

Proposed Amendments to the Idaho Juvenile Rules
Administrative Conference, April 2020

The following rule amendments are recommended by the Idaho Supreme Court's Child Protection Committee for approval by the Administrative Conference.

Proposed NEW Rule I.J.R. 30. Protective Orders in Child Protection Proceedings:

The Family First Prevention Services Act is an invitation to states to focus the child welfare system on primary prevention, preventing the initial act of abuse or neglect, and, if there is an instance of abuse or neglect that brings the family into the child protective system, preventing children from entering out-of-home care.

Idaho Code § 16-1602(34) provides that a protective order issued in a child protective case, "...shall be in the same form and have the same effect as a domestic violence protection order issued pursuant to chapter 63, title 39, Idaho Code." Idaho Code § 16-1615(8) authorizes the court to issue a protective order if the court finds jurisdiction, "but a reasonable effort to prevent placement of the child outside the home could be affected by a protective order safeguarding the child's welfare." Idaho Code § 16-1619(10) authorizes the court to issue or extend a protective order "to preserve the unity of the family system and to ensure the best interests of the child." The protective order "shall be determined to be in the best interests of the child and upon a showing of continuing danger to the child."

Protective orders can be a useful tool to prevent children from entering out-of-home care. Neither statute nor court rule define a process for entering a protective order in a child protection case. In addition, the meaning of the requirement that protective orders "shall have the same form and effect as domestic violence protective orders" is unclear. For those reasons, attorneys have been reluctant to request and courts have been reluctant to issue protective orders in child protection cases.

Proposed new IJR 30, integrating relevant provisions of chapter 63, title 39, addresses those issues by:

- *Clarifying that a protective order issued in a child protection case “with the same force and effect of a protective order under chapter 63 title 39 Idaho Code ” is a civil protection order issued pursuant to title 63, chapter 39, Idaho Code.*
- *Defining the scope of a protective order issued in a child protection case.*
- *Defining processes for issuing a protective order in a child protective case and, as a condition for returning the child home, requiring a parent to obtain a civil protection order under chapter 63, title 39, Idaho Code.*
- *Clarifying that a protective order issued in a child protection case survives the closure of the child protection case.*

Idaho Juvenile Rule 30. Protective Orders in a Child Protection Proceeding

(a) Protection Order. For the purposes of this Rule, a protective order with the same form and effect as a domestic violence protection order is a civil protection order under Chapter 63, Title 39, Idaho Code. On the motion of any party, the court may issue a protective order if the court determines a parent, guardian, legal custodian, or child, whether present in court or not, represents an immediate and present danger of domestic violence to another parent, guardian, legal custodian, or child. The moving party bears the burden for establishing the need for a protective order. Immediate and present danger includes, but is not limited to, situations in which a parent, guardian, legal custodian, or child has recently threatened bodily harm, engaged in domestic violence, or where there is reasonable cause to believe bodily harm may result against a parent, guardian, legal custodian, or child.

(1) A protective order may:

- (A) Order temporary custody of the child;
- (B) Restrain a parent, guardian, legal custodian, or child from committing acts of domestic violence;
- (C) Exclude the restrained person from the dwelling of a child, parent, guardian or legal custodian, including a dwelling shared by the parents, guardians, or legal custodians;
- (D) Order a parent, guardian, legal custodian or child to participate in treatment or

counseling services;

- (E) Order other relief as the court deems necessary for the protection of a parent, guardian, legal custodian or child, including orders or directives to a peace officer, as allowed under chapter 63, title 39;
 - (F) Restrain a parent, guardian, legal custodian, or child from harassing, annoying, disturbing the peace of, telephoning, contacting, or otherwise communicating, directly or indirectly, with a parent, guardian, legal custodian, or child;
 - (G) Restrain a parent, guardian, legal custodian, or child from entering any premises when it appears to the court that such restraint is necessary to prevent the parent, guardian, legal custodian, or child from contacting, harassing, annoying, disturbing the peace of or telephoning a parent, guardian, legal custodian, or child.
 - (H) Restrain a parent, guardian, legal custodian, or child from coming within one thousand five hundred (1,500) feet or other specified distance of a parent, guardian, legal custodian or child, their residence, school or place of employment, or any specified place frequented by a parent, guardian, legal custodian, or child.
- (2) For the purposes of a protective order, the Respondent is the parent, guardian, legal custodian, or child to be restrained and the Protected Persons are another parent, guardian, legal custodian, or a child. A protective order must be entered on the form approved by the Idaho Supreme Court for child protection cases.
- (A) Respondent Present. If the Respondent is present in court, the court may issue a temporary protection order and set a hearing to be held within fourteen (14) days or may issue a protective order for a period not to exceed one (1) year. If any protective order is issued, the Respondent must be served with a copy of the order in court and the order must be submitted to the appropriate law enforcement agency specified in the order for entry pursuant to chapter 63, title 39, Idaho Code.
 - (B) Respondent Not Present. If the Respondent is not present in court, the court may issue an ex parte temporary protective order to be effective for a fixed period not to exceed fourteen (14) days. A hearing on the protective order shall be set

not later than fourteen (14) days from the issuance of the temporary protective order. A copy of the temporary protective order must be submitted to the appropriate law enforcement agency specified in the order. Entry of the order and service on the Respondent must be pursuant to chapter 63, title 39, Idaho Code.

- (b) Termination/Closure/Dismissal. A Protective Order issued under this Rule shall remain in effect for the term set by the court or until terminated by the court, pursuant to Idaho Code § 39-6311(4), and survives the closure or dismissal of the child protection case. After the child protection case is closed or dismissed, any modification, renewal, or termination of the Protective Order is governed by Idaho Code §§ 39-6311(4) and 39-6313. At any time, if the court determines the Protective Order is no longer necessary, the court will issue an order terminating the Protective Order. A copy of the order modifying, renewing, or terminating the Protective Order shall be forwarded to the appropriate law enforcement agency specified in the order pursuant to Idaho Code § 39-6311.
- (c) Non-parties. In the event a non-party needs to be restrained from harassing, annoying, disturbing the peace of, telephoning, contacting, or otherwise communicating, directly or indirectly, with the parent, guardian, legal custodian, or child, the court, as a condition for the child to remain in or return home, may require that a parent, guardian, or legal custodian petition for a civil protection order pursuant to Chapter 63, Title 39, or Chapter 79, Title 18, Idaho Code. In the event a petition is filed for a civil protection order, the civil protection order case shall be assigned to the judge handling the underlying child protection case.

Proposed NEW Rule I.J.R. 41A. Discovery for Adjudicatory Hearings:

The Idaho Rules of Civil Procedure apply in child protection cases to the extent that they “are not inconsistent with” the Idaho Juvenile Rules, statutes, or the law. The timeline for adjudicating cases under the Child Protective Act is condensed and requires more expedited discovery than is set forth by the Idaho Rules of Civil Procedure. This proposed new rule provides direction on disclosure requirements for adjudicatory hearings that reflects the expedited timelines in child protection cases.

Idaho Juvenile Rule 41A. Discovery for Adjudicatory Hearings (C.P.A.)

(a) **Mandatory Disclosure.** The timeline for adjudicating cases under the Child Protective Act is condensed and requires more expedited discovery than is set forth by the Idaho Rules of Civil Procedure. For this reason, requirements for disclosure for the adjudicatory hearing are governed by this rule. Formal discovery, including but not limited to discovery disclosures in Title V, Idaho Rules Civil Procedure, does not apply unless ordered by the court. Without necessity of a request by another party and no later than three (3) days prior to the pre-trial conference, each party must disclose in writing, to every other party, the following information:

- (1) **Disclosure of witnesses.** The names, addresses, telephone numbers, and email addresses if known, of any witness whom the disclosing party expects to call at the adjudicatory hearing;
 - (2) **Disclosure of expert witnesses.** The names, addresses, telephone numbers, and email addresses if known, of any person whom the disclosing party expects to call as an expert at the adjudicatory hearing, and a written statement of the subject matter on which the witness is expected to present evidence under Rule 702, 703 or 705 of the Rules of Evidence, and a summary of the facts and opinions to which the witness is expected to testify;
 - (3) **Documents and media.** Any documents or media relied upon, or intended to be introduced into evidence, by a party. This includes but is not limited to documents or media in the possession of law enforcement agencies, the Department of Health and Welfare, or other witnesses or experts involved in the investigation of child maltreatment or neglect.
- (b) **Reports to the Court.** The Report of Investigation of the Department of Health and Welfare and the report of the guardian ad litem will be provided pursuant to the Idaho Child Protective Act.
- (c) **Depositions.** Depositions will be taken only upon order of the court if the court finds that the testimony is material and:
- (1) the deposition is required to preserve testimony; or

- (2) it is likely that a prospective witness will be prevented from attending or unable to attend the adjudicatory hearing.
- (d) Continuing duty to disclose. The duty described in this rule is a continuing duty, and each party will make additional or amended 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. The disclosures will not be filed with the court.
- (f) Protection Orders. Any documents, media, 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 purpose of preparing for the adjudicatory hearing and other proceedings under the Child Protective Act. No documents or media 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 or documents or media in violation of this rule may constitute contempt of court. The court may issue additional protective orders, as needed.
- (g) Failure to Comply. If a party fails to disclose in accordance with this rule, the court may grant a continuance, prohibit the party from calling the witness or introducing the evidence not disclosed, or enter such other order as it deems just under the circumstances. In determining the consequence 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.

Proposed Amendment to I.J.R. 42 Extended Home Visits (C.P.A.):

Each fiscal year federal Title IV-E funds are lost for otherwise eligible children because the children's IVE eligibility was not preserved by approving home visits extending beyond six (6) months. The purpose of the proposed amendment to IJR 42 is to make explicit the requirement that EHV's exceeding 6 months must first obtain the approval of the court. In addition, the proposed amendments require that if the court approves an EHV for a period exceeding six

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.”

Idaho Juvenile Rule 41A. 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.