

# IJR 16 RESOURCES FOR JUVENILE JUDGES

*Bench Card*

## **GOALS**

Idaho Juvenile Rule 16 authorizes the juvenile court to order an investigation, a screening team or expand the juvenile case to a Child Protective Act (CPA) case. Advantages to a graduated approach include avoiding possible delay caused by ordering investigation or expansion, engaging the family in a less confrontational manner, and creating a problem-solving forum with all stakeholders at the table. In appropriate cases, the screening team approach can avoid the need to order an investigation or expand the juvenile case to a child protection case.

## **WHEN<sup>1</sup>**

At any stage of a Juvenile Corrections Act (JCA) proceeding, when the court has reasonable cause to believe that a juvenile living or found within the state is neglected, abused, abandoned, homeless, or whose parents or legal custodian fails or is unable to provide a stable home environment.

## **RESOURCES**

1. Investigation – Direct Idaho Department of Health and Welfare (IDHW) to investigate the facts and circumstances of the juvenile and the juvenile’s family and report to the court. (See JV Order for Investigative Report to the Court under IJR 16)
2. Screening Team – Order a screening team to convene and report to the court. (See JV Order for Screening under IJR 16)
3. Expansion – Expand the JCA proceeding into a Child Protection Act proceeding.<sup>2</sup> (See JV Order Expanding Juvenile JCA Proceeding to CPA Proceeding)

## **PURPOSE**

1. IDHW Investigation:  
An order for investigation is best used when there exist child protection issues but many facts are unknown and should be gathered for the decision makers before determining whether to use a screening team approach or expansion.
2. Screening Team:  
The purpose of the screening team is to develop a coordinated plan to safely meet the needs of the juvenile and the juvenile’s family, based on all resources available to the juvenile and the juvenile’s family.
  - a. The focus of the screening team is to assess the safety of the juvenile in the juvenile’s home and determine whether the juvenile’s needs, including services and treatment, can be addressed safely and appropriately (preferably in the juvenile’s home using community-based services).
  - b. The screening team prepares a written report to the court summarizing the findings and recommendations of the screening team.

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- c. The court may order both an investigation and screening team.
3. Expansion to a Child Protection Case:  
An expansion is best used when a crisis exists and/or imminent safety concerns for the child exist.
  - a. If the proceeding is expanded to a CPA case, the JCA court may, in its discretion, order the juvenile placed in shelter care. The CPA court must hold a shelter care hearing within 48 hours of the child being placed in shelter care, excluding Saturdays, Sundays and holidays.<sup>3</sup>
  - b. If the child is not removed, the CPA court must hold an adjudicatory hearing within 30 days of the JCA court's determination to expand the proceedings.<sup>4</sup>

### **REQUIRED FINDINGS (if expanded)**

1. There is reasonable cause to believe the juvenile is living or found within the state and is neglected, abused, abandoned, homeless, or the juvenile's parents or other legal custodian(s) have failed or are unable to provide a stable environment.<sup>5</sup>
2. If the court orders an expansion of a JCA proceeding and removal of the juvenile from the home or present surroundings, the court must make written, case-specific findings that:
  - a. the juvenile was placed in shelter care because continuation in the child's home or present condition or surroundings would be contrary to the welfare of the juvenile; and,
  - b. vesting legal custody of the juvenile with IDHW is in the juvenile's best interest.

### **ORDER**

1. The order expanding the JCA proceeding to a CPA proceeding must be in writing and contain the factual basis supporting the order.<sup>7</sup>
2. The order expanding the Juvenile Corrections Act proceedings to Child Protective Act proceedings, serves the function of the CP Petition.<sup>8</sup>

### **ENDNOTES**

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<sup>1</sup> I.J.R. 16(a).

<sup>2</sup> I.J.R. 16(a)(1)-(3).

<sup>3</sup> I.J.R. 16(b).

<sup>4</sup> I.J.R. 16(d).

<sup>5</sup> I.J.R. 16(f).

<sup>6</sup> 45 C.F.R. § 1356.21(c); I.C. § 16-1615(5); I.J.R. 16(a) and (f).

<sup>7</sup> I.J.R. 16(a).

<sup>8</sup> I.J.R. 16(h).

# IJR 16 EXPANSION FOR CP JUDGES

(CASES COMING FROM JUVENILE CORRECTIONS TO CP PROCEEDINGS)

*Bench Card*

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

To conduct the initial and subsequent hearings in a child protection case that was expanded from a Juvenile Corrections Act (JCA) case.

## **WHEN**

1. If a JCA proceeding is expanded, the JCA court may, in its discretion, order the juvenile placed in shelter care.<sup>2</sup> The CPA court must then hold a shelter care hearing within 48 hours of the child being placed in shelter care, excluding Saturdays, Sundays, and holidays.<sup>3</sup>
2. The CPA court must hold an adjudicatory hearing within 30 days of the JCA court's determination to expand the proceedings.<sup>4</sup>

## **WHO MAY BE PRESENT**

1. The general public shall be excluded, and only such persons shall be admitted as are found by the court to have a direct interest in the case.<sup>5</sup>
2. The child may be excluded from hearings at any time at the discretion of the court.<sup>6</sup>
3. The Department of Juvenile Corrections has standing as an interested party in the CPA case if the juvenile is in the custody of the Department of Juvenile Corrections.<sup>7</sup>

## **EVIDENCE**

1. The Rules of Evidence do not apply to shelter care hearings held after the expansion of a JCA proceeding to a CPA proceeding; they do apply in the CPA proceeding only to that part of the adjudicatory hearing where jurisdiction and/or aggravated circumstances is/are determined.<sup>8</sup>
2. A counselor, friend, or other person may be permitted to remain in the courtroom at the witness stand as the child testifies.<sup>9</sup>
3. The burden going forward with the evidence at the adjudicatory hearing remains with the prosecutor.<sup>10</sup>

## **CPA PETITION**

1. The order expanding the JCA proceeding to a CPA proceeding serves as the petition in the CPA case.<sup>11</sup> No further petition is required.<sup>12</sup> The expansion order must be given to the juvenile's parent(s), guardian(s), or legal custodian(s), the Department of Health and Welfare, the prosecuting attorney or deputy attorney general and other counsel of record, and the Department of Juvenile Corrections, if the juvenile is currently under commitment.<sup>13</sup>
2. Notice of hearing will be served on the parents(s), the Department of Health and Welfare, the juvenile, the Department of Juvenile Corrections, if the juvenile is currently under commitment, as though a petition under the CPA has been filed.<sup>14</sup>
3. A petition may be filed in the CPA proceeding, to include other children that come within the jurisdiction of the CPA but who were not before the JCA court.<sup>15</sup>

# IJR 16 EXPANSION FOR CP JUDGES

(CASES COMING FROM JUVENILE CORRECTIONS TO CP PROCEEDINGS)

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## CONSOLIDATING HEARINGS<sup>16</sup>

The court may consolidate hearings under both the JCA and the CPA if the purposes of both acts can be served and the rights of the participants are not prejudiced.

## ENDNOTES

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<sup>1</sup> I.J.R. 16.

<sup>2</sup> I.J.R. 16(f).

<sup>3</sup> I.J.R. 16(f); I.C. § 16-1608(2).

<sup>4</sup> I.J.R. 16(h); I.C. § 16-1619(1).

<sup>5</sup> I.C. § 16-1613(1); I.J.R. 39(h), I.J.R. 52(a).

<sup>6</sup> I.C. § 16-1613(1).

<sup>7</sup> I.J.R. 16(j).

<sup>8</sup> I.R.E. 101(e)(6); I.J.R. 39(e), I.J.R. 41(c), I.J.R. 51(b).

<sup>9</sup> I.C. § 16-1613(2).

<sup>10</sup> I.J.R. 16(h).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> I.J.R. 16(g).

<sup>14</sup> I.J.R. 16(h).

<sup>15</sup> I.C. § 16-1603(2); I.J.R. 16(h).

<sup>16</sup> I.J.R. 16(i).

# STATUS OFFENDERS DETENTION PLACEMENT, AND THE VALID COURT ORDER EXCEPTION

## BENCH CARD

### PURPOSE

To ensure Juvenile Status Offender (JSO) placements in detention are in accordance with Idaho Juvenile Rule 17(e) and (f), Idaho Code § 20-520, and the Juvenile Justice and Delinquency Prevention Act (JJDP A).

### STATUS OFFENDER DEFINITION

The term “status offender” means a juvenile who is charged with or who has been adjudicated of an offense that would not be a crime if committed by an adult.<sup>1</sup> Status offenses can include: truancy, running away from or being beyond the control of parents, guardian, or legal custodian, tobacco possession, and curfew violations.<sup>2</sup>

### PRE-ADJUDICATION PLACEMENT OF A STATUS OFFENDER<sup>3</sup>

When a juvenile status offender is placed in detention by an officer prior to an adjudication the juvenile will:

1. not be placed in any jail facility;
2. be brought before the court no later than 24 hours, excluding weekends and holidays, for a detention hearing to determine where the juvenile will be placed.

### RESTRICTIONS ON THE PLACEMENT OF A STATUS OFFENDER POST ADJUDICATION

1. A juvenile adjudicated of a status offense or as a habitual status offender may not be placed in detention or other secure confinement.<sup>4</sup>
2. Status offenders may not be the subject of an order establishing any discretionary or unscheduled detention time.<sup>5</sup>

### VALID COURT ORDER EXCEPTION (*See JV Order for Detention (Status Offense)*)<sup>6</sup>

Following adjudication of a status offense, a juvenile may be subject to detention if, after notice and hearing, the court finds that the juvenile offender has violated the court’s decree imposing the sentence under circumstances that bring the violation under the valid court order exception, and the court’s order:

1. identifies the valid court order that has been violated;
2. specifies the factual basis for determining that there is reasonable cause to believe that the juvenile has violated such order;
3. includes findings of fact to support a determination that there is no appropriate, less-restrictive alternative available to placing the juvenile in such a facility, with due consideration to the best interest of the juvenile;
4. specifies the length of time, not to exceed seven days, that the juvenile may remain in a secure detention facility or correctional facility, and includes a plan for the juvenile’s release from such facility; and
5. states that the order may not be renewed or extended.

## STATUS OFFENDER PLACEMENT IN DETENTION BENCH CARD

The court may not issue a second or subsequent order described in this subsection relating to a juvenile unless the juvenile violates a valid court order after the date on which the court issues an order in this subsection.

### INTERSTATE COMPACT FOR JUVENILES (ICJ) EXCEPTION

A runaway or accused status offender from another state may be held in detention in accordance with the Interstate Compact for Juveniles, and qualify for the ICJ exception if:<sup>7</sup>

1. the juvenile is brought before the court within 24 hours (excluding weekends and holidays) of their placement in detention, and
2. an ICJ Form III (Consent for Voluntary Return of Out-Of-State Juveniles) is signed by the juvenile and the presiding judge.<sup>8</sup> If the juvenile refuses to sign ICJ Form III, a requisition hearing will be scheduled.<sup>9</sup>

### Best Practice Considerations

1. Placing juvenile status offenders in detention jeopardizes their safety and well-being, and may increase their criminal risk factors.<sup>10</sup>
2. Detention centers lack the resources to address the underlying causes of the status offense, and detention placements are not shown to deter future status-offending behaviors.<sup>11</sup>
3. Community-based interventions are more effective in helping juvenile status offenders develop life skills, pro-social relationships, strong social networks, and support systems needed to successfully to become a productive member of the community.<sup>12</sup>

### ENDNOTES

<sup>1</sup> 103 U.S.C. § 11103(42).

<sup>2</sup> I.C. § 18-1502(e), § 20-516(c).

<sup>3</sup> I.C. § 20-516(4).

<sup>4</sup> I.J.R. 17(e).

<sup>5</sup> I.J.R. 17(e) and (f).

<sup>6</sup> I.J.R. 17(e).

<sup>7</sup> 34 U.S.C. § 11133(a)11(A)(i).

<sup>8</sup> I.C.J. § 6-102.

<sup>9</sup> I.C.J. § 6-103.

<sup>10</sup> Justice Policy Institute. (2006). *The Dangers of Detention*. Washington, DC: Barry Holman and Jason Zidenberg. P. 4.

<sup>11</sup> Nelson, D. W. (2008). *A Road Map for Juvenile Justice Reform*. Baltimore, MD: Annie E. Casey Foundation. p. 9.

<sup>12</sup> *Id.*

# COMMITMENT TO DEPARTMENT OF JUVENILE CORRECTIONS, I.J.R. 19

BENCH CARD

## PURPOSE <sup>1</sup>

To determine eligibility of a juvenile to be committed to the Idaho Department of Juvenile Corrections (I.D.J.C).

## ELIGIBILITY FACTORS

Juvenile's history or charged offense(s) contain the underlying facts: <sup>2</sup>

1. of violence that either did or could reasonably have resulted in serious bodily injury or death to others; and/or,
2. of a sexual nature; and/or,
3. demonstrating a wanton and reckless disregard for the property rights of others, such that release constitutes 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 own well-being over time.

A juvenile under the age of 12 years shall not be committed unless the court finds extraordinary circumstances. The court shall not commit a juvenile under the age of 10 years. <sup>3</sup>

## SCREENING TEAM<sup>4</sup> (See JV-Order for Screening Team Report I.J.R. 19)

Prior to disposition on any offense for which a juvenile may be committed, the court shall order a screening team to convene and determine if a community plan, created by the team, can address the juvenile's risk to the community.

## PARTICIPANTS IN SCREENING TEAM <sup>5</sup>

1. The screening team shall include parents, custodians, or guardians of the juvenile, representatives from the county juvenile probation office, the Idaho Department of Juvenile Corrections and the Idaho Department of Health and Welfare.
2. In addition, the screening team should include the juvenile, the defense attorney, prosecuting attorney, local school officials, and any other persons that the screening team may deem appropriate.

## HISTORICAL INFORMATION PROVIDED TO SCREENING TEAM <sup>6</sup>

The following historical information will be made available to the screening team:

1. history of mental health issues or substance abuse treatment;
2. the family's structure and dynamics;
3. parental, guardian, or custodian, engagement in counseling and treatment designed to develop positive parenting skills and an understanding of the family's role in the juvenile's behavior;
4. the juvenile's academic performance and behavior in an educational setting;
5. prior intervention and treatment efforts by the family and /or the community;
6. prior offenses; and,
7. current and prior risk/needs assessment.

## FACTORS TO BE EVALUATED BY THE SCREENING TEAM <sup>7</sup>

The screening team will use a strengths-based approach while evaluating the following factors to decide whether a community-based program or alternative can adequately address the risk and needs identified:

1. the family's strengths;
2. the parent's, guardian's, custodian's abilities and capacities for engagement in community based programs;
3. any barriers that may impede the parent's, guardian's, custodian's or juvenile's ability to participate in community-based programs;
4. whether or not community based programs which are needed are accessible to the juvenile and the juvenile's parents, guardians, or custodians;
5. whether or not the community-based programs are a cost-effective option.

## I.J.R. 19 SCREENING TEAM REPORT <sup>8</sup>

The county probation officer or other court designee will prepare a written report summarizing the screening team's recommendations, including all conflicting opinions of team members. The report will be made available to the court and all parties to the case at least 48 hours prior to the sentencing hearing, excluding Saturdays, Sundays, and holidays.

An I.J.R. 19 Screening Team Report Template and Facilitator Guide is available on the Idaho Supreme Court website.

## ISSUING AN ORDER OF COMMITMENT TO I.D.J.C. <sup>9</sup> (See *JV-Decree and Order of Disposition (Commitment)*)

Prior to issuing an order of commitment to I.D.J.C., the court will make findings on the record as to the underlying facts and circumstances that were relied upon in making the decision, and the specific facts relied upon to determine that a community-based alternative was not appropriate.

## Best Practice Considerations

1. An independent facilitator can ensure a fair process and increase collaboration of all participants.<sup>10</sup>
2. Diverse stakeholder participation will increase the likelihood of collaboration, removing barriers to participation, and development of effective community-based interventions for juveniles and their families.<sup>11</sup>
3. Evaluating both strengths and weakness equally will give the screening team and courts a more comprehensive understanding of the juvenile's capacity for success.<sup>12</sup>

## ENDNOTES

<sup>1</sup> I.J.R. 19.

<sup>2</sup> I.J.R. 19(a).

<sup>3</sup> I.J.R. 19(g).

<sup>4</sup> I.J.R. 19(b)

<sup>5</sup> I.J.R. 19(b).

<sup>6</sup> I.J.R. 19(c).

<sup>7</sup> I.J.R. 19(d).

<sup>8</sup> I.J.R. 19(e).

<sup>9</sup> I.J.R. 19(f).

<sup>10</sup> Terri L. Griffith, Mark A. Fuller, Gregory B. Northcraft Facilitator Influence in Group Support Systems: Intended and Unintended Effects, 1998.

<sup>11</sup> Lu Hong, and Scott E. Page.(2004).Groups of diverse problem solvers can outperform groups of high-ability problem solvers

PNAS November 16, 2004 101 (46) 16385-16389; <https://doi.org/10.1073/pnas.0403723101> (last visited July 2020).

<sup>12</sup> Jimerson, S.R., Sharkey, J.D., Nyborg, V. et al. Strength-Based Assessment and School Psychology: A Summary and Synthesis. Contemp School Psychol 9, 9–19 (2004). <https://doi.org/10.1007/BF03340903> (last visited July 2020).



# WAIVER TO ADULT COURT

## I.C. § 20-508, I.C. § 20-509, AND I.J.R. 26

*BENCH CARD*

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

To outline the process of waiver and transfer of a juvenile to be held for adult criminal proceedings.

### **WHEN**

#### **Non-discretionary:**

Any juvenile, 14 to 18 years old, who is alleged to have committed any of the following crimes shall be held for adult criminal proceedings:

1. Murder of any degree or attempted murder;
2. Robbery;
3. Rape;<sup>2</sup>
4. Forcible sexual penetration by the use of a foreign object;
5. Infamous crimes against nature, committed by force or violence;
6. Mayhem;
7. Assault of battery with the intent to commit any of the above felonies;
8. Drug transaction within one thousand feet of school property or function;<sup>3</sup> and
9. Arson in the first degree and aggravated arson.

Any juvenile proceeded against pursuant to this section shall be accorded all constitutional rights, including bail and trial by jury, and procedural safeguards as if that juvenile were an adult defendant.<sup>4</sup>

#### **Discretionary:**

After the filing of a petition, but before the court has entered an order or decree that the juvenile has come within the purview of the Juvenile Corrections Act (JCA)<sup>5</sup>, the court may waive jurisdiction and order that the juvenile be held for adult criminal proceedings when:

1. A juvenile under 14 years of age is alleged to have committed any of the crimes enumerated in I.C. § 20-509; or
2. A juvenile 14 years of age or older is alleged to have committed an act which would be a crime if committed by an adult; or
3. An adult is alleged to have committed an act as a juvenile which would be a felony if committed by an adult, and the court finds that the adult is not committable to an institution for people with intellectual disabilities or mental illness, is not treatable in any available institution or facility available to the state designed for the care and treatment of juveniles, or that the safety of the community requires the adult continue under restraint; or
4. An adult already under the jurisdiction of the court is alleged to have committed a crime while an adult.<sup>6</sup>

### **WHO MAY INITIATE<sup>7</sup>**

The prosecuting attorney, the juvenile, or the court may initiate waiver proceedings by filing a written motion containing the grounds and reasons to support waiving jurisdiction.

### **ORDER SETTING HEARING AND INVESTIGATION**

Upon the filing of a motion to waive jurisdiction, the court shall set the motion for hearing and order county probation or other court designee to complete a full investigation of the circumstances of the alleged offense.<sup>8</sup>

**Notice:**

At least 10 days before the waiver hearing, notice shall be provided to the juvenile, the juvenile's parent(s), guardian or custodian, prosecuting attorney, probation officer (if any) and Department of Juvenile Corrections district liaison, and shall inform the juvenile of the right to counsel.<sup>9</sup>

**Investigation:**

The court shall order county probation or other court designee to complete a full investigation of the circumstances of the alleged offense and the following factors:

1. The seriousness of the offense and whether the protection of the community requires isolation of the juvenile beyond that afforded by juvenile facilities;
2. Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;
3. Whether the alleged offense was against persons or property, greater weight being given to offenses against persons;
4. The maturity of the juvenile as determined by considerations of his home, environment, emotional attitude, and pattern of living;
5. The juvenile's record and previous history of contacts with the juvenile corrections system; and,
6. The likelihood that the juvenile will develop competency and life skills to become a contributing member of the community by use of facilities and resources available to the court.<sup>10</sup>

At least 5 days prior to the hearing, the investigative report shall be submitted to the court, prosecuting attorney, and juvenile or counsel for the juvenile.<sup>11</sup>

**HEARING****Evidence:**

The Rules of Evidence apply, except that the court may consider such hearsay as may be contained in the investigative report, criminal records, or other relevant evidence submitted to the court.<sup>12</sup> The court's decision to waive jurisdiction is discretionary and not a determination with a required burden of proof.<sup>13</sup>

**Making the Record:**

The hearing upon the motion to waive jurisdiction shall be held in the same manner as an evidentiary hearing upon the original petition and shall be made part of the record.<sup>14</sup>

The court may rely on the investigative report, the juvenile's criminal record in the state of Idaho, and other states' certified court and probation records. The prosecuting attorney, juvenile, or attorney for the juvenile may present evidence in support of, or opposed to, the contents of the reports and records before the court and the waiver request. Each party shall have the right to present such evidence as may be relevant to the issue of waiver, and the court may consider such hearsay as may be contained in the investigative report, criminal records, or other relevant evidence submitted to the court.<sup>15</sup>

The juvenile may stipulate to waiver, but said stipulation shall be in writing or on the record in open court.<sup>16</sup>

**Factors:**

In considering whether or not to waive juvenile court jurisdiction over the juvenile, the juvenile court shall consider the following factors:<sup>17</sup>

1. The seriousness of the offense and whether the protection of the community requires isolation of the juvenile beyond that afforded by juvenile facilities;
2. Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;
3. Whether the alleged offense was against persons or property, greater weight being given to offenses against persons;
4. The maturity of the juvenile as determined by considerations of his home, environment, emotional attitude, and pattern of living;
5. The juvenile's record and previous history of contacts with the juvenile corrections system; and
6. The likelihood that the juvenile will develop competency and life skills to become a contributing member of the community by use of facilities and resources available to the court.

The amount of weight to be given to each of the factors listed is discretionary with the court, and a determination to waive the juvenile may be based on any one or a combination of the factors, which shall be recited in the order of waiver.<sup>18</sup>

**Findings:<sup>19</sup>**

If the court determines that jurisdiction should not be waived, the petition shall be processed under the JCA.

If the court determines jurisdiction should be waived and the juvenile should be prosecuted as an adult, the court shall enter findings of fact and conclusions of law together with a decree waiving JCA jurisdiction and binding the juvenile over to the authorities for prosecution as an adult.

**Following a Waiver:**

Upon waiver, the prosecuting attorney shall file a criminal complaint within 24 hours, excluding Saturdays, Sundays, or holidays, and order that an initial appearance on the criminal complaint shall be held pursuant to I.C.R. 5.<sup>20</sup>

Upon non-discretionary or discretionary waiver, the juvenile offender shall thereafter and in all subsequent violation of Idaho law be handled in every respect as an adult.<sup>21</sup>

**Placement:<sup>22</sup>**

A juvenile under the age of 18 may not be held before sentencing in any adult jail or lockup unless a court finds, after a hearing and in writing, that it is in the interest of justice. In determining if it is in the interest of justice, a court shall consider:

1. the age of the juvenile;
2. the physical and mental maturity of the juvenile;
3. the present mental state of the juvenile, including whether the juvenile presents an imminent risk of harm to the juvenile;
4. the nature and circumstances of the alleged offense;
5. the juvenile's history of prior delinquent acts;
6. the relative ability of the available adult and juvenile detention facilities to not only meet the specific needs of the juvenile but also to protect the safety of the public as well as other detained youth; and
7. any other relevant factor.

If a court determines that it is in the interest of justice to hold a juvenile under the age of 18 before sentencing in any adult jail or lockup:

1. the court shall hold a hearing not less frequently than once every 28 days, to review if it is still in the interest of justice to hold the juvenile in an adult jail or lockup; and
2. the juvenile shall not be held in an adult jail or lockup for more than 180 days, unless the court, in writing, determines there is good cause for an extension or the juvenile expressly waives this limitation.<sup>23</sup>

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<sup>1</sup> I.C. § 20-508, I.C. § 20-509; I.J.R. 26.

<sup>2</sup> I.C. § 18-6101.

<sup>3</sup> I.C. § 37-2732(a)(1)(A),(B), or (C).

<sup>4</sup> I.C. § 20-509(1).

<sup>5</sup> I.C. § 20-508(7).

<sup>6</sup> I.C. § 20-508(1).

<sup>7</sup> I.C. § 20-508(2).

<sup>8</sup> I.C. § 20-508(3).

<sup>9</sup> I.J.R. 26(a)(1).

<sup>10</sup> I.C. § 20-508(8); I.J.R. 26(a)(2).

<sup>11</sup> I.J.R. 26(2).

<sup>12</sup> I.J.R. 51(a); I.C. § 20-508(5); I.J.R. 26(b).

<sup>13</sup> I.C. § 20-508(1) and (8)(g); *In re Doe*, 147 Idaho 243, 247 (2008); *See also Interest of Doe*, 167 Idaho 249, 260 (Ct. App. 2020).

<sup>14</sup> I.C. § 20-508(5).

<sup>15</sup> I.J.R. 26(b).

<sup>16</sup> I.J.R. 26(c).

<sup>17</sup> I.C. § 20-508.

<sup>18</sup> I.C. § 20-508(8)(g).

<sup>19</sup> I.C. § 20-508(6).

<sup>20</sup> I.J.R. 26(d).

<sup>21</sup> I.C. § 20-509(3).

<sup>22</sup> I.C. § 20-509(2); I.C.R. 53.

<sup>23</sup> *Id.*

# MENTAL HEALTH ASSESSMENTS AND PLANS OF TREATMENT UNDER I.C. § 20-511A AND I.J.R. 54

*BENCH CARD*

## PURPOSE

- Part I. Mental Health Assessment and Plan of Treatment:<sup>1</sup> To ensure an appropriate court-approved mental health assessment and plan of treatment is created and implemented by the Department of Health and Welfare for juveniles who suffer from a substantial increase or persistence of a serious emotional disturbance.<sup>2</sup>
- Part II. Screening Team:<sup>3</sup> Review the Department of Health and Welfare's mental health assessment and plan of treatment and any other relevant information, and make written recommendations to the court.
- Part III. Court Approval and Implementation of Plan of Treatment:<sup>4</sup> To adequately address, with supportive or corrective measures, the juvenile's needs with respect to a serious emotional disturbance.

## WHEN

- Part I. Mental Health Assessment and Plan of Treatment: *At any stage of the proceedings* if the judge has reason to believe that the juvenile:
1. is suffering a substantial increase or persistence of a serious emotional disturbance;<sup>5</sup> **and**,
  2. such condition has not been adequately addressed with supportive services and/or corrective measures, or the juvenile's needs with respect to serious emotional disturbance are not being met or have not been met;<sup>6</sup>
- the court may order a mental health assessment and plan of treatment. The order shall set a time for the submission to the court, which may be extended for good cause. Notice of the order shall be given to all interested parties.<sup>7</sup>
- Part II. Screening Team: At any time after determining there is reason to believe the conditions in Part I above are present, the court may order the convening of a screening team to review the mental health assessment and plan of treatment and make written recommendations to the court.<sup>8</sup>

The order shall set a time for the submission of the written recommendations, which may be extended for good cause. Notice of the order shall be given to all interested parties.<sup>9</sup>

- Part III. Court Approval and Implementation of Plan of Treatment: After receiving the mental health assessment and plan of treatment from the Department of Health and Welfare, any recommendations from the screening team, and any additional recommendations for treatment, the court may make a determination as to whether the conditions in Part I are present.<sup>10</sup>

# MENTAL HEALTH ASSESSMENTS AND PLANS OF TREATMENT

A court hearing is **required** if:

1. the court determines that a hearing would be helpful in making such determinations;
2. any interested party objects to the entry of such a determination or order; or
3. inpatient or residential treatment would be required as part of the plan of treatment, unless the hearing is waived by the juvenile and the parents or guardians of the juvenile.<sup>11</sup>

## WHO MAY BE PRESENT

### Part I. Mental Health Assessment and Plan of Treatment:

*Interested Parties:*<sup>12</sup>

1. the juvenile;
2. the juvenile's parents, guardians and custodians;
3. the juvenile's counsel;
4. the prosecuting attorney;
5. the Department of Health and Welfare;
6. the Department of Juvenile Corrections;
7. county probation; and
8. any other agencies or persons designated by the court.

The general public may be admitted only after the court makes a determination as to the confidentiality status of the juvenile case records and proceedings.<sup>13</sup>

### Part II. Screening Team:

The court shall designate a leading member of the screening team who shall have the responsibility for scheduling meetings and submitting the written recommendations of the screening team to the court.<sup>14</sup>

Parents and guardians of the juvenile or juvenile offender, if available, shall be included in the screening team and consulted with regard to the plan of treatment. The screening team should also consist of representatives from:<sup>15</sup>

1. the Department of Health and Welfare;<sup>16</sup>
2. county probation;
3. local school officials;
4. the Department of Juvenile Corrections; and
5. other agencies or persons designated by the court.

### Part III. Court Approval and Implementation of Plan of Treatment:

*Interested Parties:*<sup>17</sup>

1. the juvenile;
2. the juvenile's parents, guardians and custodians;
3. the juvenile's counsel;
4. the prosecuting attorney;
5. the Department of Health and Welfare;

6. the Department of Juvenile Corrections;
7. county probation; and
8. any other agencies or persons designated by the court.

The general public may be admitted only after the court makes a determination as to the confidentiality status of the juvenile case records and proceedings.<sup>18</sup>

## HEARING PROCESS

### Part I. Mental Health Assessment and Plan of Treatment

#### *Evidence:*

1. The Rules of Evidence do not apply.
2. The evidentiary standard is reason to believe.

#### *Making the Record:*

The court may rely upon the record, the proceedings or upon affidavit of a party, state or county agency, or any person having physical custody of the juvenile.

#### *Findings:*<sup>19</sup>

The court may order the Department of Health and Welfare to submit a mental health assessment and plan of treatment if the court has reason to believe that the juvenile:

1. is suffering a substantial increase or persistence of a serious emotional disturbance<sup>20</sup> which impairs the juvenile's ability to comply with the orders and directives of the court, or, which presents a risk to the juvenile's safety or well-being or the safety of others; **and**
2. such condition has not been adequately addressed with supportive services and/or corrective measures previously provided to the juvenile, or the juvenile's needs with respect to the serious emotional disturbance are not being met or have not been met.

#### *Order:*

The order for mental health assessment and plan of treatment shall include:

1. The time for submission of the mental health assessment and plan of treatment, which may be extended for good cause.<sup>21</sup>
2. Notice of the order to all interested parties.<sup>22</sup>
3. Notice to the juvenile's parents that initial costs of the preparation of the assessment and plan of treatment, and any additional evaluation and/or recommendations, may be borne by the Department of Health and Welfare; however, these costs and all costs associated with assessment and treatment shall be the responsibility of the parents according to their ability to pay based upon the sliding fee scale established by the Department of Health and Welfare.<sup>23</sup>
4. Whether a screening team is ordered. If a screening team is ordered, the order must also:
  - a. designate a leading member of the screening team who shall have the responsibility for scheduling meetings and submitting written recommendations of the screening team to the court; and



# MENTAL HEALTH ASSESSMENTS AND PLANS OF TREATMENT

- b. set a time for the submission of the written recommendations, which may be extended for good cause.<sup>24</sup>

## *Order for Participation and Release of Information:*

To assist in the preparation of the assessment, plan of treatment, and/or the recommendations of the screening team, the court may order:

1. the juvenile;
  2. the parents or guardians of the juvenile;
  3. the Department of Health and Welfare;
  4. county probation;
  5. the Department of Juvenile Corrections;
  6. school officials; or
  7. any agencies that have treated or had custody of the juvenile,
- to participate and release any pertinent information or records regarding the juvenile to the Department of Health and Welfare, the court, and/or the screening team for the purpose of mental health assessment and preparation of a plan of treatment.<sup>25</sup>

## Part II. Screening Team

### *Order:*

The court may order a screening team to:

1. review the mental health assessment and plan of treatment prepared by the Department of Health and Welfare and any other relevant information; and
2. make written recommendations to the court.

## Part III. Court Approval and Implementation of Plan of Treatment:

### *Evidence:*

1. The Rules of Evidence do not apply.
2. Inpatient or residential treatment shall not be ordered unless the court determines by clear and convincing evidence that the following conditions are present and that such treatment is required.<sup>26</sup>
  - a. The juvenile is suffering a substantial increase or persistence of a serious emotional disturbance;<sup>27</sup> **and**
  - b. such condition has not been adequately addressed with supportive services and/or corrective measures, or the juvenile's needs with respect to serious emotional disturbance are not being met or have not been met.<sup>28</sup>

### *Making the Record:*

The court shall hold a hearing before approving or implementing a plan of treatment or entering an order if:

1. the court determines that a hearing would be helpful in making such determinations;
2. any interested party objects to the entry of such a determination or order; or
3. inpatient or residential treatment would be required as part of the plan of treatment, unless the hearing is waived by the juvenile and the parents or guardians of the juvenile.



At the hearing, the parties may present evidence in support of, or opposed to, the information from any source. Each party shall have the right to present any relevant evidence on the issue of whether:

1. the juvenile is suffering a substantial increase or persistence of a serious emotional disturbance;<sup>29</sup>
2. such condition has not been adequately addressed with supportive services and/or corrective measures, or the juvenile's needs with respect to serious emotional disturbance are not being met or have not been met;<sup>30</sup> **and**
3. what should be included in the plan of treatment, if any, ordered by the court.

### *Findings:*

After any required hearings and the consideration of the mental health assessment and plan of treatment, and the recommendations from the screening team, the court shall determine if:

1. the juvenile is suffering a substantial increase or persistence of a serious emotional disturbance;<sup>31</sup> and
2. such condition has not been adequately addressed with supportive services and/or corrective measures, or the juvenile's needs with respect to serious emotional disturbance are not being met or have not been met.<sup>32</sup>

Upon making the above findings the court shall order mental health services in accordance with the approved plan of treatment.

If additional information is necessary for the court to make the determination, the court may order an evaluation and/or recommendations for treatment to be furnished by a psychiatrist, licensed physician or licensed psychologist, with the expenses of such evaluation and/or recommendations to be borne by the Department of Health and Welfare.<sup>33</sup>

### *Order:*

If the court finds that such conditions are present, the court will order:

1. the Department of Health and Welfare to provide mental health treatment as designated by the approved plan of treatment; and, if necessary,
2. the parents, legal guardians or custodians to adhere to the treatment designated in the plan of treatment.

### *Review of Approved Plan of Treatment:*

A review hearing will be held within 120 days of the Order Approving Plan of Treatment or more frequently as determined by the court. At the review hearing, the court will review compliance with the approved plan of treatment and any motions concerning the plan. The court may:

1. order the approved plan of treatment remain in full force and effect;
2. approve recommended modifications to the plan of treatment, as appropriate; or
3. find the Department of Health and Welfare Children's Mental Health program has fulfilled its obligations under the I.C. § 20-511A order approving plan of treatment.<sup>34</sup>

# MENTAL HEALTH ASSESSMENTS AND PLANS OF TREATMENT

Representatives from the Department of Health and Welfare, county probation, local school officials, the Department of Juvenile Corrections and/or other agencies or persons designated by the court shall attend case review hearings as scheduled by the court.<sup>35</sup>

<sup>1</sup> I.C. § 20-511A; I.C. § 16-2403(13); I.J.R. 54.

<sup>2</sup> “Serious emotional disturbance” means a diagnostic and statistical manual of mental disorders (DSM) diagnosable mental health, emotional or behavioral disorder, or a neuropsychiatric condition which results in a serious disability, and which requires sustained treatment interventions, and causes the child’s functioning to be impaired in thought, perception, affect or behavior. A disorder shall be considered to “result in a serious disability” if it causes substantial impairment of functioning in family, school or community that is measured by and documented through the use of a standardized instrument approved by the department and conducted or supervised by a qualified clinician. A substance abuse disorder does not, by itself, constitute a serious emotional disturbance, although it may coexist with serious emotional disturbance. I.C. § 16-2403(13).

<sup>3</sup> I.C. § 20-511A(2); I.J.R. 54(c).

<sup>4</sup> I.C. § 20-511A(4); I.J.R. 54(f).

<sup>5</sup> I.C. § 20-511A(1), I.C. § 16-2403(13).

<sup>6</sup> I.C. § 20-511A(1), I.C. § 16-2403(13).

<sup>7</sup> I.J.R. 54(b); A minimum of 30 days is typically needed for the Department to facilitate an assessment of the youth and to develop a treatment plan. See also IDAPA 16.07.37.105 to IDAPA 16.07.37.115.

<sup>8</sup> I.C. § 20-511A(2); I.J.R. 54(c).

<sup>9</sup> I.J.R. 54(c).

<sup>10</sup> I.C. § 20-511A(4), I.C. § 16-2403(13); I.J.R. 54(f).

<sup>11</sup> I.C. § 20-511A(4); I.J.R. 54(f).

<sup>12</sup> I.J.R. 54(a)(1).

<sup>13</sup> I.J.R. 6, I.J.R. 52; I.C.A.R. 32.

<sup>14</sup> I.J.R. 54(c).

<sup>15</sup> I.C. § 20-511A(2); I.J.R. 54(c).

<sup>16</sup> May include representatives from the Idaho Department of Health and Welfare’s Child and Family Services, Children’s Mental Health program, and/or Children’s Developmental Disabilities program.

<sup>17</sup> I.J.R. 54(a)(1).

<sup>18</sup> I.J.R. 6, I.J.R. 52; I.C.A.R. 32.

<sup>19</sup> I.C. § 20-511A(1).

<sup>20</sup> I.C. § 16-2403(13). See also endnote 2.

<sup>21</sup> I.J.R. 54(b); A minimum of 30 days is typically needed for the Department to facilitate an assessment of the youth and to develop a treatment plan. See also IDAPA 16.07.37.105 to IDAPA 16.07.37.115.

<sup>22</sup> I.J.R. 54(a)(1).

<sup>23</sup> I.C. § 20-511A(3) and (5); I.J.R. 54(b) and (e).

<sup>24</sup> I.J.R. 54(c).

<sup>25</sup> I.J.R. 54(d).

<sup>26</sup> I.J.R. 54(h).

<sup>27</sup> I.C. § 20-511A(1), I.C. § 16-2403(13). See also endnote 2.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

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

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> I.C. § 20-511A(3); I.J.R. 54(e).

<sup>34</sup> I.J.R. 54(j).

<sup>35</sup> I.C. § 20-511A(4).

# INTERSTATE COMPACT FOR JUVENILES (ICJ) RETURNS

## BENCH CARD

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

To outline the process for returning a detained out-of-state juvenile who has entered Idaho without permission.

### WHO<sup>2</sup>

The Interstate Compact for Juveniles (ICJ) is applied to an out-of-state juvenile who has crossed state lines without the permission of a parent/guardian or the state of residence and is detained.

Non-Delinquent Juvenile: Any juvenile who has not been adjudicated delinquent and does not have an active detention order or warrant.

Delinquent Juvenile: Probation/parole absconders, escapees, or accused and adjudicated delinquents and/or status offenders.

### WHERE

#### Placement / Detention Review:

Within the first 24 hours of detainment (excluding weekends and holidays), non-delinquent juveniles may be released to a legal guardian or custodial agency without applying the ICJ. After 24 hours, the state ICJ Office shall be notified and the ICJ shall be applied.<sup>3</sup>

Non-delinquent and delinquent juveniles who are not a threat to themselves or others and do not have an active warrant or detention order may be held in a location the court/state deems appropriate.

Non-delinquent and delinquent juveniles who are a threat to themselves or others or have a detention order or warrant shall be detained in a secure facility until returned to the home/demanding state.<sup>4</sup>

### HEARINGS

Once an out-of-state juvenile is detained for longer than 24 hours (excluding weekends and holidays) the ICJ applies, and the court shall hold a hearing.<sup>5</sup>

Notice of the right to be represented by counsel, and right to counsel at public expense where financial inability exists on the part of the juvenile, parent(s), or guardian, shall be given at the earliest possible time.<sup>6</sup>

#### Voluntary Return:<sup>7</sup>

At the hearing, if the juvenile agrees to voluntarily return to the home state, the court will:

1. inform the juvenile of the juvenile's due process rights (The court may use the [ICJ Juvenile Rights Form](#));
2. review [ICJ Form III - Consent for Voluntary Return of Out of State Juvenile](#), ensuring specific details from the demanding state/agency/person are listed;
3. witness the juvenile's signature on the ICJ Form III;
4. sign the ICJ Form III;

# INTERSTATE COMPACT FOR JUVENILES (ICJ) RETURNS

5. forward the fully completed ICJ Form III to the Idaho ICJ Office; and
6. ensure the juvenile is returned to the home state within 5 business days. This time period can be extended up to an additional 5 business days with the approval of both ICJ Offices.

## **Non-Voluntary Return:**<sup>8</sup>

At the hearing, if the juvenile refuses to voluntarily return to the home state, the court will:

1. inform the juvenile of his/her due process rights;
2. continue to hold the juvenile in an appropriate location or secure facility; and
3. notify the Idaho ICJ Office.

After the hearing, the Idaho ICJ Office will:

1. notify the home/demanding state ICJ Office, who will have 60 days to produce a requisition for the juvenile's return; and
2. provide the court with a petition for requisition and request that a requisition hearing be held within 30 days.

Upon receiving a petition for requisition, the court will set a requisition hearing within 30 days.

## **Requisition Hearing:**

At the requisition hearing, the court will:

1. inform the juvenile of the juvenile's due process rights;
2. inform the juvenile of the demand made for the juvenile's return to the home/demanding state;
3. review the petition for requisition, that may include [Form I](#), [Form II](#), and/or [Form A, Petition for Requisition to Return a Runaway Juvenile](#), and determine proof of entitlement for the return of the juvenile;<sup>9</sup> and

### *Proof of Entitlement*

*Proof of entitlement may be determined by facts found within the petition, which may include:*

#### *Runaway or Non-delinquent Juveniles:*

- a. *Birth certificate;*
- b. *Custody decree;*
- c. *Letters of Guardianship;*
- d. *Other affidavits and documents.*<sup>10</sup>

#### *Escapee, Absconder, or Accused Delinquent Juveniles:*

- a. *Judgment;*
- b. *Order of Adjudication;*
- c. *Order of Commitment;*
- d. *Petition Alleging Delinquency;*
- e. *Other affidavits and documents submitted with requisition.*<sup>11</sup>

*If proof of entitlement is not established, the court shall issue written findings detailing the reason(s) for denial and immediately forward the findings to the ICJ Office.*

*If proof of entitlement is established, the order granting requisition shall be forwarded to the ICJ Office.*

# INTERSTATE COMPACT FOR JUVENILES (ICJ) RETURNS

4. return the Juvenile to the home/demanding state within 5 business days of the receipt of the order granting the requisition. This time period may be extended up to an additional 5 business days with approval from both ICJ Offices.

Juveniles held in detention, pending non-voluntary return to the home/demanding state, may be held for a maximum of 90 calendar days. Regular status hearings should be held to ensure timelines are met.<sup>12</sup>

## **RETURN OF JUVENILES WHEN ABUSE OR NEGLECT IS REPORTED:<sup>13</sup>**

When a holding state has reason to suspect abuse or neglect by a person in the home/demanding state, the holding state's ICJ Office shall notify the home/demanding state's ICJ Office of the suspected abuse or neglect. The home/demanding state's ICJ Office shall work with the appropriate authority and/or court of competent jurisdiction in the home/demanding state to affect the return of the juvenile.

Allegations of abuse or neglect do not alleviate a holding state's responsibility to return a juvenile within the time frames in accordance with the rules.

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<sup>1</sup> I.C. § 20-505(3), I.C. § 16-1901; Interstate Compact for Juveniles (I.C.J.) Rules. See also <https://www.juvenilecompact.org/west/idaho>.

<sup>2</sup> I.C.J. Rule 1-101, I.C.J. §§ 600 et. al. See also <https://www.juvenilecompact.org/legal/toolkit-for-judges> and [https://www.juvenilecompact.org/sites/default/files/Bench%20Book\\_Web.pdf](https://www.juvenilecompact.org/sites/default/files/Bench%20Book_Web.pdf).

<sup>3</sup> I.C.J. Rule 6-101.

<sup>4</sup> I.C.J. Rule 6-102.

<sup>5</sup> I.C.J. Rule 6-102; I.J.R. 7(c).

<sup>6</sup> I.J.R. 9.

<sup>7</sup> I.C.J. Rule 6-102.

<sup>8</sup> I.C.J. Rule 6-103.

<sup>9</sup> I.C.J. Rule 6-103, 6-103A.

<sup>10</sup> I.C.J. Rule 6-102.

<sup>11</sup> I.C.J. Rule 6-103A.

<sup>12</sup> I.C.J. Rule 6-103.

<sup>13</sup> I.C.J. Rule 6-105.