



# Idaho State Judiciary

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## Report to Idaho Courts:

## Uniform Business Practices to Implement Legislative and Rule Changes

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### Acknowledgements:

The Court wishes to acknowledge and express appreciation for the work of various committees and workgroups who developed these business practices.

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# LEGISLATIVE CHANGES

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## HB 0494a

This legislation amended law to reclassify a first offense for under age alcohol possession, consumption, selling, or serving from a misdemeanor to an infraction. The recommendation for a first offense infraction originated from the Misdemeanor Reclassification Subcommittee of the Criminal Justice Commission.

(Effective July 1, 2016.)

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### Overview of House Bill 0494a

The legislation amended **Idaho Code § 23-604** to clarify that the section governs consumption, possession and purchase offenses and **Idaho Code § 23-949** governs underage selling, serving and dispensing offenses. Both statutes state that a person committing such an offense shall be punished in accordance with Idaho Code § 18-1502.

**Idaho Code § 18-1502** was amended to create a new subsection (e) that states that a first alcohol age violation (I.C. § 23-604, § 23-949, and § 23-505) shall constitute an infraction. Per the new Idaho Code § 18-1502 subsection (b)(1), every person convicted of an infraction under this section shall be punished by a fine of \$300.

**Idaho Code § 20-505** of the Juvenile Corrections Act was amended to state that a juvenile who was under the age of eighteen at the time of their first alcohol age violation / infraction offense (§ 18-1502(e)) is under the jurisdiction of the Juvenile Corrections Act. **Idaho Code § 20-516(1)(c)** was amended to include a first alcohol age violation / infraction offense (I.C. § 18-1502(e)) as a status offense. As a status offense the juvenile shall not be placed in a jail facility but instead may be placed in juvenile shelter care facilities. The status offense shall be in addition to the infraction.

While first alcohol age violations were reclassified as infractions, House Bill 494a made provisions for payment of certain fees normally associated with a *misdemeanor offense* to avoid diversion of funds away from the Crime Victims' Fund and Drug and Mental Health Courts normally funded through court fees on misdemeanors and felonies. Those sections amended include: **Idaho Code §§ 31-3201(3)** (district court services fee), **31-3201A(3)** (district court fee); **31-3201H(1)(b)** (surcharge fee), **31-3204** (victim notification fee), **72-1025(1)(c)** (reimbursement fee), **72-1105(2)** (peace officer temporary disability fund fee). Note, these fine/fees amendments apply only to Idaho Code §§ 23-604 and 23-949 and was not applied to violations of Idaho Code § 23-505. Note also that Idaho Code § 32-1410 (domestic violence court fees) would still apply to these violations.

### **Business Process for Judges and Court Clerks:**

This change in law may impose a significant change in business process for those counties that process first alcohol age violations committed by a minor in magistrate court versus juvenile court. Per the statutory language of Idaho Code § 20-505(4), all alcohol age infractions under Idaho Code § 18-1502(e) committed by juveniles are under the jurisdiction of the Juvenile Corrections Act (“JCA”). Subsequent violations by a juvenile may be under the JCA at the discretion of the court.

The changes to the statutes governing fees should not impose a change in business process as the fees remained the same despite the reclassification of these violations from misdemeanor to infraction.

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## **HB 0495**

This legislation amends Idaho Code § 18-1502 to add language that will compel a court to vacate and seal court records pertaining to a person under 21’s alcohol or drug related finding of guilt in certain circumstances.

(Effective July 1, 2016.)

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This legislation amends Idaho Code § 18-1502 to provide that a person who has been found guilty of only one (1) violation of Idaho Code § 18-1502 or Idaho Code § 23-604, and does not have any alcohol or drug related findings of guilt, in this state or any state, within five (5) years of the commission of a violation of these same statutes, *shall* have such finding completely vacated and sealed by the court. It is estimated that there are thousands of people who have only this misdemeanor conviction on their record. This change will affect those who are 18-21 years old when the ticket was issued.

### **Business Process for Judges and Court Clerks:**

The person / petitioner shall have the responsibility for initiating this process. The court shall provide a form for the convicted person to use. No fee shall be charged by the court for this process.

#### **Order Vacating and Sealing Alcohol Age Violation, I.C. § 18-1502**

1. File stamp pleading and enter the appropriate ROA / event code.

2. Route the request to the assigned judge.
3. If the court finds the person/petitioner is entitled to relief based upon the petition filed, the court shall enter an Order Vacating and Sealing Alcohol Age Violation, I.C. § 18-1502(6)). File stamp the order, and enter the appropriate ROA / event code and serve the same on the parties and juvenile probation.
4. If the court maintains electronic files, the clerk shall designate the security group of the records as sealed thereby limiting access in accordance with the Court's order. If the court has not yet transitioned to an electronic file, the originals shall be placed in a manila envelope marked "sealed" with a general description of the records.
5. At all times thereafter, the proceedings shall be deemed never to have occurred. If a member of the public makes inquiry regarding the file they are not to be told of the case's existence.

The petition and order forms will be made available to the lead clerks and loaded into Odyssey and ISTARS. The petition and order, will be available in ISTARS, Odyssey, and warehoused on the Judicial Education page under clerk-archive: <http://www.isc.idaho.gov/judicial-education/clerks-archive>.

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## **HB 0556a**

This bill amended law to require that if an adoption arises from a Child Protection Act ("CPA") case, the permanency plan prepared in the CPA case must be filed along with the adoption petition. This is to assure that the proposed adoptive parents are approved by the judge presiding over the CPA case. The bill also amends the CPA to provide that when legal custody is vested in the Idaho Department of Health and Welfare ("IDHW"), all matters relating to custody shall be subject to judicial approval when contested by any party. It also requires that the permanency plan name the prospective adoptive parents, if known. It also amends the placement priority list to add "[f]oster parents . . . with a significant relationship with the child." Finally, the bill provides a process for IDHW caseworkers when moving a child from a foster home in which the child has resided for sixty (60) or more days to another foster home, and requires that IDHW notify foster parents of the change in the child's foster care placement.

(Effective July 1, 2016.)

**Idaho Code § 16-1506** pertaining to proceedings on adoption adds new language about adoptions that arise from a child protection act case. In such a case, in addition to the petition filed, the department of health and welfare shall file the permanency plan approved by the child protection court and prepared pursuant to sections 16-1620 or 16-1622, Idaho Code. If the adoption court determines that the person proposing to adopt the child **is not** the proposed adoptive parent named in the approved 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 protective act proceeding.

To enable compliance with the amended Idaho Code § 16-1506, **Idaho Code §§ 16-1620, 16-1621, and 16-1622** were amended to require the IDHW to identify the prospective adoptive parents, if known, in the permanency plan and case plan. If not known, the plan shall be amended to include the proposed adoptive parents as soon as persons became known.

**Idaho Code § 16-1619**, pertaining to the Adjudicatory Hearing, was amended to add:

(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.

The new Idaho Juvenile Rule 43 set out the procedure for parties to object to placement decisions and provides that a court will not approve a placement if it finds that the placement is not in the best interest of the child. (See below summary of Idaho Juvenile Rule 43.)

**Idaho Code § 16-1629** articulates the powers and duties of the department of health and welfare. Paragraph 8 of the statute indicates that while the department, as having legal custody of the child shall have the right to determine where and with whom the child shall live, ultimately the court retains jurisdiction over the child. House Bill 566a amends the section to emphasize that the decisions of the department are subject to judicial review and judicial approval when matters are contested by any party.

“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.”

**Idaho Code § 16-1629(11)** includes a list to provide a “placement priority” for the department of health and welfare to consider when making placement decisions for the child. The first priority is (a) A fit and willing relative and second priority is (b) A fit and willing nonrelative with a significant relationship with the child. New language was added as paragraph (c):

“Foster parents and other persons licensed in accordance with chapter 12, title 39, Idaho Code, with a significant relationship with the child.”

Foster parents without a “significant relationship” were moved to a new paragraph d.

**Idaho Code § 16-1629** was also amended to include new subsections 12-15. These subsections define process for the IDHW when children are moved from one foster care placement to another. Per subsection 12, if the caseworker assigned to a child protection case recommends moving 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 caseworker's supervisor shall conduct a review of the foster care placement 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 their 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.

Per subsection 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 written notice of the planned change at least seven (7) days before the change in placement.

Per subsection 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 written notice of the unplanned change within seven (7) days after the change in placement.

Per subsection 15, the department shall clearly state the reasons for the change in placement of the child.

### **Business Process for Judges and Court Clerks:**

House Bill 556a and Idaho Juvenile Rule 43 will impact the business process of the judges and clerks who preside over both a child's CPA case and adoption petition. Both are now required to assure that the applicable CPA report or plan identifies the child's placement. The judge presiding over the adoption matter must now review the permanency plan submitted to confirm that the person proposing to adopt the child is the proposed adoptive parent named in the permanency plan approved by the child protection court. If it is not, the judge MUST STAY the adoption proceedings and instruct the IDHW to seek the approval by the judge presiding over the CPA matter to amend the permanency plan to identify the petitioning / proposed adoptive parent.

The business process the court and clerks should employ for the handling of any challenge related to the custody of the child by the department is outlined in the new Idaho Juvenile Rule 43. See below summary of Idaho Juvenile Rule 43.

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## **HB 0558**

This legislation amended the provisions pertaining to the compromise of a claim by a minor. The law now allows persons other than the parents to petition the court for approval of a compromise of a claim and provides procedural requirements regarding the same.

(Effective July 1, 2016.)

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### **Overview of House Bill 0558**

This legislation was recommended by the Idaho Supreme Court's Guardianship and Conservatorship Committee. Previously, I.C. § 15-5-409a only permitted a minor's legal claim for money to be settled by the father or mother of the minor with whom the minor resides. In some cases, the minor's parents are deceased or unavailable, or the minor may not reside with them. In such cases, it may be difficult or impossible to settle the claim. This legislation allows other persons, such as a conservator, guardian, or other legal representative, to submit a proposed compromise of the claim to the court. A priority for who may settle the claim on behalf of the minor is specified.

The legislation also requires certain information to be provided to the court to assist in determining whether the compromise is reasonable and is in the best interest of the minor.

The legislation also grants the court authority, when in the best interest of the minor, to direct the money to be paid to this expanded group of potential petitioners and to subject the payment to an appropriate protective order.

### **Business Process for Judges and Court Clerks:**

One significant change in process is that the court now has the option to rule on the petition without a hearing after review of the petition in some cases.

- If the minor’s claim is less than ten thousand dollars (\$10,000) the court has the discretion to rule on the petition with or without a hearing.
- If the minor’s claim is ten thousand dollars (\$10,000) or more, the court **shall** set a hearing for approval of the compromise.

## **SB 1328a**

This bill makes revisions to the Child Protection Act (“CPA”) to conform to the requirements of the federal Preventing Sex Trafficking and Strengthening Families Act and the Fostering Connections Act, to require court inquiries into a child’s possible status as an Indian child, efforts to successfully transition to successful adulthood, preserving sibling contact, educational stability, and to require court inquiries into the prescription of psychotropic drugs for the child. The bill also provides clarity to procedure for various hearings and Department of Health and Welfare (“DHW”) reporting requirements.

(Effective July 1, 2016.)

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### **Overview of Senate Bill 1328a**

The statutory amendments (Idaho Code §§ 16-1602, 16-1615, 16-1619-16-1623, 16-2002, 16-1602, 16-1602) were recommended by the Idaho Supreme Court Child Protection Committee. This is a summary of the issues addressed by the proposed changes. A summary of how these changes will impact the court at the various hearings is provided below under the heading “Business Process for Judges and Court Clerks.”

#### **A. PSYCHOTROPIC MEDICATIONS**

At every review and permanency hearing, IDHW will report if a child is being prescribed psychotropic medications, and if so, what, how much, and by whom. The court may then inquire as to the circumstances.

#### **B. 2014 FEDERAL LEGISLATION: The Preventing Sex Trafficking and Strengthening Families Act, and the Fostering Connections Act**

The amendments made to the CPA pursuant to Senate Bill 1328a were recommended to the legislature by the Child Protection Committee and were prompted by recent changes in federal legislation. More specifically, the amendments incorporate some of the requirements provided in the Preventing Sex Trafficking and Strengthening Families Act, the Fostering Connections Act, and the 2015 Bureau of Indian Affairs, Guidelines for State Courts and Agencies in Indian Custody Proceedings (BIA Guidelines).

Idaho law enforcement agencies have compelling information as to the nature and extent of sex trafficking of children in Idaho. Improving outcomes for foster youth has been a major focus of child protection efforts in Idaho and nationwide. Both of the recent federal laws contain extensive provisions intended to improve outcomes for foster children, and particularly older foster youth.

## **1. Sex Trafficking and Foster Connections**

Both laws are directed primarily at state agencies, and compliance with both is necessary to maintain federal funding (over \$17 million last year). It is anticipated that these statutory changes will improve outcomes for Idaho foster children, particularly foster youth. The further effort required by the courts is not burdensome.

### **a. Transition to Successful Adulthood (from the Sex Trafficking Act)**

“Transition to independent living” is now called “transition to successful adulthood,” and the age at which transition planning must start is 14 rather than 16. A transition plan must also be included in case plans (it was previously included in permanency plans). Although not required, the Child Protection Committee recommends it as a consideration at review hearings. If a youth is in the legal custody of the department 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. Further, the court shall have a review or permanency hearing to discuss with the youth his or her transition plan for the purposes of ensuring that the plan provides the services necessary to allow a transition to successful adulthood.

### **b. Youth's rights (from the Sex Trafficking Act)**

For youth age 14 and older, the case plan must document that the youth was provided with information about his/her rights (education, health, visitation, court participation, receipt of annual credit report, including signed acknowledgement from IDHW that youth was provided with the information and it was explained in an age or developmentally appropriate way).

### **c. Youth's desires as to permanency (from the Sex Trafficking Act)**

For youth age 12 and older, who are now required to attend review and permanency hearings, the court will inquire as to the youth's permanency desires. (The federal statute requires this for youth with another planned permanent living arrangement (APPLA) as a permanency goal. The CPA now requires the court do this for all youth 12 and older.)

**d. Another Planned Permanent Living Arrangement (APPLA) (Sex Trafficking Act)**

**i. Limited to youth 16 and older**

The amended statute expressly limits the potential permanency goal of "another planned permanent living arrangement" to "youth age sixteen (16) years and older only."

**ii. Youth Activities/Reasonable and Prudent Parent**

If the permanency goal is APPLA, the permanency plan must document the steps IDHW is taking to: (1) ensure that the foster parents or child care institution are following the reasonable and prudent parent standard when determining whether to allow the youth to participate in extracurricular, enrichment, and social activities, and (2) the opportunities provided to the youth to engage in age or developmentally appropriate enrichment activities. The impetus for this is that these youth often don't get opportunities for the normal activities that other youth get to do.

**iii. Best Interest/Compelling Reasons (from the Sex Trafficking Act)**

Before approving a permanency goal of APPLA, the statute currently requires the court to make written, case-specific findings as to why a more permanent goal is not in the best interest of the child. The Preventing Sex Trafficking Act refines this finding as follows: 1) as of the date of the hearing, APPLA is the best permanency goal for the youth, and 2) there are compelling reasons why it is not in the best interests of the youth to be placed permanently with a parent, in an adoptive placement, in a guardianship, or in the custody of the department in a relative placement. (*NOTE:* Federal law recognizes long-term foster care with a relative as acceptable for purposes of IV-E funding. That is why "relative placement" is listed here, even though that is not listed as a permanency goal in the state statute.)

**e. Siblings (from the Fostering Connections Act)**

DHW must make reasonable efforts to place siblings together, and if siblings can't be placed together, IDHW must provide a plan for frequent visitation or ongoing

interaction between the siblings, unless it is contrary to the welfare of one or more of the siblings.

**f. Educational Stability (from the Fostering Connections Act)**

DHW must develop a plan to ensure educational stability for a child, including assurances that the child's placement takes into account the appropriateness of the current educational setting and the proximity of the school that the child is enrolled in at the time of the placement, and assurances that IDHW will make reasonable efforts to ensure the child remains in the school the child is enrolled in at the time of placement.

**2. ICWA and BIA Guidelines**

In 2015, The Bureau of Indian Affairs published guidelines for implementing the Indian Child Welfare Act. The final guidelines have since been codified in the Federal Register at 25 CFR 23. The Child Protection Act has been revised to require the court, **at every hearing until final determination is made**, to inquire about the child's possible Indian status. It is essential to identify the child's status as early as possible for two reasons: 1) to ensure compliance with ICWA; and 2) to avoid potential disruption to the child's life and to the judicial proceedings from failure to comply with ICWA. It is necessary to continue the inquiry because new information as to the child's status may arise at any time in the proceeding.

If there is reason to believe the child is an Indian child but there has been no final determination of the child's status, IDHW will document its efforts to determine the child's status and the court will determine whether IDHW is making **active efforts** to work with all tribes of which the child may be a member to determine whether the child is a member or eligible for membership.

**C. CLARIFICATION / CLEANUP**

**1. Shelter care**

The purpose of a shelter care hearing is for the court to decide first, whether there is reasonable cause to believe that a child comes within the jurisdiction of the CPA, and if so, whether it is in the best interest of the child to be placed in temporary shelter care pending the adjudicatory hearing. The court also has the authority to issue a protection order (whether or not the child is placed in shelter care). So there are four potential outcomes:

First, and most commonly, there is reasonable cause, and the child should be placed in shelter care. Second, there is reasonable cause, but it is not necessary to place the child in shelter care, because the child's welfare can be adequately safeguarded by issuing a protection order, in which case the case should continue to an adjudicatory hearing.

Third, there is reasonable cause, but it is not necessary either to place the child in shelter care, or to issue a protection order, and the case should still proceed to adjudicatory

hearing. This is rare but it has happened – usually when the state needed to file a petition to spur the parent(s) to action, filing the petition had the desired effect, everyone is reasonably confident that the parent(s) will proceed with the necessary action, but the adjudicatory hearing is still needed to ensure that the parent(s) proceed with the necessary action. The last possible outcome is that there is not reasonable cause, in which case the petition should be dismissed.

The previous statute language explicitly addressed only the first option, and then said that if the court doesn't decide to place or keep the child in shelter care, the petition "may" be dismissed. This lack of clarity has resulted in some confusion in some cases about the correct outcome when the court doesn't place a child in shelter care.

The amended IC § 16-1615, which governs shelter care hearings, remedies these shortcomings. Subsection (5) continues to address the criteria for shelter care. Issuance of a protection order is separated from the criteria for shelter care and placed in its own subsection (8). Subsection (6) says if reasonable cause is found, the case will be scheduled for an adjudicatory hearing. Subsection (10) says if reasonable cause is not found, the petition will be dismissed.

## **2. Status hearings**

IC § 16-1622 was amended with the addition of a new subsection – now (1)(b) – to distinguish between a review hearing and a status hearing. The new language provides that a status hearing is one that does not address all the issues identified in the subsection on review hearings, and written reports are not required unless ordered by the court. The amendment helps to clarify the purpose of a review hearing and creates an opportunity for the court to review discrete issues without requiring a report from IDHW and the guardian *ad litem*.

## **3. Redisposition hearings**

There is continuing confusion about the hearing that takes place when a child who is under protective supervision is removed from the home pursuant to IC § 16-1623. The proposal is to amend subsection (3) to state that the hearing is a redisposition hearing (not a shelter care hearing). The language also clarifies that this section applies only when a child is removed without prior hearing.

Also, subsection (5) currently provides that, if the court amends disposition to place the child back in IDHW custody, the court shall hold a case plan hearing and IDHW shall prepare a written case plan. The amendment provides that the court **may** (vs shall) hold a case plan hearing and may order a written case plan.

## **4. Permanency hearings in aggravated circumstance cases**

The bill amended IC § 16-1620(1) to require annual permanency hearings in addition to the thirty-day permanency hearing.

#### **5. Reports at review hearings**

Amend IC § 16-1622(1)(a) to provide that reports must be filed at least five days prior to the hearing.

#### **Business Process for Court Clerks:**

##### **A. Shelter Care Hearing (IC § 16-1615)**

IC § 16-1615 controls the process for shelter care hearings. In addition to the changes described above, the statute has been amended to require that the court to do the following:

- Inquire whether there is reason to believe that the child is an Indian child.
- Upon entry of an order of shelter care the court shall:
  - Inquire if the child is of school age, about the department's efforts to keep the child in school at which the child is currently enrolled; and
  - If a sibling group is removed from their home, inquire re department's efforts to place 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 unless contrary to the safety or well-being of one or more of the siblings.

##### **B. Adjudicatory Hearing (IC § 16-1619)**

IC § 16-1619 controls the process for adjudicatory hearings. The statute has been amended to require that the court to do the following:

- Inquire:
  - whether there is reason to believe that the child is an Indian child;
  - the efforts that have been made since the last hearing to determine whether the child is an Indian child; and
  - 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.
- In addition, if the court vests legal custody of the child in the department or other agency, inquire as to:
  - If the child is of school age, about the department's efforts to keep the child in school at which the child is currently enrolled; and
  - If a sibling group is removed from their home, inquire re department's efforts to place 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 unless contrary to the safety or well-being of one or more of the siblings.

- In addition, if the court vests legal custody of the child in the department or other agency, and the child is being treated with psychotropic medication, these additional requirements shall apply:
  - The department shall report to the court the medications and dosages prescribed for the child and the medical professional who prescribed the medication; and
  - The court shall inquire as to, and may make any additional inquiry relevant to, the use of psychotropic medications.

### **C. Permanency Hearing / Plan (IC § 16-1620) - Finding of Aggravated Circumstances**

IC § 16-1620 controls the process for permanency hearing and plan when the court has found that aggravated circumstances exist. In addition to the requirement to conduct annual permanency hearings in addition to the thirty-day permanency hearing, and the changes in requirements upon the department's plan discussed previously, the statute has been amended to require that the court to do the following:

- For youth age 12 and older, unless good cause is shown, the court shall ask the youth about his desired permanency outcome and consult with the youth about the youth's current permanency plan;
- If there is reason to believe 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:
  - Inquire about the efforts that have been made since the last hearing to determine whether the child is an Indian child; and
  - 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.
- If the child is being treated with psychotropic medication, these additional requirements shall apply:
  - The department shall report to the court the medications and dosages prescribed for the child and the medical professional who prescribed the medication; and
  - The court shall inquire as to, and may make any additional inquiry relevant to, the use of psychotropic medications.
- 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 best permanency plan for the youth and that there are compelling reasons why it is not in the youth's best interest to be placed permanently with a parent, 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.

#### **D. Case Plan Hearing – No Finding of Aggravated Circumstances (IC § 16-1621)**

IC § 16-1621 controls the process for case plan hearings and case plans. In addition to the changes in requirements upon the department's plan discussed previously, the statute has been amended to require that the court to do the following:

- 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:
  - Inquire about the efforts that have been made since the last hearing to determine whether the child is an Indian child; and
  - 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.
- If the child is being treated with psychotropic medication, the court shall inquire as to, and make any additional inquiry relevant to, the use of psychotropic medication.

#### **E. Review Hearings / Status Hearings / Annual Permanency Hearings (IC § 16-1622)**

##### **1. Review Hearing**

In addition to the changes in requirements upon the department's plan discussed previously, IC § 16-1622(1)(a) has been amended to require that the guardian *ad litem* and department file reports to the court **no later than five days prior to the six month review hearing**. The amendments to paragraph (a) also compel the court at the review hearing to do the following:

- 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, the court shall confirm the department has met the statutory requirements to:
  - 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
  - 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.
- 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;
- 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;

- Inquire regarding permanency. The court shall ask each youth age twelve (12) years and older about his/her desired permanency outcome and discuss with the youth his/her 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;
- Document efforts related to the reasonable and prudent parent standard as discussed above; (IC § 16-1622(1)(a)(vi))
- Document efforts made to find a permanent placement other than another planned permanent living arrangement as described above; (IC § 16-1622(1)(a)(vii))
- Make findings regarding permanency goal of another planned permanent living arrangement as described above; (IC § 16-1622(1)(a)(viii))
- Document and inquire regarding psychotropic medication. At each review hearing, if the child is being treated with psychotropic medication, these additional requirements shall apply:
  - The department shall report to the court the medications and dosages prescribed for the child and the medical professional who prescribed the medication; and
  - The court shall inquire as to, and may make any additional inquiry relevant to, the use of psychotropic medications.

## 2. Status Hearing

IC § 16-1622(1)(b) clarified that a status hearing is a review hearing that does not address all or most of the purposes identified to take place at a review hearing and may be held at the discretion of the court. Further, the amendment clarifies that **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.**

## 3. Permanency Plan and Hearing

IC § 16-1622(2)(a) was amended to indicate that the permanency goal of another planned permanent living arrangement was only an available as a permanency goal **for youth age 16 years or older**. (IDHW must identify an alternate permanency goal for all youth under age 16 who currently have a permanency goal of APPLA.) The section was also amended to add the following requirements of the court (IC § 16-1622(2)(e)-(k):

- The court shall ask each youth age 12 and older, about his/her desired permanency outcome and consult with the youth about the youth's current permanency plan;

- In the case of a child who is 14 or 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.”
- As stated above, the permanency goal of another planned permanent living arrangement was only an appropriate option **for youth age 16 years or older**. If the court approves such a goal, the court must make “written, case-specific findings” that, as of the date of the hearing:
  - Another planned permanent living arrangement is the best permanency goal for the youth; and
  - 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.
- 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;
  - 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, 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.
- 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:
  - Inquire about the efforts that have been made since the last hearing to determine whether the child is an Indian child; and
  - 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.
- At each permanency hearing, if the child is being treated with psychotropic medication these additional requirements shall apply:
  - The department shall report to the court the medications and dosages prescribed for the child and the medical professional who prescribed the medication; and
  - The court shall inquire as to, and may make any additional inquiry relevant to, the use of psychotropic medications.
- If a youth is in the legal custody of the department or other authorized agency and is **within ninety (90) days of his/her 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**:

- Discuss with the youth his or her transition plan; and
- 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.

Note that a new Event Code has been configured in Odyssey and a new ROA code has been configured in ISTARs (CPILT – CP IL/Transition Plan Filed) to facilitate tracking of the filing of the required report. Additionally, a new Hearing Type has been configured in Odyssey (CP IL/Transition Plan Hearing) and a new Hearing Result has been configured in ISTARs (CPHH – CP IL/Transition Hearing held) to facilitate tracking of the hearing in which the report is reviewed by the Court. In Odyssey, if the IL/Transition Hearing is held in conjunction with another hearing, both types of hearings must be scheduled and resulted. In ISTARs, the result should be entered for whichever hearing is scheduled and held, as there is no IL/Transition Hearing scheduled in ISTARs.

#### **F. Amended Disposition (“Redisposition Hearing”) (IC § 16-1623)**

As stated above, revisions have been made to the section to resolve confusion regarding the hearing that takes place when a child who is under protective supervision is removed from the home pursuant to 16-1623. Per the new amendment the hearing held by the court is a “**redisposition hearing**” (not a shelter care hearing). This applies only when a child is removed without prior hearing.

Note also that per the amendment, if the court amends disposition the court **may** order a written case plan. Further, the court now **may** hold a case plan hearing. *The preparation of the case plan and conducting a case plan hearing are no longer mandatory.* If the court does conduct a case plan hearing it **shall** be held within 30 days of the redisposition hearing.

## **SB 1352**

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Amends law to provide that any person interested in the welfare of a minor who is the subject of a guardianship, or the minor if 14 or older, may petition the court for modification or termination of the guardianship on the ground that the modification or termination would be in best interest of the minor.

(Effective July 1, 2016.)

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Idaho Code § 15-5-210 was amended to include “termination of the guardianship” as a means to terminate a guardian’s authority and responsibility for a minor. The section was also amended to

clarify the resignation of a guardian without the appointment of a successor guardian does not terminate the guardianship until it has been approved by the court.

Idaho Code § 15-5-212 specifically addresses the procedure for terminating the guardianship of a child who has been found to be abandoned, abused, or neglected under the Child Protective Act. However, the statute included **no reference to the termination** of a guardianship for other minors. This was identified as an apparent oversight in the concurring opinion of Justice Jim Jones in *Doe v. Doe*, 150 Idaho 432, 247 P.3d 659 (2011). This bill amended I.C. § 15-5-212 to provide that a person interested in the welfare of a ward, or a ward who is at least 14, may petition the court for modification or termination of the guardianship on the ground that the modification or termination would be in the best interest of the ward. This fills a gap in the Idaho Code and provides guidance to all persons concerned in a guardianship.

### **Business Process for Court Clerks:**

Although the clerks should be aware of these changes, there is no impact to the current business process.

## **SB 1373**

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New law permits a victim of malicious harassment, stalking, or telephone harassment to file a civil petition in court seeking a protective order on behalf of himself, his children or his ward.

(Effective July 1, 2016.)

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### **Overview of Senate Bill 1373**

#### **Idaho Code § 18-7907**

Senate Bill 1373 has expanded civil protection orders in two significant ways.

1. Previously, per Idaho Code § 39-6301 *et. seq.*, protection orders could only be obtained by victims of domestic violence perpetrated by 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. The new law places no such limit on who may petition the court for protection.
2. Protection orders per Idaho Code § 39-6301 *et. seq.*, offer protection against: “physical injury, sexual abuse or forced imprisonment or threat thereof.” The new law offers protection against:
  - a. malicious harassment (as described in Idaho Code § 18-7902);
  - b. stalking in any degree (as described in Idaho Code §§ 18-7905 or 18-7906); or
  - c. telephone harassment (as described in Idaho Code § 18-6710).

The court may grant the petition and issue a protective order if it is shown that such conduct occurred within ninety (90) days immediately preceding the filing of the petition and that such conduct is likely to occur in the future thereby causing irreparable injury. Evidence of such conduct occurring *prior* to such ninety (90) day period shall be admissible to show that conduct committed within the ninety (90) day period is part of a course or pattern of conduct.

Judges and court clerks should employ the same process utilized in handling petitions for protection orders and service of the same upon law enforcement, pursuant to Idaho Code § 39-6304. Idaho Code § 18-7907(10) indicates that the petitioner may file a single petition for relief under both statutes (Idaho Code §§ 39-6304, 18-7907). The court shall hold a hearing within fourteen (14) days to determine whether the relief sought shall be granted. The evidentiary standard is “preponderance of the evidence.”

The protective order may not exceed one (1) year and may:

- (a) Direct the respondent to refrain from such conduct;
- (b) Order the respondent to refrain from contacting the protected person; and
- (c) Grant such other relief and impose such other restrictions as the court deems proper, including a requirement that the respondent not knowingly remain within a distance of up to 1,500 feet of the protected person. (**NOTE:** This language is different from Idaho Code § 39-6306 which states that the “respondent be restrained from coming within one thousand five hundred (1,500) feet **or other appropriate distance of the petitioner . . .**” [emphasis added])

Following a hearing, and for good cause shown, the order may be renewed in one (1) year increments or may be modified or rescinded at any time if the court finds it appropriate to do so. (Note that this new law requires a hearing for a renewal while renewal under Idaho Code § 39-6308 does not.) If the respondent was served a copy of the order, a violation of the order shall be a misdemeanor punishable by not to exceed one (1) year in jail and a fine not to exceed five thousand dollars (\$5,000). A peace officer may arrest without a warrant if the peace officer has probable cause to believe the respondent has violated the order.

#### **Idaho Code § 18-7908**

This section provides authority to seek *ex parte* temporary protection order much the same as previously provided by Idaho Code § 39-6308.

#### **Idaho Code § 18-7909**

The court shall impose no filing fee, service fee, or bond for proceedings seeking relief under this new law.

## **Business Process for Judges and Court Clerks:**

As stated above, judges and court clerks should employ the same process utilized in handling petitions for protection orders pursuant to Idaho Code § 39-6304. An exception, as noted above, is that a renewal of the order requires a hearing.

Please note there are new civil filing fee schedule codes as follows:

### H.2.d. Petition for civil protection order

- (i) Petition for civil protection order or to enforce foreign CPO pursuant to I.C. 39-6304 or 39-6306A (domestic violence)
- (ii) Petition for civil protection order pursuant to I.C. 18-7907 (malicious harassment, stalking, and telephone harassment)

Amended civil protection forms (adding references to Idaho Code § 18-7907 *et seq.*) have been distributed to the courts. The use of these forms is mandatory per Order of the Idaho Supreme Court (click [HERE](#) for a copy of the Court's order). The forms used by the public will be warehoused on the Supreme Court's Court Assistance Office website. The Orders, not available to the public, will be available in ISTARs, Odyssey, and warehoused on the Judicial Education page under clerk-archive: <http://www.isc.idaho.gov/judicial-education/clerks-archive>.

With regard to the forms, note that the practice of the petitioner signing documents in the presence of the clerk is no longer required.

The new forms include Affidavit and Request for Registration of Foreign Protection Order (CAO DV 10-1). The form was developed to file a foreign protection order with the court. This one page affidavit is filed by the protected individual stating that, to the best of the protected individual's knowledge, the foreign order is currently in effect (mirrors language of Idaho Code § 39-6306A(5)).

Questions are often asked regarding service and transmittal to law enforcement. As such, we provide the text of Idaho Code §§ 39-6310, 39-6311 below with emphasis added to clerk tasks / duties.

### **Idaho Code §§ 39-6310 – Order & 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 [and petition]**, 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.

[NOTE: These new civil protection order cases (like the ones filed per Idaho Code § 39-6301 *et. seq.*) will have the Law Enforcement Service Information Sheet filed with the petition. This sheet provides law enforcement information for service. **Be sure to forward this document to law enforcement along with the petition and order.**]

(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.** [NOTE: Foreign protection orders are not served; therefore the filing of a law enforcement service information sheet is not required.]

#### **Idaho Code §§ 39-6311 – Transmittal to Law Enforcement Agency – Record in Idaho Public Safety and Security Information System**

(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 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.**

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. **[NOTE AGAIN: if the petition and order is pursuant to the new law, Idaho Code § 18-7907, the court must conduct a hearing.]** 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.

# **IDAHO RULE CHANGES**

Rules implemented in January and February of this year were previously announced via the Supreme Court's E-News. They are included herein so that this may be a comprehensive summary of rules that have been added or amended over the last year.

## **IDAHO APPELLATE RULES**

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### **I.A.R. 5**

(Effective January 21, 2016.)

Several new subsections have been added to this rule on original writs filed with the Supreme Court. The rule now states that if the court denies the petition or issues a peremptory writ it shall be a separate document that only states the relief ordered. There is also a new subsection addressing the filing of a memorandum of costs and what costs are allowed. The memorandum must be filed within 14 days of the order denying the petition or granting the peremptory writ and failure to timely file a waiver of the right to costs. An objection to the memorandum of costs must be filed no later than 14 days after service of the memorandum of costs. If mailed, both the memorandum and the objection are deemed filed upon mailing.

#### **Business Process for Court Clerks:**

Although judges and clerks should be aware of this rule change, it does not impact current business processes.

### **I.A.R. 11, 11.1 and 17**

(Effective January 1, 2016.)

These rules on filing the notice of appeal were all amended to require that a copy of the judgment or order being appealed be attached to the notice of appeal.

#### **Business Process for Court Clerks:**

Although judges and clerks should be aware of this rule change, it does not impact current business processes. Please note, despite the new requirement, clerks should not refuse any appeal pleading for lack of this newly required attachment.

## **I.A.R. 30**

(Effective January 1, 2016.)

The parties are required to paginate documents attached to the motion to make it easy to identify the augmented pages if the motion to augment is granted entirely or in part.

### **Business Process for Court Clerks:**

Although judges and clerks should be aware of this rule change, it does not impact current business processes.

## **I.A.R. 34.1**

(Effective January 1, 2016.)

A new subsection was added to this rule to provide that, in criminal cases, the parties may file an electronic brief without the necessity of filing any paper copies of the brief. The filing must still comply with the other requirements in the rule for filing an electronic brief.

### **Business Process for Court Clerks:**

Although judges and clerks should be aware of this rule change, it does not impact current business processes.

## **I.A.R. 118**

(Effective January 1, 2016.)

The rule now clarifies that the brief in support of the petition for review must address the criteria for review set out in I.A.R. 118(b). There is still no response to a petition for review unless the Supreme Court requests a party to respond to the petition for review before granting or denying the petition. If a petition for review is granted, the Supreme Court will rely on the original briefs filed by the parties and considered by the Court of Appeals. There will be no additional briefing unless it is ordered by the Supreme Court.

### **Business Process for Court Clerks:**

Although judges and clerks should be aware of this rule change, it does not impact current business processes.

# IDAHO RULES OF CIVIL PROCEDURE

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## Adoption of Newly Formatted Rules

(Effective January 1, 2016.)

The Idaho Rules of Civil Procedure have been reformatted with a new table of contents, and the language has been simplified, clarified and modernized. Each rule addresses a single topic, and a consistent format for the rules has been adopted. In addition, there is a separate set of Rules for Small Claims Actions. Some rules that were obsolete were deleted and some rules were moved to the Idaho Court Administrative Rules. As part of this review, there were also a number of substantive changes that were recommended by the Idaho Rules of Civil Procedure Advisory Committee and adopted by the Supreme Court as part of the newly formatted rules. Note that the Order adopting the newly formatted rules includes a reference table of rule numbers new to old as well as old to new.

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## I.R.C.P 54

(Effective January 1, 2016.)

A new subsection was added to Rule 54(a) providing that, if the court orders an amendment to a judgment, the amendment will be effective only after the court enters an amended judgment setting forth all of the terms of the new judgment, including those terms of the prior judgment that remain in effect. Subsection (b) was amended to reflect that the judgment in this subsection is only a partial judgment since it is not final as to all parties and all claims.

### **Business Process for Court Clerks:**

This amendment changes business process as the judge must now enter the entire judgment after it has been amended. It is not sufficient to enter only the amended part. If an amended judgement is entered, add the appropriate ROA/EVENT code for amended judgment.

## I.R.C.P. 11

(Effective July 1, 2016.)

Language found in the federal rule on the procedure for a motion for sanctions, the nature of a sanction imposed under this rule, and limitations on monetary sanctions was added. The rule also

clarifies that a law firm may be held jointly responsible for a violation committed by a partner, associate, or employee.

### **Business Process for Judges and Clerks:**

This rule change will impact the court order but not the clerk's business process. In addition to the changes identified above, a new paragraph (c)(6) was added that states that the court in its order "**must describe the sanctioned conduct and explain the basis for the sanction.**"

## **I.R.C.P. 16**

(Effective July 1, 2016.)

A new subsection was added entitled "request for trial setting by a party," that allows a party to request the court to set the matter for trial and to set any other deadlines and conferences should the court fail to do so after all defendants have appeared. (Note: This new language will be subparagraph 16(b) under the new numbering structure.)

### **Business Process for Judges and Clerks:**

#### **Request for Trial Setting**

1. File stamp pleading and enter the appropriate ROA / event code.
2. Calendar a Clerk Reminder (REM) event ten (10) days of the filing of the motion, for the court to *either* rule issue a scheduling order, or set the request for hearing.
3. Route the request to the assigned judge.
4. Any response to the request by other parties must be filed and served within seven (7) days of the filing of the motion. The response should state whether a hearing is requested. Route the response pleadings to the assigned judge.
5. Per step 2 above, within ten (10) days of the filing of the motion, the court has determined whether to either issue a scheduling order pursuant to I.R.C.P. Rule 16(b)(2) [new number system] or set the request for hearing.
  - If the court chooses to set a hearing on the request, calendar hearing, prepare notice, and serve the same on the parties.
  - If the court elects to prepare an order, file stamp order and enter the appropriate ROA / event code and serve the same on the parties.

## I.R.C.P. 26

(Effective July 1, 2016.)

New subsections (Rule 26(b)(1)(B) and (C)) similar to those found in the federal rule were added regarding limits on electronically stored information and limits on frequency and extent of discovery where discovery sought is unreasonably cumulative or duplicative or can be obtained from a source less burdensome or less expensive. Per I.R.C.P. Rule 26(b)(1)(C), the use and frequency of discovery is not limited unless the court orders otherwise or limited specifically by the rules. The rule has been amended to provide factors that must be determined by the court before imposing such a limit.

On motion or its own, the court must limit the frequency or extend of discovery otherwise allowed by these rules if it determines that:

- (i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;
- (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or
- (iii) the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

In addition, language was added to Rule 26(b)(5)(B) to clarify the obligation on a party who has been notified that privileged information was sent by mistake. The receiving party must not use or disclose the information until the claim is resolved. They must take reasonable steps to retrieve the information if the party disclosed it before being notified. The also states that they may promptly present the information to the court under seal for a determination of the claim.

Subsection Rule 26(c) on protective orders was amended to add the requirement that the motion include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. A statement on the effect of a signature with respect to a statement of fact in a discovery response was added to the subsection on signing discovery requests.

### **Business Process for Judges and Clerks:**

Although judges and clerks should be aware of this rule change, it does not impact current business processes.

## I.R.C.P. 29

(Effective July 1, 2016.)

This rule was amended to add a statement that a stipulation to extend time must have court approval if it would interfere with the time set for trial, or if approval is required by other order of the court.

### **Business Process for Judges and Clerks:**

Although judges and clerks should be aware of this rule change, it does not impact current business processes.

## I.R.C.P. 30

(Effective July 1, 2016.)

The officer taking the deposition must identify all persons present in the opening statement on the record. Similar to the federal rule, a person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(4).

### **Business Process for Judges and Clerks:**

Although judges and clerks should be aware of this rule change, it does not impact current business processes.

## I.R.C.P. 31

(Effective July 1, 2016.)

The current rule states that a party may depose any person by written questions without leave of court except as provided in Rule 31(a)(2). The rule was amended to include language found in the federal rule stating that a party must obtain leave of court to take a deposition by leave of court where the parties have not stipulated to the deposition and the deponent has already been deposed in the case.

### **Business Process for Judges and Clerks:**

Although judges and clerks should be aware of this rule change, it does not impact current business processes.

## I.R.C.P. 37

(Effective July 1, 2016.)

In subsection (a)(5) on “payment of expenses; protective orders”, a reference was added similar to that found in the federal rule about providing discovery after a motion to compel is filed. The new language clarifies that costs can still be awarded by the court even when discovery is provided after the motion was filed but before the motion was granted.

There is also a new subsection (c) on the consequences of a failure to supplement an earlier response when required or to comply with a disclosure requirement ordered by the court that includes not allowing the party to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. A new subsection (e) on failure to provide electronically stored information states that, absent exceptional circumstances, a court may not impose sanctions on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

### **Business Process for Judges and Clerks:**

Although judges and clerks should be aware of this rule change, it does not impact current business processes.

## I.R.C.P. 43

(Effective July 1, 2016.)

The rule now provides that for good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.

### **Business Process for Judges and Clerks:**

Although judges and clerks should be aware of this rule change, it does not impact current business processes.

## I.R.C.P. 55

(Effective July 1, 2016.)

References to the clerk entering default judgment were removed.

### **Business Process for Judges and Clerks:**

This amendment will change business process for those counties which employed the practice of assigning clerks to enter default judgments. Per this new rule, that task will be reserved for judges only.

## **I.R.C.P. 66**

(Effective July 1, 2016.)

Language that formerly applied only to temporary restraining orders and preliminary injunctions was added to this rule to make it applicable to any instance where a surety gives security under the civil rules. The provision is that the surety's liability may be enforced on motion without an independent action. The motion, and any notice that the court orders, may be served on the court clerk, who must promptly mail a copy of each to every surety whose address is known.

### **Business Process for Judges and Clerks:**

#### **Motion to Enforce Surety's Liability**

1. File stamp motion and enter the appropriate ROA / event code.
2. Route the request to the assigned judge.
3. Within one business day of the motion's filing, the court clerk must mail a copy of that motion to every surety whose address is known.
4. If the court determines that a hearing is necessary, the court clerk will calendar the hearing, prepare notice, and serve the same on the parties via mail within one business day.

## **I.R.C.P. 77**

(Effective July 1, 2016.)

This rule was formerly Rule 23. The amendments add language found in the federal rule, including a subsection (g) on what the court must consider in appointing class counsel and a subsection on attorney's fees and nontaxable costs that includes the procedure for claiming the award.

#### (g) Class Counsel

(1) *Appointing Class Counsel.* Unless a statute provides otherwise, a court that certifies a class must appoint class counsel. In appointing class counsel, the court:

(A) must consider:

- (i) the work counsel has done in identifying or investigating potential claims in the action;
  - (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
  - (iii) counsel's knowledge of the applicable law; and
  - (iv) the resources that counsel will commit to representing the class;
- (B) may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class;
- (C) may order potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorney's fees and nontaxable costs;
- (D) may include in the appointing order provisions about the award of attorney's fees or nontaxable costs under Rule 23(h); and
- (E) may make further orders in connection with the appointment.
- (2) *Standard for Appointing Class Counsel.* When one applicant seeks appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under Rule 77(g)(1) and (4). If more than one adequate applicant seeks appointment, the court must appoint the applicant best able to represent the interests of the class.
- (3) *Interim Counsel.* The court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.
- (4) *Duty of Class Counsel.* Class counsel must fairly and adequately represent the interests of the class.

### **Business Process for Judges and Clerks:**

Although judges and clerks should be aware of this rule change, it does not impact current business processes.

## **Appendix A. Filing Fee Schedule**

Appendix A was amended to reflect that a request for a modification for support or custody that requires a filing fee will still require that fee even if initiated by a stipulation. H(2)(d) was also amended to include a petition for civil protection order pursuant to I.C. 18-7907 (malicious harassment, stalking, and telephone harassment). See review of Senate Bill 1373 below.

# IDAHO COURT ADMINISTRATIVE RULES

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## I.C.A.R. 32

(Effective July 1, 2016.)

There were several amendments to this rule. The Public Records Act was recodified by the Legislature in 2015 as chapter 1 of title 74 so references to the Public Records Act have been updated. Subsection (g) of this rule provides that certain records are confidential and exempt from disclosure and that willful or intentional disclosure of a confidential court record may be treated as contempt. However, in certain instances the disclosure of the record may be either explicitly or implicitly authorized by provisions in Rule 32 itself, for instance with regard to those persons who have access to confidential records under subsection (c) of the rule. Therefore, the amendment to subsection (g) clarifies this by providing that the disclosures that may be treated as contempts of court are those “not otherwise authorized under this rule.” Subsection (g)(5) provides that arrest warrants are exempt from disclosure, while bench warrants are not. The terms “arrest warrant” and “bench warrant” have been defined to clarify this provision. An arrest warrant is a warrant issued for the arrest and detention of a defendant at the initiation of a criminal case. A bench warrant is a warrant issued for the arrest of a defendant who has already appeared in a criminal action and includes a warrant issued for a failure to appear, for violation of the conditions of release or bail, or for a probation violation.

Subsection (j) of the rule, dealing with sealing, redaction, and opening of records, has been revised in two respects. First, this subsection has been divided into sub-parts for clarity and ease of reading. Second, since Idaho is moving into a period when some courts will have fully electronic case files and others will still have paper case files, the rule has been revised to provide clearer procedures for the sealing and redaction of records in both of these settings. As Idaho moves to electronic case files, clarity is needed as to who are the custodian and custodian judges of the electronic case records within each county, and who are the custodian and custodian judge of the statewide case management system. Subsections (j)(2)(G) and (j)(3)(A) have been amended to provide that the Administrative Director of the Courts and the Chief Justice are the custodian and custodian judge of only the statewide case management system.

### **Business Process for Judges and Clerks:**

Although judges and clerks should be aware of this rule change, it does not impact current business processes. **NOTE**, however, that judges should be careful to identify warrants in conformance with this rule. If the prosecutor in your county is identifying warrants in a manner contrary to the definitions provided in this rule, it is important that the court take action to curb this practice. We recommend that the clerk enter the warrant as described by the prosecutor in the caption. If however, it appears that a prosecutor is identifying the warrant contrary to the

rules, please bring the issue to the court’s attention. As stated above, failure to conform to the language of these rules will result in files being inappropriately sealed.

## **I.C.A.R. 56**

(Effective July 1, 2016.)

The amendment allows partial waivers of fees charged by Family Court Services in order to be consistent with the companion statute, I.C. § 32-1406, which authorizes partial fee waivers.

### **Business Process for Judges and Clerks:**

Although judges and clerks should be aware of this rule change, it does not impact current business processes.

## **IDAHO RULES OF EVIDENCE**

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## **I.R.E. 609**

(Effective January 1, 2016.)

The term “character for truthfulness” has been substituted for the term “credibility” in the first sentence of this rule. The amendment and the comment clarify that the restrictions in Rule 609 apply only where the conviction is offered to attack a witness’s general character for truthfulness and not for some other purpose, such as contradicting the witness’s specific testimony.

### **Business Process for Judges and Clerks:**

Although judges and clerks should be aware of this rule change, it does not impact current business processes.

## **I.R.E. 801(d)(1)(B)**

(Effective January 1, 2016.)

Before the amendment, the definition in this section was that a statement is not hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is consistent with declarant’s testimony and is offered to rebut an expressed or implied charge against declarant of recent fabrication or improper influence or

motive. The amendment added “or, to rehabilitate the declarant’s credibility as a witness when attacked on another ground.”

**Business Process for Judges and Clerks:**

Although judges and clerks should be aware of this rule change, it does not impact current business processes.

**I.R.E. 803**

(Effective January 1, 2016.)

The amendments to subsections (6) through (8) clarify the burden of proving circumstances indicating the evidence is not trustworthy. If the proponent has established the stated requirements of the exception, regular business with regularly kept record, source with personal knowledge, record made timely, and foundation testimony or certification, then the burden is on the opponent to show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness. The amendment to subsection (10), absence of public record or entry, creates a procedure by which a defendant may waive the Sixth Amendment right to confront a witness and permit the admission of the certification to prove absence of the public record. The certification is admissible only if the prosecutor who intends to offer the certification provides written notice of that intent at least 14 days before trial, and the defendant does not object in writing within 7 days of receiving the notice, unless the court sets a different time for the notice or the objection.

**Business Process for Judges and Clerks:**

Although judges and clerks should be aware of this rule change, it does not impact current business processes.

**I.R.E. 804**

(Effective January 1, 2016.)

Subsection (b)(3), statement against interest, was amended. Under the rule, statements tending to expose the declarant to criminal liability and to exculpate a criminal defendant must meet an additional requirement before the statement may be admitted, as there must be corroborating circumstances indicating that the evidence is trustworthy. The amendment broadens the rule to apply whether the evidence exculpates or inculpates the defendant.

### **Business Process for Judges and Clerks:**

Although judges and clerks should be aware of this rule change, it does not impact current business processes.

## **RULES OF FAMILY LAW PROCEDURE**

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### **I.R.F.L.P. 112**

(Effective July 1, 2016.)

In this rule regarding the appearance and withdrawal of counsel, the reference to “local” rules is deleted and the reference to “Rule 115.D” is corrected and now refers to new “Rule 819.”

### **Business Process for Judges and Clerks:**

Although judges and clerks should be aware of this rule change, it does not impact current business processes.

### **I.R.F.L.P. 201**

(Effective July 1, 2016.)

Subsection C, proceedings to modify child custody, child support and spousal maintenance, was amended to expressly permit a proceeding to modify custody or support to be initiated by **stipulation**. The current rule requires that a petition be filed first; however, the courts often see modifications filed by stipulation without an accompanying petition. The amendment ratifies existing practice.

### **Business Process for Judges and Clerks:**

Clerks will now assess a filing fee for modifications initiated by stipulation in accordance with the filing fee schedule at B.2. Modifications initiated by stipulation have also been added to the filing fee schedule at B.2 and B.2.f.

### **I.R.F.L.P. 207**

(Effective July 1, 2016.)

This rule (form of Documents; Caption; Name of Parties; Language; Abbreviation; and Numbers) as amended reflects the changes made to I.R.C.P. 2, formerly I.R.C.P. 10.

### **Business Process for Judges and Clerks:**

Although judges and clerks should be aware of this rule change, it does not impact current business processes.

## **I.R.F.L.P. 720**

(Effective July 1, 2016.)

This **new rule** authorizes the court to order a “brief focused assessment” in child custody cases where less than a comprehensive parenting time evaluation is needed or warranted. The rule distinguishes between a brief focused assessment and a parenting time evaluation and further defines (i) the scope of the assessment to a limited number of issues, (ii) the qualifications of assessors by making them consistent with those who can perform parenting time evaluations, and (iii) the procedure for appointment.

### **Business Process for Judges and Clerks:**

#### **Brief Focused Assessment Request**

1. A request for a brief focused assessment under this new rule could be presented to the court by either motion or stipulation.
  - If by motion:
    - file stamp motion and enter the appropriate ROA / event code
    - route the request to the assigned judge
    - set / calendar hearing and provide notice of the same to the parties
2. After consideration of the stipulation or after properly noticed hearing, the court shall issue an order that includes a “well-defined referral question or set of questions, specifically naming the clinician or agency to conduct the assessment and to whom the report shall be provided upon completion.” See subsections C and F(2). The assessor must meet or exceed the qualifications set forth in IRFLP Rule 719.D.1. Family Court Services in each county has a list that they provide to the clerks. Depending on local practice, the clerk will either rotate through the list (to keep the number of assignments fair), or the judge will choose which assessor they believe would best fit the specific case. The judge’s secretary drafts an Order for Brief Focused Assessment with the assessor of their choosing along with their contact information, then provides a copy of the letter to the assessor.
3. Note that the issues to be the subject of a brief focused assessment are limited to those outlined in subsection E.

4. The written report shall be distributed contemporaneously to the parties and the court. The parties shall have an opportunity to cross-examine the assessor if the contents of the assessment are introduced into evidence in the form of expert testimony or a written report. If the report is oral, the court shall not hear the contents of the report and findings unless both parties are present.

NOTE: This report is exempt from disclosure to the public pursuant to Idaho Court Administrative Rule 32(g)(17)(C). As such, it should be handled as though it is a sealed document and set with the appropriate security setting to be excluded from public access. If this document is submitted electronically or converted to an electronic format to be stored in the court's case management system the document should be assigned a security type so to secure its confidentiality.

## I.R.F.L.P. 803

(Effective July 1, 2016.)

In this rule regarding judgments a new subsection D was added on entry of judgment as this was inadvertently omitted from the I.R.F.L.P.

### **Business Process for Judges and Clerks:**

Although judges and clerks should be aware of this rule change, it does not impact current business processes.

## I.R.F.L.P. 819

(Effective July 1, 2016.)

This new rule regarding providing notice of orders or judgments is the equivalent of Rule 77 found in the Idaho Rules of Civil Procedure.

### **Business Process for Judges and Clerks:**

Although judges and clerks should be aware of this rule change, it does not impact current business processes.

# IDAHO INFRACTION RULES

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## I.I.R. 1

(Effective July 1, 2016.)

A reference to “bicycles” has been added. The amendment allows bicycle friendly communities in the state to deal with bicycle violations in an educational fashion rather than through uniform citation and financial penalty.

### **Business Process for Judges and Clerks:**

Although judges and clerks should be aware of this rule change, it does not impact current business processes.

## I.I.R. 8

(Effective July 1, 2016.)

The form found in subsection (d) on the notice of default judgment and of noncompliance has been updated.

### **Business Process for Judges and Clerks:**

Per this amendment, the court must utilize the new “Notice of Default Judgment and Noncompliance” form. Click [HERE](#) for a copy of the new form. This form will be made available to the lead clerks and loaded into Odyssey and ISTARs.

## I.I.R. 10

(Effective July 1, 2016.)

References to mailing the receipt for payments to the defendant have been deleted as some payments are now made online. The amendment also recognizes that receipt of payment is automatically sent to the Department of Transportation electronically. The form for notice of non-payment was updated and the form for receipt and notice of payment was deleted.

### **Business Process for Judges and Clerks:**

Per this amendment, the court must utilize the new “Notice of Default Judgment and Noncompliance” form. Click [HERE](#) for a copy of the new form. This form will be made available to the lead clerks and loaded into Odyssey and ISTARs.

## **IDAHO JUVENILE RULES**

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### **I.J.R. 19**

(Effective July 1, 2016.)

In 2014, the Office of Performance Evaluation’s report on Confinement of Juvenile Offenders recommended that the court or the legislature revisit the criteria for commitment to state custody. Specifically, the report stated that some stakeholders had said the criteria lacked definition and judges had too much discretion in applying the existing criteria. The revised rule addresses some of those concerns and base commitment decisions on a more evidence-based risk/needs analysis.

Per the amended rule, a juvenile offender may become eligible for commitment to custody if the juvenile’s prior history or charged offense(s) contain underlying facts:

1. of violence that either did or could reasonable have resulted in serious bodily injury or death to others;
2. of a sexual nature;
3. demonstrating a wanton and reckless disregard for the property rights of others such that release continues a substantial risk to the community; and/or
4. demonstrating a pattern of misdemeanor or felony criminal behavior, escalating in its impact on public safety or the juvenile’s safety or well-being over time.

### **Business Process for Judges and Clerks:**

Prior to disposition on any offense for which a juvenile may be committed to the custody of the Department of Juvenile Corrections, **the court shall** order that a **screening team** convene to determine whether or not the actual risks posed to the community safety by the juvenile offender can be adequately addressed in a **community based setting** or whether the risks posed are such that the juvenile is in need of treatment programming **within a secure setting**. The rule calls out that this screening team shall have a detailed history of the juvenile and what specifically that must include.

Prior to issuing an order of commitment of a juvenile to the Department of Juvenile Corrections, **the court shall** make findings on the record as to the underlying facts and circumstances that were relied on in making the decision and the specific facts relied on to determine that a community based alternative was not appropriate.

The amendment also added new language stating that a juvenile under the age of twelve (12) years shall not be committed to the Department of Juvenile Corrections unless the court finds that there are **extraordinary circumstances**. Further, the court **may not** commit a juvenile offender under the age of ten (10) years to the custody of the Department.

## **I.J.R. 39**

(Effective July 1, 2016.)

The juvenile rule controlling the shelter care hearing in a Child Protection Act matter received minor modifications to improve the language of the rule. Subsection (g) was amended such that it instructs the court to advise the parties of their right to present evidence and to cross-examine witnesses regarding whether the child should “be placed in the care of the department” versus the prior language “return home with or without conditions or whether the child should be placed in protective care.” Subsection (k) was modified to change the reference to the court’s service of the “endorsement on the summons” to “order of removal.”

### **Business Process for Judges and Clerks:**

Although judges and clerks should be aware of this rule change, it does not impact current business processes.

## **I.J.R. 40**

(Effective July 1, 2016.)

The Preventing Sex Trafficking and Strengthening Families Act of 2014 requires that courts ask foster children about their desires for permanency. The amendments require foster children 12 and older to attend review and permanency hearings unless the youth declines in writing prior to the hearing, declines through counsel, or is excused by the court.

### **Business Process for Judges and Clerks:**

Children age twelve (12) and older are **now required** to attend their 6-month review and permanency hearings in person or telephonically, unless the youth declines in writing prior to the

hearing, declines through counsel, or the court finds good cause to excuse the youth from attending a 6-month review or permanency hearing. Previously attendance was optional.

This rule change is directly related to portions of the statutory changes pursuant to Senate Bill 1328a. See discussion of SB 1328a above.

## I.J.R. 43

(Effective July 1, 2016.)

Recent amendments to the Child Protective Act in HB 556a (*see review of HB 556a above*) require “judicial approval” of placement decisions made by the Department of Health and Welfare when a placement is contested by “any party” or counsel for the child in a child protection case. Idaho Juvenile Rule 43 sets out the procedure for parties to object to placement decisions and provides that a court will approve a placement unless it finds that the placement is not in the best interests of the child or the child.

If the court vests legal custody of a child 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 forth 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 either rule on the motion based on the affidavits, or hold a hearing on the motion.

### **Business Process for Judges and Clerks:**

#### **Motion to Contest Matters Related to Placement**

1. File stamp motion and enter the appropriate ROA / event code. There is **NO filing fee**. Note that a new ROA code has been configured in ISTARs and a new Event Code has been configured in Odyssey (CPMCP - CP Motion to Contest Placement). It is important that clerks always use this ROA/Event Code when this motion is filed for tracking purposes.
2. The motion will state whether a hearing is requested and will be accompanied by a supporting affidavit. Route the motion, affidavit, and case file to the assigned judge.
3. Calendar a Clerk Reminder (REM) event within fourteen (14) days of the filing of the motion, for the court to **either** rule on the motion based on the pleadings, or schedule a

hearing on the motion. Note that a new Hearing Type has been configured in Odyssey (CP Contested Placement Hearing). In addition, a new hearing result has been configured in ISTARs (CPTP – Contested Placement Hearing held), which can be used for any hearing type. It is important that clerks always use this Hearing Type or Hearing result in this scenario for tracking purposes.

4. The Department of Health and Welfare should file a written response (and supporting affidavit) to the motion within seven (7) days of the filing of the motion. (Note: Any other party, or counsel for the child may do the same.) The response should state whether a hearing is requested. Route the response pleadings to the assigned judge.
5. Per step 3 above, within fourteen (14) days of the filing of the motion, the court has determined to either rule on the motion based on the affidavits, or schedule a hearing on the motion.
  - 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.
  - If hearing must be held, calendar **no later than thirty days (30) days from the date the motion was filed.**

**NOTE:** 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.

6. Upon granting or denying of the motion, file stamp the order and enter the appropriate ROA / event code.

#### **DHW's Motion to Place the Child Out-of-State**

1. If the Department of Health and Welfare proposes to place the child out-of-state, the department will file the following for approval:
  - Motion for Approval of Out-of-State Placement
  - Affidavit in Support
  - Documentation of Compliance with Interstate Compact on Placement of Children
2. File stamp motion and enter the appropriate ROA / event code. There is **NO filing fee**. Note that a new ROA code has been configured in ISTARs and a new Event Code has been configured in Odyssey (CPMOP - CP Motion for Approval of out-of-state placement). It is important that clerks always use this ROA/Event Code when this motion is filed for tracking purposes.
3. Route the motion, affidavit, and case file to the assigned judge.

4. Calendar a Clerk Reminder (REM) event within fifteen (15) days of the filing of the motion, for the court to review the file to see if an objection is filed and to **either** rule on the motion based on the pleadings, or schedule a hearing on the motion.
5. Any party or counsel for the child may file and objection / response to the motion within fourteen (14) days of the filing of the motion. Route the response pleadings to the assigned judge.
6. Per step 3 above, fifteen days from the filing of the motion have passed, the court may now assess whether to either:
  - Rule on the motion based upon the pleadings submitted (court must enter ruling **within thirty days (30) days from the date the motion was filed**); *or*
  - Hold a hearing on the motion. If hearing is to be held, calendar **no later than thirty days (30) days from the date the motion was filed**.

**NOTE:** 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.

6. Upon granting or denying of the motion, file stamp the order and enter the appropriate ROA / event code.

## **I.J.R. 45**

(Effective July 1, 2016.)

The juvenile rule controlling the review hearings in a Child Protection Act matter received a minor modification to add a reference to Idaho Code section 16-1620 and remove the erroneous reference to 16-1622(b)(4).

### **Business Process for Judges and Clerks:**

Although judges and clerks should be aware of this rule change, it does not impact current business processes.

# MISDEMEANOR CRIMINAL RULES

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## M.C.R. 8

(Effective July 1, 2016.)

The amendment adds a reference to “any other court ordered payment” in reference to those payments or fines which may be included in a deferred payment agreement. The accompanying Misdemeanor Deferred Payment Agreement form has been amended. The rule also clarifies that this agreement in no way impacts a victims right to collect restitution as provided in Idaho Code § 19-5305(1).

### **Business Process for Judges and Clerks:**

Per this amendment, the court must utilize the new “Misdemeanor Deferred Payment Agreement” form. Click [HERE](#) for a copy of the new form. This form will be made available to the lead clerks and loaded into Odyssey and ISTARS.

## M.C.R. 9.1

(Effective July 1, 2016.)

The amendment recognizes that the order of suspension is transmitted electronically to the Department of Transportation. The forms for the order of suspension and temporary restricted license have been updated. The forms can now be used in felony cases as well as misdemeanors.

### **Business Process for Judges and Clerks:**

Per this amendment, the court must utilize the new “Order Suspending Driving Privileges,” “Notification of Penalties for Subsequent Violations,” and “Temporary Restricted License During Suspension” forms. Click [HERE](#) for a copy of the new form. This form will be made available to the lead clerks and loaded into Odyssey and ISTARS.

## M.C.R. 9.2 & 9.3

(Effective July 1, 2016.)

References to seizing a driver’s license have been deleted since that is no longer the practice of law enforcement, and the rule has been changed to refer to refusal to submit to evidentiary

testing rather than alcohol testing since the rule also applies to drugs. The affidavit of refusal form has been updated and the alternative form for probable cause eliminated since each law enforcement agency has its own probable cause affidavit. The suspension order for a refusal has also been updated.

**Business Process for Judges and Clerks:**

Per this amendment, the court must utilize the new “Affidavit of Refusal to Take Evidentiary Test” and “Order Suspending Driving Privileges” forms. Click [HERE](#) for a copy of the new form. This form will be made available to the lead clerks and loaded into Odyssey and ISTARs.

## **IDAHO CRIMINAL RULES**

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### **I.C.R. 4 & 5.3**

(Effective February 25, 2016.)

The word “arrest” was added to describe this warrant as part of an effort to clarify in the rules the difference between a bench warrant and an arrest warrant. According to I.C.A.R. 32, an arrest warrant is exempt from disclosure but a bench warrant is not. The wrong designation can result in the entire case being sealed if the warrant is outstanding.

**Business Process for Judges and Clerks:**

Although judges and clerks should be aware of this rule change, it does not impact current business processes. **NOTE**, however, that judges should be careful to identify warrants in conformance with this rule. If the prosecutor in your county is identifying warrants in a manner contrary to the definitions provided in this rule, it is important that the court take action to curb this practice. We recommend that the clerk enter the warrant as described by the prosecutor in the caption. If however, it appears that a prosecutor is identifying the warrant contrary to the rules, please bring the issue to the court’s attention. As stated above, failure to conform to the language of these rules will result in files being inappropriately sealed.

### **I.C.R. 16**

(Effective February 25, 2016.)

The section on the disclosure of evidence by the prosecution was amended with a new subsection designed to address the delay caused by the need to redact information and the use of body worn cameras by law enforcement. The amendment allows prosecutors to disclose the unredacted

media to defense counsel without delay, even if there is information that needs to be protected, so that defense counsel can make decisions necessary to expedite resolution of the case. However, defense counsel cannot share the unredacted version with the defendant without prior consent of the State or a court order and, when shared, the defendant is not able to retain a copy. If the State determines there is protected information that needs to be redacted before it is disclosed, then the State must prepare a redacted version and indicate what was redacted. If defense counsel disagrees with the redactions, a motion to compel may be filed.

When defendant chooses to proceed *pro se*, the State may release unredacted digital media to the defendant but, if the State determines that digital media should not be disclosed because it contains protected information, the State shall seek a Protective Order pursuant to section (d)(2)(B) of Rule 16.

### **Business Process for Judges and Clerks:**

Although judges and clerks should be aware of this rule change, it does not impact current business processes.

## **I.C.R. 44.1**

(Effective February 25, 2016.)

The amendment allows the court, in the order of appointment, to state at what time or upon what event the appointment terminates. It also adds a section on substitution of counsel that allows for notice to the court instead of leave of the court and specifies that if a new attorney appears in an action, the action shall proceed in all respects as though the new attorney of record had initially appeared for that party, unless the court finds good cause for delay of the proceedings.

### **Business Process for Judges and Clerks:**

Per I.C.R. 44.1(b) the clerk should be aware that the appointment of counsel / representation of a defendant could automatically withdraw without a court order (upon the occurrence of a specified event or the expiration of a specified period of time). As such, the clerk should confirm representation through review of the file or, if necessary, contacting counsel, before sending notice to counsel.

Per I.C.R. 44.1(d) the party of record may now change per notice to the court signed by the withdrawing and new attorney. The clerk should then:

1. File stamp motion and enter the appropriate ROA / event code.
2. Route the notice to the assigned judge.

3. Amend the party data to reflect the defendant is represented by the new attorney.

## I.C.R. 46

(Effective February 25, 2016.)

This rule was amended to clarify that the warrant referred to in this rule is a bench warrant.

### **Business Process for Judges and Clerks:**

Although judges and clerks should be aware of this rule change, it does not impact current business processes.

## I.C.R. 46.2

(Effective February 25, 2016.)

The reference to “victims” in this rule was changed to “protected persons” as a no contact order is not limited to the protection of victims and may be issued to protect others, such as a witness, a co-defendant, or a reporting party. The change also more accurately reflects I.C. § 18-920, which states “an order forbidding contact with another person may be entered.”

### **Business Process for Judges and Clerks:**

Although judges and clerks should be aware of this rule change, it does not impact current business processes.

## I.C.R. 54.17

(Effective February 25, 2016.)

If a district court on appeal remands less than all of the issues back to the magistrate court, a problem can arise if an appeal is filed and the magistrate court is also attempting to proceed on remand. A provision similar to that found in the Civil Rules of Procedure was added, requiring a remittitur to be issued to the magistrate court after the time for an appeal has expired and is issued only if no appeal is filed to the Supreme Court.

### **Business Process for Judges and Clerks:**

This new rule presents a new business process in criminal cases. That process, however, will be the same as is currently practiced in civil cases. Once the time for appeal has run, the court shall

issue an appropriate remittitur and the clerk is to file and send copies to all parties, including the presiding magistrate in the underlying action.