

MINUTES

CHILD PROTECTION COMMITTEE MEETING

*October 20 – 21, 2011
Idaho Supreme Court Building – Boise, Idaho*

Thursday, October 20, 2011

ATTENDANCE:

Judges Bryan Murray, John Melanson, Ryan Boyer, Barbara Buchanan, Gregory Kalbfleisch, Gregory Frates, Cathleen MacGregor-Irby, Lynne Krogh, and Michael Dennard, Barry Black, Shirley Alexander, Rob Luce, Mary Jo Beig, Elizabeth Brandt, Andrew Ellis, Chuck Halligan, Julie Kane, Karlene Behringer, Adam Kimball, Scott Davis, and Stacy McAlevy. Administrative Office of the Court Staff: Nanci Thaemert, Kim Halbig-Sparks, Taunya Jones, Debra Alsaker-Burke, and Janice Beller.

Guests: Chief Justice Roger Burdick and Patti Tobias.

Agenda Items:

1. Welcome/Announcements

Judge Murray welcomed all attendees and requested that Committee members fill out match time sheets and expense reports. Judge Melanson and Stacy McAlevy were welcomed to the Committee, and all attendees introduced themselves in turn. Judge Murray introduced and welcomed guests Chief Justice Roger Burdick and Administrative Director of the Courts Patti Tobias.

2. Remarks from the Chief Justice

3. Review and Approve Minutes

The minutes from the April 28-29th meeting were reviewed, and a motion was made by Julie Kane to approve them as written. The motion was seconded by Shirley Alexander, and with no objection, the minutes were approved unanimously.

4. Recommendations from the Statute and Rule Subcommittee

- a. I.C. §16-1623(3) Redisposition Hearing(pg. 12 of the meeting materials.) Motion to approve by Jennifer Gose, second by Karlene Behringer. Unanimously approved as drafted. (Appendix A to Minutes)
- b. I.C. §16-1621 & IJR 44(pg. 13 of the meeting materials.) Motion to approve by Mary Jo Beig, second by Shirley Alexander. Unanimously approved as drafted. (Appendix B to Minutes)

- c. I.C. §16-1621(3) and (4) and §16-1622(5) (pg. 14 of the meeting materials.)
Discussion regarding policy of requiring reasonable efforts to finalize permanency for primary and secondary permanency goal.

I.C. §16-1621(3) and (4) – Motion to approve as revised, Jennifer Gose. Seconded by Judge Frates. Motion passes with opposition votes by Andrew Ellis, Mary Joe Beig, and Barry Black.

As approved, proposed amendments to §16-1621(3) and (4) are:

(3) The case plan shall include a reunification plan setting forth the efforts which will be made to make it possible for the child to return to his home, ~~and~~ The case plan shall concurrently also include a concurrent permanency plan setting forth the efforts to place the child for adoption, with a legal guardian, or in another approved permanent placement. Whenever possible, the child's connections to the community, including individuals with a significant relationship to the child, religious organizations and community activities, will be maintained through the transition. The case plan shall state with specificity the role of the department toward each parent.

(4) The case plan, as approved by the court, shall be entered into the record as an order of the court. In the absence of finding of aggravated circumstances as provided for in section 16-1619(6)(d), Idaho Code, 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, ~~or in the alternative to complete the steps necessary to finalize the permanent placement of the child.~~ The court's order shall also require the department to simultaneously take steps to accomplish the reunification and concurrent permanency plans.

NOTE: If the proposed amendment to add a new §16-1602(5) – aggravated circumstances, passes, we will have to amend the reference to § 16-1619(6)(d) .

§16-1622(5) – Motion to approve as written (pg 14 of the meeting materials) made by Judge Kalbfleisch, seconded by Julie Kane. Motion passes with one dissenting vote (Mary Jo Beig). (Appendix C to Minutes)

- d. IJR 46 – Motion to approve with amendment in last sentence made by Julie Kane. Seconded by Judge Buchanan. Motion approved as amended.

Proposed amendment to IJR 46 is:

(a) The permanency ~~plan goal~~ may be ~~but is not limited to~~ one of the following: continued efforts at reunification, termination of parental rights and adoption, guardianship, or ~~long term foster care~~ another planned permanent living arrangement. In the case of a child who will not be

returned to a parent, the hearing shall include review of the department's consideration of the options for in-state and out-of-state placement of the child. The plan shall specifically identify the activities necessary to implement the goal, and set forth schedules for the accomplishment of those actions.

(b) If the permanency goal is not reunification, termination of parental rights and adoption, or guardianship, the court may approve a permanency goal of another planned permanent living arrangement ~~permanency plan of long term foster care~~ only upon written case-specific findings that there are compelling reasons why a more permanent plan is not in the best interests of the child.

- e. I.C. §16-1622(3) (4) – Review and permanency hearings (pg 16 of the meeting materials.) Motion to approve as drafted by Judge Boyer. Seconded by Julie Kane. Unanimously approved as drafted. (Appendix D of Minutes)
- f. I.C. §16-1602(29) §16-1619(5)(a), and IJR 44(b) – Protective Supervision (pgs. 17 and 18 of the meeting materials). Barry Black moved to approve all amendments as drafted. Second by Andrew Ellis. Unanimously approved as proposed. (Appendix E of Minutes)
- g. I.C. §16-1629 – Powers and Duties of the Department (pgs. 18-20 of the meeting materials.) An additional amendment was proposed for the third sentence in (4): “...with the court which has jurisdiction. ~~of the person.~~” Motion to approve as amended by Elizabeth Brandt, with a second by Mary Jo Beig. Unanimously approved with the proposed amendment to (4) listed above. (Appendix F of Minutes)
- h. New IJR 56 (pg. 21 of the meeting materials.) Proposed amendment to delete “magistrate” reference in (1). Judge Buchanan moved to approve as amended. Elizabeth Brandt seconded. Approved as amended with one abstention from Jennifer Gose. (Appendix G of Minutes)

Prior to the discussion on this proposed amendment to IJR 56, Debbie read a note to the committee from Patti Tobias regarding this proposed new rule. The note states *“I am happy to discuss any concerns from the CP Committee about training and invite your thinking. The long time “policy” of the Judicial Education Committee has been to encourage 100% participation as opposed to “mandatory training”. As the quality of programs has improved, so has attendance...and I am not aware of any problems today, other than a lack of money for all needed trainings. I am also happy to discuss your ideas with the Education Committee at its next meeting.”*

- i. IJR 40(b) – Youth Participation in Court (pg 22 of meeting materials.) After discussion, the proposal was amended further. A motion was made by Julie Kane

to approve the proposed amendment to IJR 40(b) as amended. The motion was seconded by Andrew Ellis. Unanimously approved as amended.

Proposed amendment to IJR 40(b) is:

(b) After the adjudicatory hearing, a child eight (8) years of age or older, shall be provided with notice of, and have a right to be heard, either in person or in writing, in any further hearings to be held with respect to the child. The Department of Health and Welfare shall provide this notice and shall confirm to the court that the notice was given. If the child chooses to be heard in writing, the writing shall be filed, copies provided to all parties, and considered by the court.

j. New §16-1602(5) - Aggravated Circumstances (pg 23 of the meeting materials.)
After discussion, it was determined the issue should be tabled until Friday.

5. Improving Advocacy in Child Protection Cases – Judge Varin addressed the CP Committee regarding a work group which is responding to a report on the state of public defense in Idaho. Recommendations will be made to the Criminal Defense Commission in the upcoming year.

6. Update on Resources and Request for Volunteers – Several work groups were formed to address projects of the CP Committee:

- a. New and Updates to Bench Cards and CP Manual: Kim Halbig-Sparks, Liz Brandt, Shirley Alexander, DAB, and Judge Murray.
- b. Child Protection Forms: DAB, Jennifer Gose, Andrew Ellis, Adam Kimball, Scott Davis, Judge Harris, and Judge Brian Lee.
- c. Booklet for Parents: Adam Kimball, Judge Buchanan, DAB, and Scott Davis.

Adjourn for Day.

FRIDAY, OCTOBER 21, 2011

ATTENDANCE:

Judges Bryan Murray, John Melanson, Ryan Boyer, Barbara Buchanan, Gregory Kalbfleisch, Gregory Frates, Cathleen MacGregor-Irby, Lynne Krogh, and Michael Dennard, Barry Black, Shirley Alexander, Mary Jo Beig, Elizabeth Brandt, Andrew Ellis, Chuck Halligan, Julie Kane, Karlene Behringer, Adam Kimball, Scott Davis, and Stacy McAlevy. Administrative Office of the Court Staff: Nanci Thaemert, Kim Halbig-Sparks, Taunya Jones, Debra Alsaker-Burke, and Janice Beller.

Guests: Judge Barry Woods, Julie Cottrell, Erica Wainaina, and Norma Jaeger.

7. ICPC Update - Erica Wainaina, Interstate Compact Administrator from IDHW, updated the group on changes to the Interstate Compact on the Placement of Children.

ACTION ITEM: Amend CP Manual regarding changes to ICPC.

ACTION ITEM: Develop Bench Card for ICPC cases.

ACTION ITEM: Submit an “e-news” item for Idaho Judiciary regarding ICPC Order and Information.

ACTION ITEM: Consider education opportunities regarding ICPC changes – work with Judicial Education to create a webinar for judges, GALs, prosecutors, and/or PD’s regarding ICPC process.

- 8. Advancing Justice** – Meeting materials beginning on page 69. Judge Barry Wood and Taunya Jones joined the group to share the objectives of the Advancing Justice project. Judge Woods noted that Idaho was the first, or was one of the first states, to have time standards (see Rule 57 on page 85 of the materials).

The CP Committee was asked if child protection cases needs its own category under Rule 57, given that CP cases already have their own time standards under the CPA. Is there value to adding these standards to IJR 57?

It was suggested that the Rules Subcommittee look at the data on the length of time between TPR and Adoption filings, to determine if a time standard is needed to promote better outcomes for children. It was further suggested that the Subcommittee discuss if a separate category for terminations/adoptions/private adoptions is needed.

Motion was made by Judge Frates to move CP to a separate category under Rule 57, which would place it out of the enforcement category. He further moved that the Rules Subcommittee consider determining time standards for termination which would be placed under either Idaho Statute or Juvenile Rule. Motion seconded by Judge Boyer, and approved unanimously.

ACTION ITEM: Judges will look at data and rules/statutes and make a proposal regarding TPR. This needs to be done no later than the end of February, 2012. Attorneys should also be included in the discussion (prosecutors and public defenders).

- 9. Case Law Review** – Nancy, Kim, and Julie discussed the following recent cases:
- a. Washington – included ICWA in state law with good detail.
 - b. Shepard v. Shepard – state tribal court orders given full faith and credit.
 - c. U.S. Congress – Tribal Law and Order Act created to address disparity in tribal judicial systems around the country.
- 10. Problem Solving Courts and Child Protection** – Norma Jaeger addressed the Committee and shared information on:
- a. Current data on dependency drug courts in Idaho;
 - b. Integrating problem solving court practices and principals into dependency drug courts;
 - c. PPT Presentation on “Essential Elements of Problem Solving Courts” – see slide notes at the end of these minutes. (Not included in meeting materials)

11. ISTARs Data Update – Julie Cottrell and Debbie reviewed the two new summary reports created with ISTARs data: 4KA Timeliness Summary and Case Pending Summary reports.

Feedback from the committee included a request to make reports more user friendly, and a query as to whether the committee should develop benchmarks on timeliness. Also wondered if state or federal benchmarks should be considered if the two deviate?

A benchmark working group was created to discuss and includes Shirley, Taunya, Judge Buchanan, Kim, Judge Murray, Nanci, Karlene, Andrew, Julie Cottrell, and Debbie.

12. Continuation of Rules Subcommittee Discussion from Thursday: Discussion continued on §16-1602(5) with a new proposal from Barry Black regarding the wording of the proposed changes. Julie Kane moved to approve the “new” 16-1602(5) proposed by Barry Black, which references language from §18-8303. Second was made by Karlene Behringer, and the motion was unanimously approved.

As approved, §16-1602(5) will be submitted as follows:

§16-1602(5) (New addition):

(5) “Aggravated circumstances” include but are not limited to: circumstances in which the parent has engaged in any of the following act(s):

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

i. Abandonment, chronic abuse, or chronic neglect of the child;

ii. Sexual abuse against a child of the parent;

iii. Torture of a child, ~~sexual abuse of a child~~ a sexual offense as set forth in 18-8303(1), battery or an injury to a child that results in serious or great bodily injury to a child, committed voluntary manslaughter of another child, aided or abetted, attempted, conspired or solicited to commit such voluntary manslaughter; or

b. ~~iii.~~ The parent has ~~Committed~~ committed murder, aided or abetted, attempted, conspired or solicited to commit murder; or

c. ~~iv.~~ The parental rights of the parent to another child have been terminated involuntarily.

Companion amendments to IJR 39 and §16-1619(6) (d) were also considered. A motion to approve both as set forth on pages 24 and 25 in the meeting materials was made by Judge Frates and seconded by Andrew Ellis. The amendments to IJR 39 and § 16-1619 (6) (d) were unanimously approved. (Appendix H in Minutes)

13. Strategic Plans and Budgets – Debbie recommended the following areas of focus for the Committee to consider:

- a. Data – Develop additional reports, shared data project with IDHW, and the development of a CQI process.
- b. Improving Legal Advocacy in CP cases.
- c. Integrating problem solving court practices and standards in CP cases.

All three were supported without discussion by the Committee. In addressing CQI goals, it was proposed that the Committee use a combination of stakeholder meetings and the TCAs to set up meetings in counties where stakeholder meetings do not exist currently.

14. Updates from IDHW, GAL Programs (State and Local)

15. Next meeting dates – February and late August were discussed. No dates were set, but Debbie will review schedules and send dates out as soon as possible.

Meeting Adjourned.

Child Protection Committee Meeting Follow Up Items

ACTION ITEMS:

- **ACTION ITEM: Amend CP Manual regarding changes to ICPC.**
- **ACTION ITEM: Develop Bench Card for ICPC cases.**
- **ACTION ITEM: Submit an “e-news” item for Idaho Judiciary regarding ICPC Order and Information.**
- **ACTION ITEM: Consider education opportunities regarding ICPC changes – work with Judicial Education to create a webinar for judges, GALs, prosecutors, and/or PD’s regarding ICPC process.**
- **ACTION ITEM: Judges will need to meet to look at data and rules/statutes. Make a proposal regarding TPR. This needs to be done no later than the end of February, 2012. Attorneys should also be included in the discussion (prosecutors and public defenders).**

Appendix A:

16-1623.AMENDED DISPOSITION -- REMOVAL DURING PROTECTIVE SUPERVISION.

(3) When a child under protective supervision is removed from his home, a 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.

Appendix B:

Rule 44. Case plan hearing/permanency hearing--Aggravated circumstances (C.P.A.)

(a) The **case plan** shall include the following:

§16-1621. Case plan hearing

The court shall set a case plan hearing to be held within sixty (60) days from the date the child was removed from the home or within thirty (30) days after the adjudicatory hearing, whichever occurs first. The case plan shall be filed with the court no later than five (5) days prior to the hearing. Copies of the case plan shall be delivered to the parents and other legal guardians, the guardian ad litem and attorney for the child.

Appendix C:

Proposed change to §16-1622(5) – Review and Permanency Hearings:

Sections 1-4 unchanged.

(5) The court shall make written, case-specific findings whether the department made reasonable efforts to finalize the permanency plan in effect for the child.

Sections 6-7 unchanged.

Appendix D:

§ 16-1622. Review and permanency hearings

(3) 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 the act, and every six (6) months thereafter.

(4) A hearing shall be held to review the permanency plan of the department prior to 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. The court shall review, approve, reject or modify the permanency plan of the department and review progress in accomplishing the permanency plan. This permanency hearing may be combined with the review hearing required under subsection (3) of this section.

Appendix E:

§16-1602(29):

(29) "Protective supervision" means a legal status created by court order in 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.

§16-1619(5) (a):

(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;

IJR 44(b):

(b) If the child has been placed under the protective supervision of the department, the case plan shall include the same information set forth in subsections (a)(1) and (2) above.

Appendix F:

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 which 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 consultative 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 3, title 9](#), 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 3, title 9](#), 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, subject to the judicial review provisions of this subsection, 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. Provided however, that 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.

(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. There shall be a rebuttable presumption that if a child is placed in the custody of the department and was also placed in out of the home care for a period not less than fifteen (15) out of the last twenty-two (22) months from the date the child entered shelter care, the department shall initiate a petition for termination of parental rights. This presumption may be rebutted by a finding of the court that the filing of a petition for termination of parental rights would not be in the best interest of the child or reasonable efforts have not been provided to reunite the child with his family, or the child is placed permanently with a relative.

(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.

Appendix G:

Proposed IJR 56:

1. Each judge who is assigned child protective matters shall receive instruction designed for training judges in such matters.
2. Each judge to whom this rule applies shall attend such instruction when it is offered for the first time after the assignment of child protective matters to his or her calendar and from time to time thereafter.
3. The Administrative Director of the Courts shall establish standards and expectations for instruction and shall arrange for giving appropriate instruction to judges as required by the provisions of this rule.