been adequately addressed with supportive services and/or corrective measures previously provided to the juvenile, or the juvenile's needs with respect to the serious emotional disturbance are not being met or have not been met.

(2) The court may convene a screening team consisting of representatives from the department of health and welfare, county probation, local school officials, teen early intervention specialists as provided for under section 16-2404A, Idaho Code, the department of juvenile corrections and/or other agencies or persons designated by the court to review the plan of treatment and provide written recommendations to the court. Parents and guardians of the juvenile or juvenile offender, if available, shall be included in the screening team and consulted with regard to the plan of treatment.

(3) If the court, after receiving the mental health assessment and plan of treatment submitted by the department of health and welfare and any recommendations from the screening team, determines that additional information is necessary to determine whether the conditions set forth in subsections (1)(a) and (1)(b) of this section are present, or to determine an appropriate plan of treatment for the juvenile or juvenile offender, the court may order an evaluation and/or recommendations for treatment to

be furnished by a psychiatrist, licensed physician or licensed psychologist, with the expenses of such evaluation and/or recommendations to be borne by the department of health and welfare.

(4) If the court concludes that the conditions set forth in subsections (1)(a) and (1)(b) of this section are present, the plan of treatment, as approved by the court, shall be entered into the record as an order of the court. The department of health and welfare shall provide mental health treatment as designated by the approved plan of treatment. If in-patient or residential treatment is required as part of the plan of treatment, the court shall hold a hearing on whether to order such treatment unless the hearing is waived by the juvenile or juvenile offender and his or her parents or guardians. The court may order parents, legal guardians or custodians to adhere to the treatment designated in the plan of treatment. Representatives from the department of health and welfare, county probation, local school officials, teen early intervention specialists as provided for under section 16-2404A, Idaho Code, the department of juvenile corrections and/or other agencies or persons designated by the court shall attend case review hearings as scheduled by the court.

(5) All costs associated with assessment and treatment shall be the responsibility of the parents of the juvenile or juvenile offender according to their ability to pay pursuant to section 39-3140, Idaho Code. The financial obligation of the family shall be determined after consideration of all available payment and funding sources including title XIX of the social security act, as amended, all available third party sources, and parent resources according to any order for child support under chapter 10, title 32, Idaho Code. Services shall not be conditioned upon transfer of custody or parental rights.

(most recent amendment, 2025)

***Editorial Note**: See Also: Idaho Juvenile Rule 54*

Domestic Violence Crime Prevention

§39-6301. Short title.

This chapter shall be known and may be cited as the "Domestic Violence Crime Prevention Act."

(as added, 1988)

§39-6302. Statement of purpose

For purposes of this chapter, the legislature adopts by reference the declaration of policy in section 39-5201, Idaho Code. Additionally, the legislature finds that a significant number of homicides, aggravated assaults, and assaults and batteries occur within the home between adult members of families. Furthermore, research shows that domestic violence is a crime which can be deterred, prevented or reduced by legal intervention. Domestic violence can also be deterred, prevented or reduced by vigorous prosecution by law enforcement agencies and prosecutors and by appropriate attention and concern by the courts whenever reasonable cause exists for arrest and prosecution.

The purpose of this act is to address domestic violence as a serious crime against society and to assure the victims of domestic violence the protection from abuse which the law and those who enforce the law can provide.

It is the intent of the legislature to expand the ability of the courts to assist victims by providing a legal means for victims of domestic violence to seek protection orders to prevent such further incidents of abuse. It is the intent of the legislature that the official response to cases of domestic violence shall stress the enforcement of the laws to protect the victim and shall communicate the attitude that violent behavior in the home is criminal behavior and will not be tolerated. It is the intent of the legislature to presume the validity of protection orders issued by courts in all states, the District of Columbia, United States territories and all federally recognized Indian tribes within the United States, and to afford full faith and credit to those orders. The provisions of this chapter are to be construed liberally to promote these purposes.

(most recent amendment, 1999)

§39-6303. Definitions

(1) "Domestic violence" means the physical injury, sexual abuse or forced imprisonment or threat thereof of a family or household member, or of a minor child by a person with whom the minor child has had or is having a dating relationship, or of an adult by a person with whom the adult has had or is having a dating relationship.

(2) "Dating relationship," for the purposes of this chapter, is defined as a social relationship of a romantic nature. Factors that the court may consider in making this determination include:

(a) The nature of the relationship;
(b) The length of time the relationship has existed;
(c) The frequency of interaction between the parties; and
(d) The time since termination of the relationship, if applicable.

(3) "Family member" means spouses, former spouses and persons related by blood, adoption or marriage.

(4) "Family dwelling" is any premises in which the petitioner resides.

(5) "Foreign protection order" means a protection order issued by a tribunal of another state.

(6) "Household member" means persons who reside or have resided together, and persons who have a child in common regardless of whether they have been married or have lived together at any time.

(7) "Judicial day" means any day upon which court business may be transacted as provided in sections 1-1606 and 1-1607, Idaho Code.

(8) "Protection order" means any order issued for the purpose of preventing violent or threatening acts or acts of harassment against, or contact or communication with, or physical proximity to, another person, where the order was issued:

(a) Pursuant to this chapter;

(b) In another jurisdiction pursuant to a provision similar to section 39-6306, Idaho Code; or

(c) In any criminal or civil action, as a temporary or final order (other than a support or child custody order), and where the order was issued in a response to a criminal complaint, petition or motion filed by or on behalf of a person seeking protection, and issued after giving notice and an opportunity to respond to the person being restrained.

(9) "Respondent" means the individual against whom enforcement of a protection order is sought.

(most recent amendment, 2003)

§39-6304. Action for protection

(1) There shall exist an action known as a "petition for a protection order" in cases of domestic violence.

(2) A person may seek relief from domestic violence by filing a petition based on a sworn affidavit with the magistrates division of the district court, alleging that the person or a family or household member, whether an adult or a child, is the victim of domestic violence. Any petition properly filed under this chapter may seek protection for any additional persons covered by this chapter. A custodial or noncustodial parent or guardian may file a petition on behalf of a minor child who is the victim of domestic violence.

(3) A person's right to petition for relief under this chapter shall not be affected by that person's having left the residence or household to avoid abuse.

(4) The petition shall disclose the existence of any custody or any marital annulment, dissolution or separation proceedings pending between the parties, the existence of any other custody order affecting the children of the parties, and the existence of child protection or adoption proceedings affecting the children of any party.

(5) When the petitioner requests custody of any child, the petition shall disclose:

(a) The county and state where the child has resided for six (6) months immediately prior to the filing of the petition;

(b) The party or other responsible person with whom the child is presently residing; and

(c) The party or other responsible person with whom the child has resided for six (6) months immediately prior to the filing of the petition.

(6) A petition shall be filed in the county of the respondent's residence, the petitioner's residence, or where the petitioner is temporarily residing.

(most recent amendment, 2000)

§39-6305. Fees waived

No filing fee, service fee, hearing fee or bond shall be charged for proceedings seeking only the relief provided under this chapter.

(as added, 1988)

§39-6306. Hearing on petition for protection order – Relief provided and realignment of designation of parties

(1) Upon filing of a petition based upon a sworn affidavit for a protection order, the court shall hold a hearing to determine whether the relief sought shall be granted within fourteen (14) days. If either party is represented by counsel at a hearing seeking entry of a protection order, the court shall permit a continuance, if requested, of the proceedings so that counsel may be obtained by the other party. If the court finds that it is necessary for both parties to be represented by counsel, the court shall enter appropriate orders to ensure that counsel is retained. The order entered may require either the petitioner or respondent, or both, to pay for costs of counsel. Upon a showing that there is an immediate and present danger of domestic violence to the

petitioner the court may, if requested, order for a period not to exceed one (1) year that:

(a) Temporary custody of the minor children of the petitioner or of the parties be awarded to the petitioner or respondent if exercise of such jurisdiction is consistent with the provisions of section 32-11-204, Idaho Code, and consistent with prior custody orders entered by a court of competent jurisdiction unless grounds exist pursuant to section 32-717, Idaho Code;

(b) A party be restrained from committing acts of domestic violence;

(c) Exclude the respondent from the dwelling which the parties share or from the residence of the petitioner;

(d) The respondent be ordered to participate in treatment or counseling services. The council on domestic violence, in recognition of the particular treatment requirements for batterers, shall develop minimal program and treatment standards to be used as guidelines for recommending approval of batterer programs to the court;

(e) Other relief be ordered as the court deems necessary for the protection of a family or household member, including orders or directives to a peace officer, as allowed under this chapter;

(f) The respondent be required to pay service fees, and to reimburse the petitioner for costs incurred in bringing the action, including a reasonable attorney's fee;

(g) The respondent be restrained from harassing, annoying, disturbing the peace of, telephoning, contacting, or otherwise communicating, directly or indirectly, with the petitioner and any designated family member or specifically designated person of the respondent's household, including the minor children whose custody is awarded to the petitioner;

(h) The respondent be restrained from entering any premises when it appears to the court that such restraint is necessary to prevent the respondent from contacting, harassing, annoying, disturbing the peace of or telephoning the petitioner or the minor children whose custody is awarded to the petitioner; and/or

(i) The respondent be restrained from coming within one thousand five hundred (1,500) feet or other appropriate distance of the petitioner,

the petitioner's residence, the school or place of employment of the petitioner, or any specified place frequented by the petitioner and by any other designated family member or specifically designated person of the respondent's household, including the minor children whose custody is awarded to the petitioner.

(2) Immediate and present danger under this section includes, but is not limited to, situations in which the respondent has recently threatened the petitioner with bodily harm or engaged in domestic violence against the petitioner or where there is reasonable cause to believe bodily harm may result.

(3) No order made under this chapter shall in any manner affect title to real property.

(4) Relief shall not be denied because petitioner used reasonable force in self-defense against respondent, or because petitioner or respondent was a minor at the time of the incident of domestic violence.

(5) Any relief granted by the protection order, other than a judgment for costs, shall be for a fixed period not to exceed one (1) year; provided, that an order obtained pursuant to this chapter may, upon motion and upon good cause shown, continue for an appropriate time period as directed by the court or be made permanent if the requirements of this chapter are met, provided the order may be terminated or modified by further order of the court either on written stipulation filed with the court or on the motion of a party and after a hearing on the motion. The motion to renew an order may be granted without a hearing, if not timely objected to by the party against whom the order was entered.

(6) In providing relief under this chapter, the court may realign the designation of the parties as "petitioner" and "respondent" where the court finds that the original petitioner is the abuser and the original respondent is the victim of domestic violence.

(most recent amendment, 2006)

§39-6306A. Uniform interstate enforcement of domestic violence protection orders act

(1) Short Title. This section may be cited as the "Uniform Interstate Enforcement of Domestic Violence Protection Orders Act."

(2) Definitions. As used in this section:

(a) "Issuing state" means the state whose tribunal issues a protection order.

(b) "Mutual foreign protection order" means a foreign protection order that includes provisions in favor of both the protected individual seeking enforcement of the order and the respondent.

(c) "Protected individual" means an individual protected by a protection order.

(d) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band that has jurisdiction to issue protection orders.

(e) "Tribunal" means a court, agency, or other entity authorized by law to issue or modify a protection order.

(3) Judicial Enforcement of Order.

(a) A person authorized by the law of this state to seek enforcement of a protection order may seek enforcement of a valid foreign protection order in a tribunal of this state. The tribunal shall enforce the terms of the order, including terms that provide relief that a tribunal of this state would lack power to provide but for this section. The tribunal shall enforce the order, whether the order was obtained by independent action or in another proceeding, if it is an order issued in response to a complaint, petition or motion filed by or on behalf of an individual seeking protection. In a proceeding to enforce a foreign protection order, the tribunal shall follow the procedures of this state for the enforcement of protection orders.

(b) A tribunal of this state may not enforce a foreign protection order issued by a tribunal of a state that does not recognize the standing of a protected individual to seek enforcement of the order.

(c) A tribunal of this state shall enforce the provisions of a valid foreign protection order which govern custody and visitation if the order was issued in accordance with the jurisdictional requirements governing the issuance of custody and visitation orders in the issuing state.

(d) A foreign protection order is valid if it:

(i) Identifies the protected individual and the respondent;

(ii) Is currently in effect;

(iii)Was issued by a tribunal that had jurisdiction over the parties and subject matter under the law of the issuing state; and

(iv) Was issued after the respondent was given reasonable notice and had an opportunity to be heard before the tribunal issued the order or, in the case of an order ex parte, the respondent was given notice and has had or will have an opportunity to be heard within a reasonable time after the order was issued, in a manner consistent with the rights of the respondent to due process.

(e) A foreign protection order valid on its face is prima facie evidence of its validity.

(f) Absence of any of the criteria for validity of a foreign protection order is an affirmative defense in an action seeking enforcement of the order.

(g) A tribunal of this state may enforce provisions of a mutual foreign protection order which favor a respondent only if:

(i) The respondent filed a written pleading seeking a protection order from the tribunal of the issuing state; and

(ii) The tribunal of the issuing state made specific findings in favor of the respondent.

(4) Nonjudicial Enforcement of Order.

(a) A law enforcement officer of this state, upon determining that there is probable cause to believe that a valid foreign protection order

exists and that the order has been violated, shall enforce the order as if it were the order of a tribunal of this state. Presentation of a foreign protection order that identifies both the protected individual and the respondent and, on its face, is currently in effect constitutes probable cause to believe that a valid foreign protection order exists. For the purposes of this subsection, the foreign protection order may be inscribed on a tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form. Presentation of a certified copy of a foreign protection order is not required for enforcement.

(b) If a foreign protection order is not presented, a law enforcement officer of this state may consider other information in determining whether there is probable cause to believe that a valid foreign protection order exists.

(c) If a law enforcement officer of this state determines that an otherwise valid foreign protection order cannot be enforced because the respondent has not been notified or served with the order, the officer shall inform the respondent of the order, make a reasonable effort to serve the order upon the respondent, and allow the respondent a reasonable opportunity to comply with the order before enforcing the order.

(d) Registration or filing of an order in this state is not required for the enforcement of a valid foreign protection order pursuant to this section.

(5) Registration of Order.

(a) Any individual may register a foreign protection order in this state pursuant to section 39-6311, Idaho Code. To register a foreign protection order, an individual shall present a copy of a protection order which has been certified by the issuing state to a court of this state in order to be entered in the Idaho law enforcement telecommunications system pursuant to section 39-6311, Idaho Code.

(b) An individual registering a foreign protection order shall file with the court an affidavit by the protected individual stating that, to the best of the protected individual's knowledge, the order is currently in effect.

(c) A fee may not be charged for the registration of a foreign protection order.

(d) A foreign protection order registered under this section may be entered in any existing state or federal registry of protection orders, in accordance with applicable law.

(6) Immunity. This state or a local governmental agency, or a law enforcement officer, prosecuting attorney, clerk of court, or any state or local governmental official acting in an official capacity, is immune from civil and criminal liability for an act or omission arising out of the registration or enforcement of a foreign protection order or the detention or arrest of an alleged violator of a foreign protection order if the act or omission was done in good faith in an effort to comply with this section.

(7) Uniformity of Application and Construction. In applying and construing this section, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(8) Transitional Provision. This section applies to foreign protection orders issued before July 1, 2002, and to continuing actions for enforcement of foreign protection orders commenced before July 1, 2002. A request for enforcement of a foreign protection order made on or after July 1, 2002, for violations of a foreign protection order occurring before that date is governed by this section.

(most recent amendment, 2003)

§39-6307. Security

Whenever a protection order is issued under this chapter, the issuing court may set a security amount for a violation of the order.

(as added, 1988)

§39-6308. Ex parte temporary protection order

(1) Where an application under this section alleges that irreparable injury could result from domestic violence if an order is not issued immediately without prior notice to the respondent, the court may grant

an ex parte temporary protection order based upon the affidavit submitted or otherwise shall hold a hearing which may be ex parte on the day a petition is filed or on the following judicial day to determine whether the court should grant an ex parte temporary protection order, pending a full hearing, and grant such other relief as the court deems proper, including an order:

(a) Restraining any party from committing acts of domestic violence;

(b) Excluding any party from the dwelling shared or from the residence of the other until further order of the court;

(c) Restraining any party from interfering with the other's custody of the minor children or from removing the children from the jurisdiction of the court;

(d) Ordering other relief as the court deems necessary for the protection of a family or household member, including orders or directives to a peace officer, as allowed under this chapter;

(e) Restraining the respondent from contacting, molesting, interfering with or menacing the minor children whose custody is awarded to the petitioner;

(f) Restraining the respondent from entering any premises when it appears to the court that such restraint is necessary to prevent the respondent from contacting, molesting, interfering with or menacing the petitioner or the minor children whose custody is awarded to the petitioner; and/or

(g) Restraining the respondent from taking more than personal clothing and toiletries and any other items specifically ordered by the court.

(2) An ex parte hearing to consider the issuance of a temporary protection order may be conducted by telephone in accordance with procedures established by the Idaho supreme court.

(3) Irreparable injury under this section includes but is not limited to situations in which the respondent has recently threatened the petitioner with bodily injury or has engaged in acts of domestic violence against the petitioner.

(4) The court shall hold an ex parte hearing on the day the petition is filed or on the following judicial day.

(5) An ex parte temporary protection order shall be effective for a fixed period not to exceed fourteen (14) days, but may be reissued. A full hearing, as provided in this chapter, shall be set for not later than fourteen (14) days from the issuance of the temporary order. The respondent shall be served with a copy of the ex parte order along with a copy of the petition and notice of the date set for the hearing. If the ex parte temporary protection order substantially affects the respondent's rights to enter the domicile or the respondent's right to custody or visitation of the respondent's children and the ends of justice so require, the respondent may move the court for an order shortening the time period within which the hearing required under the provisions of section 39-6306, Idaho Code, must be held. Motions seeking an order shortening the time period must be served upon the petitioner at least two (2) days prior to the hearing on the motion.

(most recent amendment, 1990)

§39-6309. Issuance of order – Assistance of peace officer – Designation of appropriate law enforcement agency

When an order is issued or a foreign protection order is recognized under this chapter upon request of the petitioner, the court may order a peace officer to accompany the petitioner and assist in placing the petitioner in possession of the dwelling or residence, or otherwise assist in the execution of the protection order. A certified copy of the order shall be prepared by the clerk for transmittal to the appropriate law enforcement agency as specified in section 39-6311, Idaho Code. Orders issued or foreign protection orders recognized under this chapter shall include an instruction to the appropriate law enforcement agency to execute, serve, or enforce the order.

(most recent amendment, 2002)

§39-6310. Order and service

(1) An order issued under this chapter along with a copy of the petition for a protection order, if the respondent has not previously received the petition, shall be personally served upon the respondent, except as provided in subsections (6), (7) and (8) of this section.

(2) A peace officer of the jurisdiction in which the respondent resides shall serve the respondent personally unless the petitioner elects to have the respondent served by a private party at the petitioner's own expense.

(3) If service by a peace officer is to be used, the clerk of the court shall have a copy of any order issued under this chapter and a copy of the petition for a protection order, if the respondent has not previously received the petition, forwarded on or before the next judicial day to the appropriate law enforcement agency specified in the order for service upon the respondent. Service of an order issued under this chapter shall take precedence over the service of other documents unless they are of a similar emergency nature.

(4) If the peace officer cannot complete service upon the respondent within ten (10) days, the sheriff or municipal peace officer shall notify the petitioner. The petitioner shall provide information sufficient to permit notification.

(5) Returns of service under this chapter shall be made in accordance with the applicable court rules.

(6) If an order entered by the court recites that the respondent appeared in person before the court and receives a copy of the order, the necessity for further service is waived and proof of service of that order is not necessary.

(7) If a party has appeared in person before the court and has waived personal service, the clerk of the court shall complete service of any notice of hearing or orders or modifications by certified mail to the

party's address as shown on the court petition which resulted in the issuance of the order or modification. Parties shall at all times keep the court informed of their current mailing address.

(8) If a foreign protection order is registered with the court under section 39-6306A, Idaho Code, the necessity for further service is waived and proof of service of that order is not necessary.

(most recent amendment, 2002)

§39-6311. Order – Transmittal to law enforcement agency – Record in Idaho public safety and security information system – enforceability

(1) The orders issued under sections 39-6306 and 39-6308, Idaho Code, or foreign protection orders recognized under section 39-6306A, Idaho Code, shall be in a form approved by the supreme court of the state of Idaho.

(2) (a) A copy of a protection order granted or a foreign protection order recognized under this chapter shall be forwarded by the clerk of the court on or before the next judicial day to the appropriate law enforcement agency specified in the order.

(b) Upon receipt of the order, the law enforcement agency shall forthwith enter the order and its expiration date into the Idaho public safety and security information system available in this state used by law enforcement agencies to list outstanding warrants. Notification of service as required in section 39-6310, Idaho Code, shall also be entered into the Idaho public safety and security information system upon receipt. Entry into the Idaho public safety and security information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in the state. Renewals of the order shall be recorded in the same manner as original orders. The information entered shall specifically state that the protection order is civil in nature. If the appropriate law enforcement agency determines that the service information sheet is incomplete or cannot be entered into the Idaho public safety and

security information system upon receipt, the service information sheet shall be returned to the clerk of the court. The clerk of the court shall then notify the petitioner of the error or omission.

(3) Law enforcement agencies shall establish procedures reasonably adequate to assure that an officer approaching or actually at the scene of an incident of domestic violence may be informed of the existence and terms of such protection order.

(4) A protection order shall remain in effect for the term set by the court or until terminated by the court. A protection order may, upon motion and upon good cause shown, be renewed for additional terms not to exceed one (1) year each if the requirements of this chapter are met. The motion to renew an order may be granted without a hearing, if not timely objected to by the party against whom the order was entered. If the petitioner voluntarily and without duress consents to the waiver of any portion of the protection order vis-a-vis the respondent pursuant to section 39-6313, Idaho Code, the order may be modified by the court.

(most recent amendment, 2013)

§39-6312. Violation of order – Penalties

(1) Whenever a protection order is granted and the respondent or person to be restrained had notice of the order, a violation of the provisions of the order or of a provision excluding the person from a residence shall be a misdemeanor punishable by not to exceed one (l) year in jail and a fine not to exceed five thousand dollars ($5,000), ten dollars ($10.00) of which shall be deposited to the credit of the domestic violence project account created in section 39-5212, Idaho Code.

(2) A peace officer may arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order, if the person restrained had notice of the order.

(3) The person against whom a protection order has been issued by an out-of-state court is presumed to have notice of the order if the victim presents to the officer proof of service of the order.

(most recent amendment, 1999)

§39-6313. Order – Modification – Transmittal

Upon application with notice to all parties and after a hearing, the court may modify the terms of an existing protection order. In any situation where an order is terminated or modified before its expiration date, the clerk of the court shall forward on or before the next judicial day a true copy of the modified order or the termination order to the appropriate law enforcement agency specified in the modification or termination order. Upon receipt of the order, the law enforcement agency shall promptly enter it in the Idaho law enforcement telecommunications system.

(as added, 1988)

§39-6314. Peace officers – immunity

No peace officer may be held criminally or civilly liable for actions or omissions in the performance of the duties of his office under this chapter, including the enforcement of out-of-state protection orders, if the peace officer acts in good faith and without malice.

(most recent amendment, 1999)

§39-6315. Proceedings additional

Any proceedings under this chapter are in addition to other civil or criminal remedies.

(most recent amendment, 2006)

§39-6316. Law enforcement officers – Training, powers, duties
(1) All training provided by the peace officers standards and training academy relating to the handling of domestic violence complaints by law enforcement officers shall stress enforcement of criminal laws in domestic situations, availability of community resources, and protection of the victim. Law enforcement agencies and community organizations with expertise in the issue of domestic violence shall cooperate in all aspects of such training.

(2) When a peace officer responds to a domestic violence call, the officer shall give a written statement to victims which alerts the victim to the availability of a shelter or other resources in the community, and give the victim a written notice provided by the Idaho state police substantially stating the following:

IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE, you can ask the city or county prosecuting attorney to file a criminal complaint. You also have the right to file a petition in magistrate court requesting an order for protection from domestic abuse which could include any of the following: (a) an order restraining your abuser from further acts of abuse; (b) an order directing your abuser to leave your household; (c) an order preventing your abuser from entering your residence, school, business, or place of employment; (d) an order awarding you or the other parent custody of or visitation with your minor child or children; and (e) an order restraining your abuser from molesting or interfering with minor children in your custody. The forms you need to obtain a protection order are available from the clerk of the district court. The resources available in this community for information relating to domestic violence, treatment of injuries and places of safety and shelters are: (For safety reasons, inclusion of shelter/safe house addresses is not necessary). You also have the right to sue for losses suffered as a result of the abuse, including medical and moving expenses, loss of earnings or support, and other out-of-pocket expenses for injuries sustained and damage to your property. This can be done without an attorney in small claims court if the total amount claimed is less than five thousand dollars ($5,000).

(3) The peace officer shall make every effort to arrange, offer, or facilitate transportation for the victim to a hospital for treatment of injuries or to a place of safety or shelter.

(4) The law enforcement agency shall forward the offense report to the appropriate prosecutor within ten (10) days of making such report if there is probable cause to believe that an offense has been committed, unless the case is under active investigation.

(most recent amendment, 2006)

§39-6317. Severability

The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.

(as added, 1988)

§39-6318. Order for transfer of wireless telephone service

(1) In order to ensure that a requesting party can maintain an existing wireless telephone number and the wireless numbers of any minor children in the care of the requesting party, a court may issue an order, after notice and a hearing, directing a wireless telephone service provider to transfer the billing responsibility for and rights to the wireless telephone number or numbers to the requesting party, if the requesting party is not the account holder.

(2) (a) The order transferring billing responsibility for and rights to the wireless telephone number or numbers to a requesting party shall be a separate order that is directed to the wireless telephone service provider. The order shall list the name and billing telephone number of the account holder, the name and contact information of the person to whom the telephone number or numbers will be transferred and each

telephone number to be transferred to that person. The court shall ensure that the contact information of the requesting party is not provided to the account holder.

(b) The order shall be served on the wireless service provider's agent for service of process listed with the secretary of state.

(c) Where the wireless service provider cannot operationally or technically effectuate the order due to certain circumstances including, but not limited to, any of the following, the wireless service provider shall notify the requesting party when:

(i) The account holder has already terminated the account;

(ii)Differences in network technology prevent the functionality of a device on the network; or

(iii)There are geographic or other limitations on network or service availability.

(3) (a) Upon transfer of billing responsibility for and rights to a wireless telephone number or numbers to a requesting party, pursuant to subsection (2) of this section, by a wireless telephone service provider, the requesting party shall assume all financial responsibility for the transferred wireless telephone number or numbers, monthly service costs and costs for any mobile device associated with the wireless telephone number or numbers.

(b) This section shall not preclude a wireless service provider from applying any routine and customary requirements for account establishment to the requesting party as part of this transfer of billing responsibility for a wireless telephone number or numbers and any devices attached to that number or numbers including, but not limited to, identification, financial information and customer preferences.

(4) This section shall not affect the ability of the court to apportion the assets and debts of the parties as provided for in law or the ability to determine the temporary use, possession and control of personal property.

(5) No cause of action shall lie against any wireless telephone service provider, its officers, employees or agents for actions taken in

accordance with the terms of a court order issued pursuant to the provisions of this section.

(as added, 2018)

Idaho Safe Haven Act

§39-8201. Title

This chapter shall be known as the "Idaho Safe Haven Act."

(most recent amendment, 2005)

§39-8202. Definitions

As used in this chapter, the following terms shall mean:

(1) "Custodial parent," for the purposes of this chapter, means, in the absence of a court decree, the parent with whom the child resides.

(2) "Indian child" means any unmarried person who is under eighteen (18) years of age and is either:

(a) A member or citizen of an Indian tribe; or

(b) Eligible for membership or citizenship in an Indian tribe and is the biological child of a member or citizen of an Indian ."

(3) "Newborn safety device" means a device that is voluntarily installed in a supporting wall of a hospital, fire station, law enforcement agency, or medical services provider that is staffed twenty-four (24) hours per day and that has an exterior point of access allowing an individual to place a newborn infant inside and an interior point of access allowing individuals inside the building to safely retrieve the newborn infant.

(4) "Safe haven" means:

(a) Hospitals licensed in the state of Idaho;

(b) Licensed physicians in the state of Idaho and staff working at their offices and clinics;

(c) Advanced practice professional nurses including certified nurse-midwives, clinical nurse specialists, nurse practitioners and certified registered nurse anesthetists licensed or registered pursuant to chapter 14, title 54, Idaho Code;

(d) Physician assistants licensed pursuant to chapter 18, title 54, Idaho Code.

(e) Medical personnel acting or serving in the capacity as a licensed provider, affiliated with a recognized Idaho EMS agency. For purposes of this act, "medical personnel" shall include those individuals certified by the Idaho military division as:

(i) First responders;
(ii) Emergency medical technicians - basic;
(iii) Advanced emergency medical technicians - ambulance;
(iv) Emergency medical technicians - intermediate; and
(v) Emergency medical technicians – paramedic; and

(f) A fire station operated by a city, a county, a tribal entity, a fire protection district or a volunteer fire department if there are personnel on duty.

(most recent amendment, 2025)

§39-8203. Emergency custody of certain abandoned children – Confidentiality – Immunity

(1) A safe haven shall take temporary physical custody of a child, without court order, if the child is personally delivered to a safe haven or to a safe haven through a newborn safety device, provided that:

(a) The child is no more than thirty (30) days of age;
(b) The custodial parent delivers the child to the safe haven; and
(c) The custodial parent does not express an intent to return for the child.

(2) A hospital, fire station, law enforcement agency, or medical services provider that is staffed twenty-four (24) hours per day seven (7) days a week, without exception, may use a newborn safety device to accept surrendered newborn infants pursuant to this section if the device is:

(a) Physically part of the building of the hospital, fire station, law enforcement agency, or medical services provider;
(b) Temperature-controlled and ventilated for the safety of newborns;
(c) Equipped with a functional alarm system that automatically triggers an alarm inside the building when the newborn infant is placed in the device; and

(d) Located such that the interior point of access is in an area that is conspicuous and visible to the employees of the hospital, fire station, law enforcement agency, or medical services provider.

(3) If a safe haven takes temporary physical custody of a child pursuant to subsection (1) of this section, the safe haven shall:

(a) Perform any act necessary, in accordance with generally accepted standards of professional practice, to protect, preserve, or aid the physical health and safety of the child during the temporary physical custody, including but not limited to delivering the child to a hospital for care or treatment; and

(b) Immediately notify a peace officer or other person appointed by the court of the abandonment.

(4) The safe haven shall not inquire as to the identity of the custodial parent and, if the identity of a parent is known to the safe haven, the safe haven shall keep all information as to the identity confidential. The custodial parent leaving the child shall not be required to provide any information to the safe haven but may voluntarily provide information, including but not limited to Indian tribe membership or citizenship and medical history of the parent(s) or the child.

(5) A safe haven with responsibility for performing duties under this section, and any employee, doctor, or other personnel working at the safe haven, are immune from any civil or criminal liability that otherwise might result from their actions, if they are acting in good faith in receiving a child and performing duties under this section.

(6) A custodial parent may leave a child with a safe haven or with a safe haven through a newborn safety device in this state without being subjected to prosecution for abandonment pursuant to the provisions of title 18, Idaho Code, provided that the child was no more than thirty (30) days of age when it was left at the safe haven or at a safe haven through a newborn safety device, as determined within a reasonable degree of medical certainty.

(most recent amendment, 2025)

§39-8204. Protective custody – Placement – Immunity

(1) Upon notification by a safe haven that a child has been abandoned pursuant to the provisions of this chapter, a peace officer or other person appointed by the court shall take protective custody of the child and shall immediately deliver the child to the care, control and custody of the department of health and welfare.

(2) The department of health and welfare shall maintain a list of licensed adoption agencies to contact for the placement of abandoned children and shall transfer care, control, and custody of an abandoned child to the department's selected adoption agency for placement within twenty-four (24) hours of taking custody of an abandoned child, unless exigent circumstances exist.

(3) When an abandoned child requires further medical evaluation, care, or treatment and the adoption agency selected by the department of health and welfare pursuant to subsection (2) of this section is unable to locate a prospective adoptive family within forty-eight (48) hours, the child shall be left in the care of a hospital, and the peace officer or other person appointed by the court shall notify the court and prosecutor of the action taken and the location of the child so that a shelter care hearing may be held.

(4) If, at any time, a party knows or has reason to know that the child is an Indian child, the jurisdiction of the Indian child welfare act (ICWA), 25 U.S.C. 1901, et seq., applies. If a party knows or has reason to know that the child is an Indian child, the department of health and welfare shall send immediate ICWA notification to the child's Indian tribe and to any other tribe or to the bureau of Indian affairs as required by ICWA or federal regulations implementing ICWA. Within ten (10) days of receiving the information that causes the department of health and welfare to know or have reason to know that the child is an Indian child, the department shall issue any notice required by this subsection.

(5) A peace officer or other person appointed by the court who takes a child into custody under this section, shall not be held liable either criminally or civilly unless the action of taking the child was exercised in bad faith or in violation of the provisions of this chapter.

(most recent amendment, 2025)

§39-8205. Shelter care hearing – Investigation – Adjudicatory hearing – Termination of parent-child relationship

(1) A shelter care hearing shall be held pursuant to section 16-1615, Idaho Code, and the department shall file a petition for adjudicatory hearing to vest legal custody in the department pursuant to section 16-1621, Idaho Code, at or prior to the time set for shelter care hearing.

(2) A child protective investigation or criminal investigation shall not be initiated based on a claim of abandonment unless a claim of parental rights is made and the court orders the investigation.

(3) During the initial thirty (30) day period from the time the child was delivered to a safe haven or to a safe haven through a newborn safety device by a custodial parent, the department shall request assistance from law enforcement officials to investigate through the missing children information clearinghouse and other state and national resources to ensure that the child is not a missing child.

(4) An adjudicatory hearing shall be conducted pursuant to the provisions of section 16-1619, Idaho Code, and section 16-1621, Idaho Code.

(5) As soon as practicable following the initial thirty (30) day period from the time the child was delivered to a safe haven by a custodial parent, the department shall petition to terminate the parental rights of the parent who abandoned the child at the safe haven and any unknown parent pursuant to section 16-1624, Idaho Code, and in accordance with chapter 20, title 16, Idaho Code.

(most recent amendment, 2024)

§39-8206. Claim of parental rights – Procedure

(1) A parent of the child may make a claim of parental rights of an abandoned child, abandoned pursuant to the provisions of this chapter, by filing a notice of claim of parental rights with the vital statistics unit of the department of health and welfare. The vital statistics unit of the department of health and welfare shall maintain an abandoned child registry for this purpose which shall be subject to disclosure according to chapter 1, title 74, Idaho Code. The department shall provide forms for the purpose of filing a claim of parental rights, and the forms shall be made available through the vital statistics unit of the Idaho department of health and welfare and in the office of the county clerk in every county of this state. Any parent claiming a parental right of an abandoned child, abandoned pursuant to the provisions of this chapter, shall file the form with the vital statistics unit of the department of health and welfare. The form must be filled out completely and provide the name and address for service of the person asserting the parental claim and set forth the approximate date the child was left in a safe haven or in a safe haven through a newborn safety device. The form must be signed by the person claiming the parental right and be witnessed before a notary public. The department shall record the date and time the claim of parental rights is filed with the department. The claim shall be deemed to be duly filed with the department as of the date and time recorded on the claim by the department. To be valid, a claim of parental rights must be filed before an order terminating parental rights is entered by the court. A parent that fails to file a claim of parental rights prior to entry of an order terminating their parental rights is deemed to have abandoned the child and waived and surrendered any right in relation to the child, including the right to notice of any judicial proceeding in connection with the termination of parental rights or adoption of the child. Registration of notice of commencement of paternity proceedings pursuant to chapter 15, title 16, Idaho Code, shall not satisfy the requirements of this section.

(2) Prior to the time set for hearing on the petition to terminate parental rights filed by the department of health and welfare, and prior to entry of an order terminating parental rights by the court, the department of health and welfare shall obtain and file with the court a certificate from the vital statistics unit of the department of health and welfare, signed by the state registrar of vital statistics, which certificate shall state that a diligent search has been made of the registry of claims of parental rights of abandoned children, abandoned pursuant to this chapter, and shall set forth the results of that search.

(3) If a claim of parental rights is made before an order terminating parental rights is entered by the court, notice pursuant to section 16-2007, Idaho Code, will be required and the court shall hold the action for involuntary termination of parental rights in abeyance for a period of time not to exceed sixty (60) days unless otherwise ordered by the court. During that period:

(a) The court shall order genetic testing to establish maternity or paternity, at the expense of the person or persons claiming the parental right.

(b) The department of health and welfare shall conduct an investigation pursuant to section 16-2008, Idaho Code, and in those cases where a guardian ad litem has been appointed, the guardian ad litem shall have all rights, powers and duties as provided for in chapter 16, title 16, Idaho Code, and as provided for in chapter 20, title 16, Idaho Code.

(c) When indicated as a result of the investigation, a shelter care hearing shall be conducted by the court in accordance with section16-1615, Idaho Code, within forty-eight (48) hours, or at an earlier time if ordered by the court, to determine whether the child should remain in the physical custody of the department or be released to a parent or other third party.

(d) Further proceedings shall be conducted as the court determines appropriate. However, where a claim of parental rights is made before an order terminating parental rights is entered by the court, a parent shall not be found to have neglected or abandoned a child placed in

accordance with this chapter solely because the child was left with a safe haven.

(4) If there is no showing that a parent has claimed a parental right to the child, the department of health and welfare shall file with the court a certificate from the vital statistics unit of the department of health and welfare, signed by the state registrar of vital statistics, stating that a diligent search has been made of the registry of parental claims for children abandoned pursuant to the provisions of this chapter and that no parental claim has been made. The certificate shall be filed with the court prior to the entrance of the final order of termination of parental rights.

(most recent amendment, 2024)

§39-8207. Repealed

(Repealed, 2025)

Selected Idaho Juvenile Rules (C.P.A.)

Rule 16. Investigate, screen or expand a Juvenile Corrections Act proceeding to a Child Protective Act proceeding (J.C.A.)

(a) If at any stage of a J.C.A. proceeding the court has reasonable cause to believe that a juvenile living or found within the state is neglected, abused, abandoned, homeless, or whose parent(s) or other legal custodian fails or is unable to provide a stable home environment, as set forth in I.C. Section 16-1603, the court may:

(1) direct the Department of Health and Welfare to investigate the circumstances of the juvenile and his or her family and report to the court their findings and recommendations;

(2) order a screening team to convene and report to the court as provided for in this rule; or

(3) order the proceeding expanded to a Child Protective Act (C.P.A.) proceeding.

> The order expanding the juvenile proceeding to a C.P.A. proceeding must be in writing, be case specific and contain the factual basis found by the court to support its order. The order will direct that copies of all court documents, studies, reports, evaluations, and other records in the court files, probation files, and juvenile corrections files relating to the juvenile/child be made available to the Department of Health and Welfare at its request and, if convened, the screening team.

(b) The purpose of the screening team in section (a)(2) is to develop a plan to safely meet the needs of the juvenile and the juvenile's family, based on all resources available to the juvenile, juvenile's parents, guardians, or legal custodians and, when appropriate, to avoid expanding the case to a C.P.A. proceeding. The focus of the screening team is to assess the juvenile's safety in the juvenile's home, determine whether the juvenile's needs, including services and treatment, can be safely and appropriately addressed, preferably in the juvenile's home. The screening team will include the juvenile, the juvenile's parents, custodians or legal guardians; a representative from the county juvenile

probation office; the Idaho Department of Juvenile Corrections; the Idaho Department of Health and Welfare's Child and Family Services, and Children's Mental Health programs. In addition, the screening team may include the Idaho Department of Health and Welfare's Children's Developmental Disabilities program, local school officials, and any other person or entity that the court or screening team deems appropriate. Participants will share information relevant to the purpose of the screening team. All such information will be maintained as confidential pursuant to Idaho Court Administrative Rule (I.C.A.R.) 32.

(c) The screening team will consider a detailed history of the juvenile which will include, but not be limited to:

(1) history of mental health issues or substance abuse treatment;

(2) the family's structure and dynamics;

(3) child protection history, including services and treatment provided by Family and Children Services and other departments of the Idaho Department of Health and Welfare;

(4) history of parental, guardian or legal custodian engagement in counseling and treatment designed to develop positive parenting skills and an understanding of the family's role in the juvenile's behavior;

(5) the juvenile's academic performance and behavior in an educational setting;

(6) prior intervention and treatment efforts by the family or the community;

(7) prior offenses; and

(8) current and prior risk/need assessments.

(d) The screening team will evaluate whether home or community-based programs or services can adequately address the risks, safety concerns, and needs identified by the screening team. The screening team will determine whether in-home or community services exist to address the juvenile's identified needs or whether such services can be accessed in a setting to prevent placement in the custody of the Idaho Department of Health and Welfare. The screening team will identify and evaluate any barriers that may exist and may also evaluate the

relative cost-effectiveness of any options considered. The screening team will employ a family centered approach. The screening team will consider the juvenile's and family's strengths and needs and evaluate the juvenile's and parents', guardians', or legal custodians' capacity to safely parent the child at home, with extended family, or another placement.

(e) The county probation officer or other court designee will prepare a written report to the court summarizing the screening team's findings and recommendations. If the screening team does not reach consensus regarding its findings or recommendations, the written report will contain a summary of the different opinions regarding the juvenile's safety at home, risks, needs and recommendations. The written report will be presented to the court and be made available to the parties as directed by the court and may include a recommendation for a plan for the juvenile and family to comply with a court order that addresses family and juvenile needs.

(f) If the court expands to a C.P.A. proceeding, the court may order the juvenile placed in shelter care under the C.P.A. When the court orders that the juvenile be placed in shelter care pending a shelter care hearing, the court will make a finding that the juvenile was placed in shelter because continuation in the juvenile's present condition or surroundings would be contrary to the welfare of the juvenile and vesting legal custody of the juvenile with the Department of Health and Welfare is in the juvenile's best interest. If the juvenile is placed in shelter care, a shelter care hearing under the C.P.A. must be held within 48 hours, excluding Saturdays, Sundays, and holidays, and notice thereof shall be given to the juveniles parents(s), guardian, or custodian, and to the Department of Health and Welfare.

(g) A copy of the order expanding a J.C.A. proceeding to a C.P.A. proceeding shall be given to the juvenile's parent(s), guardian, or custodian, the Idaho Department of Health and Welfare, the prosecuting attorney and other counsel of record, and the Department of Juvenile Corrections if the juvenile is currently under commitment

to the Department, pursuant to these rules and the rules of civil procedure.

(h) No further C.P.A. petition will be required. A petition may be filed to include other children that come within the jurisdiction of the C.P.A. but who are not before the court under the Juvenile Corrections Act. Any petition must be filed 14 days before the date set for the adjudicatory hearing. Any adjudicatory hearing pursuant to I.C. Section 16-1619 will be held within 30 days of the court's determination to expand the proceeding to a C.P.A. proceeding. A notice of the hearing will be served upon the parent(s), the Department of Health and Welfare, the juvenile, and the Department of Juvenile Corrections if the juvenile is currently under commitment to the Department, as though a petition under the C.P.A. has been filed. The burden of going forward with the evidence at the adjudicatory hearing shall remain with the prosecuting attorney.

(i) The proceeding under the J.C.A. will continue unless otherwise ordered by the court. The court may consolidate hearings under both the J.C.A. and the C.P.A. if the purposes of both acts can be served and the rights of the participants are not prejudiced.

(j) The Department of Juvenile Corrections shall have standing as an interested party in the child protective action if the juvenile is in the custody of the Department.

(most recent amendment, 2020)

Rule 29. Application of other rules (C.P.A.)

The Idaho Rules of Civil Procedure shall apply to C.P.A. proceedings to the extent that they are not inconsistent with these rules, statutes, or the law.

(as adopted, 2006)

Rule 31. Emergency (pretrial) removal of a child (C.P.A.)
There are four procedures under which a child may be removed from the home before the adjudicatory hearing:

(a) **Declaration of Imminent Danger.** A child may be removed from the home by a peace officer on a declaration of imminent danger by a peace officer, without a court order, under I.C. § 16-1608(1).

(b) **Order of Removal.** A child may be removed from the home by a summons with an order of removal by the court, under I.C. § 16-1611(4) and I.J.R. 34.

(c) **Order Following Shelter Care Hearing.** A child may be removed from the home on order of the court following a shelter care hearing under I.C. § 16-1615 and I.J.R. 39.

(d) **Rule 16 Expansion.** A child may be removed from the home and placed in shelter care upon order of the court when the court expands a J.C.A. proceeding to a C.P.A. proceeding pursuant to I.J.R. 16.

(most recent amendment, 2025)

Rule 32. Notice of emergency removal (C.P.A.)
(a) When a child is taken into custody under I.C. § 16-1608(1)(a) following a declaration of imminent danger, the peace officer must provide a written notice of emergency removal to the court, and to the parent(s), guardian or custodian, as required under I.C. § 16-1609(1).

(b) The notice of emergency removal must include the right to counsel and right to court appointed counsel, available under these rules. The notice must be personally served at least 24 hours before the shelter-care hearing. A parent, guardian, or custodian is not required to receive notice of the shelter-care hearing if they cannot be located or are out of state.

(c) The notice of emergency removal of the child from the home must substantially conform to the form found in Appendix A of these rules.

(most recent amendment, 2025)

Rule 33. Summons (C.P.A.)

(a) After a petition has been filed service of process must be made as provided in Idaho Code §§ 16-1611 and 16-1612.

(b) **Form of Child Protective Act Summons, Order of Removal, and Order to Prevent Removal**. The summons, Order of Removal, and Order to Prevent Removal in Child Protective Act cases must substantially conform to the forms found in Appendix A of these rules.

(most recent amendment, 2025)

Rule 34. Order of removal of child upon issuance of the summons (C.P.A.)

(a) *Order.* The court may order the removal of the child/ren from the home, in accordance with I.C. § 16-1611(4), at the time the Summons is issued, or upon separate motion. Except as provided in subsection (c) of this rule, a request for an Order of Removal must be made in writing, either in the petition or by separate motion of the petitioner. Determination shall be made on facts presented to the court ex parte, either by testimony or affidavit.

(b) *First Order Sanctioning Removal.* If the Order of Removal of Child is the first court order sanctioning removal of the children from the home, the court shall make written, case-specific findings that remaining in the home is contrary to the child/ren's welfare and that vesting legal custody with the Department of Health and Welfare or other authorized agency is in the best interest of the child/ren.

(c) *After Hours, Weekends, and Holidays.* If a prosecuting attorney or deputy attorney general seeks an order of removal of the child/ren from the home, after office hours, during the weekend, or on a holiday, the

court may issue the order and summons based on information communicated in person, by telephone or other reliable electronic means or affidavit. When the court's findings are based on a sworn oral statement, the statement must be recorded, filed with the clerk of the court, and is considered part of the record; these statements need not be filed prior to the issuance of the order. All sworn oral statements given in support of an order for removal must be given on oath or affirmation and must identify the speaker. If the court is unable to provide an electronic signature on the order of removal in accordance with Idaho Rules for Electronic Filing and Service (I.R.E.F.S.) 9 the court may verbally authorize the prosecuting attorney or deputy attorney general to sign on behalf of the court, which verbal authorization must be recorded.

(d) *Electronic Signatures.* An electronic signature may be used on any document that is required or permitted under this rule and that is transmitted electronically, including an order of removal, a written certification or declaration under penalty of perjury, an affidavit, or a notary's seal, in accordance with I.R.E.F.S. 9.

(e) *Form of Order of Removal to accompany the Summons.* The Order of Removal accompanying the summons shall substantially conform to the Supreme Court form found in Appendix A.

Committee Comments. As to subsection (b), federal law requires the court to make a written, case-specific finding that remaining in the home is contrary to the child's welfare. See 45 CFR § 1356.21(c). Idaho Code § 16-1611(4) requires the court to find that remaining in the home is contrary to the child's welfare and that vesting legal custody in IDHW is in the child's best interests. The policy of the rule is to require written case specific findings on both best interest and contrary to the welfare. Failure to timely make the federal finding will result in loss of federal funding for an otherwise eligible child. If the case-specific finding is not made, or not made at the required time, the error cannot be corrected at a later date to restore funding. The funding cannot be a simple recitation of the language of the statute; however, if the case-

specific information upon which the finding is based is set forth in a document in the court record (such as an affidavit), the finding can incorporate the document by reference without reiterating the facts set forth in the document.

(most recent amendment, 2025)

Rule 34A. Order to prevent removal (Alleged offender removal) (C.P.A.)

(a) **Motion.** A prosecutor or the attorney general may file a motion for an Order to Prevent Removal that excludes the alleged offending parent, legal guardian, or legal custodian from the child's residence.

(1) ***Affidavit.*** A motion for an Order to Prevent Removal must be in writing and accompanied by a sworn affidavit from a law enforcement officer or the Idaho Department of Health and Welfare (department), except as provided in subdivision (c) of this rule.

(2) ***Ex Parte.*** The court's determination may be made on facts presented ex parte, either by testimony or affidavit.

(3) ***Facts.*** The court may enter an Order to Prevent Removal on a showing that:

(A) there is 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

(B) neglect or abuse by another parent, legal guardian, or legal custodian is alleged.

(b) **Order.** If the court finds 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 occurred, the court must issue an order that:

(1) excludes the alleged offending parent, legal guardian, or legal custodian from the dwelling where the child resides;

(2) prohibits the alleged offending parent, legal guardian, or legal custodian from any contact or communication with the child; and

(3) restrains the alleged offending parent, legal guardian, or legal custodian from coming within 1,500 feet, or other appropriate distance, of the child until further order of the court.

(c) **After Hours, Weekends, and Holidays.** If a prosecuting attorney or deputy attorney general seeks an Order to Prevent Removal after office hours, during the weekend, or on a holiday, the court may issue the order and summons based on information communicated in person, by affidavit, telephone or other reliable electronic means.

(1) ***Testimony/Oral Statements.*** When the court's findings are based on an oral statement or testimony, the statement must comply with the following:

(A) *Recorded.* The statement must be recorded, filed with the clerk of the court, and becomes as part of the record. Sworn statements need not be filed prior to the issuance of the order.

(B) *Under Oath.* Oral statements or testimony given in support of an Order to Prevent Removal must be under oath or affirmation and must identify the speaker.

(C) *Signature.* If the court is unable to provide an electronic signature on the Order to Prevent Removal under Idaho Rule for Electronic Filing and Service (I.R.E.F.S.) 9, the court may verbally authorize the prosecuting attorney or deputy attorney general to sign on behalf of the court. The judge's verbal authorization must be recorded.

(d) **Electronic Signatures.** An electronic signature may be used on any document required or permitted under this rule that is transmitted electronically, including an Order to Prevent Removal, a written certification or declaration under penalty of perjury, an affidavit, or a notary's seal, under I.R.E.F.S. 9.

(e) **Form of Order to Prevent Removal to Accompany the Summons.** The Order to Prevent Removal must substantially conform to the form found in Appendix A.

(f) **Service.** A copy of an Order to Prevent Removal along with a copy of the petition and summons must be personally served, unless

otherwise ordered by the court, on the alleged offending parent, legal guardian, or legal custodian. All parents, legal guardians, or legal custodians must receive notice of a hearing on whether to continue an order within 48 hours, excluding Saturdays, Sundays, and holidays.

(as adopted, 2025)

Rule 35. Guardian ad litem programs (C.P.A.)

(a) The purpose of Guardian ad Litem programs in Idaho shall be to provide court-appointed volunteer advocacy to abused, neglected, abandoned and/or homeless children.

(b) Each GAL program shall have a governing body responsible for overseeing compliance with all applicable laws and regulations, adopting program policies, defining program services, and guiding program development.

(c) Each GAL program shall communicate, collaborate, and share information with fellow programs in the state.

(d) Each GAL program shall follow written policies for inclusiveness, recruitment, selection, training, retention, and effective performance and evaluation of its paid personnel.

(e) Each GAL program shall develop and follow written policies for its volunteers regarding recruitment; application, selection and screening; training; supervision; volunteer roles and responsibilities; and dismissal of volunteers.

(1) Each GAL program shall require that volunteers complete at least 30 hours of pre-service training and 12 hours of in-service training per year.

(2) Pre-service training shall include the following topics:

(A) Roles and responsibilities of a GAL volunteer;

(B) Court processes;

(C) Dynamics of families including mental health, substance abuse, domestic violence, and poverty;

(D) Relevant state laws, regulations and policies;
(E) Relevant federal laws, regulations and policies, including the Adoption and Safe Families Act (ASFA), the Child Abuse Prevention and Treatment Act (CAPTA), the Indian Child Welfare Act (ICWA), and the Multi Ethnic Placement Act (MEPA):
(F) Confidentiality and record keeping practices;
(G) Child development;
(H) Child abuse and neglect;
(I) Permanency planning;
(J) Community agencies and resources available to meet the needs of children and families;
(K) Communication and information gathering;
(L) Effective advocacy;
(M) Cultural competency;
(N) Special needs of the children served;
(O) Volunteer safety;
(P) Educational advocacy.

(f) Each GAL program shall manage its operations in accordance with generally accepted financial and risk management practices and applicable federal, state, and local statutory requirements.

(g) Each GAL program shall purchase liability protection for its governing body, organization, program staff, and volunteers to the extent that such individuals are not otherwise immune from liability under Idaho law.

(h) Each GAL program shall maintain management information and data necessary to plan and evaluate its services.

(i) Each GAL program shall maintain complete, accurate, and current case records and shall follow local policies for acceptance and assignment of GAL cases.
(j) Each GAL program shall maintain confidentiality of all information regarding a case and shall not disclose such information except to the

court or to other parties to the case and to the Department of Health and Welfare, whether or not a party. This duty of confidentiality is not extinguished by the dismissal of the case. Each GAL program shall follow written policies and procedures regarding access to, use of, and release of information about the children it serves to ensure that children's confidentiality is maintained at all times.

(k) Each GAL program shall complete the following national fingerprint based criminal records checks which shall include a complete check of the Idaho Sex Offender Registry maintained by the Idaho State Police and of the Child Abuse Registry maintained by the Idaho Department of Health & Welfare.

(1) GAL volunteers shall obtain a national fingerprint based criminal records check prior to being assigned a case, and shall obtain a national fingerprint based criminal records check at least every four years thereafter and at any time requested by the Program Director;

(2) GAL program staff shall obtain a national fingerprint based criminal records check at the time of hire and shall obtain a national fingerprint based criminal records check at least every four years thereafter, and at any time requested by the Program Director; and,

(3) Members of the Board of Directors of the GAL program shall obtain a national fingerprint based criminal records check upon appointment to the Board, and shall obtain a national fingerprint based criminal records check at least every four years thereafter, and at any time requested by the Board of Directors or the Program Director.

(most recent amendment, 2024)

Rule 36. Guardian ad litem (C.P.A.)

(a) As soon as practicable after the filing of the petition, the court shall appoint a guardian ad litem for the child as provided in I.C. § 16-1614.

(b) Upon the resignation or removal of a guardian ad litem, the court shall appoint a successor guardian ad litem for the child or children in accordance with I.C. § 16-1614.

(c) Subject to the direction of the court, the guardian ad litem shall maintain all information regarding the case confidential and shall not disclose the same except to the court or to other parties to the case or to the Department of Health and Welfare, whether or not a party. This duty of confidentiality is not extinguished by the resignation of the guardian ad litem; the removal of the guardian ad litem, or the dismissal of the case.

(most recent amendment, 2012)

Rule 37. Right to counsel (C.P.A.)

(a) For a child under the age of twelve (12) years, the court shall appoint a guardian ad litem for the child or children and shall appoint counsel to represent the guardian ad litem, unless the guardian ad litem is already represented by counsel. The court may appoint separate counsel for the child or children under the age of twelve (12) years in appropriate cases. The court may consider the nature of the case, the child's age, maturity, intellectual ability, ability to direct the activities of counsel and other factors relevant to the appropriateness of appointing counsel for the child.

(b) If there is no qualified ad litem program or qualified guardian ad litem available, the court shall appoint counsel for the child as provided in I.C. § 16-1614.

(c) The parent(s), guardian, or legal custodian has the right to be represented by counsel in all proceedings before the court. The court shall appoint counsel to represent the parent(s), guardian, or legal custodian if it finds that they are financially unable to pay for such legal services, unless representation is competently and intelligently waived.

(d) Notice of the right to be represented by counsel, and at public expenses where financial inability exists on the part of the parent(s),

guardian, or legal custodian, should be given at the earliest possible time. Notice shall be given in the summons, and at the outset of any hearing in which the parent(s), guardian, or legal custodian is making a first appearance before the court.

(most recent amendment, 2015)

Rule 38. Stipulations (C.P.A.)

All or some of the parties may enter into stipulations as to any issue at any stage of a proceeding under the Child Protective Act. Stipulations shall be made part of the court record, and are subject to court approval. The court may enter orders or decrees based upon such stipulations only upon a reasonable inquiry by the court to confirm that the parties entered into the stipulation knowingly and voluntarily, that the stipulation has a reasonable basis in fact, and that the stipulation is in the best interest of the child. Any order entered based on a stipulation must include all case-specific findings required by the state or federal statute or these rules.

(as adopted, 2006)

Rule 39. Shelter care hearing (C.P.A.)

(a) 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.

(b) The court shall schedule a shelter care hearing whenever a child or alleged offender is removed from the home as described in I.J.R. 31(a), (b), and (d), or upon the written motion or petition of the petitioner with or without prior removal of a child or alleged offender. Once a Child Protective Act case is assigned to a magistrate, the magistrate retains responsibility for the case until its conclusion. A different magistrate shall only be assigned when: (1) the judge who presided over the case no longer holds the same judicial office that the judge held at case initiation; or (2) other extraordinary circumstances exist, such as the judge's disqualification, death, illness, or other disability.

(c) When a child is taken into custody as described in I.J.R. 31(a) or (d), the court must hold a shelter-care hearing within 48 hours, excluding weekends and holidays.

(d) When an alleged offender is removed from the home under I.J.R. 31(a), the court must hold a shelter-care hearing within 24 hours, excluding weekends and holidays.

(e) The Idaho Rules of Evidence, other than those regarding privileges, do not apply in a shelter-care hearing as provided in I.R.E. 101(e)(6).
(f) The shelter-care hearing may be continued for a reasonable time by request of the parent(s), guardian, or custodian of the child upon entry of a waiver of the statutory time limits for setting the shelter-care hearing. The court may also grant a reasonable continuance to all other parties or participants upon good cause shown.

(g) At the time of the shelter-care hearing, the court shall advise the child, if present, and the parent(s), guardian, or custodian of their right to be represented by an attorney and, if financially unable to hire an attorney, of their right to be represented by a court-appointed attorney. The court should verify that each party has a copy of the petition and they are advised of the allegations therein; the purpose and scope of the hearing; the possible consequences of the proceedings, including termination of parental rights; the right of the parties to present evidence and to cross-examine witnesses regarding whether the child should be placed in the care of the department; and that failure to appear at future hearings could result in a finding that the petition has been proved, issuance of an order adjudicating that the child is in need of protection or services, and an order transferring permanent legal and physical custody of the child to another.

(h) The shelter-care hearing in its entirety shall be placed upon the record, and the general public shall be excluded in the manner set forth in I.J.R. 52.

(i) Pursuant to I.C. § 16-1615(5), and following receipt of evidence at the shelter care hearing, the court shall enter an order of shelter care/protective order if shown that:

(1) A petition has been filed; and

(2) Reasonable cause exists to believe that the child comes within the jurisdiction of the C.P.A.; and

(3) The department made reasonable efforts to eliminate the need for shelter care but the efforts were unsuccessful; or the department made reasonable efforts to eliminate the need for shelter care but was not able to safely provide preventative services; and

(4) The child could not be placed in the temporary sole custody of a parent having joint legal or physical custody; and

(5) It is contrary to the welfare of the child to remain in the home; and

(6) It is in the best interest of the child to remain in shelter care pending the adjudicatory hearing.

The court's findings as to reasonable efforts to prevent removal shall be in writing, and case-specific. If the shelter care order is the first order sanctioning removal of the child from the home, the court shall make written, case-specific findings that remaining in the home is contrary to the child's welfare and that vesting custody with the department or other authorized agency is in the best interest of the child.

(j) The court may enter a protective order as defined in I.C. § 16-1602(28), in addition to the shelter care order or instead of the shelter care order if it is shown that:

(1) Reasonable cause exists to believe the child comes within the purview of the C.P.A.; and

(2) A reasonable effort to prevent placement of the child outside the home could be effected by a protective order safeguarding the child's welfare.

(k) The court shall enter its order within 24 hours. If the court enters an order placing the child in shelter care, then the court must set the adjudicatory hearing as soon as possible and not more than 30 days

after the filing of the Child Protective Act petition, or the date the court orders a Juvenile Corrections Act case expanded to a Child Protective Act case, or service of the order of removal, whichever occurs later. If the court does not find that the child should remain in shelter care, the court may return the child to the home under a protective order, which will safeguard the child's health, safety or welfare, or may dismiss the petition.

(l) In making the determination as to whether shelter care of the child is required, the court shall consider any relevant facts consistent with subsection (i) of this rule, but generally the existence of any of the following facts will justify ordering temporary shelter care of the child:

(1) The child is in immediate need of medical treatment; or

(2) The child is seriously endangered in the child's surroundings and prompt removal appears to be necessary for the child's immediate protection; or

(3) The evidence indicates a danger that some action may be taken which would deprive the court of jurisdiction over the child; or

(m) At the shelter care hearing, or at any other time, upon notice and motion by any party, the court may make the following determinations, which shall temporarily suspend further efforts to reunify the child who is the subject of the action with the child's parent, pending further order of the court:

(1) when a termination of parental rights petition has been filed regarding this child; or

(2) there is reason to believe that aggravated circumstances exist; or

(3) the parental rights of the parent to a sibling have been terminated involuntarily.

(most recent amendment, 2021)

Rule 40. Notice of further proceedings (C.P.A.)

(a) **Notice to Foster Parents, Preadoptive Parents, and Relatives Providing Care.**

(1) ***Notice and Right to be Heard.*** After the adjudicatory hearing, the following persons designated by the Idaho Department of Health and Welfare (department) to provide care for the child must be provided notice of, and a right to be heard, in hearings concerning the child:

(A) foster parent;

(B) preadoptive parent; or

(C) relative providing care for the child.

(2) ***Non-parties.*** A foster parent, preadoptive parent, or relative providing care for the child is not a party to the proceeding.

(3) ***Notice responsibility.*** The department must provide this notice and must confirm to the court that the notice was given.

(b) **Participation by Child 8 and Over.** After the adjudicatory hearing, a child age 8 or older, must be provided with notice of, and have a right to be heard, in person or in writing, in hearings concerning the child.

(1) ***Participation in Writing.*** If the child chooses to be heard in writing:

(A) the writing must be filed;

(B) a copy provided to each party;

(C) a copy provided to the department, whether or not a party; and

(D) the writing must be considered by the court.

(2) ***Hearing.***

(A) The court may continue a hearing if notice is not given or the child does not appear.

(B) This rule does not replace the Idaho Rules of Evidence in a proceeding where those rules apply.

(3) ***Notice Responsibility.*** The department must provide this notice and confirm to the court that the notice was given.

(c) **Participation by Youth 12 and Over.** Youth age 12 and older must attend their review and permanency hearings in person or telephonically, unless:

(1) the youth declines in writing before the hearing;

(2) the youth declines through counsel; or
(3) the court finds good cause to excuse the youth from attending.

(d) **Notice.** Notice of the time, date, and place of further proceedings after an initial appearance or service of summons may be given:
(1) in open court, by written acknowledgment of receipt; or
(2) by mail. Notice is acceptable if:
(A) the clerk deposits the notice in the United States mail, postage prepaid, to the address provided by the party to the court or mails it to the person's last known address, or the address at which the person was initially served, and files a certificate of such service, or
(B) the notice is sent by registered or certified mail.

(e) **Form.** The notice of hearing must conform to the format found in Appendix A of these rules.

(most recent amendment, 2025)

Rule 41. Adjudicatory hearing (C.P.A.)
(a) The purpose of the adjudicatory hearing is to determine: (1) whether the child is within the jurisdiction of the court under the Child Protective Act as set forth in I.C. § 16-1603; and (2) if jurisdiction is found, to determine the disposition of the child. The court may also determine whether aggravated circumstances exist, if aggravated circumstances were alleged in the petition or raised by written motion with notice to the parents prior to the adjudicatory hearing. The court may make an aggravated circumstances determination at any time after the adjudicatory hearing if aggravated circumstances is raised by written motion with notice to the parents prior to the hearing.

(b) The hearing shall be scheduled as set forth in I.C. § 16-1619. The hearing may not be continued more than 60 days from the date the child was removed from the home, unless the court has made case-specific, written findings as to whether the department made reasonable efforts to prevent the need to remove the child from the home.

(c) The hearing shall be conducted in an informal manner. The Idaho Rules of Evidence apply to the portion of the hearing where jurisdiction and/or aggravated circumstances is determined. The Idaho Rules of Evidence do not apply to disposition or any other portion of the hearing.

(d) In the event the court finds the child is within the jurisdiction of the court under the Child Protective Act, it shall make findings of fact and conclusions of law indicating the basis of jurisdiction.

(e) If the court finds that the child is within the jurisdiction of the court under the Child Protective Act, and if the court places the child in the custody of the department, and if the court does not find that the parent subjected the child to aggravated circumstances, then the court shall make written, case-specific findings that the department made reasonable efforts to eliminate the need for shelter care by the efforts were unsuccessful or that the department made reasonable efforts to eliminate the need for shelter care but the efforts were unsuccessful or that the department made reasonable efforts to eliminated the need for shelter care but was not able to safely provide preventative services.

(f) If the adjudicatory decree is the first order of the court sanctioning removal of the child from the home, the court shall make a written, case-specific finding that remaining in the home is contrary to the welfare of the child, or, in the alternative, removal from the home is in the best interest of the child.

(g) If the court finds that the child is within the jurisdiction of the court under the Child Protective Act, and if the court vests legal custody of the child in the department, and the court does not find that the parent subjected the child to aggravated circumstances, then the court shall order the department to prepare a written case plan, to be filed with the court and served upon the parties five days prior to the hearing on the case plan. The department shall consult with the guardian ad litem and the child’s parents in preparing the plan.

(h) If the court finds that the child is within the jurisdiction of the court under the Child Protective Act, and the court places the child under the protective supervision of the department, then the court shall order the department to prepare a written case plan, to be filed with the court and served upon the parties five days prior to the hearing on the case plan. The department shall consult with the guardian ad litem and the child's parents in preparing the plan.

(i) If the court finds that the child is within the jurisdiction of the court under the Child Protective Act, and finds that the parent has subjected the child to aggravated circumstances, then the court shall order the department to prepare a written permanency plan, to be filed with the court and served upon the parties five days prior to the hearing on the permanency plan. The department shall consult with the guardian ad litem, and the child's parents in preparing the plan.

(most recent amendment, July 2013)

Rule 41A. Discovery for adjudicatory hearing (C.P.A.)

(a) **Scope.** The timeline for adjudicating cases under the Child Protective Act is condensed and requires more expedited discovery than is established by the Idaho Rules of Civil Procedure. To facilitate child protection timelines, the requirements for disclosure of witnesses, documents, and other evidence to be used at the adjudicatory hearing are governed by this rule. Other formal discovery, including but not limited to, discovery disclosure provided in the Idaho Rules of Civil Procedure, do not apply unless otherwise ordered by the court.

(b) **Mandatory Disclosures.** Without necessity of a request by another party and no later than 7 days prior to the adjudicatory hearing, each party must disclose in writing, to every other party, the following information:

(1) Disclosure of non-expert witnesses. The name, address, telephone number, email address, if known, of any witness whom

the disclosing party may call at the adjudicatory hearing, including known potential impeachment witnesses, together with a short and plain statement of the witness's expected testimony;

(2) Disclosure of expert witnesses. The name, address, telephone number and email address, if known, of any person whom the disclosing party expects to call as an expert witness at the adjudicatory hearing together with a written summary of opinions to be expressed and the basis and reason for the opinions, a copy of any report prepared in anticipation of trial, and any exhibits the witness may rely on while testifying;

(3) Documents and electronically stored information. Any documents or electronically stored information relied upon or intended to be introduced into evidence at the adjudicatory hearing by the disclosing party. This includes, but is not limited to, documents and electronically stored information in the possession of law enforcement agencies, the Department of Health and Welfare, or other witnesses or experts over whom the disclosing party has control and which documents or electronically stored information in any way relate to the investigation of the child and circumstances which are the subject of the pending child protection case.

(c) **Depositions.** Depositions may be taken only upon order of the court. The court must first find that the proposed testimony is material, and the desired testimony should be preserved because there is a reasonable likelihood that the prospective witness will be unavailable for the adjudicatory hearing.

(d) **Continuing duty to disclose.** The duty to disclose under this rule is a continuing duty until the conclusion of the adjudicatory hearing, and each party is required to make additional, amended, or supplemental disclosures as soon as practicable in the event new or different information is discovered or revealed.

(e) **Service and filing.** The party serving disclosures must file with the court a notice of when the disclosures were served and upon

whom. Unless the court orders otherwise, the disclosures will not be filed with the court.

(f) **Confidentiality.** Any documents, electronically stored information, or information disclosed pursuant to this rule must only be used by counsel, parties, the Department of Health and Welfare, or expert witnesses for the purposes of preparing for the adjudicatory hearing and other proceedings under the Child Protective Act. No document or electronically stored information will be disclosed or distributed to any other person or entity not authorized by this rule without prior approval of the court. Disclosure of protected information, documents, or electronically stored information in violation of this rule may constitute contempt of court. The court may issue additional orders regarding discovery, as needed in the case.

(g) **Failure to Comply.** If a party fails to disclose in accordance with this rule, in the exercise of discretion, the court may grant a continuance, prohibit the party from calling the witness or introducing evidence not disclosed, or enter such other order as it deems just under the circumstances. In determining the consequences for failure to comply, the court will consider the reason for the failure to disclose, the probative value of the evidence, prejudice to any party, the best interest of the child, and any other factor deemed relevant by the court. If a continuance is granted, the hearing must be held, and the required findings must be made no later than 60 days from the date of the removal.

(as added, 2024)

Rule 42. Extended home visits (C.P.A.)

If the court vests legal custody of the child in the department, then extended home visits must be approved by the court in writing prior to the extended home visit. For purposes of this rule, an extended home visit is any period of unsupervised visitation between the parent, guardian or legal custodian and the child that exceeds forty-eight (48) hours duration.

(a) The court may authorize an extended home visit for a period not to exceed six (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 six (6) months, the court shall conduct a hearing to review the extended home visit no less than every forty-two (42) days to address the efforts and progress toward a change in legal custody.

(b) The department may terminate an extended home visit without prior court approval when, in the determination of the department, termination of the extended home visit and removal of the child is in the best interest of the child. If the department terminates an extended home visit, the department shall prepare a written statement, setting forth when the extended home visit was terminated and the reason(s) for terminating the extended home visit. The statement shall be filed with the court within forty-eight (48) hours (excluding weekends and holidays) of the termination of the extended home visit, and shall be mailed or otherwise provided to the parties.

(most recent amendment, 2020)

Rule 43. Judicial review of placement, judicial approval of out-of-state placement, and judicial approval of placement in a qualified residential treatment program (C.P.A.)

(1) This rule does not apply to extended home visits, which are addressed in IJR 42, to return to home under protective supervision, which is addressed in I.C. § 16-1622, or to the removal of a child who is in the custody of a parent under the protective supervision of the department, which is addressed in I.C. § 16-1623.

(2) When legal custody of a child is vested in the department, the department will include information about the child's placement in the Report of Investigation and every report or plan filed thereafter with the court. The report or plan will identify the child's placement, whether there has been a change in placement since the last hearing,

and if so, the reasons for the change in placement, and the reasons for the selection of the new placement. If safety reasons prevent identifying the placement, the plan or report will describe the nature of the placement and the safety reasons preventing identification of the placement.

(3) 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.

(4) Judicial Review of Placement

(a) Where legal custody of a child is vested in the department, any party or counsel for a child may, at or after the disposition phase of the Adjudicatory Hearing, file and serve a written motion to contest matters relating to the placement of the child by the department. The motion will be accompanied by a supporting affidavit that sets forth the reasons why the court should not approve the placement. The department will file and serve a written response to the motion within seven (7) days of the filing of the motion. The response will be supported by an affidavit that sets forth the reasons why the court should approve the placement. Any other party, or counsel for the child, may also file and serve a written response to the motion, within seven (7) days of the filing of the motion. The response may be supported by an affidavit that may set forth the reasons why the placement should or should not be approved. Any party filing a motion or response may waive the right to a hearing. Copies of motions contesting placement, responses, and supporting affidavits will be served on all parties, the department and counsel for the child.

(b) Within fourteen (14) days of the filing of the motion, the court will schedule a hearing on the motion, unless waived by the moving party and all responding parties. The hearing must be held no later than thirty days (30) days from the date the motion was filed. If the court approves the placement, the court will enter an order denying the motion. If the court does not approve the placement, the court will enter an order directing the department to identify and implement an alternative placement in accordance with applicable law.

(5) Judicial Approval of Out-of-State Placement
When legal custody of a child is vested in the department and the department proposes to place the child out-of-state, the department will file a written motion for approval of out-of-state placement. The motion will be accompanied by a supporting affidavit that sets for the reasons for the placement. The motion will also be accompanied by documentation showing that the placement complies with the Interstate Compact on the Placement of Children, Title 16, Chapter 21, Idaho Code. Any party, or counsel for the child, may object to the motion by filing a written response, which shall be filed within fourteen (14) days of the filing of the motion. The response will be accompanied by a supporting affidavit setting forth the reasons why the court should not approve the placement. Within thirty (30) days of the date the motion was filed, the court will a hearing on the motion unless waived by the moving party and all responding parties.

(most recent amendment, 2021)

Rule 44. Case plan hearing – permanency plan hearing (C.P.A.)
(a) Case Plan: No Finding of Aggravated Circumstances.

(1) Absent a finding of aggravated circumstances, the case plan shall provide that reunification must be finalized within twelve (12) months from the date the child is removed from the home. If in the child's best interest, the court may approve an amendment to the case plan extending the time to finalize reunification for up to three (3) months.

(2) Absent a finding of aggravated circumstances, if the case plan has a concurrent permanency goal of guardianship, the case plan shall include a schedule to finalize the guardianship within thirteen (13) months from the date the child was removed from the home. Any amendment to the case plan to extend the time to finalize the guardianship must be approved by the court.

(b) Permanency Plan- Aggravated Circumstances Found.

(1) If the permanency plan has a permanency goal of guardianship, the permanency plan will include a schedule to finalize the guardianship within five (5) months from the date of the judicial

determination of aggravated circumstances. Amendments to the permanency plan to extend the time to finalize the guardianship must be approved by the court.

(2) If the permanency plan has a permanency goal of termination of parental rights and adoption, the permanency plan shall include a schedule to finalize the termination of parental rights within six (6) months from the approval of the permanency plan, and has the objective of finalizing the adoption within twelve (12) months from the approval of the permanency plan. Amendments to the permanency plan to extend the time to finalize the termination of parental rights or the adoption must be approved by the court.

(3) If the court approves a permanency plan with a permanency goal of termination of parental rights and adoption, the court shall order the department to file a petition to terminate parental rights within thirty (30) days of approval of the permanency plan and shall enter a scheduling order that complies with the time limits of this rule and implements the schedule set forth in the permanency plan. The scheduling order may include, but is not limited to, deadlines for filing the petition for termination of parental rights and service of process, the date and time of hearing in the event the petition is not contested, and the date and time of pretrial conference and trial in the event the petition is contested.

(most recent amendment, 2013)

Rule 45. Review hearings (C.P.A.)

(a) **Timing.** The court must hold a hearing to review the child's case and permanency plan no later than 6 months after the entry of the court's order taking jurisdiction, and every 2 months after.

(b) **Review Hearings.** At review hearings, the court must review compliance with the case plan or the permanency plan (whichever is in place) and the Idaho Department of Health and Welfare's (department's) progress in achieving permanency for the child. The court may:

(1) modify the case plan or permanency plan;

(2) modify the disposition of the child (if a child was placed under the protective supervision of the department, modification is subject to I.C. § section 16-1623);

(3) determine whether the department has made reasonable efforts to finalize a permanency plan; and in the case of a child who will not be

returned to a parent, review the department's consideration of options for in-state and out-of-state placement of the child; or
(4) enter orders to ensure progress towards achieving permanency for the child.

(c) **Continuance.** The court may continue a review hearing for a short period to give the parties time to respond to substantive issues raised for the first time at a review hearing. The court may enter temporary orders pending the continued hearing.

(d) **Combined Review and Annual Permanency Hearing.** If a review hearing is combined with the annual permanency hearing described at I.C. §§ 16-1620 or 16-1622, the court must order the department to prepare a written permanency plan. The permanency plan must be filed with the court and served on the parties at least 5 days before the hearing. For hearings required by I.C. § 16-1622(1)(a), the department and guardian ad litem must file reports to the court no later than 5 days prior to the hearing.
(most recent amendment, 2025)

Rule 46. Annual permanency hearings
(a) If the permanency plan has a permanency goal of termination of parental rights and adoption, the permanency plan shall include a schedule which has the objective of finalizing the termination of parental rights within eighteen (18) months from the date the child was removed from the home, and has the objective of finalizing the adoption within twenty-four (24) months from the date the child was removed from the home. Amendments to the permanency plan to extend the time to finalize the termination of parental rights or the adoption must be approved by the court.

(b) If the court approves a permanency plan with a permanency goal of termination of parental rights and adoption, the court shall order the department to file a petition to terminate parental rights within thirty (30) days of approval of the permanency plan and shall enter a scheduling order that complies with the time limits set forth in this rule and

implements the schedule set forth in the permanency plan. The scheduling order may include, but is not limited to, deadlines for filing the petition for termination of parental rights and service of process, the date and time of hearing in the event the petition is not contested, and the date and time of pretrial conference and trial in the event the petition is contested, with the objective of finalizing the proceedings on the petition within six (6) months of the date of the permanency hearing.

(most recent amendment, 2013)

Rule 47. Modification or revocation of disposition or case plan (C.P.A.)

Any C.P.A. disposition or case plan may be modified or revoked at any time that the court has jurisdiction over the child. If the modification is to remove a child from the home who has been placed there under protective supervision, then the modification shall be made in accordance with the procedure set forth in I.C. § 16-1623.

(as adopted, 2006)

Rule 48. Termination of parent-child relationship (C.P.A.)

(a) **Petition for Termination.** A petition for termination of the parent child relationship may be filed after entry of a decree finding that the child is within the jurisdiction of the court under the Child Protective Act (C.P.A.) as governed by I.C. § 16-1624 and Idaho Code, title 16, chapter 20.

(b) **Where Filed.** The petition to terminate parental rights must be filed in the same case as the C.P.A. proceeding, for purposes of judicial administration. Appointments of attorneys and guardians ad litem in the C.P.A. proceeding must remain in effect for termination proceedings, unless the court orders otherwise.

(c) **Judicial Assignment.** The termination proceeding must be assigned to the same magistrate as the C.P.A. proceeding and such magistrate shall retain responsibility for the case until its conclusion. A different magistrate may only be assigned when:

(1) the presiding judge no longer holds the same judicial office; or

(2) other extraordinary circumstances exist, such as the judge's disqualification, death, illness, or disability.

(d) **Service.** The petitioner must serve process as required by Idaho Code, title 16, chapter 20 concerning termination of parental rights.

(e) **Idaho Rules of Evidence.** The petitioner in a termination proceeding must meet its burden of proof through evidence admissible under the Idaho Rules of Evidence. The court record in the C.P.A. proceeding may not be used to meet the petitioner's burden of proof in the termination proceeding, unless:

(1) the part offered is admissible under the Idaho Rules of Evidence; or

(2) the parties stipulate to its admission.

(most recent amendment, 2025)

Rule 48A. Consent to termination of parent child relationship (C.P.A.)

(a) **Consent to Termination.** When a petition for termination of parent child relationship (petition for termination) has been initiated by the department of health and welfare pertaining to a child who is in the legal custody of the department, a parent may consent to the termination of their parental rights (consent).

(b) **Form.** The consent must be in the same form prescribed in Appendix B of these rules.

(c) **In State Consent to Termination.** The consent must be witnessed, on the record, by a district or magistrate judge for the state of Idaho.

(d) **Out of State Consent to Termination.** The court must accept a consent, or a surrender and release executed in another state if:

(1) It is witnessed 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.

(e) **Hearing on the Petition.** The court must hold a hearing on a petition to terminate a parent's rights unless a consent signed by that parent of the child has been filed.

(as adopted, 2025)

Rule 49. Right of appeal (C.P.A.)

(a) An aggrieved party may appeal to the district court those orders of the court in a C.P.A. action specified in I.C. § 16-1625. A party may also seek a permissive appeal to the Supreme Court pursuant to Idaho Appellate Rule. 12.1.

(b) During the pendency of an appeal of a C.P.A. proceeding, or of an order, decree or judgment terminating parental rights, from the magistrate's division to the district court, and any further appeal to the Supreme Court, the magistrate shall continue to conduct review hearings and annual permanency hearings pursuant to I.C. § 16-1622 and to enter orders thereon, unless otherwise ordered by the district judge or the Supreme Court. If the district judge or the Supreme Court orders that the magistrate judge shall not conduct the review hearings and annual permanency hearings, then the district judge or the Supreme Court will conduct the review hearings and annual permanency hearings.

(most recent amendment, 2009)

Rule 50. Transfer of venue (C.P.A.)

(a) Transfer of venue in a case under the Child Protective Act is governed by these rules and is not subject to the Idaho Rules of Civil Procedure.

(b) Venue in a case under Child Protective Act may not be transferred prior to the entry of a decree finding the child within the jurisdiction of the court under the Child Protective Act.

(c) In the discretion of the court, venue in a case arising under the Child Protective Act may be transferred when the following conditions exist:

(1) The court has entered a decree finding the child within the jurisdiction of the court under the Child Protective Act;

(2) It is in the best interest of the child;

(3) All parties either agree or do not object to the transfer;

(4) The Department of Health & Welfare is able and ready to provide services in case management in the new county;

(5) The parents or a parent who is the subject of a reunification plan lives in the receiving county;

(6) Prior to the transfer, the judge of the sending county court will communicate either verbally or in writing and obtain consent to the transfer from a judge of the receiving county court; and

(7) All currently needed hearings and findings have been completed and transfer will not jeopardize the ability of the court or parties to comply with the time requirements of the Child Protective Act or these rules.

(d) Counsel of record and guardians ad litem shall continue in the case unless there is a stipulation for substitution of counsel and/or guardians ad litem with the new counsel or guardians ad litem or an order of the receiving court allowing withdrawal of counsel or guardians ad litem.

(e) If a case is transferred, the clerk shall forward the original file to the receiving court and shall maintain a copy of the file in the sending jurisdiction for record purposes and shall, if possible, transfer any ISTARS record to the receiving county.

(f) The receiving county will conduct a review hearing of the case status within sixty (60) days of receipt of the file.

(as adopted, 2006)

Rule 51. Application of Idaho rules of evidence (C.P.A.) (J.C.A.)

(a) The Idaho Rules of Evidence shall apply to J.C.A. proceedings except in the following situations:

(1) Detention review hearings. Pre-adjudication detention hearings held under I.C. § 20-516 and Idaho Juvenile Rule 7.

(2) Sentencing hearings. Sentencing hearings held under I.C. § 20-520 and Idaho Juvenile Rule 17.

(b) The Idaho Rules of Evidence shall apply in C.P.A proceedings only to the portion of the adjudicatory hearing where jurisdiction is being determined, or to the portion of any hearing where aggravated circumstances is being determined.

(c) Where a petition to terminate parental rights has been filed in a C.P.A. case, the Idaho Rules of Evidence shall apply to proceedings on the petition to terminate.

(d) The Idaho Rules of Evidence shall not apply in proceedings under I.C. § 20-511A and Idaho Juvenile Rule 54.

(most recent amendment, 2013)

Rule 52. Closed hearings (C.P.A.) (J.C.A.)

(a) All C.P.A. hearings shall be closed to the public, except for those persons found by the court to have a direct interest in the case or in the work of the court.

(b) All Juvenile Correction Act proceedings on a petition filed under I.C. § 20-510 shall be closed to the public except for those persons found by the court to have a direct interest in the case or who work for the court, until a admit/deny hearing is held pursuant to Idaho Juvenile Rule 6 to permit the parties to request that the court consider, or permit

the court to consider on its own motion, closing the proceedings. Thereafter the proceedings shall be open unless the court enters an order closing them. At the admit/deny hearing, the court shall make a determination whether the proceedings shall be opened or closed to the public as provided in (1) and (2) below:

(1) Juvenile Correction Act proceedings brought against any juvenile under the age of fourteen (14) or brought against a juvenile fourteen (14) years or older who is charged with an act that would not be a felony if committed by an adult may be closed to the public at the court's discretion by a written order made in each case.

(2) Juvenile Correction Act proceedings brought against a juvenile fourteen (14) years or older who is charged with an act that would be a felony if committed by an adult shall be open to the public unless the court determines by a written order made in each case that extraordinary circumstances exist which justify that the proceedings should be confidential.

(c) All hearings and screening team meetings held pursuant to I.C. § 20-511A and Idaho Juvenile Rule 54 shall be closed to the public.

(d) Notwithstanding any other provision of this rule, in every case the court may exclude the public from a proceeding during the testimony of a child witness or child victim if the court determines that the exclusion of the public is necessary to protect the welfare of the child witness or child victim.

(e) Persons found by the court to have a direct interest in the case or who work for the court may attend all Juvenile Corrections Act proceedings.

(f) If a juvenile fourteen (14) years or older who is charged with an act which would be a felony if committed by an adult is found not to have committed an act that would be a felony if committed by an adult, or the charge is reduced to allege an act that would not constitute a felony if committed by an adult, all further court proceedings may be closed upon written order of the court made in each case.

(g) If a petition filed against a juvenile fourteen (14) years or older alleges acts committed by the juvenile which would be a felony if committed by an adult, and acts which would be a misdemeanor if committed by an adult or a status offense, or if separate petitions are filed against a juvenile fourteen (14) years of age or older which, if consolidated, allege acts which would be a felony if committed by an adult, and acts which would be a misdemeanor if committed by an adult or a status offense, the proceedings relating to all of the charges, including those charges alleging acts which would be a misdemeanor if committed by an adult or a status offense, shall be open to the public as though all of the charges allege acts which would be felonies if committed by an adult. The case records and files of the proceedings in such a case shall be subject to the disclosure provisions of Idaho Juvenile Rule 53 and Rule 32 of the Idaho Court Administrative Rules.

Comment of the Child Protection Committee:

This rule gives the court broad discretion on who may attend juvenile proceedings. The direct interest standard can be considered on a case-by-case basis. This standard is consistent with I.C. § 16-1613.

(as adopted, 2006)

Rule 53. Release of information (C.P.A.) (J.C.A.)

A court shall not disclose any of the contents of a case file of any action brought under the Juvenile Corrections Act or the Child Protective Act, nor other records of such proceedings, except as authorized under Rule 32 of the Idaho Court Administrative Rules and I. C. § 16-1626 (addressing the disclosure of judicial records.)

(as adopted, 2006)

Rule 54. Mental health assessments and plans of treatment under I.C. § 20-511A

(a) As used in this rule, 'interested parties' means:

(1) in Juvenile Corrections Act proceedings, the juvenile, the juvenile's parents, guardians and custodians, the juvenile's counsel, the

prosecuting attorney, the department of health and welfare, the department of juvenile corrections, county probation and any other agencies or persons designated by the court.

(2) in Child Protective Act proceedings, the child, the child's parents, guardians and custodians, the child's counsel if any, the child's guardian ad litem if any, the attorney general or prosecuting attorney appearing in the case, the department of health and welfare, and any other agencies or persons designated by the court.

(b) When the court has reason to believe that the conditions specified in I.C. § 20-511A(1)(a) and (b) are present, the court may order the department of health and welfare to submit appropriate mental health assessments and a plan of treatment for the court's approval. The order shall set a time for the submission of the mental health assessment and plan of treatment, which time may be extended for good cause. Notice of the order shall be given to all interested parties.

The order shall give notice to the parents of the juvenile or child that initial costs of the preparation of the assessment and plan of treatment, and of any additional evaluation and/or recommendations under Idaho Code § 20-511A(3) and subsection (e) of this rule, may be borne by the department of health and welfare, but that, pursuant to I.C. § 20-511A(5), these costs and all costs associated with assessment and treatment shall be the responsibility of the parents according to their ability to pay based upon the sliding fee scale established pursuant to I.C. § 16-2433.

(c) At any time after determining that there is reason to believe that the conditions specified in I.C. § 20-511A(1)(a) and (b) are present, the court may order the convening of a screening team consisting of representatives from the department of health and welfare, county probation, local school officials, teen early intervention specialists as provided for under I.C. § 16-2404A, the department of juvenile corrections and/or other agencies or persons designated by the court. The screening team shall review the mental health assessment and plan of treatment and any other relevant information and make written

recommendations to the court. Any parents or guardians of the juvenile or child who are available shall be included in the screening team and consulted with regard to the plan of treatment. The order shall set a time for the submission of the written recommendations, which time may be extended for good cause. The order shall designate a leading member of the screening team, who shall have the responsibility for scheduling meetings and submitting the written recommendations of the screening team to the court. Notice of the order shall be given to all interested parties.

(d) The court may:

(1) order any agencies that have treated or had custody of the juvenile or child to release any pertinent information or records to the department of health and welfare for the purpose of mental health assessment and preparation of a plan of treatment;

(2) order the department of health and welfare, county probation, school officials and the department of juvenile corrections to release all pertinent information regarding the juvenile or child to the court and and/or the screening team; and

(3) require the parents or guardians of the juvenile or child, and where appropriate require the juvenile or child, to allow information pertinent to the assessment or treatment of the child to be released to the department of health and welfare, the court and/or the screening team.

(e) If the court, after receiving the mental health assessment and plan of treatment submitted by the department of health and welfare and any recommendations from the screening team, determines that additional information is necessary to determine whether the conditions specified in I.C. § 20-511A(1)(a) and (b) are present, or to determine an appropriate plan of treatment for the juvenile, the court may order an evaluation and/or recommendations for treatment to be furnished by a psychiatrist, licensed physician or licensed psychologist, with the expenses of such evaluation and/or recommendations to be borne by the department of health and welfare.

(f) After receiving the mental health assessment and plan of treatment from the department of health and welfare, any written recommendations from the screening team and any additional evaluations or recommendations for treatment, the court may make a determination of whether the conditions specified in I.C. § 20-511A(1)(a) and (b) are present. If the court finds that such conditions are present, the court shall order mental health treatment in accordance with a plan of treatment approved by the court. However, the court shall first hold a hearing before making such determination or entering such order if:

(1) the court determines that a hearing would be helpful in making such determinations or fashioning the order; or

(2) any interested party objects to the entry of such a determination or order; or

(3) in-patient or residential treatment would be required as part of the plan of treatment, unless the hearing is waived by the juvenile or child and the parents or guardians of the juvenile or child. Notice of the hearing shall be given to all interested parties.

(g) At the hearing, the court shall consider the mental health assessment and plan of treatment submitted by the department of health and welfare, the recommendations of the screening team and any additional evaluation or recommendations for treatment. The parties may present evidence in support of, or opposed to, the information from any of these sources. Each party shall have the right to present any relevant evidence on the issues of: (1) whether the conditions specified in I.C. § 20-511A(1)(a) and (b) are present; and (2) what should be included in the plan of treatment, if any, ordered by the court.

(h) At the conclusion of the hearing, the court shall determine whether the conditions specified in I.C. § 20-511A(1)(a) and (b) are present. If the court determines that such conditions are present, the court shall order mental health treatment for the juvenile or child in accordance with the plan of treatment approved by the court. The court shall not order in-patient or residential treatment unless the court determines by clear and

convincing evidence that the conditions specified in I.C. § 20-511A(1)(a) and (b) are present and that such treatment is required.

(i) Where the procedures set forth in I.C. § 20-511A and this rule are initiated in a Juvenile Corrections Act proceeding, any communications made by the juvenile to any person participating in an assessment, evaluation or preparation of a plan of treatment for the juvenile, and made for the purpose of such assessment, evaluation or preparation of a plan of treatment, shall not be used against the juvenile for any purpose in the evidentiary hearing in the Juvenile Corrections Act proceeding.

(j) A review hearing will be held within 120 days of the order approving plan of treatment or more frequently as determined by the court. At the review hearing, the court will review compliance with the approved plan of treatment and any motions concerning the plan. The court may:

(1) order the approved plan of treatment remain in full force and effect;

(2) approve recommended modifications to the plan of treatment, as appropriate; or

(3) find the department of health and welfare children's mental health program has fulfilled its obligations under the I.C. § 20-511A order approving plan of treatment.

(most recent amendment, 2022)

Rule 55. Review of voluntary out-of-home placements

(a) The department of health and welfare may petition the court for review of voluntary out-of-home placement of children.

(b) The petition shall be signed by the prosecutor or deputy attorney general before being filed with the court. The petition shall be entitled "In the Matter of _____, a child under the age of eighteen (18) years," and shall be verified and set forth with specificity:

1. The name, birthdate, sex and residence address of the child;

2. The name and residence addresses of the child's parents, custodian, or guardian,
3. The date the child entered the voluntary out-of-home placement, and the nature and location of that placement,
4. A statement that review is sought to ensure the child's eligibility for federal funding for the placement, or statement of such other reasons for which the review is requested.
5. The name of the parent, guardian, or custodian consenting to the placement, and in the case of a guardian or custodian, the basis for the guardian or custodian's authority to consent to treatment on behalf of the child, and a statement that the consent has not been withdrawn.
6. A statement that continued voluntary out-of-home placement is in the best interest of the child.

(c) In the case of a voluntary out-of-home placement, the petition shall be accompanied by an affidavit of the department setting forth the basis for the department's determination that continued voluntary out-of-home placement is in the best interest of the child. In the case of a voluntary placement pursuant to the Children's Mental Health Services Act, the petition shall also be accompanied by an affidavit of the child's clinician setting forth the basis for the clinician's determination that the child is seriously emotionally disturbed, and is in need of continued out-of-home placement.

(d) At or following the hearing, the court shall enter an order approving the placement if the court finds that:
1. A petition has been filed.
2. In the case of a voluntary out-of-home placement pursuant to the Children's Mental Health Services Act, the clinician's determination that the child is seriously emotionally disturbed and is in need of continued out-of-home placement is supported by information in the affidavit and/or the clinician's testimony at the hearing.
3. The child's parent, guardian, or custodian has consented to continuation of the placement, and in the case of a guardian or

custodian, that the guardian or custodian has authority to consent to treatment on behalf of the child.

4. The voluntary out-of-home placement of the child is in the best interest of the child.

(e) The court's best interest finding shall be in writing and shall be case-specific.

(f) This procedure shall not be used to convert a voluntary placement to an involuntary placement.

(as adopted, 2008)

Rule 56. Declaration

Whenever these rules require or permit a written statement to be made under oath or affirmation, such statement may be made as provided in Idaho Code § 9-1406.

(most recent amendment, 2013)

Rule 58. ICWA (C.P.A.)

In any child custody proceeding where the court or any party knows or has reason to know that a child who is the subject of the proceedings is a member of, or is eligible for membership in an Indian tribe, notice of the proceedings shall be provided to the child's parent(s) or Indian custodian and to the appropriate Indian tribe. If the child is an Indian child as defined by the Indian Child Welfare Act, then the provisions of the ICWA, 25 U.S.C. § 1901, et seq., and 25 C.F.R. § 23.11 shall apply.

(as adopted, 2006)

Rule 59. Transition to successful adulthood plan and extended foster care (C.P.A.)

(a) **Hearing on Youth's Transition Plan**. If a child is in the legal custody of the department or an authorized agency, the court must conduct 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. Failure to conduct a hearing within 60 days does not preclude the court from considering a transition plan or ordering extended foster care. The court must review the plan with the youth to ensure the plan provides the services necessary for the youth to successfully transition to adulthood. The hearing may be combined with a permanency or review hearing.

(b) **Youth's Transition Plan and Extension of Foster Care**. The department must file the youth's transition plan no later than 7 days prior to the hearing. The 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 under I.C. § 16-1622(5) if the youth is:

(1) completing secondary education or a program leading to an equivalent credential;
(2) enrolled in an institution which provides post-secondary or vocational education;
(3) participating in a program or activity designed to promote, or remove barriers to, employment;
(4) employed for at least 80 hours per month; or
(5) incapable of doing an activity described in paragraph (1) through (4) due to a medical condition, which incapability is supported by regularly updated information in the case plan of the youth.

(c) **Review and Permanency Hearings**. When the court orders extended foster care, the court must hold review and permanency hearings as governed by I.C. § 16-1622, at which the court shall also determine whether the youth continues to meet the requirement of subdivision (b). If at any time the youth no longer meets the requirements, the court must terminate extended foster care.

(d) **Fixed Period of Time**. The extension must be for a fixed period of time but must not extend past the youth's 23rd birthday.

(e) **Attorney**. Appointment of the youth's attorney(s) in the proceeding must remain in effect during the extension, unless otherwise ordered by the court.

(most recent amendment, 2025)

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Idaho Juvenile Rules (C.P.A.) – Appendix A Forms

Idaho Juvenile Rule 32. Notice of Emergency Removal of Child

(____) The undersigned gives notice that on _____, the above-named child was removed by a peace officer and taken to a place of shelter at a (foster/group) home designated by this court for the child's immediate care and protection.

I certify that I notified the parent(s), guardian, or custodian of the above-named child that a shelter care hearing will be held by this court within 48 hours, excluding Saturdays, Sundays, and holidays as required under I.C. § 16-1609.

By this notice, the parent(s), guardian, or custodian have been informed of their right to retain and be represented by an attorney. If the parent(s), guardian, or custodian cannot afford an attorney, an attorney can be appointed by the court.

If you cannot afford an attorney and want to have the court appoint an attorney for you, please immediately call _____ (phone number) or go to the _____ County Court, _____ (address) , to apply for a court-appointed attorney. You should do so immediately because time is of the essence.

_____ _____

Date Person Exercising Emergency Powers

Hearing: Notice:

Location: _____ Served on: _____

Day: _____ Served by: _____

Date: _____ Time: _____

Date: _____ Time: _____

Idaho Juvenile Rule 33. Summons

YOU ARE HEREBY NOTIFIED THAT:

A petition has been filed in this case in the district court of _____ County, Idaho, alleging that the child/ren named above comes within the jurisdiction of the Child Protective Act (C.P.A). A copy of the petition is attached.

[If child/ren are already removed or an order of removal has been issued] You, as the parent, legal guardian, or custodian of the child/ren are directed to appear personally before the court for a Shelter Care Hearing at following time and location:

Hearing	Date	Time	Location

[If child/ren has not been removed] You, as the individual(s) who has/have the custody or control of said child/ren, are hereby directed to appear personally and bring said child/ren before the court for an Adjudicatory Hearing at the following time and location:

☐ Order of Removal. The court has entered an Order of Removal directing a peace officer or other suitable person to take the child/ren to an authorized place of shelter care until the Shelter Care Hearing. A copy of the Order of Removal is attached.

☐ Order to Prevent Removal. The Court has entered an Order to Prevent Removal directing a peace officer or other suitable person to exclude _____ from the child/ren's residence, restrain any contact or communication with the child/ren, and restrain _____ from coming within 1,500 feet, or other appropriate distance, of the child/ren until further order of the court. A copy of the Order to Prevent Removal is attached.

You, as the parent, legal guardian, or custodian of the child/ren are directed to appear personally before the Court for a Hearing on the Order to Prevent Removal at the following date, time and location:

_____

Service of the petition upon you, as the parent(s), guardian(s), or custodian(s) of the child, confers the personal jurisdiction of the court upon you and subjects you to the provisions of the C.P.A.

If you fail to appear without reasonable cause, the Court may proceed in your absence or may proceed against you for contempt of court. If the Court proceeds without your presence, you may forfeit all your rights. You may be financially liable for the support of the child(ren).

You have the right to be represented by counsel. If you are unable to afford an attorney, you have the right to have an attorney appointed by the court at state expense.

☐ If you want to ask to have an attorney appointed for you at public expense, call the court before the hearing at this phone number: _____.

☐ An attorney has been appointed for you at public expense. Call the court before the hearing at this phone number for your attorney's contact information: _____.

When a child has been placed in the temporary and/or legal custody of the Idaho Department of Health and Welfare (I.D.H.W.) for 12 of the most recent 22 months, I.D.H.W. shall, prior to the last day of the 15th month, file a petition to terminate parental rights, unless the child has been permanently placed with a relative, there are compelling reasons why termination of parental rights is not in the best interest of the child, or the Department has failed to provide reasonable efforts to reunify the child with his/her family.

Idaho Juvenile Rule 34. Order of Removal

ORDER OF REMOVAL

It is contrary to the welfare of the child/ren to remain in the child's/ren's home, present condition or surroundings, and it is in the best interest of the child/ren to place the child/ren in the temporary legal custody of the Idaho Department of Health and Welfare (I.D.H.W.) until the Shelter Care Hearing. This finding is based on the information set forth in the verified petition under the Child Protective Act (C.P.A.), based on the sworn oral statements that have been or will be filed with the court, and/or the affidavit attached to and incorporated in the petition that has been filed in this case and/or the following factual findings:

_____

_____

_____

_____

☐ The child/ren is an Indian child, or there is reason to believe that the child/ren is an Indian child, within the meaning of the Indian Child Welfare Act. Removal of the child/ren is necessary to prevent imminent physical damage or harm to the child/ren. If I.D.H.W. receives information that the removal or placement is no longer necessary to prevent imminent physical damage or harm to the Indian child/ren, the state will file a motion with the court to review whether the removal of the Indian child/ren continues to be necessary.

IT IS HEREBY ORDERED that a peace officer or other authorized person promptly take the following child/ren to an authorized place of shelter care until the Shelter Care Hearing:

Name(s) of child/ren to be removed:

Dated: _____ _____

Magistrate Judge

Idaho Juvenile Rule 34A. Order to Prevent Removal

Based on the State's motion and accompanying sworn affidavit from a law enforcement officer or Idaho Department of Health and Welfare worker, the court finds there is reasonable cause to believe that the following child(ren): [List child(ren)'s name(s) and DOB(s)]

_____

_____

has/have been subjected to neglect and/or abuse by the following parent, legal guardian, or legal custodian: [List alleged offending parent, legal guardian or legal custodian, DOB, and address]

_____

Further, the court finds there is reasonable cause to believe the child(ren) will be safe in the child(ren)'s present surroundings in the sole care of the following parent, legal guardian, or legal custodian: [List non-offending parent, legal guardian or legal custodian, DOB, and address]

_____

IT IS ORDERED that a peace officer shall promptly remove [list alleged offending parent, legal guardian or legal custodian and DOB] from the dwelling where the child(ren) resides at: [list child[ren]'s address]

_____

FURTHER, IT IS ORDERED that [list alleged offending parent, legal guardian or legal custodian, DOB, and address]

_____

1) Shall stay away from the dwelling where the child(ren) resides at:_____,

2) Shall not contact or attempt to contact or communicate with the child(ren) in any manner, and;

3) Shall not come within ☐ 1,500 feet of the child(ren) ☐ _____ feet of the child(ren).

This Order shall continue until further order of the court. Any person who fails to abide by this Order shall be guilty of misdemeanor criminal contempt as described in section 18-1801, Idaho Code.

Idaho Juvenile Rule 40. Notice of Further Proceedings

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT OF THE STATE OF IDAHO,

IN AND FOR THE COUNTY OF _____

In the Interest of: _____	) Case No. _____
A Child Under Eighteen (18) Years of Age	) NOTICE OF HEARING

PLEASE TAKE NOTICE that the above matter has been set for hearing in the Magistrate Court at the _____ County Courthouse, (address) , (city) , Idaho, on the ____ day of _____, 20___, at _____ o'clock ___.m. The nature of the hearing is:

_____ Shelter Care Hearing

_____ Pretrial Conference

_____ Adjudicatory Hearing

_____ Case Plan Hearing

_____ Permanency Hearing (Aggravated Circumstances)

_____ Review Hearing

_____ Permanency Hearing (12 month)

_____ Other:_____

You are further notified that the parent(s), guardian, or custodian have the right to be represented by an attorney of your choosing, or if financially unable to pay, have the right to have an attorney appointed by the court to represent the child or the parent(s), guardian, or custodian at public expense. If you wish to have an attorney appointed at public expense, you must contact the court at the address given above, at least two days prior to the hearing, for the court to inquire whether the parent(s), guardian, or custodian require the separate appointment of an attorney.

DATED this ____ day of _____, 20_____.

CLERK OF THE DISTRICT COURT

By: _____

Deputy Clerk

CERTIFICATE OF SERVICE

I hereby certify that copies of this notice were served as follows on this date: _____.

Parent(s)/Guardian/Custodian:
Hand Delivered ____ Mailed ____

_____

Parent's/Guardian's/Custodian's
Signature of Hand Receipt

Defense Counsel:
Hand Delivered ____ Mailed ____

Prosecutor:
Hand Delivered ____ Mailed ____

Other: _____
Hand Delivered ____ Mailed ____

Probation Officer/Caseworker:
Hand Delivered ____ Mailed ____

By _____

Deputy Clerk

Idaho Juvenile Rules – Appendix B Forms

Idaho Juvenile Rule 48A. Consent to Termination of Parent Child Relationship

I am the _____ (mother or father) of the following child(ren):

Child(ren):	Birthdate(s):
_____	_____
_____	_____

I give my full and free consent to the complete and absolute termination of my parental rights to this child(ren). I relinquish completely and forever, all legal rights, privileges, duties and obligations, including all rights of inheritance to and from the child(ren). I expressly waive my right to a hearing on the petition to terminate my parental relationship with the child(ren) and ask that the petition be granted.

I understand that I have the right to talk to an attorney. ☐ I had the opportunity to talk to an attorney, or ☐ I chose not to, and I waive this right.

Date:_____ _____
Signature

On this _____ day of _____ before me, a Judge of the District Court of the _____ Judicial District of the state of Idaho, in and for the county of _____, personally appeared _____ known to me (or proved to me on the oath of_____) to be the person whose name is subscribed within the instrument, and acknowledged to me that he/she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Date: _____ _____
Judge

Selected Idaho Appellate Rules

Rule 11.1. Appealable judgments and orders from the magistrate court. The following appeals from the magistrate court are expedited pursuant to Rule 12.2

(a) As a matter of right. An appeal from the following final judgments, as defined in Rule 54(a), must be taken from the magistrate court to the Supreme Court:

(1) a final judgment that grants or denies a petition for termination of parental rights, or

(2) a final judgment that grants or denies a petition for adoption.

(b) By permission. When permission has been granted pursuant to Rule 12.1, an appeal from the following may be taken to the Supreme Court:

(1) a final judgment, as defined in Rule 802 of the Idaho Rules of Family Law Procedure, or an order made after final judgment, involving the custody of a minor, or

(2) those orders or decrees of the magistrate court in a Child Protective Act proceeding specified in section 16-1625, Idaho Code, or

(3) a final judgment, as defined in Rule 54(a) of the Idaho Rules of Civil Procedure, or an order made after final judgment, in a guardianship proceeding arising under Title 15, Chapter 5 of the Idaho Code.

(most recent amendment, 2024)

Rule 12.1. Permissive appeal in custody and guardianship cases

(a) Motion for permission to appeal. Whenever the best interest of a child or protected person would be served by an immediate appeal to the Supreme Court, any party may move the magistrate court for permission to seek an immediate appeal to the Supreme Court from the following:

(1) a final judgment, as defined in Rule 802 of the Idaho Rules of Family Law Procedure, or an order entered after final judgment, involving the custody of a minor, or

(2) those orders or decrees of the magistrate court in a Child Protective Act proceeding specified in section 16-1625, Idaho Code, or

(3) a final judgment, as defined in Rule 54(a) of the Idaho Rules of Civil Procedure, or an order made after final judgment, in a guardianship proceeding arising under Title 15, Chapter 5 of the Idaho Code.

The motion must be made within fourteen (14) days from the date evidenced by the filing stamp of the clerk on the final judgment or order the party seeks to appeal. The motion shall be filed, served, noticed for hearing and processed in the same manner as any other motion. If a hearing is held on the motion, it shall be expedited. Within fourteen (14) days after the time for response has expired or within fourteen (14) days of a hearing, whichever is later, the magistrate court shall enter its written order on the motion. The filing of a motion for permissive appeal shall stay the time for appealing to the district court until the magistrate court enters an order making the determination. In the event a notice of appeal to the district court is filed prior to the motion for permissive appeal, the magistrate shall retain jurisdiction to rule on the motion and, in the event the motion is granted, the appeal to the district court shall be dismissed.

(b) Permission granted by magistrate court. If the magistrate court grants permission for an immediate appeal to the Supreme Court, the appeal is not valid and effective unless a notice of appeal is physically filed with the clerk of the district court within fourteen (14) days from the date file stamped on the order of the magistrate granting permission. A notice of cross appeal must be filed within seven (7) days from the notice of appeal. The appeal shall be expedited as set forth in Rule 12.2.

(c) Permission denied by magistrate court.

(1) Motion to Supreme Court. Within fourteen (14) days from entry by the magistrate court of an order denying a motion for permission to appeal under this rule, any party may file a motion with

the Supreme Court requesting acceptance of the appeal by permission. A copy of the order of the magistrate court denying permission to appeal shall be attached to the motion along with a copy of the order or judgment the party seeks to appeal. If the magistrate court fails to rule upon a motion for permission to appeal within twenty-one (21) days from the date of the filing of the motion, any party may file a motion with the Supreme Court for permission to appeal without any order of the magistrate court. A motion to the Supreme Court for permission to appeal under this rule shall be filed, served, and processed in the same manner as any other motion under Rule 32 of these rules.

(2) Motion granted by Supreme Court. If the Supreme Court grants the motion for permission to appeal and directs that a notice of appeal be filed, the appeal is not valid and effective unless a notice of appeal is physically filed with the clerk of the district court within fourteen (14) days from the date of issuance of the Supreme Court order granting permission. The appeal shall be expedited as set forth in Rule 12.2. The clerk of the Supreme Court shall file with the magistrate court a copy of the order of the Supreme Court granting permission to appeal and shall send copies to all parties to the action or proceeding.

(most recent amendment, 2024)

Rule 12.2. Expedited review for appeals in custody cases brought pursuant to Rule 11.1 or Rule 12.1

This rule governs procedures for an expedited review of an appeal brought as a matter of right pursuant to Rule 11.1 or a permissive appeal granted pursuant to Rule 12.1.

(a) Procedure for filing notice of appeal.

(1) Appeal from a judgment granting or denying a petition to terminate parental rights or a petition for adoption. An appeal from any final judgment, as defined in Rule 54(a) of the Idaho Rules of Civil Procedure, granting or denying a petition for termination of parental rights or granting or denying a petition for adoption shall be made only

by physically filing a notice of appeal with the clerk of the district court within fourteen (14) days from the date file stamped on the judgment. A notice of cross appeal must be filed within seven (7) days from the notice of appeal.

(2) Permissive appeals involving custody of a minor or a Child Protective Act proceeding. An appeal filed pursuant to an order granting a motion for permission to appeal pursuant to Rule 12.1 shall be made only by physically filing a notice of appeal with the clerk of the district court within fourteen (14) days from the date file stamped on the order of the magistrate court granting the appeal or the date of issuance of the Supreme Court order granting the appeal. A notice of cross appeal must be filed within seven (7) days from the notice of appeal.

(b) Preparation and filing of clerk's record. The official court file, including any minute entries or orders together with the exhibits offered or admitted, shall constitute the clerk's record in such appeal. The record shall be prepared in accord with Rule 27 (a) and (b) as to number, use and fee, and Rule 28 (d) (e) and (f) and (g) as to preparation. The clerk shall prepare the record and have it ready for service on the parties within twenty one (21) days of the date of the filing of the notice of appeal. Clerks shall give priority to preparation of the record in these cases. The payment of the clerk's record fee as required by this rule may be waived by the magistrate court pursuant to section 31-3220, Idaho Code, in accordance with the local rules of the judicial district of the district court.

(c) Preparation and filing of transcript. Upon the filing of the notice of appeal the clerk of the district court shall forward the notice to the Trial Court Administrator, who shall be responsible for assigning preparation of the transcript. Unless otherwise ordered by the magistrate court, the appellant shall pay the estimated fee for preparation of the transcript as determined by the transcriber within the time set by the Trial Court Administrator and transcriptionist. The payment of the transcript fee may be waived by the magistrate court pursuant to section 31-3220, Idaho Code, in accordance with the local rules of the judicial district of the district court. The transcript shall be prepared in accord with Rule 24 (a) and (b) as to number, use and format, and in accord with Rules 25 and

26. The transcript shall be prepared and ready for service on the parties within twenty one (21) days of the date of the filing of the notice of appeal.

(d) Briefing. The time prescribed in Rule 34 for filing of briefs shall be reduced such that the appellant's brief is due within twenty-one (21) days of the date that the clerk's record and transcript are filed with the Supreme Court. The respondent's and cross-appellant's brief, if any, shall be joined in one brief, and shall be filed within twenty-one (21) days after service of the appellant's brief. The reply brief and cross-respondent's brief, if any, shall be combined and shall be filed within fourteen (14) days of service of any respondent's brief. If there is no cross-respondent's brief then the reply brief shall be filed within seven (7) days after service of the respondent's brief.

(e) Extensions. Each case subject to this rule shall be given the highest priority at all stages of the appellate process, and the clerk, transcriptionist or court reporter, and litigants will not be given extensions of time in which to comply with the expedited docketing and briefing schedules except upon a verified showing of the most unusual and compelling circumstances.

(f) Oral argument. Oral argument, if requested, shall be held within one hundred twenty (120) days from the date stamped on the notice of appeal when it is received by the Supreme Court.

(g) Petitions for rehearing and review. Any petition for rehearing or review shall be accompanied by the brief in support of the petition or the petition shall be summarily dismissed.

(most recent amendment, 2017)

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Selected Idaho Court Administrative Rules

Rule 32. Records of the judicial department—Examination and copying – Exemption from and limitations on disclosure.

(a) Statement of policy. This rule is adopted pursuant to the Supreme Court's authority to control access to court records, as recognized in the Idaho Public Records Act, I.C. § 74-104. The public has a right to access the judicial department's declarations of law and public policy, and to access the records of all proceedings open to the public. This rule provides for access in a manner that:

(1) Promotes accessibility to court records;
(2) Supports the role of the judiciary;
(3) Promotes governmental accountability;
(4) Contributes to public safety;
(5) Minimizes the risk of injury to individuals;
(6) Protects individual privacy rights and interests;
(7) Protects proprietary business information;
(8) Minimizes reluctance to use the court system;
(9) Makes the most effective use of court and clerk of court staff;
(10) Provides excellent customer service; and
(11) Avoids unduly burdening the ongoing business of the judiciary.

In the event of any conflict this rule shall prevail over any other rule on the issue of access to judicial records.

(b) Definitions: As used in this Rule:

(1) "Custodian" means the person defined in paragraph (k)(2) of this Rule.
(2) "Custodian judge" means the Justice, Judge or Magistrate defined in paragraph (k)(3) of this Rule.
(3) "Personnel" means justices, judges, magistrates, trial court administrators, clerks of the district court and staff of a court.
(4) "Court record" includes:

(A) Any document, information or other thing that is filed, docketed, or lodged by a court or clerk of court in connection with a judicial proceeding;

(B) Any index, calendar, docket, register of actions, official record of the proceedings, order, decree, judgment, minute, and any information in an automated case management system created by or prepared by the court or clerk of court that is related to a judicial proceeding, including existing case management system reports.

(C) Any writing, as defined in I.C. § 74-101, containing information relating to the conduct or administration of the public's business, prepared, owned, used or retained by the judicial branch, including the courts, the Administrative Office of the Courts, and the Judicial Council; by the Idaho State Bar; by the Idaho Bar Commission; or by the District Magistrates Commissions.

(5) "Physical record" means a judicial branch record, including a court record, that exists in physical form, irrespective of whether it also exists in electronic form.

(6) "Electronic form" means a court record that exists as:

(A) Electronic representations of text or graphic documents;

(B) An electronic image, including a video image, of a document, exhibit or other thing;

(C) Data in the fields or files of an electronic database or the case management system; or

(D) An audio or visual recording, analog or digital, of an event or notes in an electronic file from which a transcript of an event can be prepared; irrespective of whether it also exists in physical form.

(7) "Remote access" means the ability whereby a person may electronically search, examine and copy court information maintained in a court record by means of access via the Internet or other publicly available telecommunication mechanism.

(8) "Bulk Distribution" means the distribution of all, or a significant subset of the information in court records in electronic form, as is, and without modification or compilation.

(9) "Case management system" means the court technology program, and other technologies that assist in the efficient management of the courts or that improve access to the courts and court records.

(10) "Compiled Data Information" means information that is derived from the selection, aggregation or reformulation by the court of some of the information from more than one individual court record.

(11) “Redaction” means that personal data identifiers will be omitted or obscured in the manner specified in Idaho Rule of Electronic Filing Rule and Service 15, Idaho Rule of Civil Procedure 2.6, and Idaho Rule of Family Law Procedure 218.

(c) Applications. This Rule shall apply to all court records existing on or after the date of adoption of this Rule. Provided, this Rule shall not prevent examination, inspection, and copying of records otherwise exempt from disclosure by the following persons in the following situations:

(1) If approved by the custodian judge, or the custodian in the case of any record in the judicial council, federal, state and local officials or their agent accessing a judicial record in the exercise of their official duties and powers; however, requests for numerous records or records from more than one county must be approved by the Chief Justice.

(2) Parties to an action and their attorneys accessing the court file of the action, unless restricted by order of the court. However, parties to an action and their attorneys may not access records identified in paragraphs (g)(3), (4), (5), (15), and (17)(F) that were filed by another party, unless permitted by court order. Parties may authorize release of their own court filings directly to a third party.

(3) Disclosure by the custodian of statistical information that is not descriptive of identifiable persons.

(4) Employees shall have access to their own personnel files.

(5) Judges, clerks, trial court administrators, or other staff employed by or working under the supervision of the courts who need to access specific court records for the performance of their job duties.

(6) Guardians ad litem and court visitors in guardianship and conservatorship cases shall have access to the case information sheet in those cases, unless restricted by order of the court.

(d) Access to Court Records, Examination and Copying. Except as provided in paragraphs (g), (i), and (j), the following are subject to examination, inspection and copying. The Supreme Court may provide such access to these records through terminals at judicial branch facilities or on-line from any remote location over the Internet, subject to the limitations of the case management system.

(1) Litigant/party indexes to cases filed with the court;

(2) Listings of new case filings, including the names of the parties;

(3) The chronological case summary of events;

(4) Calendars or dockets of court proceedings, including case numbers and captions, date and time of hearings, and location of hearings;

(5) Minutes, orders, opinions, findings of fact, conclusions of law, and judgments of a court and notices of the clerk of the court;

(6) Transcripts and recordings of all trials and hearings open to the public;

(7) Pleadings, motions, affidavits, responses, memoranda, briefs and other documents filed or lodged in a case file;

(8) Administrative or other records of the clerk, justice, judge, magistrate or staff of the court unless exempt from disclosure by statute, case law, or court rule; and

(9) A court record that has been offered or admitted into evidence in a judicial action or that a court has considered as evidence or relied upon for purposes of deciding a motion; except that, before final disposition by the trial court, access to any exhibit shall be allowed only with the permission of the custodian judge subject to any conditions set by the custodian judge and shall take place under the supervision of the office of the court clerk. After final disposition by the trial court, the custodian judge may set reasonable conditions for access to exhibits admitted or offered. The public shall not have access at any time to items of contraband or items that pose a health or safety hazard; for example, drugs,

weapons, child pornography, toxic substances, or bodily fluids, without permission of the custodian judge.

(e) Bulk distribution. Bulk distribution of electronic court data is not allowed. However, at its discretion, the Supreme Court may grant requests for scholarly, journalistic, political, governmental, research, evaluation, or statistical purposes where the identification of specific individuals is ancillary to the request.

(f) Compiled Information. Any member of the public may request copies of existing compiled information that consists solely of information that is not exempt from disclosure. Case management reports and information shall be exempt from disclosure until final approval by the Supreme Court of the advancing justice time standards. In addition, the Supreme Court may compile and provide the information if it determines, in its discretion, that the resources are available to compile the information and that it is an appropriate use of public resources. The Supreme Court may delegate to its staff the authority to make the initial determination as to whether to provide the compiled information.

Compiled information that includes information to which public access has been restricted may be requested from the Supreme Court by any member of the public. The request shall:

(1) identify what information is sought,

(2) describe the purpose for requesting the information and explain how the information will benefit the public interest or public education, and

(3) explain provisions for the secure protection of any information requested to which public access is restricted or prohibited.

The response to the request shall be made by the Supreme Court within ten (10) working days following the date of the request.

(g) Court records exempt from disclosure. Except as provided in paragraph (h) of this rule, court records specified below are exempt from disclosure. Any willful or intentional disclosure or accessing of

a sealed, shielded, or exempt court record, not otherwise authorized under this rule, may be treated as a contempt of court.

(1) Documents and records to which access is otherwise restricted by state or federal law;

(2) Pre-trial risk assessments and pre-sentence investigation reports, except as provided in Idaho Criminal Rule 32;

(3) Affidavits or sworn testimony and records of proceedings in support of the issuance of search or arrest warrant pending the return of the warrant;

(4) Unreturned search warrants;

(5) Unreturned arrest warrants, except bench warrants, or summonses in a criminal case, provided that the arrest warrants or summonses may be disclosed by law enforcement agencies at their discretion;

(A) An "arrest warrant" is a warrant issued for the arrest and detention of a defendant at the initiation of a criminal action.

(B) A "bench warrant" is a warrant issued for the arrest and detention of a defendant who has already appeared in a criminal action, and it would include a warrant issued for failure to appear at a hearing or trial, a warrant issued for violation of the conditions of release or bail, and a warrant issued for a probation violation.

(6) Unless otherwise ordered by the custodian judge, applications made and orders granted for the interception of wire, electronic or oral communications pursuant to Idaho Code § 18-6708, recordings of intercepted communications provided to the court, and reports made to the court regarding such interceptions under Idaho Code § 18-6708(7);

(7) Except as provided by Idaho Criminal Rules or statutes, records of proceedings and the identity of jurors of grand juries;

(8) Except as provided by the Idaho Criminal Rules or Idaho Rules of Civil Procedure, the names of jurors placed in a panel for a trial of an action and the contents of jury qualification forms and jury questionnaires for these jurors, unless ordered to be released by the presiding judge;

(9) Juvenile court records as hereinafter provided:

(A) All court records of Child Protective Act proceedings.
(B) In Juvenile Corrections Act cases filed before July 1, 2017, all court records of Juvenile Corrections Act proceedings on a petition filed under I.C. § 20-510 pending an admit/deny hearing held pursuant to Rule 6, I.J.R. to permit the parties to request that the court consider, or permit the court to consider on its own motion, closing the records and files. Thereafter the court records shall be open unless the court enters an order exempting them from disclosure. At the admit/deny hearing the court shall determine whether the court records shall remain exempt from disclosure as provided in 1. and 2. below:

1. Court records of Juvenile Corrections Act proceedings brought against a juvenile under the age of fourteen (14), or brought against a juvenile fourteen (14) years or older who is charged with an act that would not be a felony if committed by an adult, shall be exempt from disclosure if the court determines by a written order in each case that the records should be closed to the public.

2. Court records of Juvenile Corrections Act proceedings brought against a juvenile fourteen (14)years or older who is charged with an act which would be a felony if committed by an adult, shall be exempt from disclosure if the court determines upon a written order made in each case that extraordinary circumstances exist which justify that the records should be confidential. If the juvenile is not found to have committed an act which would be a felony if committed by an adult or the charge is reduced to allege an act which would not constitute a felony if committed by an adult, all existing and future case records and documents shall be exempt from disclosure if the court determines by written order in each case that the court records should be closed to the public.

(C) In Juvenile Corrections Act cases filed on or after July 1, 2017, all court records of Juvenile Corrections Act proceedings on a petition filed under I.C. § 20-510 except as provided in 1, 2, and 3 below:

1. The court may release juvenile court records if the court finds, upon motion by the prosecuting attorney, interested party, or other interested persons, that the public's interest in the right to know outweighs the adverse effect of the release of the records on the juvenile's rehabilitation and competency development. In making this decision, the court may consider the following factors:
   a. Age of the juvenile;
   b. Seriousness of the offense;
   c. Whether the offense deals with persons or property;
   d. Prior record of the juvenile;
   e. The juvenile's risk to reoffend; and
   f. The impact on the victim or victims.
2. The following individuals or entities may inspect juvenile court records without a court order unless otherwise prohibited by law:
   a. Probation officers;
   b. Law enforcement officers;
   c. The Department of Juvenile Corrections;
   d. The Department of Correction;
   e. The Department of Health and Welfare pursuant to its statutory responsibilities in title 16, chapter 16; title 16, chapter 24; or title 20, chapter 5, Idaho Code.
3. The victim of misconduct is entitled to receive:
   a. The name, address and telephone number of the juvenile offender involved;
   b. the name of the juvenile offender's parents or guardians, and their addresses and telephone numbers;
   c. The petition, the decree, and orders of restitution;
   d. Any other information as provided in title 19, chapter 53, Idaho Code.

(D) Notwithstanding any other provision of paragraph (g)(9) of this rule, reports prepared pursuant to I.C. § 20-520(1), and other records and reports described in paragraph (g)(17) of this rule are exempt from disclosure.

(E) Notwithstanding any other provision of paragraph (g)(9) of this rule, the court shall make available upon the written request of a superintendent or an employee of the school district authorized by the board of trustees of the school district, the facts contained in any records of a juvenile maintained under Chapter 5, Title 20, Idaho Code. If a request is made to examine records in courts of multiple districts, it shall be ruled upon by the Chief Justice.

(10) All records of proceedings relating to hospitalizations pursuant to Idaho Code sections, 66-326, 66-329, 66-406, 16-2413, 16-2414, 56-2104 and 56-2105. Provided, the court may disclose these records when consented to by the person identified or his or her legal guardian, or the parent if the individual is a minor. The court in its discretion may make such records available to the spouse, or the immediate family of the person who is the subject of the proceedings;

(11) A uniform citation (the citation only, not the case type); however courts may share the citation with federal, state and local officials or their agents in the exercise of their official duties and powers;

(12) Adoption records and records of proceedings to terminate the parent and child relationship under Chapter 20 of Title 16, Idaho Code, except that an adopted person or a child whose parental rights were terminated may obtain non-identifying medical information in all cases, and the court may also in its discretion make information from the records available, upon such conditions as the court may impose, to the person requesting the record, if the court finds upon written verification of a medical doctor a compelling medical need for disclosure;

(13) All records of proceedings relating to the consent required for abortion for minors brought pursuant to I.C. 18-609A(1) or (3);

(14) All records of proceedings relating to the judicial authorization of sterilization procedures pursuant to I.C. 39-3901;
(15) Documents filed or lodged with the court in camera;
(16) Protection order petitions and related records, maintained pursuant to either the domestic violence crime prevention act or chapter 79, title 18 of the Idaho Code, except orders of the court;
(17) Records maintained by a court that are gathered at the request or under the auspices of a court (other than records that have been admitted in evidence);

(A) to determine an individual's need for counseling, rehabilitation, treatment or assistance with personal conflicts;
(B) to assist in assigning an appropriate disposition in the case, including the ADR screening report and screening reports prepared by Family Court Service Coordinators or their designees;
(C) to provide the court with a recommendation regarding the custody of minor children;
(D) to provide a court with a psychological evaluation of an individual;
(E) to provide annual or other accountings by conservators and guardians, except to interested parties as defined by Idaho law;
(F) to provide personal or identifying information on individuals for internal court use, including case information sheets filed pursuant to Idaho Rule of Civil Procedure 3(d) or Idaho Rule of Family Law Procedure 201, and victim information/restitution sheets.

(18) A reference list of personal data identifiers or an unredacted copy of a document filed pursuant to Idaho Rule of Electronic Filing and Service 15, Idaho Rule of Civil Procedure 2.6 or Idaho Rule of Family Law Procedure 218; however, courts will share the reference list or unredacted copy with other government agencies as required or allowed by law without court order or application for purposes of the business of those agencies.
(19) All court filings, including attachments, in guardianship or conservatorship proceedings whether temporary or permanent, and in proceedings involving a protective arrangement under I.C. § 15-

5-409, and whether for an adult, a minor, or a developmentally disabled person, except to interested persons as defined in section 15-1-201, Idaho Code, guardians ad litem, court visitors, or any monitoring entity as defined by Idaho law, or any attorney representing any of the foregoing; provided, however, the following shall not be exempt from disclosure:

(A) the register of actions for the case;

(B) letters of guardianship and letters of conservatorship, and any supplemental orders, decrees or judgments describing, limiting, or expanding the rights and duties of the guardian or conservator;

(C) any order by the court regarding bond by a conservator, and the conservator's bond ;

(D) any order, decree, or judgment dismissing, concluding, or otherwise disposing of the case.

(20) The records in cases involving child custody, child support, and paternity, except that officers and employees of the Department of Health and Welfare shall be able to examine and copy such records in the exercise of their official duties. Other exceptions to this rule are that the register of actions shall be available to the public, and a redacted copy of any order, decree or judgment issued in the case shall be available to the public. However, no redacted copy of any order, decree or judgment must be prepared until there is a specific request for the document. Provided further that any person may request that the court make other records in the case available for examination and copying. Any individual may make the request by filing a court-provided form. When the court receives such a request, it shall promptly review the records in the case and shall make the records available except for those records or portions of records that allege abuse, abandonment or neglect of a child, or which the court determines would inflict undue embarrassment to or put at risk a person referenced in the record who was a child at the time of the filing of the record, or which are exempt from disclosure under other provisions of Supreme Court rules.

This subsection (g)(20) shall apply only to records in cases filed on or after July 1, 2012, and to records in cases in which a motion to modify an order, decree or judgment was filed on or after July 1, 2012.

(21) Records of judicial work product or drafts, including all notes, e-mail, memoranda or drafts prepared by a judge or a court-employed attorney, law clerk, legal assistant or secretary;

(22) Personnel records, application for employment and records of employment investigations and hearings, including, but not limited to, information regarding sex, race, marital status, birth date, home address, telephone number, applications, testing and scoring materials, grievances or complaints against an employee, correspondence, and performance evaluations; provided the following are not exempt from disclosure: a public official's public service or employment history, classification, pay grade and step, longevity, gross salary and salary history, status, workplace, employing agency, and any adverse official action taken against an employee as a result of a grievance or complaint (except a private letter of reprimand), and after such action is taken (except when the action is a private letter of reprimand), the record of any investigation and hearing leading to the action;

(23) Applications, testing and scoring to be included on a court maintained roster;

(24) Computer programs and related records, including but not limited to technical and user manuals, which the judicial branch has acquired and agreed to maintain on a confidential basis;

(25) Records maintained by the state law library that link a patron's name with materials requested or borrowed in the patron's name with a specific subject about which the patron has requested information or materials;

(26) Allegations of attorney misconduct received by the Idaho State Bar and records of the Idaho State Bar relating to attorney discipline, except where confidentiality is waived under the Idaho Bar Commission Rules;

(27) All records relating to applications for permission to take the Idaho bar examination or for admission to practice as exempted from disclosure in the Idaho Bar Commission Rules;

(28) All records and records of proceedings, except the identity of applicants for appointment to judicial office, of the Idaho Judicial Council or any District Magistrates Commission pertaining to the appointment, performance, removal, disability, retirement or disciplining of judges or justices. Provided, however, that the record of a disciplinary proceeding filed by the Judicial Council in the Supreme Court loses its confidential character upon filing;

(29) Pending grant applications and attachments submitted to the Guardian Ad Litem Grant Review Board for consideration of grant funding authorized under Title 16, Chapter 16, Idaho Code. Provided, however, such applications and attachments will no longer be exempt following the Board's consideration of all applications and the Supreme Court's awarding of grant funds.

(h) Permissive Release of Judicial Decision in Exempted Categories. Records of courts' determinations in proceedings exempt from disclosure under (g) of this rule may, by direction of the court issuing the determination, be subject to inspection, examination and copying in a manner that preserves the anonymity of the participants to the proceeding. In particular, the Supreme Court and the Court of Appeals may provide copies of their rulings in appeals from proceedings exempt from disclosure under paragraph (g) by using "John Doe/Jane Doe" designations or other anonymous designations in documents made available for inspection, examination and copying. Further deletions from the decisions may be made if necessary to preserve anonymity.

(i) Redaction and Sealing of Court Records.

(1) Filing a motion. Parties to a case, or non-parties whose rights are affected by or who otherwise have a right to access information contained in a court file, may move to redact, disclose, seal, or unseal records in a case file. The court at its own discretion may

also move to redact, disclose, seal, or unseal records in a case file in accordance with this rule.

(2) When a hearing must be held. When a motion is filed under this rule, the court shall hold a hearing on the motion if one is requested by a party to the case, or if one is requested by a non-party whose rights are affected. The court may also hold a hearing at its own discretion. The court is not required to hold a hearing if the court concludes redaction is necessary to prevent the disclosure of personal data identifiers under subsection (i)(3)(A)(7) of this rule.

(A) If the motion seeks to redact or seal newly filed records, the records will be temporarily sealed for seven days. In those seven days, the court will review the motion and records to decide if they should remain temporarily sealed. The court may order the records to remain temporarily sealed pending a decision on the motion if the records appear to contain information that falls under subsection (i)(3) of this rule. Any order to continue the temporary sealing must be in writing and identify the applicable provisions of subsection (i)(3) of this rule. The written order will be publicly available.

(B) If the motion seeks to redact or seal previously filed records, the court at its discretion may temporarily seal the records pending a hearing or a final decision, utilizing the same criteria and requirements contained above with regard to temporarily sealing newly filed records.

(C) An order to redact or seal records may be challenged by a non-party whose rights may be affected by the decision.

(3) Orders to redact or seal. Consistent with the presumption in these rules of public access to information, when entering an order redacting or sealing records in a case file, a court must fashion the least restrictive exception from disclosure and provide the reason for the redaction or sealing.

(A) Prior to entering an order redacting or sealing records, the court must make one or more of the following determinations:

1. The records contain highly intimate facts or statements, the publication of which would be highly objectionable to a reasonable person.

2. The records contain facts or statements that the court finds might be libelous.

3. The records contain facts or statements that may compromise a person's financial security or could reasonably result in economic or financial loss or harm to a person who has an interest in the records.

4. The records contain facts or statements that could compromise the security of Judicial Branch personnel, property, or sealed or exempt court records maintained by the Judicial Branch.

5. The records contain facts or statements that might endanger a person's life or safety.

6. That it is necessary to temporarily seal or redact the records to preserve the right to a fair trial.

7. The records contain personal data identifiers that should have been redacted pursuant to Idaho Rule of Electronic Filing and Service 15, Idaho Rule of Civil Procedure 2.6, or Idaho Rule of Family Law Procedure 218.

(B) Regardless of whether a motion is filed or a hearing occurs, no record can be redacted or sealed (aside from presentence investigation reports) unless the court first enters a written order that includes the determinations made under subsection (i)(3)(A) above. The order must specifically identify the records to be redacted or sealed and must be consistent with the capabilities of the case management system, and a copy of the order must be served on the Clerk of the District Court. The order shall remain publicly available and subject to examination, inspection or copying by the public, but should not reveal the content of the information protected from disclosure.

(C) When a record is redacted under this rule, the original, unaltered record must be preserved under seal. A redacted copy, so marked, shall be substituted for the original in the court file and only the redacted copy shall be subject to examination, inspection or copying by the public.

(D) When a record is sealed under this rule, it shall not be subject to examination, inspection, or copying by the public except as otherwise provided in these rules. Unless otherwise ordered by the court, the record will be accessible to the parties and their attorneys, who may access and use the record only for purposes of that case. The court may impose additional restrictions on the use and disclosure of the record.

(E) Presentence investigation reports are presumptively sealed as described in Idaho Criminal Rule 32 and unless a court orders otherwise, may only be disclosed in the manner identified by that rule. No order or hearing is required to seal a presentence investigation report.

(4) Orders denying a motion to redact or seal.

(A) Withdrawal of Previously Unfiled Record. If the court denies a motion to redact or seal a previously unfiled record, the record that was the subject of that motion will be withdrawn. The record will not be publicly available; the parties may not refer to or rely on it in any pleadings, motions, or other filings; and the court will not consider the record.

(B) Refiling Associated Motions or Papers. A party moving to seal or redact records should make an effort to obtain a decision on the motion before filing any submission relying on the records. Doing so prevents a record on which a submission relies from being withdrawn pursuant to this rule, potentially leaving the submission unsupported. However, if a submission relies on a record that is withdrawn pursuant to this rule, the party may file an amended submission within seven days from the date of the order denying the motion to redact or seal.

(5) Orders to unredact or unseal.

(A) In any order removing redactions or unsealing records, the court must explain its reasoning for the decision. Those reasons may include, but are not limited to:

1. A determination that none of the factors listed under subsection (i)(3)(A) preclude release of the records.

2. A determination that release is permitted elsewhere in court rule, including other subsections of Idaho Court Administrative Rule 32.

The order must also specifically identify the records to be changed, and a copy of the order must be served on the Clerk of the District Court.

(B) When the court issues an order for a limited disclosure of records that will otherwise remain sealed or exempt from disclosure, its order shall contain appropriate limitations on disseminating the disclosed information.

(6) Filing under seal. Sealed records and records requested to be redacted or sealed must be filed in compliance with Idaho Rules for Electronic Filing and Service 5, 6, and 7 if they are filed electronically.

(7) Changes to orders. The court may reconsider, alter, or amend any order issued under the provisions of this rule at any time.

(8) Provisions concerning exempt records. Exempt records are different than sealed or redacted records and are addressed in Idaho Court Administrative Rule 32(f) and (g). Access to records otherwise exempt from disclosure is addressed in Idaho Court Administrative Rule 32(c) and (h).

(j) Court records shielded from disclosure.

(1) Criminal case court records. Upon entry of an order shielding records pursuant to I.C. § 67-3004v(11) all court records of the case in which such order is entered shall be shielded from public disclosure. Provided, the entry of an order shielding records pursuant to I.C. § 67-3004(11) shall not prevent access to the records by: (A) the defendant, (B) judges, clerks, trial court administrators, or other staff employed by or working under the supervision of the courts who are acting within the scope of their duties, or (C) law enforcement personnel and prosecuting attorneys acting in the exercise of their official duties and powers. If the shielding of criminal case court records is later revoked all records subject to the revocation shall again be open to public disclosure to the extent otherwise permitted by this Rule.

(2) Unlawful detainer case court records. All court records of an I.C. § 6-303 unlawful detainer case shall be shielded from public disclosure if: (A) the case was filed on or after January 1, 2025, (B) the case is dismissed, (C) no appeal of the case is pending, and (D) three (3) years have passed from the filing of the case or a stipulation showing the parties have agreed to the shielding is filed with the court. Provided, the shielding of unlawful detainer case court records shall not prevent access to the records by the parties or judges, clerks, trial court administrators, or other staff employed by or working under the supervision of the courts who are acting within the scope of their duties.

(k) Request for Records.

(1) Any person desiring to inspect, examine or copy physical records shall make an oral or written request to the custodian. If the request is oral, the custodian may require a written request. The custodian may request contact information as provided in I.C. § 74-102. A request for public records and delivery of the public records may be made by electronic mail. The request must clearly identify each record requested so that the custodian can locate the record without doing extensive research and continuing requests for documents not yet in existence will not be considered. The custodian may provide the requester information to help the requester narrow the scope of the request or to help the requester make the request more specific when the response to the request is likely to be voluminous.

(2) Custodian Defined. The custodian of judicial public records is designated as follows:

(A) For any record in a case file in the Supreme Court or Court of Appeals, the custodian is the Clerk of the Supreme Court or a deputy clerk designated in writing.

(B) For any record not in a case file in the Supreme Court or Court of Appeals, the custodian is the Administrative Director of the Courts or other person designated in writing by the Chief Justice.

(C) For any record in a case file in a district court or magistrate court, the custodian is the Clerk of the District Court or a deputy clerk designated in writing.

(D) For any record not in a case file in the district court or magistrate court, the custodian is the Trial Court Administrator of the judicial district, or judge or magistrate designated by the Administrative District Judge.

(E) For any record in the judicial council, the custodian is the Executive Director of the Judicial Council.

(F) For any record in the Idaho State Bar, the custodian is the Executive Director of the Idaho State Bar or other person designated in writing by the Idaho State Bar Commissioners.

(G) For the purposes of the statewide case management system, the statewide case management system data storage, and compiled information, the custodian is the Administrative Director of the Courts or other person designated in writing by the Chief Justice.

(3) Custodian Judge. The custodian judge of a judicial public record is designated as follows:

(A) For any record in the Supreme Court, statewide case management system, or the statewide case management system data storage, the custodian judge is the Chief Justice, or the Vice-Chief Justice in the absence of the Chief Justice.

(B) For any record in the Court of Appeals, the custodian judge is the Chief Judge of the Court of Appeals, or a Judge of the Court of Appeals designated in writing.

(C) For any record in a case file in the district court or magistrate court, the custodian judge is the presiding magistrate or judge of that case, or judge or magistrate designated in writing by the Administrative District Judge.

(D) For any record not in a case file in the district court or magistrate court, the custodian judge is the Administrative District Judge of that judicial district, or other district judge or magistrate designated in writing by the Administrative District Judge.

(E) For any record in the judicial council, the custodian judge is the Chief Justice or the Vice-Chief Justice in the absence of the Chief Justice.

(F) For any record in the Idaho State Bar, the custodian judge is the Administrative District Judge of the Fourth Judicial District of the State of Idaho or a district judge designated in writing by the Administrative District Judge.

(4) Response to Request. The custodian shall respond to a request for examination of public records. Within three (3) working days from receipt of request, the custodian shall disclose the records requested, refer the request to the custodian judge for determination, or give written notice of denial of the request. Provided, if the custodian determines that it will take more than three (3) working days to determine whether the request should be granted, or that a longer period of time is needed to locate or retrieve the requested records, the custodian shall so notify the person making the request within ten (10) working days following the date of the request. If the documents requested are disclosed by the custodian, no other notice need be given by the custodian. The custodian is not under a duty to compile or summarize information contained in records, nor is the custodian obligated to create new records for the requesting party, except as provided herein. The custodian may deny a request for a copy of all or part of a transcript of an administrative or judicial proceeding or other voluminous publication or document when by rule or statute it may be obtained from the preparer of such record after payment of a fee. Efforts should be made to respond promptly to requests for records.

(5) Response by Custodian Judge. If a custodian determines that there is a question as to whether records should be disclosed pursuant to a request, or if a request is made for a ruling by a judge after the custodian denies the request, the custodian shall refer the request to the custodian judge for determination. The custodian judge shall make a written determination as to whether the records should be disclosed within ten (10) working days following the request. In the sole discretion of the custodian judge, an informal hearing may be held by the custodian judge on the question of

whether the records should be disclosed. The custodian judge shall determine the time and place of the hearing and the notice to be given by the custodian to the person requesting the records and any other interested person. If a hearing is held under this rule, the response to the person requesting the record may be delayed a reasonable time after the conclusion of the hearing.

(6) Cost of Copying Records. The cost to make a paper copy of any record filed in a case with the clerk of the district court shall be determined by the clerk, and shall not exceed the amount specified in I.C. § 31-3201. The cost for any other copying of any record shall be determined by order of the Supreme Court or the Administrative District Judge in accordance with the provisions of I.C. § 74-102. The costs so determined shall be paid, in advance, by the person requesting the records. Any delay in paying the costs of copying the records shall extend the time for response by the custodian.

(7) Proceedings after Denial. If a custodian denies a request for the examination or copying of records, the aggrieved party may file a request for a ruling by the custodian judge. If the custodian judge denies a request for the examination or copying of records, the sole remedy of any aggrieved person shall be to institute proceedings for disclosure in the district court in accordance with I.C. § 74-115.

(most recent amendment, August 26, 2025)

Rule 47. Criminal History Background Checks

(a) **Persons Subject to a Criminal History Background Check**. All persons serving in, or applying for, the following positions or appointments must comply with this rule.

(1) Parenting Coordinator, section 32-717D, Idaho Code, and Rule 1002, Idaho Rules of Family Law Procedure,

(2) Domestic Violence Evaluator, Rule 75, Idaho Court Administrative Rules,

(3) Supervised Access Provider, section 32-717E, Idaho Code, and Rule 1003, Idaho Rules of Family Law Procedure,

(4) Guardian Ad Litem program director, staff member, volunteer, and board member, section 16-1632, Idaho Code and Rule 35, Idaho Juveniles Rules,
(5) Family Court Services Coordinator, section 32-1407, Idaho Code, and
(6) Domestic Violence Court Coordinator, section 32-1407, Idaho Code.

A record of all criminal history background checks shall be maintained in the office of the Supreme Court, through the Administrative Office of the Courts. If the applicant has cleared a criminal history check for any position identified in this rule within the past 12 months, the criminal history check may also be used for any other position identified under this rule.

(b) **Program or Employer Responsibilities**.
The criminal history background check clearance is not a determination of suitability for employment or voluntary appointment. The Administrative Office's clearance means that a person was found to have no disqualifying crime or relevant record. The programs or employers are responsible for determining the individual's suitability for employment or volunteer appointments as described in this rule.

(1) *Screen Applicants.* The program or employer must screen applicants prior to initiating a criminal history and background check in determining suitability of the applicant for employment or voluntary appointment. If the applicant discloses a designated crime or offense as provided in subsection (h) of this rule, or discloses other information that would indicate a risk to the health and safety of children or vulnerable adults, a determination of suitability for appointment or employment should be made during the initial screening of the application.

(2) *Ensure Time Frames are Met.* The program or employer is responsible for ensuring that the required time frames are met for

completion and submission of the application and fingerprints to the Administrative Office as required by this rule or as otherwise provided by law.

(3) *Employment or appointment determinations.* The program or employer will make a determination as to the ability or risk of the person to provide care or services to children or vulnerable adults.

(4) *Discovery of Criminal Conviction or Disqualifying Records After Clearance is Issued.* After a clearance is issued, if the employer or program discovers that the applicant may no longer be eligible for clearance due to the existence of either a conviction for a disqualifying offense, or a relevant record listed in this rule, the employer or program is required to report their discovery to the Administrative Office of the Courts. The Administrative Office may compel the applicant to be processed for a new background check under subsection (d) of this rule.

(c) **Application for a Criminal History and Background Check.** The criminal history check will consist of a self-declaration, fingerprints of the person applying, and information obtained from the following:

(1) Federal Bureau of Investigation,
(2) National Crime Information Center,
(3) Idaho State Police Bureau of Criminal Identification,
(4) State-based court records management systems,
(5) National Sex Offender Registry,
(6) Idaho Child Abuse and Neglect Central Registry, and
(7) as otherwise required by law.

(d) **Self-Declaration.** Every person subject to this rule must complete a self-declaration form signed under penalty of perjury. The self-declaration authorizes the Supreme Court to obtain and release information without liability. The applicant must provide or disclose the following information on the self-declaration form:

(1) The applicant's name(s), including any former, maiden or aliases used, address and date of birth which appears on a valid identification document issued by a governmental entity,
(2) A description of all criminal conviction(s) or charges and the circumstances surrounding the incident(s),
(3) Any notice by a state or local agency of substantiated child or substantiated vulnerable adult abuse, neglect, exploitation, or abandonment complaint,
(4) A signed release of information authorizing the Supreme Court, through their Administrative Office of the Courts, to obtain the criminal background check information and release information without liability,
(5) If the person has lived in another country or jurisdiction that is not covered by a national criminal background check under this rule, a criminal records check or a "certificate of good conduct" from the embassy of any country or jurisdiction in which the person has resided within the previous seven (7) years.

The Administrative Director of Courts or designee may inquire or request details regarding any information provided on, or omitted from, the self-declaration form prior to making a determination. The Supreme Court, through its Administrative Office of the Courts, will complete the criminal history check and inform the person and applicable entity of the results.

(e) **Failure to Disclose Information.** Failure to provide a self-declaration form containing a release of information provision or information required under this rule will result in a denial of the application.

(f) **Criminal or Relevant Record - Action Pending.**

(1) *Notice of Inability to Proceed.* When the applicant is identified as having a pending criminal action for a crime or relevant record that may disqualify them from receiving a clearance for the background check, the Administrative Director of Courts or designee may issue a notice of inability to proceed.

(2) *Availability to Provide Services.* The applicant is not available to provide service when a notice of inability to proceed or denial is issued by the Administrative Director of Courts or designee. Any previous clearance will be revoked.

(3) *Reconsideration of Action Pending*. In the case of an inability to proceed status, the applicant can submit documentation that the matter has been resolved to the Administrative Director of Courts or designee for reconsideration within one hundred and twenty (120) calendar days from the date of notice. When the Administrative Director of Courts or designee receives this documentation, they will notify the applicant of the reconsideration and issue a clearance or denial. When the Administrative Director of Courts or designee's reconsideration results in a clearance after review, any previously revoked clearance will be restored.

(g) **Updating Criminal History Checks.** Unless otherwise required by law or court rule to complete a criminal history check more frequently, every person subject to this rule must complete an updated criminal history check at least every five (5) years. An updated criminal history check must include a self-declaration form, and information as required under subsection (d) of this rule. The Supreme Court through its Administrative Office of the Courts or any appointing court may, at its discretion, require a criminal history check or updated criminal history check of any person subject to this rule at any time. Five (5) years will be calculated from the date of the person's most recent criminal history check approval.

(h) **Unconditional Denial.**

Persons subject to this rule shall not be eligible to serve if they have pled guilty or been found guilty of one (1) or more of the designated crimes listed below, or their equivalent under the laws of any other jurisdiction, regardless of the form of the judgment or withheld judgment.

(1) *Designated Crimes.* No exemption shall be granted for any of the following designated crimes:

(A) Armed Robbery, as defined by section 18-6501, Idaho Code,

(B) Arson, as defined by sections 18-801 through 18-805, Idaho Code,

(C) Forcible sexual penetration by use of a foreign object, as defined by section 18-6604, Idaho Code,

(D) Incest, as defined by section 18-6601, Idaho Code,

(E) Injury to a child, felony or misdemeanor, as defined by section 18-1501, Idaho Code,

(F) Kidnapping, as defined by sections 18-4501 through 18-4503, Idaho Code,

(G) Lewd conduct with a minor, as defined by section 18-1508, Idaho Code,

(H) Mayhem, as defined by section 18-5001, Idaho Code,

(I) Murder in any degree, voluntary manslaughter, assault or battery with intent to commit a serious felony, as defined by sections 18-4001, 18-4003, 18-4006, 18-4015, 18-909 and 18-911, Idaho Code,

(J) Poisoning, as defined by sections 18-4014 and 18-5501, Idaho Code,
(K) A felony involving a controlled substance, where the judgment or withheld judgment was entered within seven (7) years preceding the denial,
(L) Possession of sexually exploitative material, as defined by section 18-1507A, Idaho Code,
(M) Rape, as defined by sections 18-6101, Idaho Code,
(N) Felony stalking, as defined by section 18-7905, Idaho Code,
(O) Sale or barter of a child, as defined by section 18-1511, Idaho Code,
(P) Sexual abuse or exploitation of a child, as defined by sections 18-1506, 18-1506A, 18-1507, and 18-1507A, Idaho Code,
(Q) Any felony punishable by death or life imprisonment,
(R) Any felony involving any type or degree of embezzlement, fraud, theft or burglary, where the judgment or withheld judgment was entered within seven (7) years preceding the denial,
(S) Abuse, neglect, exploitation or abandoning of a vulnerable adult, as defined by sections 18-1505, 18-1505A, and 18-1505B Idaho Code,
(T) Attempt, solicitation, or conspiracy to commit any of the designated crimes,
(U) Domestic violence, felony, as defined by section 18-918, Idaho Code,
(V) Attempted strangulation, felony, as defined by section 18-923, Idaho Code, or
(W) Aggravated sexual battery, felony, as defined by section 18-925, Idaho Code.

(i) **Conditional Denial.** Except with respect to any crime which results in an unconditional denial under subsection (h) of this rule, the Administrative Director of Courts or designee may conditionally deny a person's application if:

(1) the criminal history check reveals a plea, finding or adjudication of guilt to any felony or misdemeanor (excluding traffic violations which do not result in a suspension of the individual's driver's license),
(2) the person has been found to have committed abuse, abandonment or neglect in a child protection or adult protection case,
(3) the person has a pending charge or criminal investigation,
(4) the person appears on the Idaho Child Abuse and Neglect Central Registry,
(5) the person has falsified or omitted information on the self-declaration form, or
(6) the person has a current or past civil protection order or criminal no contact order against him or her that was issued after a hearing to which such person received actual notice and in which such person had the opportunity to participate.

A conditional denial becomes a final unconditional denial within twenty-one (21) days from the date of the conditional denial notice unless, prior to the expiration of this period, the individual requests an exemption review which shall be conducted as provided in subsection (j) of this rule. The twenty-one (21) day period for filing a request for an exemption review may be extended by the Administrative Director of Courts or designee for good cause.

(j) **Exemption Review.** If an exemption review is requested in accordance with subsection (i) of this rule, the Administrative Director of Courts or designee shall initiate an exemption review of any cause, action, or crime for which a conditional denial was issued under subsection (i) of this rule. The review may consist of an evaluation of the documents and supplemental information provided by the applicant, a telephonic, virtual or in-person interview with the

applicant, or any other examination of the applicant's criminal history background. The Administrative Director of Courts may appoint any authorized designee or designees to conduct any exemption review.

Exemption reviews shall be governed by and conducted as follows.

(1) *Scheduling an Exemption Review*. Upon receipt of the request for an exemption review, the Administrative Director of Courts or designee shall determine the type of review to be conducted. An exemption review shall be conducted within twenty-one (21) days from the receipt of the request. If an in-person review is scheduled, the applicant shall be provided with at least seven (7) days' notice of the exemption review date.

(2) *Factors to Be Considered.* During the review, the following factors shall be considered:

(A) The severity or nature of the crime or other findings,

(B) The period of time since the incident(s) under current review,

(C) The number and pattern of incident(s),

(D) Circumstances surrounding the incident(s) that would help determine the risk of repetition,

(E) Activities since the incident(s) such as continuous employment, education, participation in treatment, payment of restitution, or any other factors which may be evidence of rehabilitation,

(F) Granting of a pardon by the Governor or the President,

(G) The falsification or omission of information on the self-declaration form and other supplemental forms submitted,

(H) The relationship between the crime or finding and the position sought, and

(I) Any other factor deemed relevant.

(3) *Decision After Review.* A notice of decision shall be issued within twenty-one (21) days of the date of review.

(k) **Criminal History Records.** Criminal history checks done pursuant to this rule become the property of the Supreme Court and shall be held confidential as provided by law or court rule.

(1) *Release of Criminal History Checks.* A copy of the criminal history check shall be released:

(A) To the person named in the criminal history upon receipt of a written request to the Supreme Court, provided the person also releases the state from all liability; or

(B) In response to a subpoena issued by a court of competent jurisdiction.

(2) *Release of Information Obtained Through a Criminal History Check.* Information may be released, upon written request or upon signed release by the person who is the subject of the criminal history check, to:

(A) any judge considering appointment of the person; and

(B) as otherwise required by law.

(3) *Retention of Records.* The criminal history record, supplemental documentation received, notes from the review, and the decision shall be retained by the Supreme Court for a period of not less than six (6) years after the criminal background check is completed.

(4) *Use and Dissemination Restrictions for FBI Criminal Identification Records.* According to the provisions set forth in 28 CFR 50.12, the Supreme Court shall:

(A) Notify the person fingerprinted that the fingerprints will be used to check the criminal history records of the FBI;

(B) In determining the suitability for providing services or employment, provide the person the opportunity to complete or challenge the accuracy of the information contained in the FBI identification record;

(C) Afford the person twenty-one (21) days to correct or complete the FBI identification record or to decline to do so; and

(D) Advise the person who wishes to correct the FBI identification record that the procedures for changing, correcting, or updating are set forth in 28 CFR 16.34.

(l) **Confidentiality.** Before any information obtained in a criminal history check may be released to the person who is the subject of the record, to another governmental agency or to a private person or organization, the Idaho Supreme Court will comply with federal Public Law 103-209 and 92-544.

(most recent amendment, 2025)

Rule 91. Guardian ad Litem Grant Program Administration

(a) Who may apply. Any eligible person, organization, corporation, or agency may apply for funds authorized under Title 16, Chapter 16, Idaho Code for the development and operation of a guardian ad litem (GAL) program. Applicants that have previously been awarded grant funding and have not met program requirements as set forth in the Idaho Supreme Court Policies and Procedures (Policies and Procedures) for GAL grant programs may not be considered for funding. Eligible applicants must:

(1) Comply with all program requirements set forth in Idaho Code §§ 16-1632 and 16-1633 and agree to:

(A) Establish, maintain, and coordinate a districtwide GAL program consistent with the requirements of the Child Protective Act and to the extent possible, has established a districtwide program to recruit GAL volunteers sufficient to provide services in each county of the judicial district.

(B) Provide necessary administrative and staffing services as may from time to time be required.

(C) Act as a volunteer coordinator and strive to provide every child under the age of 12 years, who has an open child protection case, a GAL volunteer throughout each stage of any child

protective proceeding and strives to provide a GAL volunteer to children age 12 and over for whom the court has appointed a GAL.

(D) Establish a program for attorneys to represent GAL volunteers, whether or not appointed by the court in conjunction with the local, districtwide, and state bar associations.

(E) Develop uniform criteria to screen, select, train, and remove volunteer GALs.

(F) Establish a priority list (triage plan) for those proceedings under the Child Protective Act in which guardians ad litem shall be appointed in districts where there are insufficient numbers of guardians ad litem.

(G) Submit an annual report for the preceding fiscal year to the grant administrator for delivery to the legislature.

(H) Confirm that all criminal background checks are complete and up to date on all staff, board members and active GAL volunteers.

(I) Confirm that all program GAL volunteers perform all the duties as listed under I.C. § 16-1633.

(2) Comply with all program requirements set forth in Idaho Juvenile Rule 35;

(3) Have a written policy and process to ensure that any person in training to serve or who is serving as a GAL has completed a criminal records check prior to having access to program case files or children being served by the program;

(4) Have a written process to temporarily inactivate GAL volunteers or staff members whose criminal records checks have expired;

(5) Have in place a process for providing timely and accurate data requested by the AOC;

(6) Have a financial accounting system and records to accurately account for any funds awarded under the GAL Grant Program; and

(7) Have established internal control policies and procedures.

(b) Grant Application Forms. The grant solicitation is posted on the Idaho Supreme Court website annually with detailed instructions on how to submit an application. All grant applications must be submitted on the most current approved form within the timelines provided in the Policies and Procedures.

(c) Guardian ad Litem Grant Review Board; Members. Members of the Guardian ad Litem Grant Review Board (Board) will be appointed by the Idaho Supreme Court for a three-year term. The Board will consist of nine (9) voting and three (3) non-voting members with experience and training in the child welfare system. The board shall be staffed by the GAL grant specialist and attended by a member of the AOC's finance department.

(1) Membership shall consist of two (2) members each from subsections A and B, and five (5) members from a combination of subsections C through H:

(A) 2 Representative(s) selected upon nomination from the Idaho Legislature;

(B) 2 Representative(s) selected upon nomination from the Governor’s office;

(C) Representative(s) from the Idaho Casey Family Programs;

(D) Representative(s) from a federally recognized Idaho Indian Tribe;

(E) Attorney(s) who represents parties in Child Protective Act cases;

(F) Former foster youth;

(G) Current or former foster parent(s); or

(H) Parent(s) with lived experience in the child welfare system.

(2) A magistrate judge, a guardian ad litem volunteer, and a person with a strong financial background will serve as non-voting members of the Board.

(3) The principal staff functions of the Board will be located with the AOC.

(d) Powers and Duties of the Grant Review Board. The Board will:

(1) Review the grant applications and attachments; and

(2) Issue a recommendation to the Idaho Supreme Court for approval or denial of grant applications. The Board may request and/or use additional information prior to reaching a decision.

(most recent amendment, 2022)

Selected Idaho Rules for Electronic Filing and Service

Rule 5: Exceptions to Electronic Filing of Documents

The documents identified in this rule are exceptions to the requirement for electronic filing.

(a) **Probate / Wills.** Probate matters must be filed electronically; however, any original will, along with any pleading to which it is attached, must be filed both electronically and conventionally. The conventional filing must be made no more than seven business days, excluding legal holidays, from the date of electronic filing.

(b) **Warrants.** A document delivered to the court to secure an arrest warrant pursuant to Idaho Criminal Rule 4 or an initial juvenile detention order pursuant to Idaho Juvenile Rule 7 must be filed conventionally. A document delivered to the court to secure a search warrant pursuant to Idaho Criminal Rules 41 may be filed conventionally.

(c) **Limits on Exhibits.** A demonstrative or oversized exhibit must be filed conventionally. Trial exhibits must not be filed unless or until they are offered by a party to be admitted into evidence.

(d) **Grand Jury Material.** Grand jury materials, which should also be accompanied by a disk or CD-ROM containing the documents in .pdf format, if possible, must be filed conventionally.

(e) **Charging Documents.** Charging documents in a criminal action including complaints and indictments must be filed conventionally unless filed through an electronic system approved by the Supreme Court.

(f) **Federally Restricted Storage.** A document or image that is barred from electronic storage must be filed conventionally, including but not limited to sexually explicit images of a minor.

(g) **Document Submitted for *In Camera* Inspection.** A document submitted for *in camera* inspection must be filed conventionally.

(h) **Motion to Redact or Seal a Document.** A motion to redact or seal a document by court order pursuant to Idaho Court Administrative Rule 32(i) and the document that is the subject of the motion may be filed conventionally. If filed electronically, the motion must comply with Rule 7.

(i) **Foreign Subpoena.** A foreign subpoena submitted to an Idaho court must be filed conventionally.

(j) **Law Enforcement Documents.** Law enforcement, including state police, sheriff's offices, police departments, and probation and parole officers, may file the following documents conventionally:

- documents for which no case number exists at the time of filing;
- documents related to a court event scheduled for the same day as the filing;
- bonds and accompanying documents received at the jail, and
- documents pertaining to an arrest for one or more offenses where at least one of the offenses is a new filing with no existing case number.

(k) **Hospitalization of Mentally Ill, Detention Without a Hearing.** A document delivered pursuant to Idaho Court Administrative Rule 100 after office hours, during the weekend, or on a holiday, will be filed in accordance with the procedure set out in Idaho Court Administrative Rule 100.

(l) **Persons with Neurocognitive Disorders, Protective Custody Without a Hearing.** A document delivered pursuant to Idaho Court Administrative Rule 101 after office hours, during the weekend, or on a holiday, will be filed in accordance with the procedure set out in Idaho Court Administrative Rule 101.

(m) **Order of Removal Upon Issuance of a Summons (C.P.A.)**. A document delivered pursuant to Idaho Juvenile Rule 34 after office hours, during the weekend, or on a holiday, will be filed in accordance with the procedure set out in Idaho Juvenile Rule 34.

(n) **Order to Prevent Removal (C.P.A.).** A document delivered pursuant to Idaho Juvenile Rule 34A after office hours, during the weekend, or on a holiday, will be filed in accordance with the procedure set out in Idaho Juvenile Rule 34A.

(o) **Other Documents that cannot be Filed Electronically**. Any document or thing that cannot be scanned or otherwise converted to a Portable Document Format (.pdf) must be filed conventionally. Upon a showing of good cause, the court may accept for conventional filing a document that would otherwise be required to be filed through the electronic filing system.

(most recent amendment, 2025)

Rule 9: Electronic Signatures

(a) **Forms of electronic signature.** A document may be electronically signed by:

(1) inserting a digital image of the signing person's handwritten signature into the document;

(2) scanning the signing person's handwritten signature after the document has been signed;

(3) using a signature block that includes an "/s/" before the signing person's typed name. An example of a signature block with "/s/" is:

/s/ John Q. Smith

JOHN Q. SMITH

If a person other than a party or their attorney signs their name preceded by "/s/," a duplicate of the document must be conventionally signed by the same person. The duplicate must be

kept by the attorney or party that submitted the document through the end of the time to appeal or the determination of an appeal, if filed.

(b) **Judge's signature.** Electronically filed documents signed by the court must be scanned or electronically produced so the judge's original signature, or a digital image of the judge's signature, is shown. But a temporary custody order, order of removal, order to prevent removal, and summons issued after office hours, during the weekend, or on a holiday under Idaho Court Administrative Rule 100(b)(3), Idaho Court Administrative Rule 101(b)(3), Idaho Juvenile Rule 34(c), or Idaho Juvenile Rule 34A(c), may be signed with an electronic or digital signature. This signature must have protective features, including embedded information, qualification, identity verification, or cryptographic security.

(c) **Conventionally signed documents.** To file a conventionally signed document the filer must:

(1) scan and OCR (Optical Character Recognition) the document; or

(2) create a Word document that substitutes the /s/ signature block in place of the handwritten signature(s) and convert that document to a PDF. If the signature replaced is that of opposing counsel or a third-party the filer must keep the conventionally signed document or a scanned copy through the end of the time for appeal and determination of an appeal, if filed.

(3) A notary public's signature and stamp may be submitted under the process outlined in subsection (c)(2) above. The version submitted electronically by the filer may replace the notary seal stamp with either the electronic image of their seal or "[Notary Seal]." The filer must keep the conventionally signed document or a scanned copy through the expiration of the time for appeal and determination of an appeal, if filed.

(most recent amendment, 2025)

Selected Idaho Rules of Civil Procedure

Rule 83: Appeals From Decisions of Magistrates

(a) **Where an Appeal Must be Taken.**

(1) *Appeals Taken from Magistrate Court to the Supreme Court.*

(A) As a Matter of Right. An appeal from the following final judgments, as defined in Rule 54(a), must be taken from the magistrate court to the Supreme Court:

(i) a final judgment that grants or denies a petition for termination of parental rights, or

(ii) a final judgment that grants or denies a petition for adoption.

(B) By Permission. When permission has been granted pursuant to Rule 12.1, Idaho Appellate Rules, an appeal from the following may be taken to the Supreme Court:

(i) a final judgment, as defined in Rule 802 of the Idaho Rules of Family Law Procedure, or an order made after final judgment, involving the custody of a minor, or

(ii) those orders or decrees of the court in a Child Protective Act proceeding specified in section 16-1625, Idaho Code, or

(iii) a final judgment, as defined in Rule 54(a) of the Idaho Rules of Civil Procedure, or an order made after final judgment, in a guardianship proceeding arising under Title 15, Chapter 5 of the Idaho Code.

(2) *Appeals from the Magistrate Court to the District Court*. An appeal from the following judgments or orders entered by the magistrate court must be taken to the district court:

(A) a final judgment in a civil action or a special proceeding commenced, or assigned to, the magistrate's division of the district court;

(B) any of the judgments or orders in an action in the magistrate's division which would be appealable from the district court to the Supreme Court under Rule 11, Idaho Appellate Rules;

(C) Domestic Violence Protection Orders issued pursuant to Idaho Code Section 39-6306;

(D) final judgments or orders entered upon current forms approved by the Idaho Supreme Court;

(E) interlocutory orders, if a permissive appeal has been granted by the district court, which must be processed in the manner provided by Rule 83.1 of the Idaho Rules of Civil Procedure; or

(F) any order, judgment or decree by a magistrate judge in a special proceeding for which an appeal is provided by statute.

(3) *Appeals from Magistrate Court When it is Acting as District Court*. Pursuant to Idaho Court Administrative Rule 6, an administrative district judge may assign a magistrate judge to hear an action that would otherwise be heard only by a district judge. An appeal from any final or interlocutory order or judgment entered by the magistrate judge in the assigned case must be taken to the Supreme Court, unless the original order of assignment states differently. An application for permission to appeal to the Supreme Court from an interlocutory order entered by the magistrate judge in the assigned case must be processed in the manner provided by Rule 12 of the Idaho Appellate Rules.

(b) **Time for Filing an Appeal or Cross Appeal.**

(1) *Appeal*. An appeal is commenced only by filing a notice of appeal with the clerk of the district court.

(A) In General. The notice of appeal must be filed within 42 days from the date file stamped by the clerk of the court on the judgment or order being appealed.

(B) Suspension of Time to File. The time to file the appeal is terminated by the timely filing of the following motions, and begins to run from the date file stamped by the clerk of the district court on the order granting or denying the motion:

(i) a motion for a judgment notwithstanding the verdict following a timely motion for a directed verdict;

(ii) a motion to amend or make additional findings of fact or conclusions of law, whether or not alteration of the judgment is required if the motion is granted;

(iii) a motion to alter or amend the judgment, not including motions under Rule 60 or motions regarding costs and attorney fees; or

(iv) a motion for new trial.

(2) *Cross Appeal*. When an appeal is filed and served upon all parties required by this rule more than 28 days from the entry of a judgment or order, a cross appeal may be filed by any opposing party within 14 days from the date such party is served with a copy of the notice of appeal.

(c) **Service of the Notice of Appeal.** The party filing the appeal must immediately serve copies of the notice of appeal upon the magistrate court appealed from and all other parties to the action. When a judgment or decision in a juvenile proceeding is appealed, a copy of the notice of appeal must be served upon the prosecuting attorney of the county in which the juvenile proceeding was held.

(d) **Contents of the Notice of Appeal.** A notice of appeal to the district court must contain the following information:

(1) the title of the court from which the appeal is taken;

(2) the title of the court to which the appeal is taken;

(3) the date and heading of the judgment or order being appealed;

(4) a statement as to whether the appeal is taken upon matters of law, or on matters of fact, or both;

(5) whether the testimony and proceedings of the original trial or hearing were recorded or reported, the method of recording or reporting, and the name of the party or person who has the recording or reporting; and

(6) a preliminary statement of the issues the appellant intends to assert in the appeal, which may be filed separately within 14 days after the filing of the notice of appeal and which does not prevent the appellant from asserting other issues on appeal.

(e) **Stay During Appeal--Powers of Magistrate judge.**

(1) *Stay of Proceedings*. The filing of an appeal to the district court automatically stays the proceeding and execution of any judgment or order appealed from by the appellant for a period of 14 days; provided, however, that there shall be no automatic stay of any civil protection order issued pursuant to Idaho Code Sections 18-7907 or 39-6306. Any further stay of proceedings and execution of judgments covered by this rule must be by order of the presiding magistrate court or the district court.

(2) *Powers of Magistrate judge*. While the appeal is pending before the district court or pending on further appeal to the Supreme Court, the magistrate judge has the same powers and authority granted to a district judge by Rules 13(b) and 13.4, Idaho Appellate Rules, during an appeal to the Supreme Court.

(f) **Manner of Review by District Court.**

(1) *Appellate Review with Transcript*. Unless otherwise ordered by the district court, the district court must hear appeals from the magistrate court as an appellate proceeding and a transcript must be prepared as provided in Rule 83(g). The district court must review the case on the record and determine the appeal in the same manner and on the same standards of review as an appeal from the district court to the Supreme Court under the statutes and law of this state, and the Idaho Appellate Rules.

(2) *Appellate Review without Transcript*. The district judge assigned the appeal may, on the court's own motion or motion of a party, order an alternate method of hearing the appeal that does not require a transcript. Even if the district judge does not require the preparation of a transcript, the court must, on motion of any party to the appeal, order the preparation of a transcript of the proceedings at the cost of the moving party and order the moving party to pay the estimated transcript fees within 14 days of entry of the order. The clerk of the court must serve a copy of the order upon the transcriber of the trial or proceedings of the trial court.

(A) Hearing on Question of Law. If the district judge determines that the appeal involves only a question of law, the district judge may determine the appeal without a transcript. It must then enter an order stating:

(i) the appeal involves a question of law only,

(ii) the issue of law to be determined on appeal,

(iii)no transcript is required,

(iv) the appeal will be decided on the clerk's record, the briefs of the parties and oral argument, and

(v) the date for the filing of the appellant's opening brief.

(B) Hearing by Listening to or Viewing Electronic Record. If the district judge determines that the appeal may be heard as an appellate proceeding by listening to or viewing the electronic record of the trial or proceedings of the trial court, it may determine the appeal without a transcript. It must then enter an order stating:

(i) that no transcript is required,

(ii) the appeal will proceed by listening to or viewing the electronic record of the trial or proceedings of the trial court,

(iii) a time within which the parties must review, view, or listen to the electronic record, and

(iv) the date for the filing of the appellant's opening brief.

(3) *Trial de Novo or Remand*. If the district court determines that the record of the proceedings in the magistrate court is inadequate for an appellate proceeding, the district court must order that the appeal be heard as a trial de novo or remand the matter to the magistrate's division. If the appeal is heard as a trial de novo, the district court must render a decision in the action as a trial court as though the matter were initially brought in the district court.

(g) **Transcripts.**

(1) *Transcript Fee*.

(A) Payment of Fee. The Appellant must:

(i) within 14 days of the filing of the notice of appeal, pay the estimated fee for preparation of the original and 2 copies of the transcript, as determined by the transcriber pursuant to Idaho Code Section 1-1105;
(ii) pay the balance of the transcript fee upon completion of the transcript;
(iii) pay the amount to the clerk of the court, who will deposit it in the fund that incurred the expense of the person who prepared the transcript; and
(iv) pay any agreed upon amount if the transcript is prepared by a transcriber or reporter privately retained by appellant; however, for purposes of taxing costs, the cost is the same per page cost set out in Idaho Code Section 1-1105.

(B) Exemption from Payment. The district judge may order a transcript prepared at public expense if the appellant is exempt from paying the fee as provided by statute or law.

(2) *Preparation of Transcript*. After the estimated fee for the transcript is paid, the transcriber must give a receipt to the party paying the fee and file a Notice of Transcript Deposit on a form provided by the Supreme Court. The transcriber must prepare the transcript and lodge it with the clerk of the trial court within 35 days from the date the estimated fee was paid. The district court may grant an extension of time to prepare the transcript if the transcriber applies for an extension and the district court finds there is good cause to grant an extension.

(3) *Certificate*. The transcript must be examined and certified by the transcriber by a certificate in substantially the form found in Appendix B.

(4) *Form of Transcript*. All transcripts of testimony and proceedings prepared for an appeal to the district court must be in the same form and arrangement required for appeals to the Supreme Court under the Idaho Appellate Rules.

(h) **Clerk's Record.** The clerk's record is the official court file of any court proceeding appealed to the district court, including any minute entries or orders together with the exhibits offered or admitted. After the appeal is determined and the time for an appeal to the Supreme Court has expired, the original clerk's record must be returned to the magistrate division together with the order or other disposition made by the district court on the appeal. The clerk need not prepare a copy of the record unless ordered by the district court.

(i) **Settlement of Transcript.** Upon receipt of the transcript of the testimony and proceedings, the clerk of the trial court must mail or deliver a notice of lodging of transcript to all attorneys of record, or parties appearing in person. The clerk of the court must retain the original of the transcript and advise that:

(1) the parties may pick up a copy of the transcript at the clerk's office;

(2) the appellant must pay the balance of the fees for the preparation of the transcript, if any, before the copy of the transcript will be delivered to the appellant; and

(3) the parties have 21 days from the date of the mailing of the notice in which to file any objections to the transcript.

If there are multiple parties, they must determine by agreement the manner and time of use of the transcript by each party, or if they cannot agree, any party may move the trial court to make this determination. If an objection is made to a trial transcript, the objection is heard and determined by the trial court in the same manner as a motion. If no objection is filed to the transcript within the 21 day period, it is deemed settled.

(j) **Filing of Record and Transcript.** The clerk of the trial court must file the clerk's record, the transcript, if any, and all exhibits offered or admitted in the proceeding within 7 days of the settlement of the transcript, or within 7 days of receipt of an order of the district court that no transcript is needed or required. The clerk of the trial court must notify all parties of the filing. Any electronic recording used to

transcribe the testimony and proceedings need not be forwarded to the clerk of the district court unless ordered by the district court.

(k) **Augmentation of the Record.** A motion to augment the transcript or record may be filed with the district court within 21 days of the filing of the settled transcript and record. The motion is filed in the same manner and pursuant to the same procedure as provided in the Idaho Appellate Rules.

(l) **Joint Use of Transcript.** Multiple parties may jointly use a transcript on appeal. Any party who wants a separate copy may obtain one by paying the transcriber $1.00 per page.

(m) **Effect of Failure to Comply With Time Limits.** The failure to file a notice of appeal or notice of cross-appeal with the district court within the time limits set out in this rule is jurisdictional and will cause automatic dismissal of the appeal. This dismissal may be pursuant to a motion by any party, or upon the district court's initiative. Failure of a party to timely take any other step in the appellate process is not jurisdictional, but may be grounds for other action or sanction as the district court deems appropriate, which may include dismissal of the appeal.

(n) **Motions.** All motions on appeal must be filed with the district court, except those expressly required to be filed in the trial court, and served upon the parties in the same manner as motions before a trial court under these rules. All motions must be accompanied by a brief in support. The opposing party has 14 days from service of the motion to file a response or reply brief. The motion will be determined without oral argument unless ordered by the court.

(o) **Appellate Briefs.** Briefs must be in the same form and arrangement, and must be filed and served within the time provided by, the Idaho Appellate Rules unless otherwise ordered by the district court. Only one original signed brief must be filed with the court and copies must be served on all other parties.

(p) **Appellate Argument.** Appellate argument may be heard by the

district court after notice to the parties in the same manner as notice of hearing of a motion before a trial court under these rules.

(q) **Other Appellate Rules.** Any appellate procedure not specified in this rule must be in accordance with the Idaho Rules of Civil Procedure or the Idaho Appellate Rules.

(r) **Decision Entered on Appeal.**

(1) *Appellate Review*. If an appeal is heard on the record, upon determination of the appeal the district judge must enter an appellate decision which must include instruction to the magistrate. The clerk must file stamp the appellate ruling and mail copies to the parties and the presiding magistrate. The original appellate ruling must be filed in the court file which is returned to the magistrate division as provided by Rule 83(h).

(A) Remittitur from District Court. If no appeal to the Supreme Court is filed within 42 days after the clerk files the appellate decision, the clerk must issue and file a remittitur with the magistrate court from which the appeal was taken and mail copies to the parties and the presiding magistrate. The remittitur must advise the magistrate judge that the decision has become final and that the magistrate must immediately comply with the directive of the decision.

(B) Remittitur from Supreme Court or Court of Appeals. When the Supreme Court or Court of Appeals files a remittitur with the district court in a case that was initially appealed from the magistrate division of the district court, the clerk of the district court must mail a copy of the remittitur to the presiding magistrate.

(2) *Trial de Novo*. If an appeal is heard as a trial de novo, upon determination of the appeal the district judge must enter a judgment as required by Rule 58(a).

(most recent amendment, 2024)

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Indian Child Welfare Act 25 U.S.C. §§1901-1922

§1901. Congressional findings

Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds –

(1) that clause 3, section 8, article I of the United States Constitution provides that "The Congress shall have Power * * * To regulate Commerce * * * with Indian tribes" and, through this and other constitutional authority, Congress has plenary power over Indian affairs;

(2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;

(3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

(5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

(as adopted, 1978)

§1902. Congressional declaration of policy

The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of

minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

(as adopted, 1978)

§1903. Definitions

For the purposes of this chapter, except as may be specifically provided otherwise, the term –

(1) "child custody proceeding" shall mean and include –

(i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;

(iii) "pre-adoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(2) "extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and

who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

(3) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in 1606 of title 43;

(4) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(5) "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

(6) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

(7) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

(8) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 1602(c) of title 43;
(9) "parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom.

It does not include the unwed father where paternity has not been acknowledged or established;

(10) "reservation" means Indian country as defined in section 1151 of title 18 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

(11) "Secretary" means the Secretary of the Interior; and

(12) "tribal court" means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

(as adopted, 1978)

§1911. Indian tribe jurisdiction over Indian child custody proceedings

(a) Exclusive jurisdiction An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) Transfer of proceedings; declination by tribal court In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction

of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: Provided, That such transfer shall be subject to declination by the tribal court of such tribe.

(c) State court proceedings; intervention In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

(d) Full faith and credit to public acts, records, and judicial proceedings of Indian tribes The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

(as adopted, 1978)

§1912. Pending court proceedings

(a) Notice; time for commencement of proceedings; additional time for preparation In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention.
If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe.

No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: Provided, That the

parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

(b) Appointment of counsel In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding.

The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child.

Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to section 13 of this title.

(c) Examination of reports or other documents Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

(d) Remedial services and rehabilitative programs; preventive measures Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court 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 proved unsuccessful.

(e) Foster care placement orders; evidence; determination of damage to child No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(f) Parental rights termination orders; evidence; determination of damage to child No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(as adopted, 1978)

§1913. Parental rights; voluntary termination

(a) Consent; record; certification matters; invalid consents

Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian.

The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood.

Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

(b) Foster care placement; withdrawal of consent

Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

(c) Voluntary termination of parental rights or adoptive placement; withdrawal of consent; return of custody

In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be

withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

(d) Collateral attack; vacation of decree and return of custody; limitations After the entry of a final decree of adoption of an Indian child in any State court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree.

Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent.
No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under State law.

(as adopted, 1978)

§1914. Petition to court of competent jurisdiction to invalidate action upon showing of certain violations

Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 1911, 1912, and 1913 of this title.

(as adopted, 1978)

§1915. Placement of Indian children

(a) Adoptive placements; preferences In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

(b) Foster care or pre-adoptive placements; criteria; preferences Any child accepted for foster care or pre-adoptive placement shall be placed in the least restrictive setting which most approximates a family and in

which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child.

In any foster care or pre-adoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with

(i) a member of the Indian child's extended family;

(ii) a foster home licensed, approved, or specified by the Indian child's tribe;

(iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(c) Tribal resolution for different order of preference; personal preference considered; anonymity in application of preferences In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section.

Where appropriate, the preference of the Indian child or parent shall be considered: *Provided* that where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(d) Social and cultural standards applicable The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

(e) Record of placement; availability

A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the Secretary or the Indian child's tribe.

(as adopted, 1978)

§1916. Return of custody

(a) Petition; best interests of child Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of section 1912 of this title, that such return of custody is not in the best interests of the child.

(b) Removal from foster care home; placement procedure Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, pre-adoptive, or adoptive placement, such placement shall be in accordance with the provisions of this chapter, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

(as adopted, 1978)

§1917. Tribal affiliation information and other information for protection of rights from tribal relationship; application of subject of adoptive placement; disclosure by court

Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

(as adopted, 1978)

§1918. Reassumption of jurisdiction over child custody proceedings

(a) Petition; suitable plan; approval by Secretary

Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

(b) Criteria applicable to consideration by Secretary; partial retrocession

(1) In considering the petition and feasibility of the plan of a tribe under subsection (a) of this section, the Secretary may consider, among other things:

(i) whether or not the tribe maintains a membership roll or alternative provision for clearly identifying the persons who will be affected by the reassumption of jurisdiction by the tribe;

(ii) the size of the reservation or former reservation area which will be affected by retrocession and reassumption of jurisdiction by the tribe;

(iii) the population base of the tribe, or distribution of the population in homogeneous communities or geographic areas; and

(iv) the feasibility of the plan in cases of multitribal occupation of a single reservation or geographic area.

(2) In those cases where the Secretary determines that the jurisdictional provisions of section 1911(a) of this title are not feasible, he is authorized to accept partial retrocession which will enable tribes to exercise referral jurisdiction as provided in section 1911(b) of this title, or, where appropriate, will allow them to

exercise exclusive jurisdiction as provided in section 1911(a) of this title over limited community or geographic areas without regard for the reservation status of the area affected.

(c) Approval of petition; publication in Federal Register; notice; reassumption period; correction of causes for disapproval
If the Secretary approves any petition under subsection (a) of this section, the Secretary shall publish notice of such approval in the Federal Register and shall notify the affected State or States of such approval.

The Indian tribe concerned shall reassume jurisdiction sixty days after publication in the Federal Register of notice of approval.

If the Secretary disapproves any petition under subsection (a) of this section, the Secretary shall provide such technical assistance as may be necessary to enable the tribe to correct any deficiency which the Secretary identified as a cause for disapproval.

(d) Pending actions or proceedings unaffected Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction, except as may be provided pursuant to any agreement under section 1919 of this title.

(as adopted, 1978)

§1919. Agreements between States and Indian tribes
(a) Subject coverage States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes.

(b) Revocation; notice; actions or proceedings unaffected
Such agreements may be revoked by either party upon one hundred and eighty days' written notice to the other party.

Such revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

(as adopted, 1978)

§1920. Improper removal of child from custody; declination of jurisdiction; forthwith return of child: danger exception

Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

(as adopted, 1978)

§1921. Higher State or Federal standard applicable to protect rights of parent or Indian custodian of Indian child

In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this subchapter, the State or Federal court shall apply the State or Federal standard.

(as adopted, 1978)

§1922. Emergency removal or placement of child; termination; appropriate action

Nothing in this subchapter shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child.

The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this subchapter, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

(as adopted, 1978)

Department of the Interior, Bureau of Indian Affairs Regulations Related to Indian Child Custody Proceedings – 25 C.F.R. § 23

The Department of the Interior Bureau of Indian Affairs issued regulations pursuant to its regulatory power under ICWA in December 2016. Before 2016, the BIA had previously issued non-binding Guidelines in 1979 and in 2015– one set was issued in 2015. When the below regulations became effective, the BIA also issued a new set of guidelines. These Guidelines for Implementing the Indian Child Welfare Act can be found at: https://www.bia.gov/sites/bia.gov/files/assets/bia/ois/pdf/idc2-056831.pdf.

§ 23.1 Purpose.

The purpose of the regulations in this part is to govern the provision of funding for, and the administration of Indian child and family service programs as authorized by the Indian Child Welfare Act of 1978.

(as amended, 2016)

§ 23.2. Definitions.

"Active efforts" means affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family. Where an agency is involved in the child-custody proceeding, active efforts must involve assisting the parent or parents or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan. To the maximum extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's Tribe and should be conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians, and Tribe. Active efforts are to be tailored to the facts and circumstances of the case and may include, for example:

(1) Conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal;

(2) Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services;

(3) Identifying, notifying, and inviting representatives of the Indian child's Tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues;

(4) Conducting or causing to be conducted a diligent search for the Indian child's extended family members, and contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child's parents;

(5) Offering and employing all available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the child's Tribe;

(6) Taking steps to keep siblings together whenever possible;

(7) Supporting regular visits with parents or Indian custodians in the most natural setting possible as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child;

(8) Identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's parents or, when appropriate, the child's family, in utilizing and accessing those resources;

(9) Monitoring progress and participation in services;

(10) Considering alternative ways to address the needs of the Indian child's parents and, where appropriate, the family, if the optimum services do not exist or are not available;

(11) Providing post-reunification services and monitoring.

Child-custody proceeding.

(1) "Child-custody proceeding" means and includes any action, other than an emergency proceeding, that may culminate in one of the following outcomes:

(i) Foster-care placement, which is any action removing an Indian child from his or her parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(ii) Termination of parental rights, which is any action resulting in the termination of the parent-child relationship;

(iii) Preadoptive placement, which is the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; or

(iv) Adoptive placement, which is the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

(2) An action that may culminate in one of these four outcomes is considered a separate child-custody proceeding from an action that may culminate in a different one of these four outcomes. There may be several child-custody proceedings involving any given Indian child. Within each child-custody proceeding, there may be several hearings. If a child is placed in foster care or another out-of-home placement as a result of a status offense, that status offense proceeding is a child-custody proceeding.

"Continued custody" means physical custody or legal custody or both, under any applicable Tribal law or Tribal custom or State law, that a parent or Indian custodian already has or had at any point in the past. The biological mother of a child has had custody of a child.

"Custody" means physical custody or legal custody or both, under any applicable Tribal law or Tribal custom or State law. A party may demonstrate the existence of custody by looking to Tribal law or Tribal custom or State law.

"Domicile" means:

(1) For a parent or Indian custodian, the place at which a person has been physically present and that the person regards as home; a person's true, fixed, principal, and permanent home, to which that person intends to return and remain indefinitely even though the person may be currently residing elsewhere.

(2) For an Indian child, the domicile of the Indian child's parents or Indian custodian or guardian. In the case of an Indian child whose parents are not married to each other, the domicile of the Indian child's custodial parent.

"Emergency proceeding" means and includes any court action that involves an emergency removal or emergency placement of an Indian child.

"Extended family member" is defined by the law or custom of the Indian child's Tribe or, in the absence of such law or custom, is a person who has reached age 18 and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

"Hearing means" a judicial session held for the purpose of deciding issues of fact, of law, or both.

"Indian child" means any unmarried person who is under age 18 and either:

(1) Is a member or citizen of an Indian Tribe; or

(2) Is eligible for membership or citizenship in an Indian Tribe and is the biological child of a member/citizen of an Indian Tribe.

"Indian child's Tribe" means:

(1) The Indian Tribe in which an Indian child is a member or eligible for membership; or

(2) In the case of an Indian child who is a member of or eligible for membership in more than one Tribe, the Indian Tribe described in § 23.109.

"Indian custodian" means any Indian who has legal custody of an Indian child under applicable Tribal law or custom or under applicable State law,

or to whom temporary physical care, custody, and control has been transferred by the parent of such child. An Indian may demonstrate that he or she is an Indian custodian by looking to Tribal law or Tribal custom or State law.

"Indian foster home" means a foster home where one or more of the licensed or approved foster parents is an "Indian" as defined in 25 U.S.C. 1903(3).
"Involuntary proceeding" means a child-custody proceeding in which the parent does not consent of his or her free will to the foster-care, preadoptive, or adoptive placement or termination of parental rights or in which the parent consents to the foster-care, preadoptive, or adoptive placement under threat of removal of the child by a State court or agency.

"Parent or parents" means any biological parent or parents of an Indian child, or any Indian who has lawfully adopted an Indian child, including adoptions under Tribal law or custom. It does not include an unwed biological father where paternity has not been acknowledged or established.

"Reservation" means Indian country as defined in 18 U.S.C 1151 and any lands, not covered under that section, title to which is held by the United States in trust for the benefit of any Indian Tribe or individual or held by any Indian Tribe or individual subject to a restriction by the United States against alienation.

"Secretary" means the Secretary of the Interior or the Secretary's authorized representative acting under delegated authority.

"Status offenses" mean offenses that would not be considered criminal if committed by an adult; they are acts prohibited only because of a person's status as a minor (e.g., truancy, incorrigibility).

"Tribal court" means a court with jurisdiction over child-custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian Tribe, or

any other administrative body of a Tribe vested with authority over child-custody proceedings.

"Upon demand" means that the parent or Indian custodian can regain custody simply upon verbal request, without any formalities or contingencies.

"Voluntary proceeding" means a child-custody proceeding that is not an involuntary proceeding, such as a proceeding for foster-care, preadoptive, or adoptive placement that either parent, both parents, or the Indian custodian has, of his or her or their free will, without a threat of removal by a State agency, consented to for the Indian child, or a proceeding for voluntary termination of parental rights.

(as amended, 2016)

§ 23.11. Notice.

(a) In any involuntary proceeding in a State court where the court knows or has reason to know that an Indian child is involved, and where the identity and location of the child's parent or Indian custodian or Tribe is known, the party seeking the foster-care placement of, or termination of parental rights to, an Indian child must directly notify the parents, the Indian custodians, and the child's Tribe by registered or certified mail with return receipt requested, of the pending child-custody proceedings and their right of intervention. Notice must include the requisite information identified in § 23.111, consistent with the confidentiality requirement in § 23.111(d)(6)(ix). Copies of these notices must be sent to the appropriate Regional Director listed in paragraphs (b)(1) through (12) of this section by registered or certified mail with return receipt requested or by personal delivery and must include the information required by § 23.111.

(b)(1) For child-custody proceedings in Alabama, Connecticut, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South

Carolina, Tennessee, Vermont, Virginia, West Virginia, or any territory or possession of the United States, notices must be sent to the following address: Eastern Regional Director, Bureau of Indian Affairs, 545 Marriott Drive, Suite 700, Nashville, Tennessee 37214.

(2) For child-custody proceedings in Illinois, Indiana, Iowa, Michigan, Minnesota, Ohio, or Wisconsin, notices must be sent to the following address: Minneapolis Regional Director, Bureau of Indian Affairs, 5600 American Blvd W, Ste 500, Bloomington, MN 55437.

(3) For child-custody proceedings in Nebraska, North Dakota, or South Dakota, notices must be sent to the following address: Aberdeen Regional Director, Bureau of Indian Affairs, 115 Fourth Avenue SE., Aberdeen, South Dakota 57401.

(4) For child-custody proceedings in Kansas, Texas (except for notices to the Ysleta del Sur Pueblo of El Paso County, Texas), or the western Oklahoma counties of Alfalfa, Beaver, Beckman, Blaine, Caddo, Canadian, Cimarron, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Grant, Greer, Harmon, Harper, Jackson, Kay, Kingfisher, Kiowa, Lincoln, Logan, Major, Noble, Oklahoma, Pawnee, Payne, Pottawatomie, Roger Mills, Texas, Tillman, Washita, Woods or Woodward, notices must be sent to the following address: Anadarko Regional Director, Bureau of Indian Affairs, P.O. Box 368, Anadarko, Oklahoma 73005. Notices to the Ysleta del Sur Pueblo must be sent to the Albuquerque Regional Director at the address listed in paragraph (b)(6) of this section.

(5) For child-custody proceedings in Wyoming or Montana (except for notices to the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana), notices must be sent to the following address: Billings Regional Director, Bureau of Indian Affairs, 316 N. 26th Street, Billings, Montana 59101. Notices to the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, must be sent to the Portland Regional Director at the address listed in paragraph (b)(11) of this section.

(6) For child-custody proceedings in the Texas counties of El Paso and Hudspeth or in Colorado or New Mexico (exclusive of notices to the Navajo Nation from the New Mexico counties listed in paragraph (b)(9) of this section), notices must be sent to the following address: Albuquerque Regional Director, Bureau of Indian Affairs, 615 First Street, P.O. Box 26567, Albuquerque, New Mexico 87125. Notices to the Navajo Nation must be sent to the Navajo Regional Director at the address listed in paragraph (b)(9) of this section.

(7) For child-custody proceedings in Alaska (except for notices to the Metlakatla Indian Community, Annette Island Reserve, Alaska), notices must be sent to the following address: Alaska Regional Director-Attn: Human Resources, Bureau of Indian Affairs, 3601 C Street, Suite 1258, Anchorage, Alaska 99503. Notices to the Metlakatla Indian Community, Annette Island Reserve, Alaska, must be sent to the Portland Regional Director at the address listed in paragraph (b)(11) of this section.

(8) For child-custody proceedings in Arkansas, Missouri, or the eastern Oklahoma counties of Adair, Atoka, Bryan, Carter, Cherokee, Craig, Creek, Choctaw, Coal, Delaware, Garvin, Grady, Haskell, Hughes, Jefferson, Johnson, Latimer, LeFlore, Love, Mayes, McCurtain, McClain, McIntosh, Murray, Muskogee, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Pittsburg, Pontotoc, Pushmataha, Marshall, Rogers, Seminole, Sequoyah, Stephens, Tulsa, Wagoner, or Washington, notices must be sent to the following address: Muskogee Regional Director, Bureau of Indian Affairs, 101 North Fifth Street, Muskogee, Oklahoma 74401.

(9) For child-custody proceedings in the Arizona counties of Apache, Coconino (except for notices to the Hopi Tribe of Arizona and the San Juan Southern Paiute Tribe of Arizona) or Navajo (except for notices to the Hopi Tribe of Arizona); the New Mexico counties of McKinley (except for notices to the Zuni Tribe of the Zuni Reservation), San Juan, or Socorro; or the Utah county of San Juan, notices must be sent to the following address: Navajo Regional Director, Bureau of Indian Affairs,

P.O. Box 1060, Gallup, New Mexico 87301. Notices to the Hopi and San Juan Southern Paiute Tribes of Arizona must be sent to the Phoenix Regional Director at the address listed in paragraph (b)(10) of this section. Notices to the Zuni Tribe of the Zuni Reservation must be sent to the Albuquerque Regional Director at the address listed in paragraph (b)(6 of this section).

(10) For child-custody proceedings in Arizona (exclusive of notices to the Navajo Nation from those counties listed in paragraph (b)(9) of this section), Nevada, or Utah (exclusive of San Juan County), notices must be sent to the following address: Phoenix Regional Director, Bureau of Indian Affairs, 1 North First Street, P.O. Box 10, Phoenix, Arizona 85001.

(11) For child-custody proceedings in Idaho, Oregon, or Washington, notices must be sent to the following address: Portland Regional Director, Bureau of Indian Affairs, 911 NE 11th Avenue, Portland, Oregon 97232. All notices to the Confederated Salish and Kootenai Tribes of the Flathead Reservation, located in the Montana counties of Flathead, Lake, Missoula, and Sanders, must also be sent to the Portland Regional Director.

(12) For child-custody proceedings in California or Hawaii, notices must be sent to the following address: Sacramento Regional Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

(c) Upon receipt of the notice, the Secretary will make reasonable documented efforts to locate and notify the child's Tribe and the child's parent or Indian custodian. The Secretary will have 15 days, after receipt of the notice, to notify the child's Tribe and parents or Indian custodians and to send a copy of the notice to the court. If within the 15-day period the Secretary is unable to verify that the child meets the criteria of an Indian child as defined in § 23.2, or is unable to locate the parents or Indian custodians, the Secretary will so inform the court and state how much more time, if any, will be needed to complete the verification or the search. The Secretary will complete all research efforts, even if those efforts cannot be completed before the child-custody proceeding begins.

(d) Upon request from a party to an Indian child-custody proceeding, the Secretary will make a reasonable attempt to identify and locate the child's Tribe, parents, or Indian custodians to assist the party seeking the information.

(as amended, 2017)

§ 23.71. Recordkeeping and information availability.

(a) The Division of Human Services, Bureau of Indian Affairs (BIA), is authorized to receive all information and to maintain a central file on all State Indian adoptions. This file is confidential and only designated persons may have access to it.

(b) Upon the request of an adopted Indian who has reached age 18, the adoptive or foster parents of an Indian child, or an Indian Tribe, BIA will disclose such information as may be necessary for purposes of Tribal enrollment or determining any rights or benefits associated with Tribal membership. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting anonymity, BIA must certify to the Indian child's Tribe, where the information warrants, that the child's parentage and other circumstances entitle the child to enrollment under the criteria established by such Tribe.

(c) BIA will ensure that the confidentiality of this information is maintained and that the information is not subject to the Freedom of Information Act, 5 U.S.C. 552, as amended.

(as amended, 2016)

Subpart I – Indian Child Welfare Act Proceedings – 25 CFR 23.101-144

§ 23.101. What is the purpose of this subpart?

The regulations in this subpart clarify the minimum Federal standards governing implementation of the Indian Child Welfare Act (ICWA) to ensure that ICWA is applied in all States consistent with the Act's express

language, Congress's intent in enacting the statute, and to promote the stability and security of Indian tribes and families.

(as added, 2016)

§ 23.102. What terms do I need to know?

The following terms and their definitions apply to this subpart. All other terms have the meanings assigned in § 23.2.

"Agency" means a nonprofit, for-profit, or governmental organization and its employees, agents, or officials that performs, or provides services to biological parents, foster parents, or adoptive parents to assist in the administrative and social work necessary for foster, preadoptive, or adoptive placements.

"Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians or a Tribe, or a majority of whose members are Indians.

(as added, 2016)

§ 23.103. When does ICWA apply?

(a) ICWA includes requirements that apply whenever an Indian child is the subject of:

(1) A child-custody proceeding, including:

(i) An involuntary proceeding;

(ii) A voluntary proceeding that could prohibit the parent or Indian custodian from regaining custody of the child upon demand; and

(iii) A proceeding involving status offenses if any part of the proceeding results in the need for out-of-home placement of the child, including a foster-care, preadoptive, or adoptive placement, or termination of parental rights.

(2) An emergency proceeding.

(b) ICWA does not apply to:

(1) A Tribal court proceeding;

(2) A proceeding regarding a criminal act that is not a status offense;

(3) An award of custody of the Indian child to one of the parents including, but not limited to, an award in a divorce proceeding; or

(4) A voluntary placement that either parent, both parents, or the Indian custodian has, of his or her or their free will, without a threat of removal by a State agency, chosen for the Indian child and that does not operate to prohibit the child's parent or Indian custodian from regaining custody of the child upon demand.

(c) If a proceeding listed in paragraph (a) of this section concerns a child who meets the statutory definition of "Indian child," then ICWA will apply to that proceeding. In determining whether ICWA applies to a proceeding, the State court may not consider factors such as the participation of the parents or the Indian child in Tribal cultural, social, religious, or political activities, the relationship between the Indian child and his or her parents, whether the parent ever had custody of the child, or the Indian child's blood quantum.

(d) If ICWA applies at the commencement of a proceeding, it will not cease to apply simply because the child reaches age 18 during the pendency of the proceeding.

(as added, 2016)

§ 23.104. What provisions of this subpart apply to each type of child-custody proceeding?

The following table lists what sections of this subpart apply to each type of child-custody proceeding identified in § 23.103(a):

Section	Type of proceeding
23.101-23.106 (General Provisions)	Emergency, Involuntary, Voluntary.
Pretrial Requirements:	
23.107 (How should a State court determine if there is reason to know the child is an Indian child?)	Emergency, Involuntary, Voluntary.

Section	Type of proceeding
23.108 (Who makes the determination as to whether a child is a member whether a child is eligible for membership, or whether a biological parent is a member of a Tribe?)	Emergency, Involuntary, Voluntary.
23.109 (How should a State court determine an Indian child's Tribe when the child may be a member or eligible for membership in more than one Tribe?)	Emergency, Involuntary, Voluntary.
23.110 (When must a State court dismiss an action?)	Involuntary, Voluntary.
23.111 (What are the notice requirements for a child-custody proceeding involving an Indian child?)	Involuntary (foster-care placement and termination of parental rights).
23.112 (What time limits and extensions apply?)	Involuntary (foster-care placement and termination of parental rights).
23.113 (What are the standards for emergency proceedings involving an Indian child?)	Emergency.
23.114 (What are the requirements for determining improper removal?)	Involuntary.
Petitions to Transfer to Tribal Court:	
23.115 (How are petitions for transfer of a proceeding made?)	Involuntary, Voluntary (foster-care placement and termination of parental rights).
23.116 (What happens after a petition for transfer is made?)	Involuntary, Voluntary (foster-care placement and termination of parental rights).
23.117 (What are the criteria for ruling on transfer petitions?)	Involuntary, Voluntary (foster-care placement and termination of parental rights).
23.118 (How is a determination of "good cause" to deny transfer made?)	Involuntary, Voluntary (foster-care placement and termination of parental rights).
23.119 (What happens after a petition for transfer is granted?)	Involuntary, Voluntary (foster-care placement and termination of parental rights).
Adjudication of Involuntary Proceedings:	
23.120 (How does the State court ensure that active efforts have been made?)	Involuntary (foster-care placement and termination of parental rights).
23.121 (What are the applicable standards of evidence?)	Involuntary (foster-care placement and termination of parental rights).
23.122 (Who may serve as a qualified expert witness?)	Involuntary (foster-care placement and termination of parental rights).

Section	Type of proceeding
23.123 Reserved	N/A.
Voluntary Proceedings:	
23.124 (What actions must a State court undertake in voluntary proceedings?)	Voluntary.
23.125 (How is consent obtained?)	Voluntary.
23.126 (What information must a consent document contain?)	Voluntary.
23.127 (How is withdrawal of consent to a foster-care placement achieved?)	Voluntary.
23.128 (How is withdrawal of consent to a termination of parental rights or adoption achieved?)	Voluntary.
Dispositions:	
23.129 (When do the placement preferences apply?)	Involuntary, Voluntary.
23.130 (What placement preferences apply in adoptive placements?)	Involuntary, Voluntary.
23.131 (What placement preferences apply in foster-care or preadoptive placements?)	Involuntary, Voluntary.
23.132 (How is a determination of "good cause" to depart from the placement preferences made?)	Involuntary, Voluntary.
Access:	
23.133 (Should courts allow participation by alternative methods?)	Emergency, Involuntary.
23.134 (Who has access to reports and records during a proceeding?)	Emergency, Involuntary.
23.135 Reserved.	N/A.
Post-Trial Rights & Responsibilities:	
23.136 (What are the requirements for vacating an adoption based on consent having been obtained through fraud or duress?)	Involuntary (if consent given under threat of removal), voluntary.
23.137 (Who can petition to invalidate an action for certain ICWA violations?)	Emergency (to extent it involved a specified violation), involuntary, voluntary.
23.138 (What are the rights to information about adoptees' Tribal affiliations?)	Emergency, Involuntary, Voluntary.
23.139 (Must notice be given of a change in an adopted Indian child's status?)	Involuntary, Voluntary.
Recordkeeping:	
23.140 (What information must States furnish to the Bureau of Indian Affairs?)	Involuntary, Voluntary.
23.141 (What records must the State maintain?)	Involuntary, Voluntary.

Section	Type of proceeding
23.142 (How does the Paperwork Reduction Act affect this subpart?)	Emergency, Involuntary, Voluntary.
Effective Date:	
23.143 (How does this subpart apply to pending proceedings?)	Emergency, Involuntary, Voluntary.
Severability:	
23.144 (What happens if some portion of part is held to be invalid by a court of competent jurisdiction?)	Emergency, Involuntary, Voluntary.

Note: For purposes of this table, status-offense child-custody proceedings are included as a type of involuntary proceeding.

(as added, 2016)

§ 23.105. How do I contact a Tribe under the regulations in this subpart?

To contact a Tribe to provide notice or obtain information or verification under the regulations in this subpart, you should direct the notice or inquiry as follows:

(a) Many Tribes designate an agent for receipt of ICWA notices. The BIA publishes a list of Tribes' designated Tribal agents for service of ICWA notice in the Federal Register each year and makes the list available on its Web site at www.bia.gov.

(b) For a Tribe without a designated Tribal agent for service of ICWA notice, contact the Tribe to be directed to the appropriate office or individual.

(c) If you do not have accurate contact information for a Tribe, or the Tribe contacted fails to respond to written inquiries, you should seek assistance in contacting the Indian Tribe from the BIA local or regional office or the BIA's Central Office in Washington, DC (see www.bia.gov).

(as added, 2016)

§ 23.106. How does this subpart interact with State and Federal laws?

(a) The regulations in this subpart provide minimum Federal standards to ensure compliance with ICWA.

(b) Under section 1921 of ICWA, where applicable State or other Federal law provides a higher standard of protection to the rights of the parent or Indian custodian than the protection accorded under the Act, ICWA requires the State or Federal court to apply the higher State or Federal standard.

(as added, 2016)

§ 23.107. How should a State court determine if there is reason to know the child is an Indian child?

(a) State courts must 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. The inquiry is made at the commencement of the proceeding and all responses should be on the record. State courts must instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child.

(b) 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:

(1) Confirm, by way of a report, declaration, or testimony included in the record that the agency or other party used due diligence to identify and work with all of the Tribes of which there is reason to know the child may be a member (or eligible for membership), to verify whether the child is in fact a member (or a biological parent is a member and the child is eligible for membership); and

(2) 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" in this part.

(c) A court, upon conducting the inquiry required in paragraph (a) of this section, has reason to know that a child involved in an emergency or child-custody proceeding is an Indian child if:

(1) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that the child is an Indian child;

(2) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child;

(3) The child who is the subject of the proceeding gives the court reason to know he or she is an Indian child;

(4) The court is informed that the domicile or residence of the child, the child's parent, or the child's Indian custodian is on a reservation or in an Alaska Native village;

(5) The court is informed that the child is or has been a ward of a Tribal court; or

(6) The court is informed that either parent or the child possesses an identification card indicating membership in an Indian Tribe.

(d) In seeking verification of the child's status in a voluntary proceeding where a consenting parent evidences, by written request or statement in the record, a desire for anonymity, the court must keep relevant documents pertaining to the inquiry required under this section confidential and under seal. A request for anonymity does not relieve the court, agency, or other party from any duty of compliance with ICWA, including the obligation to verify whether the child is an “Indian child.” A Tribe receiving information related to this inquiry must keep documents and information confidential.

(as added, 2016)

§ 23.108. Who makes the determination as to whether a child is a member, whether a child is eligible for membership, or whether a biological parent is a member of a Tribe?

(a) The Indian Tribe of which it is believed the child is a member (or eligible for membership and of which the biological parent is a member) determines whether the child is a member of the Tribe, or whether the child is eligible for membership in the Tribe and a biological parent of the child is a member of the Tribe, except as otherwise provided by Federal or Tribal law.

(b) The determination by a Tribe of whether a child is a member, whether a child is eligible for membership, or whether a biological parent is a member, is solely within the jurisdiction and authority of the Tribe, except as otherwise provided by Federal or Tribal law. The State court may not substitute its own determination regarding a child's membership in a Tribe, a child's eligibility for membership in a Tribe, or a parent's membership in a Tribe.

(c) The State court may rely on facts or documentation indicating a Tribal determination of membership or eligibility for membership in making a judicial determination as to whether the child is an "Indian child." An example of documentation indicating membership is a document issued by the Tribe, such as Tribal enrollment documentation.

(as added, 2016)

§ 23.109. How should a State court determine an Indian child's Tribe when the child may be a member or eligible for membership in more than one Tribe?

(a) If the Indian child is a member or eligible for membership in only one Tribe, that Tribe must be designated as the Indian child's Tribe.

(b) If the Indian child meets the definition of "Indian child" through more than one Tribe, deference should be given to the Tribe in which

the Indian child is already a member, unless otherwise agreed to by the Tribes.

(c) If an Indian child meets the definition of "Indian child" through more than one Tribe because the child is a member in more than one Tribe or the child is not a member of but is eligible for membership in more than one Tribe, the court must provide the opportunity in any involuntary child-custody proceeding for the Tribes to determine which should be designated as the Indian child's Tribe.

(1) If the Tribes are able to reach an agreement, the agreed-upon Tribe should be designated as the Indian child's Tribe.

(2) If the Tribes are unable to reach an agreement, the State court designates, for the purposes of ICWA, the Indian Tribe with which the Indian child has the more significant contacts as the Indian child's Tribe, taking into consideration:

(i) Preference of the parents for membership of the child;

(ii) Length of past domicile or residence on or near the reservation of each Tribe;

(iii) Tribal membership of the child's custodial parent or Indian custodian; and

(iv) Interest asserted by each Tribe in the child-custody proceeding;

(v) Whether there has been a previous adjudication with respect to the child by a court of one of the Tribes; and

(vi) Self-identification by the child, if the child is of sufficient age and capacity to meaningfully self-identify.

(3) A determination of the Indian child's Tribe for purposes of ICWA and the regulations in this subpart do not constitute a determination for any other purpose.

(as added, 2016)

§ 23.110. When must a State court dismiss an action?

Subject to 25 U.S.C. 1919 (Agreements between States and Indian Tribes) and § 23.113 (emergency proceedings), the following limitations on a State court's jurisdiction apply:

(a) The court in any voluntary or involuntary child-custody proceeding involving an Indian child must determine the residence and domicile of the Indian child. If either the residence or domicile is on a reservation where the Tribe exercises exclusive jurisdiction over child-custody proceedings, the State court must expeditiously notify the Tribal court of the pending dismissal based on the Tribe's exclusive jurisdiction, dismiss the State-court child-custody proceeding, and ensure that the Tribal court is sent all information regarding the Indian child-custody proceeding, including, but not limited to, the pleadings and any court record.

(b) If the child is a ward of a Tribal court, the State court must expeditiously notify the Tribal court of the pending dismissal, dismiss the State-court child-custody proceeding, and ensure that the Tribal court is sent all information regarding the Indian child-custody proceeding, including, but not limited to, the pleadings and any court record.

(as added, 2016)

§ 23.111. What are the notice requirements for a child-custody proceeding involving an Indian child?

(a) When a court knows or has reason to know that the subject of an involuntary foster-care-placement or termination-of-parental-rights proceeding is an Indian child, the court must ensure that:

(1) The party seeking placement promptly sends notice of each such child-custody proceeding (including, but not limited to, any foster-care placement or any termination of parental or custodial rights) in accordance with this section; and

(2) An original or a copy of each notice sent under this section is filed with the court together with any return receipts or other proof of service.

(b) Notice must be sent to:

(1) Each Tribe where the child may be a member (or eligible for membership if a biological parent is a member) (see § 23.105 for information on how to contact a Tribe);

(2) The child's parents; and
(3) If applicable, the child's Indian custodian.

(c) Notice must be sent by registered or certified mail with return receipt requested. Notice may also be sent via personal service or electronically, but such alternative methods do not replace the requirement for notice to be sent by registered or certified mail with return receipt requested.

(d) Notice must be in clear and understandable language and include the following:
(1) The child's name, birthdate, and birthplace;
(2) All names known (including maiden, married, and former names or aliases) of the parents, the parents' birthdates and birthplaces, and Tribal enrollment numbers if known;
(3) If known, the names, birthdates, birthplaces, and Tribal enrollment information of other direct lineal ancestors of the child, such as grandparents;
(4) The name of each Indian Tribe in which the child is a member (or may be eligible for membership if a biological parent is a member);
(5) A copy of the petition, complaint, or other document by which the child-custody proceeding was initiated and, if a hearing has been scheduled, information on the date, time, and location of the hearing;
(6) Statements setting out:
(i) The name of the petitioner and the name and address of petitioner's attorney;
(ii) The right of any parent or Indian custodian of the child, if not already a party to the child-custody proceeding, to intervene in the proceedings.
(iii) The Indian Tribe's right to intervene at any time in a State-court proceeding for the foster-care placement of or termination of parental rights to an Indian child.
(iv) That, if the child's parent or Indian custodian is unable to afford counsel based on a determination of indigency by the court,

the parent or Indian custodian has the right to court-appointed counsel.

(v) The right to be granted, upon request, up to 20 additional days to prepare for the child-custody proceedings.

(vi) The right of the parent or Indian custodian and the Indian child's Tribe to petition the court for transfer of the foster-care-placement or termination-of-parental-rights proceeding to Tribal court as provided by 25 U.S.C. 1911 and § 23.115.

(vii) The mailing addresses and telephone numbers of the court and information related to all parties to the child-custody proceeding and individuals notified under this section.

(viii) The potential legal consequences of the child-custody proceedings on the future parental and custodial rights of the parent or Indian custodian.

(ix) That all parties notified must keep confidential the information contained in the notice and the notice should not be handled by anyone not needing the information to exercise rights under ICWA.

(e) If the identity or location of the child's parents, the child's Indian custodian, or the Tribes in which the Indian child is a member or eligible for membership cannot be ascertained, but there is reason to know the child is an Indian child, notice of the child-custody proceeding must be sent to the appropriate Bureau of Indian Affairs Regional Director (see www.bia.gov). To establish Tribal identity, as much information as is known regarding the child's direct lineal ancestors should be provided. The Bureau of Indian Affairs will not make a determination of Tribal membership but may, in some instances, be able to identify Tribes to contact.

(f) If there is a reason to know that a parent or Indian custodian possesses limited English proficiency and is therefore not likely to understand the contents of the notice, the court must provide language access services as required by Title VI of the Civil Rights Act and other Federal laws. To secure such translation or interpretation support, a court may contact or direct a party to contact the Indian

child's Tribe or the local BIA office for assistance in locating and obtaining the name of a qualified translator or interpreter.

(g) If a parent or Indian custodian of an Indian child appears in court without an attorney, the court must inform him or her of his or her rights, including any applicable right to appointed counsel, right to request that the child-custody proceeding be transferred to Tribal court, right to object to such transfer, right to request additional time to prepare for the child-custody proceeding as provided in § 23.112, and right (if the parent or Indian custodian is not already a party) to intervene in the child-custody proceedings.

(as added, 2016)

§ 23.112. What time limits and extensions apply?

(a) No foster-care-placement or termination-of-parental-rights proceeding may be held until at least 10 days after receipt of the notice by the parent (or Indian custodian) and by the Tribe (or the Secretary). The parent, Indian custodian, and Tribe each have a right, upon request, to be granted up to 20 additional days from the date upon which notice was received to prepare for participation in the proceeding.

(b) Except as provided in 25 U.S.C. 1922 and § 23.113, no child-custody proceeding for foster-care placement or termination of parental rights may be held until the waiting periods to which the parents or Indian custodians and to which the Indian child's Tribe are entitled have expired, as follows:

(1) 10 days after each parent or Indian custodian (or Secretary where the parent or Indian custodian is unknown to the petitioner) has received notice of that particular child-custody proceeding in accordance with 25 U.S.C. 1912(a) and § 23.111;

(2) 10 days after the Indian child's Tribe (or the Secretary if the Indian child's Tribe is unknown to the party seeking placement) has received notice of that particular child-custody proceeding in accordance with 25 U.S.C. 1912(a) and § 23.111;

(3) Up to 30 days after the parent or Indian custodian has received notice of that particular child-custody proceeding in accordance with

25 U.S.C. 1912(a) and § 23.111, if the parent or Indian custodian has requested up to 20 additional days to prepare for the child-custody proceeding as provided in 25 U.S.C. 1912(a) and § 23.111; and

(4) Up to 30 days after the Indian child's Tribe has received notice of that particular child-custody proceeding in accordance with 25 U.S.C. 1912(a) and § 23.111, if the Indian child's Tribe has requested up to 20 additional days to prepare for the child-custody proceeding.

(c) Additional time beyond the minimum required by 25 U.S.C. 1912 and § 23.111 may also be available under State law or pursuant to extensions granted by the court.

(as added, 2016)

§ 23.113. What are the standards for emergency proceedings involving an Indian child?

(a) 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 imminent physical damage or harm to the child.

(b) The State court must:

(1) Make a finding on the record that the emergency removal or placement is necessary to prevent imminent physical damage or harm to the child;

(2) Promptly hold a hearing on whether the emergency removal or placement continues to be necessary whenever new information indicates that the emergency situation has ended; and

(3) At any court hearing during the emergency proceeding, determine whether the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

(4) Immediately terminate (or ensure that the agency immediately terminates) the emergency proceeding once the court or agency possesses sufficient evidence to determine that the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

(c) An emergency proceeding can be terminated by one or more of the following actions:

(1) Initiation of a child-custody proceeding subject to the provisions of ICWA;

(2) Transfer of the child to the jurisdiction of the appropriate Indian Tribe; or

(3) Restoring the child to the parent or Indian custodian.

(d) A petition for a court order authorizing the emergency removal or continued emergency placement, or its accompanying documents, should contain a statement of the risk of imminent physical damage or harm to the Indian child and any evidence that the emergency removal or placement continues to be necessary to prevent such imminent physical damage or harm to the child. The petition or its accompanying documents should also contain the following information:

(1) The name, age, and last known address of the Indian child;

(2) The name and address of the child's parents and Indian custodians, if any;

(3) The steps taken to provide notice to the child's parents, custodians, and Tribe about the emergency proceeding;

(4) If the child's parents and Indian custodians are unknown, a detailed explanation of what efforts have been made to locate and contact them, including contact with the appropriate BIA Regional Director (see www.bia.gov);

(5) The residence and the domicile of the Indian child;

(6) If either the residence or the domicile of the Indian child is believed to be on a reservation or in an Alaska Native village, the name of the Tribe affiliated with that reservation or village;

(7) The Tribal affiliation of the child and of the parents or Indian custodians;

(8) A specific and detailed account of the circumstances that led the agency responsible for the emergency removal of the child to take that action;

(9) If the child is believed to reside or be domiciled on a reservation where the Tribe exercises exclusive jurisdiction over child-custody matters, a statement of efforts that have been made and are being made to contact the Tribe and transfer the child to the Tribe's jurisdiction; and

(10) A statement of the efforts that have been taken to assist the parents or Indian custodians so the Indian child may safely be returned to their custody.

(e) An emergency proceeding regarding an Indian child should not be continued for more than 30 days unless the court makes the following determinations:

(1) Restoring the child to the parent or Indian custodian would subject the child to imminent physical damage or harm;

(2) The court has been unable to transfer the proceeding to the jurisdiction of the appropriate Indian Tribe; and

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(3) It has not been possible to initiate a "child-custody proceeding" as defined in § 23.2.

(as added, 2016)

§ 23.114. What are the requirements for determining improper removal?

(a) If, in the course of any child-custody proceeding, any party asserts or the court has reason to believe that the Indian child may have been improperly removed from the custody of his or her parent or Indian custodian, or that the Indian child has been improperly retained (such as after a visit or other temporary relinquishment of custody), the court must expeditiously determine whether there was improper removal or retention.

(b) If the court finds that the Indian child was improperly removed or retained, the court must terminate the proceeding and the child must be returned immediately to his or her parent or Indian custodian, unless returning the child to his parent or Indian custodian would subject the child to substantial and immediate danger or threat of such danger.

(as added, 2016)

§ 23.115. How are petitions for transfer of a proceeding made?
(a) Either parent, the Indian custodian, or the Indian child's Tribe may request, at any time, orally on the record or in writing, that the State court transfer a foster-care or termination-of-parental-rights proceeding to the jurisdiction of the child's Tribe.
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(b) The right to request a transfer is available at any stage in each foster-care or termination-of-parental-rights proceeding.

(as added, 2016)

§ 23.116. What happens after a petition for transfer is made?
Upon receipt of a transfer petition, the State court must ensure that the Tribal court is promptly notified in writing of the transfer petition. This notification may request a timely response regarding whether the Tribal court wishes to decline the transfer.

(as added, 2016)

§ 23.117. What are the criteria for ruling on transfer petitions?
Upon receipt of a transfer petition from an Indian child's parent, Indian custodian, or Tribe, the State court must transfer the child-custody proceeding unless the court determines that transfer is not appropriate because one or more of the following criteria are met:
(a) Either parent objects to such transfer;
(b) The Tribal court declines the transfer; or
(c) Good cause exists for denying the transfer.

(as added, 2016)

§ 23.118. How is a determination of "good cause" to deny transfer made?
(a) If the State court believes, or any party asserts, that good cause to deny transfer exists, the reasons for that belief or assertion must be

stated orally on the record or provided in writing on the record and to the parties to the child-custody proceeding.

(b) Any party to the child-custody proceeding must have the opportunity to provide the court with views regarding whether good cause to deny transfer exists.

(c) In determining whether good cause exists, the court must not consider:

(1) Whether the foster-care or termination-of-parental-rights proceeding is at an advanced stage if the Indian child's parent, Indian custodian, or Tribe did not receive notice of the child-custody proceeding until an advanced stage;

(2) Whether there have been prior proceedings involving the child for which no petition to transfer was filed;

(3) Whether transfer could affect the placement of the child;

(4) The Indian child's cultural connections with the Tribe or its reservation; or

(5) Socioeconomic conditions or any negative perception of Tribal or BIA social services or judicial systems.

(d) The basis for any State-court decision to deny transfer should be stated orally on the record or in a written order.

(as added, 2016)

§ 23.119. What happens after a petition for transfer is granted?

(a) If the Tribal court accepts the transfer, the State court should expeditiously provide the Tribal court with all records related to the proceeding, including, but not limited to, the pleadings and any court record.

(b) The State court should work with the Tribal court to ensure that the transfer of the custody of the Indian child and of the proceeding is accomplished smoothly and in a way that minimizes the disruption of services to the family.

(as added, 2016)

§ 23.120. How does the State court ensure that active efforts have been made?

(a) Prior to ordering an involuntary foster-care placement or termination of parental rights, the court must conclude that active efforts have been made to prevent the breakup of the Indian family and that those efforts have been unsuccessful.

(b) Active efforts must be documented in detail in the record.

(as added, 2016)

§ 23.121. What are the applicable standards of evidence?

(a) The court must not order a foster-care placement of an Indian child unless clear and convincing evidence is presented, including the testimony of one or more qualified expert witnesses, demonstrating that the child's continued custody by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(b) The court must not order a termination of parental rights for an Indian child unless evidence beyond a reasonable doubt is presented, including the testimony of one or more qualified expert witnesses, demonstrating that the child's continued custody by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(c) For a foster-care placement or termination of parental rights, the evidence must show a causal relationship between the particular conditions in the home and the likelihood that continued custody of the child will result in serious emotional or physical damage to the particular child who is the subject of the child-custody proceeding.

(d) Without a causal relationship identified in paragraph (c) of this section, evidence that shows only the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or

inadequate housing, substance abuse, or nonconforming social behavior does not by itself constitute clear and convincing evidence or evidence beyond a reasonable doubt that continued custody is likely to result in serious emotional or physical damage to the child.

(as added, 2016)

§ 23.122. Who may serve as a qualified expert witness?

(a) A qualified expert witness must be 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. A person may be designated by the Indian child's Tribe as being qualified to testify to the prevailing social and cultural standards of the Indian child's Tribe.

(b) The court or any party may request the assistance of the Indian child's Tribe or the BIA office serving the Indian child's Tribe in locating persons qualified to serve as expert witnesses.

(c) The social worker regularly assigned to the Indian child may not serve as a qualified expert witness in child-custody proceedings concerning the child.

(as added, 2016)

§ 23.123. [Reserved]

§ 23.124. What actions must a State court undertake in voluntary proceedings?

(a) The State court must require the participants in a voluntary proceeding to state on the record whether the child is an Indian child, or whether there is reason to believe the child is an Indian child, as provided in § 23.107.

(b) If there is reason to believe the child is an Indian child, the State court must ensure that the party seeking placement has taken all reasonable steps to verify the child's status. This may include

contacting the Tribe of which it is believed the child is a member (or eligible for membership and of which the biological parent is a member) to verify the child's status. As described in § 23.107, where a consenting parent requests anonymity, a Tribe receiving such information must keep relevant documents and information confidential.

(c) State courts must ensure that the placement for the Indian child complies with §§ 23.129-23.132.

(as added, 2016)

§ 23.125. How is consent obtained?

(a) A parent's or Indian custodian's consent to a voluntary termination of parental rights or to a foster-care, preadoptive, or adoptive placement must be executed in writing and recorded before a court of competent jurisdiction.

(b) Prior to accepting the consent, the court must explain to the parent or Indian custodian:

(1) The terms and consequences of the consent in detail; and

(2) The following limitations, applicable to the type of child-custody proceeding for which consent is given, on withdrawal of consent:

(i) For consent to foster-care placement, the parent or Indian custodian may withdraw consent for any reason, at any time, and have the child returned; or

(ii) For consent to termination of parental rights, the parent or Indian custodian may withdraw consent for any reason, at any time prior to the entry of the final decree of termination and have the child returned; or

(iii) For consent to an adoptive placement, the parent or Indian custodian may withdraw consent for any reason, at any time prior to the entry of the final decree of adoption, and have the child returned.

(c) The court must certify that the terms and consequences of the consent were explained on the record in detail in English (or the

language of the parent or Indian custodian, if English is not the primary language) and were fully understood by the parent or Indian custodian.

(d) Where confidentiality is requested or indicated, execution of consent need not be made in a session of court open to the public but still must be made before a court of competent jurisdiction in compliance with this section.

(e) A consent given prior to, or within 10 days after, the birth of an Indian child is not valid.

(as added, 2016)

§ 23.126. What information must a consent document contain?

(a) If there are any conditions to the consent, the written consent must clearly set out the conditions.

(b) A written consent to foster-care placement should contain, in addition to the information specified in paragraph (a) of this section, the name and birthdate of the Indian child; the name of the Indian child's Tribe; the Tribal enrollment number for the parent and for the Indian child, where known, or some other indication of the child's membership in the Tribe; the name, address, and other identifying information of the consenting parent or Indian custodian; the name and address of the person or entity, if any, who arranged the placement; and the name and address of the prospective foster parents, if known at the time.

(as added, 2016)

§ 23.127. How is withdrawal of consent to a foster-care placement achieved?

(a) The parent or Indian custodian may withdraw consent to voluntary foster-care placement at any time.

(b) To withdraw consent, the parent or Indian custodian must file a written document with the court or otherwise testify before the court.

Additional methods of withdrawing consent may be available under State law.

(c) When a parent or Indian custodian withdraws consent to a voluntary foster-care placement, the court must ensure that the Indian child is returned to that parent or Indian custodian as soon as practicable.

(as added, 2016)

§ 23.128. How is withdrawal of consent to a termination of parental rights or adoption achieved?

(a) A parent may withdraw consent to voluntary termination of parental rights at any time prior to the entry of a final decree of termination.

(b) A parent or Indian custodian may withdraw consent to voluntary adoption at any time prior to the entry of a final decree of adoption.

(c) To withdraw consent prior to the entry of a final decree of adoption, the parent or Indian custodian must file a written document with the court or otherwise testify before the court. Additional methods of withdrawing consent may be available under State law.

(d) The court in which the withdrawal of consent is filed must promptly notify the person or entity who arranged any voluntary preadoptive or adoptive placement of such filing, and the Indian child must be returned to the parent or Indian custodian as soon as practicable.

(as added, 2016)

§ 23.129. When do the placement preferences apply?

(a) In any preadoptive, adoptive, or foster-care placement of an Indian child, the placement preferences specified in § 23.130 and § 23.131 apply.

(b) Where a consenting parent requests anonymity in a voluntary proceeding, the court must give weight to the request in applying the preferences.

(c) The placement preferences must be applied in any foster-care, preadoptive, or adoptive placement unless there is a determination on the record that good cause under § 23.132 exists to not apply those placement preferences.

(as added, 2016)

§ 23.130. What placement preferences apply in adoptive placements?

(a) In any adoptive placement of an Indian child under State law, where the Indian child's Tribe has not established a different order of preference under paragraph (b) of this section, preference must be given in descending order, as listed below, to placement of the child with:

(1) A member of the Indian child's extended family;

(2) Other members of the Indian child's Tribe; or

(3) Other Indian families.

(b) If the Indian child's Tribe has established by resolution a different order of preference than that specified in ICWA, the Tribe's placement preferences apply.

(c) The court must, where appropriate, also consider the placement preference of the Indian child or Indian child's parent.

(as added, 2016)

§ 23.131. What placement preferences apply in foster-care or preadoptive placements?

(a) In any foster-care or preadoptive placement of an Indian child under State law, including changes in foster-care or preadoptive placements, the child must be placed in the least-restrictive setting that:

(1) Most approximates a family, taking into consideration sibling attachment;

(2) Allows the Indian child's special needs (if any) to be met; and

(3) Is in reasonable proximity to the Indian child's home, extended family, or siblings.

(b) In any foster-care or preadoptive placement of an Indian child under State law, where the Indian child's Tribe has not established a different order of preference under paragraph (c) of this section, preference must be given, in descending order as listed below, to placement of the child with:

(1) A member of the Indian child's extended family;

(2) A foster home that is licensed, approved, or specified by the Indian child's Tribe;

(3) An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(4) An institution for children approved by an Indian Tribe or operated by an Indian organization which has a program suitable to meet the child's needs.

(c) If the Indian child's Tribe has established by resolution a different order of preference than that specified in ICWA, the Tribe's placement preferences apply, so long as the placement is the least-restrictive setting appropriate to the particular needs of the Indian child, as provided in paragraph (a) of this section.

(d) The court must, where appropriate, also consider the preference of the Indian child or the Indian child's parent.

(as added, 2016)

§ 23.132. How is a determination of "good cause" to depart from the placement preferences made?

(a) If any party asserts that good cause not to follow the placement preferences exists, the reasons for that belief or assertion must be stated orally on the record or provided in writing to the parties to the child-custody proceeding and the court.

(b) The party seeking departure from the placement preferences should bear the burden of proving by clear and convincing evidence that there is "good cause" to depart from the placement preferences.

(c) A court's determination of good cause to depart from the placement preferences must be made on the record or in writing and should be based on one or more of the following considerations:

(1) The request of one or both of the Indian child's parents, if they attest that they have reviewed the placement options, if any, that comply with the order of preference;

(2) The request of the child, if the child is of sufficient age and capacity to understand the decision that is being made;

(3) The presence of a sibling attachment that can be maintained only through a particular placement;

(4) The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live;

(5) The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the preference criteria, but none has been located. For purposes of this analysis, the standards for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the Indian child's parent or extended family members maintain social and cultural ties.

(d) A placement may not depart from the preferences based on the socioeconomic status of any placement relative to another placement.

(e) A placement may not depart from the preferences based solely on ordinary bonding or attachment that flowed from time spent in a non-preferred placement that was made in violation of ICWA.

(as added, 2016)

§ 23.133. Should courts allow participation by alternative methods?

If it possesses the capability, the court should allow alternative methods of participation in State-court child-custody proceedings involving an

Indian child, such as participation by telephone, videoconferencing, or other methods.

(as added, 2016)

§ 23.134. Who has access to reports and records during a proceeding?

Each party to an emergency proceeding or a foster-care-placement or termination-of-parental-rights proceeding under State law involving an Indian child has a right to timely examine all reports and other documents filed or lodged with the court upon which any decision with respect to such action may be based.

(as added, 2016)

§ 23.135. [Reserved]

§ 23.136. What are the requirements for vacating an adoption based on consent having been obtained through fraud or duress?

(a) Within two years after a final decree of adoption of any Indian child by a State court, or within any longer period of time permitted by the law of the State, the State court may invalidate the voluntary adoption upon finding that the parent's consent was obtained by fraud or duress.

(b) Upon the parent's filing of a petition to vacate the final decree of adoption of the parent's Indian child, the court must give notice to all parties to the adoption proceedings and the Indian child's Tribe and must hold a hearing on the petition.

(c) Where the court finds that the parent's consent was obtained through fraud or duress, the court must vacate the final decree of adoption, order the consent revoked, and order that the child be returned to the parent.

(as added, 2016)

§ 23.137. Who can petition to invalidate an action for certain ICWA violations?

(a) Any of the following may petition any court of competent jurisdiction to invalidate an action for foster-care placement or termination of parental rights under state law where it is alleged that 25 U.S.C. 1911, 1912, or 1913 has been violated:

(1) An Indian child who is or was the subject of any action for foster-care placement or termination of parental rights;

(2) A parent or Indian custodian from whose custody such child was removed; and

(3) The Indian child's Tribe.

(b) Upon a showing that an action for foster-care placement or termination of parental rights violated any provision of 25 U.S.C. 1911, 1912, or 1913, the court must determine whether it is appropriate to invalidate the action.

(c) To petition for invalidation, there is no requirement that the petitioner's rights under ICWA were violated; rather, a petitioner may challenge the action based on any violations of 25 U.S.C. 1911, 1912, or 1913 during the course of the child-custody proceeding.

(as added, 2016)

§ 23.138. What are the rights to information about adoptees' Tribal affiliations?

Upon application by an Indian who has reached age 18 who was the subject of an adoptive placement, the court that entered the final decree of adoption must inform such individual of the Tribal affiliations, if any, of the individual's biological parents and provide such other information necessary to protect any rights, which may include Tribal membership, resulting from the individual's Tribal relationship.

(as added, 2016)

§ 23.139. Must notice be given of a change in an adopted Indian child's status?

(a) If an Indian child has been adopted, the court must notify, by registered or certified mail with return receipt requested, the child's biological parent or prior Indian custodian and the Indian child's Tribe whenever:

(1) A final decree of adoption of the Indian child has been vacated or set aside; or

(2) The adoptive parent has voluntarily consented to the termination of his or her parental rights to the child.

(b) The notice must state the current name, and any former name, of the Indian child, inform the recipient of the right to petition for return of custody of the child, and provide sufficient information to allow the recipient to participate in any scheduled hearings.

(c) A parent or Indian custodian may waive his or her right to such notice by executing a written waiver of notice and filing the waiver with the court.

(1) Prior to accepting the waiver, the court must explain the consequences of the waiver and explain how the waiver may be revoked.

(2) The court must certify that the terms and consequences of the waiver and how the waiver may be revoked were explained in detail in English (or the language of the parent or Indian custodian, if English is not the primary language), and were fully understood by the parent or Indian custodian.

(3) Where confidentiality is requested or indicated, execution of the waiver need not be made in a session of court open to the public but still must be made before a court of competent jurisdiction in compliance with this section.

(4) The biological parent or Indian custodian may revoke the waiver at any time by filing with the court a written notice of revocation.

(5) A revocation of the right to receive notice does not affect any child-custody proceeding that was completed before the filing of the notice of revocation.

(as added, 2016)

§ 23.140. What information must States furnish to the Bureau of Indian Affairs?

(a) Any State court entering a final adoption decree or order in any voluntary or involuntary Indian-child adoptive placement must furnish a copy of the decree or order within 30 days to the Bureau of Indian Affairs, Chief, Division of Human Services, 1849 C Street NW., Mail Stop 3645 MIB, Washington, DC 20240, along with the following information, in an envelope marked "Confidential":

(1) Birth name and birthdate of the Indian child, and Tribal affiliation and name of the Indian child after adoption;

(2) Names and addresses of the biological parents;

(3) Names and addresses of the adoptive parents;

(4) Name and contact information for any agency having files or information relating to the adoption;

(5) Any affidavit signed by the biological parent or parents asking that their identity remain confidential; and

(6) Any information relating to Tribal membership or eligibility for Tribal membership of the adopted child.

(b) If a State agency has been designated as the repository for all State-court adoption information and is fulfilling the duties described in paragraph (a) of this section, the State courts in that State need not fulfill those same duties.

(as amended, 2018)

§ 23.141. What records must the State maintain?

(a) The State must maintain a record of every voluntary or involuntary foster-care, preadoptive, and adoptive placement of an Indian child and make the record available within 14 days of a request by an Indian child's Tribe or the Secretary.

(b) The record must contain, at a minimum, the petition or complaint, all substantive orders entered in the child-custody proceeding, the complete record of the placement determination (including, but not limited to, the findings in the court record and the social worker's statement), and, if the placement departs from the placement preferences, detailed documentation of the efforts to comply with the placement preferences.

(c) A State agency or agencies may be designated to be the repository for this information. The State court or agency should notify the BIA whether these records are maintained within the court system or by a State agency.

(as added, 2016)

§ 23.142. How does the Paperwork Reduction Act affect this subpart?

The collections of information contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned OMB Control Number 1076-0186. Response is required to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless the form or regulation requesting the information displays a currently valid OMB Control Number. Send comments regarding this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer—Indian Affairs, 1849 C Street NW., Washington, DC 20240.

(as added, 2016)

§ 23.143. How does this subpart apply to pending proceedings?

None of the provisions of this subpart affects a proceeding under State law for foster-care placement, termination of parental rights, preadoptive placement, or adoptive placement that was initiated prior to December 12, 2016, but the provisions of this subpart apply to any

subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

(as added, 2016)

§ 23.144. What happens if some portion of this part is held to be invalid by a court of competent jurisdiction?

If any portion of this part is determined to be invalid by a court of competent jurisdiction, the other portions of the part remain in effect. For example, the Department has considered separately whether the provisions of this part apply to involuntary and voluntary proceedings; thus, if a particular provision is held to be invalid as to one type of proceeding, it is the Department's intent that it remains valid as to the other type of proceeding.

(as added, 2016)