

ADVISEMENT OF RIGHTS

Bench Card

A Child Protective Act petition concerning child(ren) in your custody or control has been filed with the court, and has been scheduled for a shelter care hearing. The purpose of the shelter care hearing is to determine whether the child(ren) will be placed in or remain in shelter care pending the adjudicatory hearing.¹

RIGHTS OF THE CUSTODIAL PARTY

You have the following rights:

Right to Counsel. You have the right to be represented by an attorney. If you are financially unable to hire an attorney, you have the right to be represented by a court-appointed attorney.²

Knowledge of the Allegations. The allegations claiming to bring the child(ren) within the jurisdiction of the Child Protective Act are found in the petition. You are entitled to a copy of the petition.³

Evidentiary Rights. At the shelter care hearing, you have the right to present evidence and cross-examine witnesses regarding whether the child(ren) should return home with or without conditions, or whether the child(ren) should be placed in protective care.⁴

POSSIBLE CONSEQUENCES OF PROTECTIVE PROCEEDINGS

The court has four options in child protection proceedings:

Dismissing the Case. The court may dismiss the petition.⁵

Protective Supervision. The court may order that the child(ren) be placed under the protective supervision of the Department of Health Welfare.⁶ “Protective Supervision” is a legal status-created by court order whereby the child is in the legal custody of his or her parent(s), guardian(s) or other legal custodian(s) under the supervision of the Department of Health and Welfare.⁷

Legal Custody. The court may order that the legal custody of the child(ren) be placed with the Department of Health and Welfare.⁸ “Legal Custody” means a relationship created by court order which vests in the custodian the right to have physical custody and control of the child; to determine where and with whom the child shall live; and to make legal decisions on the child’s behalf.⁹

When the court places legal custody of a child with the Department of Health and Welfare, it often results in the child’s placement in foster care or other out-of-home care.

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Termination of Parental Rights. In appropriate cases, a petition to terminate the parent-child relationship may be filed with the court.¹⁰

If a child has been in the custody of the Department for fifteen (15) of the most recent twenty-two (22) months, the department shall file, prior to the last day of the fifteenth month, a petition to terminate parental rights unless the Court finds that: 1) the child is placed permanently with a relative; 2) there are compelling reasons why termination is not in the best interests of the child; or 3) the Department has failed to provide reasonable efforts to reunify the child with his family.¹¹

FAILURE TO APPEAR AT SCHEDULED HEARINGS

Your failure, without reasonable cause, to appear at scheduled hearings could result in the following:

- (1) The court may proceed without your presence and you may forfeit your rights.¹²
- (2) The court could find that the petition has been proved.¹³
- (3) The court could issue an order adjudicating that the child(ren) is/are in need of protection or services.¹⁴
- (4) The court could issue an order transferring permanent legal or physical custody of your child(ren) to another.¹⁵
- (5) Your failure to appear at a scheduled hearing could be grounds for contempt. Each count of contempt is punishable by up to five (5) days in jail and/or a \$5,000 fine.¹⁶

ENDNOTES

¹ IJR 39(a), (g).

² IC §16-1613(1); IJR 37(d) and (e); IJR 39(g).

³ IJR 39(g).

⁴ IJR 39(g).

⁵ IC §16-1615(7); IC §16-1619(10).

⁶ IC §16-1619(5)(a).

⁷ IC §16-1602(30).

⁸ IC §16-1619(5)(b).

⁹ IC §16-1602(24).

¹⁰ IC §16-1624; IJR 39(g).

¹¹ IC §16-1622(g).

¹² IJR 33(b).

¹³ IJR 39(g).

¹⁴ IJR 39(g).

¹⁵ IJR 39(g).

¹⁶ I.C. §1-1901.

AGGRAVATED CIRCUMSTANCES DETERMINATION

(NOT TO BE USED IN AN ICWA CASE)

Bench Card

PURPOSE

To determine whether the parent(s) subjected the child to aggravated circumstances, and if so, that reasonable efforts to prevent placement of the child in foster care and to reunify are not required.¹

WHEN

At the shelter care hearing or at any time in the case upon motion and notice.²

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.³
2. If the aggravated circumstances issue is raised subsequent to the adjudicatory hearing, the Department shall provide notice of the permanency hearing to: 1) the foster parents; 2) pre-adoptive parents; 3) a relative who is providing care to a child who is in the custody of the Department; and 4) children aged eight (8) and older. The Department shall confirm to the court that this notice was given.⁴
3. If the aggravated circumstances issue is raised subsequent to the adjudicatory hearing, a child eight (8) or older and the foster parents have the right to be heard.⁵ The child may be excluded from hearings at any time in the discretion of the court. If the child testifies, a counselor, friend, or other person shall be permitted to remain in the courtroom at the witness stand as the child testifies.⁶

EVIDENCE

1. The Rules of Evidence apply.⁷

STIPULATIONS

Stipulations must be on the record and are subject to court approval. The court may enter orders or decrees based upon stipulations only upon a reasonable inquiry by the court to confirm that the stipulation is: knowing and voluntary, has a reasonable basis in fact, and is in the best interest of the child.⁸

FINDINGS (WRITTEN AND CASE SPECIFIC)

1. Parent(s) subjected the child to aggravated circumstances as defined in the CPA.
2. The Department is not required to make reasonable efforts to prevent removal or to reunify the child(ren) with his/her parents.⁹
3. If the issue is raised after the adjudicatory hearing, that the Department confirmed notice was provided to foster parents and youth.¹⁰

AGGRAVATED CIRCUMSTANCES DETERMINATION

(NOT TO BE USED IN AN ICWA CASE)

Bench Card

ORDER

1. Order the Department to prepare a written permanency plan that includes the information set forth in I.C. §1620 IJR 44(b).¹¹
2. Schedule a permanency hearing within thirty (30) days of the determination of aggravated circumstances.¹²
3. Order the Department either to file the petition to terminate parental rights no later than thirty (30) days from the date of the aggravated circumstance finding or file a motion requesting the court find compelling reasons why termination of parental rights would not be in the best interest of the child.¹³

ENDNOTES

¹ IC §16-1602(5); IC §16-1619(6)(d); IC §16-1620(1).

² IC §16-1619(6)(d); IJR 39(m).

³ IC §16-1613(1); IJR 39(h); IJR 52(a).

⁴ IC §16-1620(1); IJR 40(a) and (b).

⁵ IJR 40(a) and (b).

⁶ IC §16-1613(2).

⁷ IRE 101(e)(6); IJR 51(b).

⁸ IJR 38.

⁹ IC §16-1602(5); IC §16-1619(6)(d); IC §16-1620(1).

¹⁰ IJR 40(a) and (b).

¹¹ IC §16-1620; IJR 44(b).

¹² IC §16-1619(6)(d); IC §16-1620.

¹³ IC 16-1620(1); IC §16-1624(2) and (3).

SHELTER CARE HEARING

Bench Card

PURPOSE

To determine:

1. If there is *reasonable cause* to believe that the child(ren) comes within the jurisdiction of the Child Protective Act; **and**,
2. If so, whether it is in the child's best interest to remain in his/her home or to remain in temporary shelter care pending the conclusion of the adjudicatory hearing?¹

WHEN

1. Within 48 hours of the child(ren) being removed or within 24 hours of an alleged offender being removed, excluding Saturdays, Sundays, and holidays.²
2. Continuances³
 - a. *Request by child's custodian.* The shelter care hearing may be continued for a reasonable time by the request of a parent(s), guardian, or custodian of the child.
 - b. *Request by other parties.* The court may also grant a reasonable continuance to all other parties or participants upon good cause shown.
 - c. *Findings of the court.* If the hearing is continued and if there is a waiver of the statutory time limits for setting the shelter-care hearing, the court must find that it is contrary to the welfare of the child to remain in the home.

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.⁴
2. The child may be excluded from hearings at any time in the discretion of the court. A counselor, friend, or other person may be permitted to remain in the courtroom at the witness stand as the child testifies.⁵

ADVISEMENT OF RIGHTS AND APPOINTMENT OF COUNSEL

1. Advise parents(s) of their rights and appoint counsel where appropriate.⁶ (*See Advisement of Rights Bench Card*)
2. For a child under age 12, appoint a guardian ad litem and counsel for the guardian ad litem. For a child age 12 and over, appoint counsel for the child.⁷

EVIDENCE

1. The Rules of Evidence do not apply.⁸
2. The evidentiary standard is reasonable cause. The court may consider "any evidence which is of the type which reasonable people may rely upon."⁹
3. The only privileges in effect at the shelter care hearing are the lawyer/client privilege and the clergy privilege. There is no other privilege as to a communication relevant to an issue concerning the physical, mental, or emotional condition of or injury to a child, or concerning the welfare of a child.¹⁰

SHELTER CARE HEARING

Bench Card

MAKING THE RECORD

1. The hearing, in its entirety, must be on the record.
2. The court may enter orders or decrees based upon stipulations only upon a reasonable inquiry by the court to confirm that the stipulation is: knowing and voluntary, has a reasonable basis in fact, and is in the best interests of the child.¹¹

FINDINGS (CASE SPECIFIC)

1. The proceedings were properly initiated by a) a CPA petition, or b) a Rule 16 expansion, or c) an Order of Removal/Endorsement on Summons.¹²
2. Child does/does not come within the jurisdiction of the Indian Child Welfare Act (ICWA). (If YES, findings under ICWA must be made. *See* ICWA Bench Card.)¹³
3. Reasonable cause to believe the child comes within the jurisdiction of the CPA:
 - a. The child lives in or is found within the state of Idaho;¹⁴ and,
 - b. The child is abandoned, abused, neglected, homeless, or lacks a stable home environment, or the court has jurisdiction over another child living or having custodial visitation in the same household *and* this child has been exposed to or is at risk of being a victim of abuse, neglect, or abandonment;¹⁵ and,
 - c. The child could not be placed in the temporary sole custody of a parent having joint physical or legal custody,¹⁶ and,
4. **IV-E FINDINGS:**
 - a. The Department of Health and Welfare (the Department) made reasonable efforts to eliminate the need for shelter care but was not successful; or,
 - b. The Department made reasonable efforts to eliminate the need for shelter care but was not able to safely provide preventative services;¹⁷ and,
 - c. It is contrary to the welfare of the child to remain in the home;¹⁸ and,
 - d. It is in the child's best interests to remain in temporary shelter care.¹⁹
5. Reasonable efforts to prevent placement outside the home could be affected by protective order. If a protective order is entered, additional findings may be required.²⁰
6. Further efforts to reunify may be temporarily suspended if:
 - a. A termination of parental rights (TPR) petition has been filed regarding the child; or
 - b. There is reason to believe the child has been subjected to aggravated circumstances; or,
 - c. The parental rights to a child's sibling have been involuntarily terminated.²¹

ORDER

1. Direct the Department and GAL to investigate and file written reports for the adjudicatory hearing.²²
2. Direct the Department to make reasonable efforts to contact extended family prior to adjudicatory hearing.²³
3. Best practice: Direct the Department to identify unknown parents, locate missing parents, and provide notice to them, and/or utilize paternity tests to establish biological parentage.
4. Schedule next hearing:
 - a. Pretrial: 3 to 5 days before Adjudicatory.
 - b. Adjudicatory: Within 30 days after filing the petition.²⁴

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ADDITIONAL QUESTIONS

1. What are the results of the Department's inquiry into the status of the child as an Indian child?
2. What are the specific safety issues that caused the child to be removed from the home and what is preventing the child from returning home today?
3. Is the Department fully exploring placement with a fit and willing relative?²⁵
4. Has the Department identified and contacted all members of the child's extended family?²⁶
5. Does the current placement support the child's cultural identity?
6. Education²⁷
 - a. Is the child enrolled in his/her school of origin?
 - b. If not, was it in the child's best interests to be moved to a new school?
 - c. If the child is not enrolled in his/her school of origin, is the child currently enrolled in a new school?
7. Sibling Placement²⁸
 - a. Is the Department making reasonable efforts to place siblings together, provided it is in the children's best interests?
 - b. If not, have frequent visits been scheduled, unless documented harmful?
8. Parents
 - a. Do you understand what happened here today?
 - b. Do you understand what the next steps are?
 - c. Do you have any questions for the court?
9. Department and Guardian *ad Litem*
 - a. Do you understand what is required of the Department and/or Guardian *ad Litem* prior to the adjudicatory?
 - b. Do you have any questions for the court?

SHELTER CARE HEARING

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ENDNOTES

¹ IC §16-1603, §16-1615; IJR 39(a) and (i).

² IC §16-1608(2) and (3); IJR 39(c) and (d).

³ IC §16-1615(4); IJR 39(f).

⁴ IC §16-1613(1); IJR 39(h); IJR 52(a).

⁵ IC §16-1613(1) and (2).

⁶ IC §16-1611(3); IJR 39(g) and 37(d).

⁷ IC §16-1614; IJR 39(g).

⁸ IRE 101(e)(6).

⁹ IC §16-1615(5); IJR 39(e) and (i)(2); IJR 51(b).

¹⁰ IRE 502, IRE 505; IJR 39(e). *See also* IRE 504(d)(1) Husband/wife privilege; b) IRE 503(d)(4) Physicians and psychotherapists; c) IRE 516(d)(3) School counselors; d) IRE 517(d)(3) Licensed counselors; and e) IRE 518(d)(5) Licensed social workers.

¹¹ IJR 38.

¹² IC §16-1610(1), §16-1615(5)(a); IJR 16.

¹³ 25 U.S.C. §1903(4), 25 U.S.C. §1903(f).

¹⁴ IC §16-1603(1), §16-1615(5)(b); IJR 39(i)(2).

¹⁵ IC §16-1603(1)(a) and (b) and (2); IJR 39(i)(2).

¹⁶ IC §16-1615(5)(c).

¹⁷ IC §16-1615(5)(b); IJR 39(i)(3).

¹⁸ IC §16-1615(5)(d); IJR 39(i)(5).

¹⁹ IC §16-1615(5)(e); IJR 39(i)(6).

²⁰ IC §16-1615(5)(f); IJR 39(j).

²¹ IJR 39(m).

²² IC §16-1616; §16-1633(2).

²³ 42 U.S.C. §671(a), (29).

²⁴ IC §16-1615(6).

²⁵ IC §16-1629(11).

²⁶ 42 U.S.C. §671(a)(29).

²⁷ 42 U.S.C. §675(1)(G).

²⁸ 42 U.S.C. §671(a)(31).

ADJUDICATORY HEARING

Bench Card

PURPOSE

- Part I. Adjudication: To determine whether the child is within jurisdiction of the court under the Child Protective Act.¹
- Part II. Aggravated Circumstances: When appropriate, to determine if a parent has subjected the child to aggravated circumstances.² If found: (1) the Department does not have to make reasonable efforts to prevent the placement of the child in foster care; and, (2) the Department ceases making reasonable efforts to reunify the child with the child's parent.³
- Part III. Disposition: If jurisdiction is found, to determine if the child should be placed in the custody of the Department (or other authorized agency), or in the child's own home under the protective supervision of the Department.⁴

WHEN

1. No later than thirty (30) days after filing of the petition.⁵
2. Continuances:
 - a. The hearing may not be continued more than sixty (60) days from the date of removal, unless the court has made the "reasonable efforts to prevent removal" finding.⁶
 - b. Best practice recommendations are to: i) make findings regarding contrary-to-the-welfare, best interests, and reasonable efforts to prevent the placement of the child in foster care; and ii) obtain from the parties a waiver of the statutory time limits for the adjudicatory hearing.

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.⁷
2. The child may be excluded from hearings at any time in the discretion of the court. A counselor, friend, or other person shall be permitted to remain in the courtroom at the witness stand as the child testifies.⁸

PART I: ADJUDICATION

ICWA:

Child does/does not come within the jurisdiction of the Indian Child Welfare Act (ICWA). (*See* ICWA Bench Card for more information.)

*Evidence:*⁹

1. The Rules of Evidence apply.
2. The evidentiary standard is preponderance of the evidence.
3. The court cannot consider the Department or GAL investigatory reports.
4. The only privileges in effect at the adjudicatory hearing are the lawyer/client privilege and the clergy privilege. There is no other privilege as to a communication relevant to an issue concerning the physical, mental or emotional condition of or injury to a child, or concerning the welfare of a child.¹⁰

ADJUDICATORY HEARING

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*Making the Record:*¹¹

Stipulations must be on the record and are subject to court approval. The court may enter orders or decrees based upon stipulations only upon a reasonable inquiry by the court to confirm that the stipulation is: knowing and voluntary, has a reasonable basis in fact, and is in the best interests of the child.

*Findings:*¹² *(Must be written and case-specific)*

1. Child comes within the jurisdiction of the Child Protective Act:
 - a. The child lives or was found in Idaho; and,
 - b. The child is abused, abandoned, neglected, or has an unstable home environment; or, the child is living or having custodial visitation in the same household as a child already under the jurisdiction of the court and is exposed to or at risk of being a victim of abuse, neglect, or abandonment.
2. Facts and conclusions of law upon which court exercises jurisdiction must be in the record.
3. Written, case-specific findings regarding contrary-to-welfare, best interest, and reasonable efforts to prevent the placement of a child in foster care.
4. If the child does not come under the jurisdiction of the Child Protective Act, the case is dismissed.¹³

PART II: AGGRAVATED CIRCUMSTANCES

*Evidence:*¹⁴

1. The Rules of Evidence apply.
2. The Department/GAL reports may be admitted into evidence into the adjudicatory hearing for purposes other than determining whether the child comes under the jurisdiction of the CPA.

*Making the Record:*¹⁵

Stipulations must be on the record and are subject to court approval. The court may enter orders or decrees based upon stipulations only upon a reasonable inquiry by the court to confirm that the stipulation is: knowing and voluntary, has a reasonable basis in fact, and is in the best interest of the child.

*Findings: (Must be written and case specific):*¹⁶

1. Parent(s) subjected the child to aggravated circumstances as defined in 16-1602(5).
2. The Department is not required to make reasonable efforts to prevent placement of the child in foster care or to reunify the child with his/her family.

PART II: DISPOSITION

*Evidence:*¹⁷

1. The Rules of Evidence do not apply.
2. The court may consider any information relevant to disposition, including Department/GAL reports.

ADJUDICATORY HEARING

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*Making the Record:*¹⁸

Stipulations must be on the record and are subject to court approval. The court may enter orders or decrees based upon stipulations only upon a reasonable inquiry by the court to confirm that the stipulation is: knowing and voluntary, has a reasonable basis in fact, and is in the best interest of the child.

*Findings:*¹⁹ (Must be written and case specific)

1. Continued residence in the home is contrary to the welfare of the child; and,
2. Vesting custody with the Department is in the best interest of the child; and,
3. The Department made reasonable efforts to prevent the placement of the child into foster care:
 - a. but was not successful in eliminating the need for foster care placement; OR,
 - b. but was not able to safely provide preventative services; OR,
 - c. but efforts to temporarily place the child with related persons were not successful; OR,
 - d. reasonable efforts were not required because the parent subjected the child to aggravated circumstances.

EFFORTS TO REUNIFY MAY BE SUSPENDED IF:

1. A petition to terminate parental rights has been filed with regard to the child; OR,
2. A petition or motion has been filed in a CPA case seeking a determination of agg. circumstances; OR,
3. The permanency plan and permanency goal approved does not include reunification.²⁰

ADJUDICATORY ORDERS

1. A protective order may be issued if:
 - a. It is in the best interest of the child;
 - b. There is continued danger to the child.²¹
2. Scheduling Orders:
 - a. If aggravated circumstances exist, permanency hearing must be held within thirty (30) days.²² Order the department to prepare and file a permanency plan with the court no later than five (5) days prior to the permanency hearing.²³
 - b. In other cases, a case plan hearing within 30 days after the adjudicatory hearing.²⁴ Order the Department to prepare a case plan that must be filed with the court no later than five (5) days prior to the case plan hearing.²⁵

ADDITIONAL QUESTIONS

1. What are the results of the Department's inquiry into the status of the child as an Indian child.
2. What are the specific safety issues that caused the child to be removed from the home, and what is preventing the child from returning home today?
3. Is placement with a fit and willing relative being fully explored?
4. Has the Department identified and contacted all members of the child's extended family?²⁶
5. Has the child been moved since the Shelter Care Hearing? If so:
 - a. Does the new placement support the child's cultural identity?

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- b. Education:²⁷
 - i: Is the child enrolled in his/her school of origin?
 - ii: If no, was it in the child's best interests to be moved to a new school?
 - iii: If the child is not enrolled in his/her school of origin, is the child currently enrolled in a new school?
- c. Sibling placement:²⁸
 - i. Is the Department making reasonable efforts to place siblings together, provided it is in the children's best interests?
 - ii. If not, have frequent visits been scheduled, unless documented harmful?
- 6. Parents
 - a. Do you understand what happened here today?
 - b. Do you understand what the next steps are?
 - c. Do you have any questions for the court?
- 7. Department and Guardian *ad Litem*.
 - a. Do you understand what is required of the Department and/or Guardian *ad Litem* prior to the case plan hearing?
 - b. Do you have any questions for the court?

ENDNOTES

¹ IC §16-1602(4); §16-1603; §16-1619(4); IJR 41(a).

² IC §§16-1602(4) and (5); §16-1619(6)(d).

³ IC §16-1619(6)(d); §16-1620(8).

⁴ IC §16-1602(4); §16-1619(5); IJR 41(a).

⁵ IC §16-1619(1); IJR 41(b).

⁶ IJR 41(b).

⁷ IC §16-1613(1); IJR 39(h); IJR 52(a).

⁸ IC §16-1613(1) and (2); IJR 39(h); IJR 52(a).

⁹ IC §16-1616(3), §16-1619(4), and §16-1633(2); IRE 101(e)(6); IJR 41(c) and 51(b).

¹⁰ IRE 502 and IRE 505. *See also* IRE 504(d)(1), IRE 503(d)(4), IRE 516(d)(3), IRE 517(d)(3), IRE 518(d)(5).

¹¹ IJR 38.

¹² IC §16-1603; §16-1619(4), (6); IJR 41(d) and (f).

¹³ IC §16-1619(10).

¹⁴ IC §16-1616(3) and IC §16-1633(2); IRE 101(e)(6); IJR 41(c) and IJR 51(b).

¹⁵ IJR 38.

¹⁶ IC §16-1602(5); IC §16-1619(6)(d); IC §16-1620(1) and (8).

¹⁷ IRE 101(e)(6). *See also* IC §16-1616(2) and (3), §16-1633(2); IJR 41(c); IJR 51(b).

¹⁸ IJR 38.

¹⁹ IC §16-1619(6); IJR 41(d-f).

²⁰ I.C. §16-1620(8); I.C. § 16-1622(h); IJR 39(m).

²¹ IC §16-1602(29); §16-1619(9).

²² IC §16-1619(6)(d); IC 16-1620(1).

²³ IC §16-1620(1); IJR 41(i).

²⁴ IC §16-1621(1); IJR 44(g).

²⁵ IC 16-1621(1); IJR 41(g).

²⁶ 42 U.S.C. §671(a)(29).

²⁷ 42 U.S.C. §675(1)(G).

²⁸ 42 U.S.C. §671(a)(31).

CASE PLAN HEARING

Bench Card

PURPOSE

In both in-home and out-of-home cases where aggravated circumstances have not been found, to determine whether the best interests of the child are served by adopting, modifying, or rejecting the case plan.¹ (Where the court finds aggravated circumstances, see Permanency Hearing – Aggravated Circumstances Bench Card.)

WHEN

1. The case plan hearing must be held within thirty (30) days after the adjudicatory hearing.²
2. The case plan shall be filed with the court no later than five (5) days prior to the case plan hearing.³

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.⁴
2. Notice of the case plan hearing shall be provided to the parents and other legal guardians, the prosecuting attorney or deputy attorney general, guardian ad litem, attorney for the child, the department, the foster parents, and children ages eight (8) and older.⁵ The Department shall confirm to the court that it has provided notice to each child eight (8) years old or older, and any foster parent, pre-adoptive parent, or relative providing care for the child.⁶
3. A child eight (8) or older and foster parents have the right to be heard.⁷ The child may be excluded from hearings at any time in the discretion of the court. If the child testifies, a counselor, friend, or other person shall be permitted to remain in the courtroom at the witness stand as the child testifies.⁸

EVIDENCE

1. The Rules of Evidence do not apply.⁹
2. The foster parent, the pre-adoptive parent and/or the relative who is providing care to a child who is in the custody of the Department each have the right to be heard at the planning hearing.¹⁰
3. A child aged eight (8) or older and the foster parents have the right to be heard.¹¹
4. Privileges in effect at the case plan hearing are the lawyer/client privilege and the clergy privilege. There is no other privilege as to a communication relevant to an issue concerning the physical, mental or emotional condition of or injury to a child, or concerning the welfare of a child.¹²

MAKING THE RECORD

The court may enter orders or decrees based upon stipulations only upon a reasonable inquiry by the court to confirm that the stipulation is: knowing and voluntary, has a reasonable basis in fact, and is in the best interests of the child.¹³

CASE PLAN HEARING

Bench Card

FINDINGS

1. Contents of the Case Plan

- a. **The child is placed in the legal custody of the department.**¹⁴ The case plan filed by the department shall include:
 - i. Reasonable efforts which will be made to make it possible for the child to return home;
 - ii. Services to be provided to the child;
 - iii. Options for maintaining the child's connection to the community;
 - iv. A goal of reunification and a plan for achieving that goal, specifically identifying the tasks to be completed by the department, each parent, or others to address each issue, the services to be made available by the agency to the parents and in which the parents are required to participate, and deadlines for completion of each task;
 - v. A plan for reunification to be finalized within twelve (12) months from the date the child is removed from the home;¹⁵
 - vi. A concurrent permanency goal and a plan for achieving that goal, including:¹⁶
 1. All in and out-of-state options for permanent placement of the child; the advantages and disadvantages of each; a recommendation; and the actions necessary to implement that recommendation;
 2. A schedule for accomplishing the actions necessary to implement the concurrent permanency goal;
 3. Options for maintaining the child's connection to the community;
 4. In the case of a child who has attained the age of sixteen (16) years, services needed to assist the child to make the transition from foster care to independent living; and;
 5. If the concurrent permanency goal is guardianship, a schedule to finalize the guardianship within thirteen (13) months from the date the child was removed from the home.¹⁷
 - b. **The child is under protective supervision.** The case plan filed by the department shall include:
 - i. The services to be provided to the child;
 - ii. Options for maintaining the child's connection to the community;
 - iii. All issues that need to be addressed to allow the child to remain at home without department supervision; and
 - iv. The tasks to be completed by the department, the parents, or others to address each issue, including services to be made available by the agency to the parents and in which the parents are required to participate, and deadlines for completion of each task.¹⁸
2. The Department confirmed that it provided notice to appropriate youth and foster parents.¹⁹
 3. To determine whether it is in the best interest of the child to adopt, modify, or reject the case plan.²⁰

CASE PLAN HEARING

Bench Card

CASE PLAN ORDER

The court's order:

1. Must incorporate the case plan approved by the court.²¹
2. Must provide that reasonable efforts shall be made to reunify the family in a timely manner.²²
3. Must, unless the child has been placed under protective supervision of the department, require the department to simultaneously take steps to accomplish the goal of reunification and the concurrent permanency goal.²³
4. May include interim and final deadlines for implementing the case plan and finalizing the permanency goal;²⁴
5. Schedule the next hearing.

ADDITIONAL QUESTIONS

1. What are the results of the Department's inquiry into the status of the child as an Indian child?
2. What are the specific safety issues that caused the child to be removed from the home and what actions must occur for the child to return to the home?
3. Has the Department fully explored placement with a fit and willing relative?²⁵
4. Has the Department identified and contacted all members of the child's extended family?²⁶
5. Does the placement support the child's cultural identity?
6. Education:²⁷
 - a. Is the child enrolled in his/her school of origin?
 - b. If no, was moving the child to a new school in his/her best interests?
 - c. If the child is not enrolled in his/her school of origin, is the child currently enrolled in a new school?
7. Sibling Placement:²⁸
 - a. Is the Department making reasonable efforts to place siblings together, provided it is in the child's best interests? If not, have frequent visits been scheduled, unless documented harmful?
8. Parents:
 - a. Do you understand what happened here today?
 - b. Do you understand what the next steps are?
 - c. Do you have any questions for the court?
 - d. Confirm next hearing date.
9. The Department and Guardian *ad Litem*:
 - a. Do you understand what is required of the Department and/or Guardian *ad Litem* prior to the next hearing?
 - b. Do you have any questions for the court?

CASE PLAN HEARING

Bench Card

ENDNOTES

¹ IC §16-1621(1).

² IC §16-1621(1).

³ IC §16-1621(1).

⁴ IC §16-1613(1); IJR 52(a).

⁵ IC §16-1621(2).

⁶ IJR 40(a) and (b).

⁷ IJR 40(a) and (b).

⁸ IC §16-1613(2).

⁹ IRE 101(e)(6); IJR 51(b).

¹⁰ IJR 40(a).

¹¹ IJR 40(b).

¹² IRE 502, IRE 505 *See also* IRE 504(d)(1); IRE 503(d)(4); IRE 516(d)(3); IRE 517(d)(3); and IRE 518(d)(5).

¹³ IJR 38.

¹⁴ IC §16-1621(3).

¹⁵ IJR 44(a)(1).

¹⁶ IC §16-1621(3)(d).

¹⁷ IJR 44(a)(2).

¹⁸ IC §16-1621(4).

¹⁹ IJR 40(a) and (b).

²⁰ IC §16-1621(1).

²¹ IC §16-1621(5).

²² IC §16-1621(3) and (5).

²³ I.C. §16-1621(5).

²⁴ IC §16-1621(5).

²⁵ IC §16-1629(11).

²⁶ 42 U.S.C. §671(29).

²⁷ 42 U.S.C. §675(1)(G).

²⁸ 42 U.S.C. §671(a)(31).

REVIEW HEARINGS

Bench Card

PURPOSE

To determine: (i) the safety of the child; (ii) the continuing necessity for and appropriateness of the placement; (iii) the extent of compliance with the case plan; (iv) the extent of progress that has been made toward alleviating or mitigating the causes necessitating placement in foster care; (v) the progress of the department in achieving permanency for the child and (vi) when reasonable, to project a likely date by which the child may be safely returned to and maintained in the home, or placed in another permanent placement.¹

WHEN

1. No later than six (6) months after entry of the court's order taking jurisdiction and at least every six (6) months thereafter.²
2. Best practice is to hold hearings at least every 90 days or more frequently as needed to ensure timely permanency for the child.³
3. A review hearing may be combined with the permanency hearing.⁴
4. Continuances: The court may continue a review hearing for a short period to respond to substantive issues raised for the first time at a review hearing. The court may enter temporary orders as appropriate pending the hearing.⁵

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.⁶
2. Notice of the review hearing shall be provided to the parents and other legal guardians, prosecuting attorney or deputy attorney general, guardian ad litem, attorney for the child, the department and foster parents. The Department shall provide notice of the review hearing to: 1) the foster parents; 2) pre-adoptive parents; 3) a relative who is providing care to a child who is in the custody of the Department; and 4) children age eight (8) and older. The Department shall confirm to the court that this notice was given.⁷
3. A child eight (8) or older and the foster parents have the right to be heard.⁸ The child may be excluded from hearings at any time in the discretion of the court. If the child testifies, a counselor, friend, or other person shall be permitted to remain in the courtroom at the witness stand as the child testifies.⁹

EVIDENCE

1. The Rules of Evidence do not apply.¹⁰
2. The foster parent, the pre-adoptive parent and/or the relative who is providing care to a child who is in the custody of the Department, and the child (if eight years or older) each have the right to be heard at the review hearing.¹¹
3. Privileges in effect at the review hearing are the lawyer/client privilege and the clergy privilege. There is no other privilege as to a communication relevant to an issue concerning the physical, mental, or emotional condition of or injury to a child, or concerning the welfare of a child.¹²

REVIEW HEARINGS

Bench Card

STIPULATIONS

Must be on the record and are subject to court approval. The court may enter orders or decrees based upon stipulations only upon a reasonable inquiry by the court to confirm that the stipulation is: knowing and voluntary, has a reasonable basis in fact, and is in the best interest of the child.¹³

FINDINGS

1. The Department confirmed providing notice of the hearing as required by IJR 40(a) and (b).
2. If the twelve (12) month review hearing is combined with the permanency hearing, findings for both the review and permanency hearings must be made.
3. Modify disposition, as appropriate.¹⁴
4. The court must approve extended home visits in writing prior to the extended home visit. An extended home visit is any period of unsupervised visitation between the parent and the child that exceeds 48 hours duration.¹⁵
5. Approve, disapprove, or modify visitation proposed in any reunification plan.¹⁶
6. Approve, reject, or modify changes to the case plan or permanency plan as appropriate, and review progress in accomplishing the permanency goal.¹⁷
7. The Department made/did not make reasonable efforts to finalize the permanency plan in effect.¹⁸
8. When the child will not be returned home, review the Department's consideration of in state and out-of-state placements.¹⁹

ORDER

1. Make a specific finding about the parent's progress on accomplishing the requirements of the case plan.²⁰
2. Enter further orders as necessary to ensure the progress of the case toward achieving permanency for the child.²¹
3. If the next review hearing is the annual permanency hearing, order the Department to prepare and file a written permanency plan, served five (5) days prior to the hearing.²²
4. Schedule the next hearing.

ADDITIONAL QUESTIONS

1. What are the results of the Department's inquiry into the status of the child as an Indian child?
2. What are the specific safety issues that caused the child to be removed from the home and what actions must occur for the child to safely return to the home?
3. Has the Department explored placement with a fit and willing relative?²³
4. Has the Department identified and contacted all members of the child's extended family?²⁴
5. Does the placement support the child's cultural identity?
6. Education: What are the child's current educational needs, and are they being met?²⁵

REVIEW HEARINGS

Bench Card

7. Sibling Placement:²⁶
 - a. Is the Department making reasonable efforts to place siblings together, provided it is in the child's best interests?
 - b. If not, have frequent visits been scheduled, unless documented harmful?
8. Parents:
 - a. Do you understand what happened here today?
 - b. Do you understand what the next steps are?
 - c. Do you have any questions for the court?
 - d. Confirm next hearing date.
9. Department and Guardian *ad Litem*:
 - a. Do you understand what is required of the Department and/or Guardian *ad Litem* prior to the next hearing?
 - b. Do you have any questions for the court?

ENDNOTES

¹ IC §16-1622(a)(1); IJR 45(a).

² IC §16-1622(a).

³ Judicial Excellence in Child Abuse and Neglect Proceedings – Principles and Standards for Court Organization, Judicial Selection and Assignment, Judicial Administration and Judicial Education.

http://www.americanbar.org/content/dam/aba/publishing/child_courtworks/ccw_vol_11_no5.authcheckdam.pdf

⁴ IC §16-1622(2)(b).

⁵ IJR 45(b).

⁶ IC §16-1613(1); IJR 52(a).

⁷ IJR 40(a) and (b).

⁸ IJR 40(a) and (b).

⁹ IC §16-1613(1) and (2).

¹⁰ IRE 101(e)(6); IJR 51(b).

¹¹ IJR 40(a) and (b).

¹² IRE 502, IRE 505 *See also* IRE 504(d)(1) Husband/wife privilege; b) IRE 503(d)(4) Physicians and psychotherapists; c) IRE 516(d)(3) School counselors; d) IRE 517(d)(3) Licensed counselors; and e) IRE 518(d)(5) Licensed social workers.

¹³ IJR 38.

¹⁴ IJR 45(a)(2).

¹⁵ IJR 42.

¹⁶ IC 16-1621(3)(c); IC 16-1622(a)(iii).

¹⁷ IC §16-1622(a); IJR 45(a)(1).

¹⁸ IJR 45(a)(3).

¹⁹ IJR 45(a)(3).

²⁰ IC 16-1622(a)(3)(iii).

²¹ IJR 45(a)(4).

²² IJR 45(c).

²³ IC §16-1629(11).

²⁴ 42 U.S.C. §671(a)(29).

²⁵ 42 U.S.C. §675(1)(G).

²⁶ 42 U.S.C. §671(a)(31).

PERMANENCY HEARING

(NO AGGRAVATED CIRCUMSTANCES)

Bench Card

PURPOSE

1. A review of the Department's past efforts to finalize the primary permanency goal in effect.
2. Review, approve, reject, or modify the permanency goal and plan proposed by the Department at the permanency hearing.¹

WHEN

1. At any time, but no later than twelve (12) months from the date the child is removed from the home or the date of the court's order taking jurisdiction under the Child Protection Act (CPA), whichever occurs first, and every twelve (12) months thereafter.²
2. The permanency hearing may be combined with a review hearing.³
3. The Department must file and serve the permanency plan at least five (5) days prior to the hearing.⁴
4. If not timely held, an otherwise eligible child will lose federal IV-E match funds on the last day of the month in which the finding of "reasonable efforts to finalize permanency" should have been made. IV-E funding will be resumed on the first day of the month in which the required "reasonable efforts to finalize permanency" finding is made.⁵
5. No statute or rule specifically addresses continuances in permanency hearings. BUT NOTE: If the permanency hearing is not timely held, an otherwise eligible child will lose federal IV-E match funds on the last day of the month that the finding should have been made.⁶

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.⁷
2. Notice of the permanency hearing shall be provided to the parents and other legal guardians, prosecuting attorney or deputy attorney general, guardian ad litem, attorney for the child, the department and foster parents. The Department shall provide notice of the permanency hearing to: 1) the foster parents; 2) pre-adoptive parents; 3) a relative who is providing care to a child who is in the custody of the Department; and 4) children aged eight and older. The Department shall confirm to the court that this notice was given.⁸
3. A child eight (8) or older and the foster parents have the right to be heard.⁹ The child may be excluded from hearings at any time in the discretion of the court. If the child testifies, a counselor, friend, or other person shall be permitted to remain in the courtroom at the witness stand as the child testifies.¹⁰

EVIDENCE

1. The Rules of Evidence do not apply.¹¹
2. The foster parent, the pre-adoptive parent and/or the relative who is providing care to a child who is in the custody of the Department, and the child (eight or older) each have the right to be heard at the permanency hearing.¹²

PERMANENCY HEARING

(NO AGGRAVATED CIRCUMSTANCES)

Bench Card

EVIDENCE, continued

3. Privileges in effect at the permanency hearing are the lawyer/client privilege and the clergy privilege. There is no other privilege as to a communication relevant to an issue concerning the physical, mental or emotional condition of or injury to a child, or concerning the welfare of a child.¹³

STIPULATIONS

Must be on the record and are subject to court approval. The court may enter orders or decrees based upon stipulations only upon a reasonable inquiry by the court to confirm that the stipulation is: knowing and voluntary, has a reasonable basis in fact, and is in the best interest of the child.¹⁴

FINDINGS

1. The Department confirmed to the court that it provided notice of the permanency hearing as required by IJR 40(a) and (b).
2. Based on a retrospective review, the Department made/did not make reasonable efforts to finalize the primary permanency goal that is in effect.¹⁵
3. The Department considered/did not consider an out-of-state placement for the child.
4. When the child is in an out-of-state placement, the out-of-state placement continues to be appropriate and in the best interests of the child or is no longer appropriate and not in the best interests of the child.¹⁶
5. The primary permanency goal going forward is _____ (continued efforts at reunification, termination of parental rights and adoption, guardianship, long-term foster care.¹⁷)
6. If a motion is made seeking relief from the Department's obligation to file a petition for termination of parental rights when the child has been in the Department's temporary or legal custody for fifteen (15) of the last twenty-two (22) months, determine whether there are/are not compelling circumstances in the record why termination of parental rights is not in the best interest of the child.¹⁸
7. If the primary permanency goal is another planned permanent living arrangement (APPLA), written case-specific findings that there are compelling reasons why a more permanent plan is not in the best interests of the child.¹⁹
8. The permanency plan and goal is approved, approved with modifications, or rejected and a new permanency plan ordered.²⁰
9. If the child has attained the age of 16 years, the services needed to assist the child to make a transition from foster care to independent living are _____.²¹
10. In appropriate cases, the Department may/may not suspend further efforts to reunify the child with the child's parents.²²
11. If the permanency plan has a permanency goal of termination of parental rights and adoption, the permanency plan shall include a schedule which has the objective of finalizing the termination of parental rights within eighteen (18) months from the date the child was removed from the home, and has the objective of finalizing the adoption within twenty-four (24) months from the date the child was removed from the home.²³

PERMANENCY HEARING

(NO AGGRAVATED CIRCUMSTANCES)

Bench Card

ORDER

1. The court enters the permanency goal and plan into the record as an order.
2. If the child has been in the temporary and/or legal custody of the department for fifteen (15) of the most recent twenty-two (22) months, order the department to file, prior to the last day of the fifteenth month, a petition to terminate parental rights, unless there is a finding that: (i) the child is placed permanently with a relative; (ii) there are compelling reasons why termination of parental rights is not in the best interests of the child; or (iii) the department has failed to provide reasonable efforts to reunify the child with his family.²⁴
3. If approving a permanency plan with a permanency goal of termination of parental rights and adoption, order the department to file a petition to terminate parental rights within thirty (30) days of approval of the permanency plan and a scheduling order. The scheduling order may include, but is not limited to, deadlines for filing the petition for termination of parental rights and service of process, the date and time of hearing in the event the petition is not contested, and the date and time of pretrial conference and trial in the event the petition is contested, with the objective of finalizing the proceedings on the petition within six (6) months of the date of the permanency hearing.²⁵
4. If the child has been in the temporary or legal custody of the Department and the Department has not filed a timely petition to terminate parental rights or a motion for relief from that responsibility, the court should order the Department to file a motion to terminate parental rights.²⁶
5. Schedule the next hearing.

ADDITIONAL QUESTIONS

1. What are the results of the Department's inquiry into the status of the child as an Indian child?
2. Has the Department fully explored placement with a fit and willing relative?²⁷
3. Has the Department identified and contacted all members of the child's extended family?²⁸
4. Does the placement support the child's cultural identity?
5. What are the child's current educational needs and are they being met?²⁹
6. Sibling Placement:³⁰
 - a. Is the Department making reasonable efforts to place siblings together, provided it is in the child's best interests?
 - b. If not, have frequent visits been scheduled, unless documented harmful?
7. Parents:
 - a. Do you understand what happened here today?
 - b. Do you understand what the next steps are?
 - c. Do you have any questions for the court?
 - d. Confirm next hearing date.
8. The Department and Guardian *ad Litem*:
 - a. Do you understand what is required of the Department and/or Guardian *ad Litem* prior to the next hearing?
 - b. Do you have any questions for the court?

PERMANENCY HEARING

(NO AGGRAVATED CIRCUMSTANCES)

Bench Card

ENDNOTES

¹ IC §16-1622(2)(b); IJR 45(a).

² IC §16-1622(2)(b).

³ IC §16-1622(2)(b).

⁴ IC §16-1629(9); IJR 45(c).

⁵ 45 C.F.R. §1356.21(b)(2)(ii).

⁶ 45 C.F.R. §1356.21(b)(2)(i) and (ii).

⁷ IC §16-1613(1); IJR 52(a).

⁸ IJR 40(a) and (b).

⁹ IJR 40(a) and (b).

¹⁰ IC §16-1613(1) and (2).

¹¹ IRE 101(e)(6); IJR 51(b).

¹² IJR 40(a) and (b).

¹³ IRE 502, IRE 505 *See also* IRE 504(d)(1) Husband/wife privilege; b) IRE 503(d)(4) Physicians and psychotherapists; c) IRE 516(d)(3) School counselors; d) IRE 517(d)(3) Licensed counselors; and e) IRE 518(d)(5) Licensed social workers.

¹⁴ IJR 38.

¹⁵ IC §16-1622(2)(c).

¹⁶ IC §16-1622(2)(d).

¹⁷ IC §16-1622(2)(a).

¹⁸ IC §16-1622(2)(g).

¹⁹ IC §16-1622(2)(f).

²⁰ IC §16-1622(2)(b).

²¹ IC §16-1622(2)(e).

²² IC §16-1622(2)(h).

²³ IJR 46(a).

²⁴ IC §16-1622(2)(g).

²⁵ IJR46(b).

²⁶ IC §16-1622(2)(g).

²⁷ IC §16-1629(11).

²⁸ 42 U.S.C. §671(a)(29).

²⁹ 42 U.S.C. §675(1)(G).

³⁰ 42 U.S.C. §671(a)(31).

PERMANENCY HEARING

(AGGRAVATED CIRCUMSTANCES)

Bench Card

PURPOSE

1. Review, approve, reject, or modify the permanency goal/plan of termination of parental rights, adoption, placement with a legal guardian, or another planned permanent living arrangement (APPLA).¹
2. If this is the second or later permanency hearing, a review of the Department's past efforts to finalize the permanency plan in effect.***

WHEN

Within thirty (30) days of the determination that the parent(s) subjected the child to aggravated circumstances. The Department must file and serve the permanency plan at least five (5) days prior to the hearing.²

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.³
2. Notice of the hearing shall be provided to the parents and other legal guardians, prosecuting attorney or deputy attorney general, guardian ad litem, attorney for the child, the department, and the foster parents.⁴ The Department shall confirm to the court in writing that it has provided notice to any foster parents, pre-adoptive parents, a relative who is providing care to a child, and any child aged eight (8) and older.⁵
3. A child aged eight (8) or older and the foster parents have the right to be heard.⁶ The child may be excluded from hearings at any time in the discretion of the court. If the child testifies, a counselor, friend, or other person shall be permitted to remain in the courtroom at the witness stand as the child testifies.⁷

EVIDENCE

1. The Rules of Evidence do not apply.⁸
2. The foster parent, the pre-adoptive parent and/or the relative who is providing care to a child who is in the custody of the Department, and a child age eight (8) or older each have the right to be heard at the permanency hearing.⁹
3. Privileges in effect at the permanency hearing are the lawyer/client privilege and the clergy privilege. There is no other privilege as to a communication relevant to an issue concerning the physical, mental, or emotional condition of or injury to a child, or concerning the welfare of a child.¹⁰

STIPULATIONS

Must be on the record and are subject to court approval. The court may enter orders or decrees based upon stipulations only upon a reasonable inquiry by the court to confirm that the stipulation is: knowing and voluntary, has a reasonable basis in fact, and is in the best interest of the child.¹¹

PERMANENCY HEARING

(AGGRAVATED CIRCUMSTANCES)

Bench Card

FINDINGS

1. The Department confirmed to the court that it provided notice of the permanency hearing as required by IJR 40(a) and (b).
2. Based on a retrospective review of the Department's actions, the Department made/did not make reasonable efforts to finalize the primary permanency goal¹² ***
3. The Department considered/did not consider an out-of-state placement for the child.
4. When the child is in an out-of-state placement, the out-of-state placement continues to be appropriate and in the best interests of the child or is no longer appropriate and not in the best interests of the child.¹³
5. The primary permanency goal going forward is _____ (termination of parental rights and adoption, guardianship, another planned permanent living arrangement (APPLA).¹⁴)
6. If the primary permanency goal is APPLA, written case-specific findings that there are compelling reasons why a more permanent plan is not in the best interests of the child.¹⁵
7. If the permanency plan has a permanency goal of guardianship, the permanency plan will include a schedule to finalize the guardianship within five (5) months from the date of the judicial determination of aggravated circumstances.¹⁶
8. If the permanency plan has a permanency goal of termination of parental rights and adoption, the permanency plan shall include a schedule to finalize the termination of parental rights within six (6) months from the approval of the permanency plan, and has the objective of finalizing the adoption within twelve (12) months from the approval of the permanency plan.¹⁷
9. The permanency plan is approved, approved with modifications, or rejected and a new permanency plan ordered.¹⁸
10. If the child has attained the age of 16 years, the services needed to assist the child to make a transition from foster care to independent living are _____.¹⁹
11. The Department, in appropriate cases, may suspend further efforts to reunify the child with the child's parents.²⁰

ORDER

1. The court must enter the approved permanency goal and plan into the record as an order. The order may include interim and final deadlines for implementing the permanency plan and finalizing the permanency goal.²¹
2. The order must contain a written, case-specific finding that the Department did or did not make reasonable efforts to finalize the permanency plan in effect.²² ***

PERMANENCY HEARING

(AGGRAVATED CIRCUMSTANCES)

Bench Card

ORDER, continued

3. If the court approves a permanency plan with a permanency goal of termination of parental rights and adoption, the court shall order the department to file a petition to terminate parental rights within thirty (30) days of approval of the permanency plan and shall enter a scheduling order that complies with the time limits of this rule and implements the schedule set forth in the permanency plan. The scheduling order may include, but is not limited to, deadlines for filing the petition for termination of parental rights and service of process, the date and time of hearing in the event the petition is not contested, and the date and time of pretrial conference and trial in the event the petition is contested.²³
4. Schedule the next hearing.

ADDITIONAL QUESTIONS

1. What are the results of the Department's inquiry into the status of the child as an Indian child?
2. Has the Department fully explored placement with a fit and willing relative?²⁴
3. Has the Department identified and contacted all members of the child's extended family?²⁵
4. Does the placement support the child's cultural identity?
5. Education:²⁶
 - a. Is the child enrolled in his/her school of origin?
 - b. If no, was it in the child's best interests to be moved to a new school?
 - c. If the child is not enrolled in his/her school of origin, is the child currently enrolled in a new school?
6. Sibling Placement:²⁷
 - a. Is the Department making reasonable efforts to place siblings together, provided it is in the child's best interests?
 - b. If not, have frequent visits been scheduled, unless documented harmful?
7. The Department and Guardian *ad Litem*:
 - a. Do you understand what is required of the Department and/or Guardian *ad Litem* prior to the next hearing?
 - b. Do you have any questions for the court?

PERMANENCY HEARING

(AGGRAVATED CIRCUMSTANCES)

Bench Card

ENDNOTES

¹ IC §16-1620(2).

² IC §16-1619(6)(d) and § 16-1629(9).

³ IC §16-1613(1); IJR 39(h); IJR 52(a).

⁴ IC §16-1620(5).

⁵ IJR 40(a) and (b).

⁶ IJR 40(b).

⁷ IC §16-1613(1) and (2); IJR 52(a).

⁸ IRE 101(e)(6); IJR 51(b).

⁹ IJR 40(a) and (b).

¹⁰ IRE 502, IRE 505 *See also* IRE 504(d)(1) Husband/wife privilege; b) IRE 503(d)(4)Physicians and psychotherapists; c) IRE 516(d)(3) School counselors; d) IRE 517(d)(3) Licensed counselors; and e) IRE 518(d)(5) Licensed social workers.

¹¹ IJR 38.

¹² IC §16-1622(2)(b) and (c).

¹³ IC §16-1622(2)(d).

¹⁴ IC §16-1620(2).

¹⁵ IC §16-1620(7).

¹⁶ IJR 44(b)(1).

¹⁷ IJR 44(b)(2).

¹⁸ IC §16-1620(4) and (6).

¹⁹ IC §16-1620(3)(g).

²⁰ IC §16-1620(8).

²¹ IC §16-1620(6).

²² IC §16-1622(5).

²³ IJR 44(b)(3).

²⁴ IC §16-1619(11).

²⁵ 42 U.S.C. §671(a)(29).

²⁶ 42 U.S.C. §675(1)(G).

²⁷ 42 U.S.C. §671(a)(31).

***NOTE: On #2 under purpose, findings, and order, we are currently researching the appropriate timing of the reasonable efforts finding that must be made. We will have it in place before the final bench card is released.

TERMINATION OF PARENTAL RIGHTS

Bench Card

PURPOSE

1. Provide for voluntary and involuntary severance of the parent and child relationship.
2. Provide permanency for the child(ren).¹

WHEN

1. A petition may be filed at any time after the entry of a decree finding that the child is within the jurisdiction of the court under the CPA.²
2. A petition to terminate parental rights must be filed:
 - a. Within thirty (30) days of a judicial determination that an infant has been abandoned or reasonable efforts are not required because aggravated circumstances were present, unless there are compelling reasons why it would not be in the best interests of the child; or,³
 - b. Within thirty (30) days of an order approving a permanency plan with a permanency goal of termination of parental rights and adoption.⁴
 - c. Thirty (30) days after a child is delivered to a safe haven, or as soon as practicable thereafter;⁵ or,
 - d. If the child has been in the temporary and/or legal custody of the department for fifteen (15) of the most recent twenty-two (22) months, the department shall file, prior to the last day of the fifteenth month, a petition to terminate parental rights, unless the court finds that: (i) the child is placed permanently with a relative; (ii) there are compelling reasons why termination of parental rights is not in the best interests of the child; or (iii) the department has failed to provide reasonable efforts to reunify the child with his family.⁶

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.⁷
2. The Department shall provide notice of the termination of parental rights hearing to: 1) the foster parents; 2) pre-adoptive parents; 3) a relative who is providing care to a child who is in the custody of the Department; and 4) children age eight (8) and older. The Department shall confirm to the court that this notice was given.⁸
3. A child eight (8) or older and the foster parents have the right to be heard.⁹ The child may be excluded from hearings at any time in the discretion of the court. If the child testifies, a counselor, friend, or other person shall be permitted to remain in the courtroom at the witness stand as the child testifies.¹⁰

EVIDENCE

1. The Rules of Evidence apply.¹¹
2. Standard is clear and convincing.¹²
3. Privileges in effect at the termination of parental rights hearing are the lawyer/client privilege and the clergy privilege. There is no other privilege as to a communication relevant to an issue concerning the physical, mental or emotional condition of or injury to a child, or concerning the welfare of a child.¹³

TERMINATION OF PARENTAL RIGHTS

Bench Card

REQUIRED FINDINGS

Any order terminating parental rights must be in writing and must recite the findings upon which the order is based.¹⁴

1. The court has jurisdiction and the venue is proper.¹⁵
2. Grounds:
 - a. In the best interests of the child and any one or more of the following:¹⁶
 - i. The parent has abandoned the child;¹⁷ or
 - ii. The parent has neglected the child as defined in I.C. §16-1602 (26) or the parent(s) has failed to comply with the court's orders or the case plan in a child protective act case and: (i) The department has had temporary or legal custody of the child for fifteen (15) of the most recent twenty-two (22) months; and (ii) reunification has not been accomplished by the last day of the fifteenth month in which the child has been in the temporary or legal custody of the department¹⁸ or
 - i. The parent has abused the child;¹⁹ or
 - ii. The presumptive parent is not the biological parent; or
 - iii. The parent is unable to discharge his/her parental responsibilities and there are reasonable grounds to believe the condition will continue for a prolonged indeterminate period of time and will be injurious to the child's health, morals, or well-being; or
 - iv. The parent is incarcerated and is likely to remain incarcerated for a substantial period of time during the child's minority.
 - b. The court may grant an order terminating the relationship and may rebuttably presume that such termination of parental rights is in the best interests of the child where:²⁰
 - i. The parent caused the child to be conceived as a result of rape, incest, lewd conduct with a minor under the age of 16, or sexual abuse of a minor under the age of 16; or
 - ii. The following circumstances are present: (a) abandonment, chronic abuse or chronic neglect of the child; (b) sexual abuse against a child of the parent; (c) torture of a child; any conduct described in the code sections listed in section 18-8303(1), Idaho Code; battery or an injury to a child that results in serious or great bodily injury to a child; voluntary manslaughter of a child, or aiding or abetting such voluntary manslaughter, soliciting such voluntary manslaughter or attempting or conspiring to commit such voluntary manslaughter; or (d) the parent has committed murder, aided or abetted a murder, solicited a murder or attempted or conspired to commit murder; or
 - iii. The child is an abandoned infant except in a parental termination action brought by one (1) parent against another parent.
 - c. The court may grant termination of parental rights where it finds that termination is in the best interests of the parent *and* the child.²¹
 - d. The parent(s) has voluntarily consented to the termination of the relationship. Voluntary terminations cannot be used as a basis for a subsequent finding of aggravated circumstances.²²
3. Appoint authorized agency as a guardian and vest legal custody in such agency.²³

TERMINATION OF PARENTAL RIGHTS

Bench Card

REQUIRED FINDINGS, continued

4. Fix responsibility for child support as appropriate.²⁴
5. Set review hearings every six (6) months and permanency every twelve (12) months until adoption or final placement.²⁵
6. In an ICWA case, findings must include the testimony of a qualified Indian expert, the continued custody of the child by the parent or Indian custodian is, beyond a reasonable doubt, likely to result in serious emotional or physical damage to the child.²⁶

ENDNOTES

¹ IC §16-2001(1)(a) and (b).

² IJR 48(a).

³ IC §16-1624 (3); IC §16-1602(5).

⁴ IC §16-1624(2); IJR 46(b).

⁵ IC §39-8205(5).

⁶ IC §16-1622(g); 42 U.S.C. §675(5)(e).

⁷ IC §16-1613(1); IJR 52(a).

⁸ IJR 40(a) and (b).

⁹ IJR 40(a) and (b).

¹⁰ IC §16-1613(1) and (2); IJR 52(a).

¹¹ IRE 101(e)(6); IC §16-2009; IJR 51(c).

¹² IC §16-1609.

¹³ IRE 502, IRE 505 *See also* IRE 504(d)(1) Husband/wife privilege; b) IRE 503(d)(4)Physicians and psychotherapists; c) IRE 516(d)(3) School counselors; d) IRE 517(d)(3) Licensed counselors; and e) IRE 518(d)(5) Licensed social workers.

¹⁴ IC §16-2010(1).

¹⁵ IC §16-2010(1); §16-2003.

¹⁶ IC §16-2005(1).

¹⁷ IC §16-2002(5).

¹⁸ IC §16-2002(3)(b).

¹⁹ IC §16-1602(1).

²⁰ IC §16-2005(2).

²¹ IC §16-2005(3).

²² IC §16-2005(4), §16-1602(5).

²³ IC §16-2010(2)(a)(iii).

²⁴ IC §16-2010(2)(b).

²⁵ IC §16-2010(4); IC 16-1622(1)(a).

²⁶ 25 U.S.C. §1912(f).

OLDER YOUTH IN CARE

Bench Card

PURPOSE

To determine the services needed to assist an older youth to make a transition from foster care to independent living¹ and to ensure youth leaving foster care achieve a lifelong connection to a permanent family.

WHEN

The court must consult with the youth, in an age appropriate manner, regarding the transition from foster care to independent living.² In addition, the best practice at any post-adjudicatory hearing involving a youth over the age of fifteen is to inquire into independent living needs and services.

WHO

1. A youth fifteen (15) years of age or older in the custody of the IDHW, must have an individualized Independent Living Plan that includes a permanency plan and independent living skills development.³
2. A youth sixteen (16) years of age or older must have a permanency plan approved by the court and a permanency hearing that includes a determination of the services needed to assist the youth to make the transition from foster care to independent living.⁴
3. A Transition Plan must be completed during the 60-day period immediately after the youth's 17th birthday or prior to the youth aging out of foster care⁵
4. Before youth age out of care, the IDHW must provide the youth with a Health and Education Passport, which includes among other items:⁶
 - a. Birth certificate;
 - b. Social Security Card;
 - c. Health Records;
 - d. Education Records;
 - e. Independent Living Plan;
 - f. State and Regional resource guides;
 - g. Appropriate Vouchers.

FINDING

In those cases in which the youth's permanency goal is another permanent planned living arrangement (APPLA), the court should consider, as appropriate, completion of the independent living and transition plans as part of the reasonable efforts to finalize permanency analysis.

ADDITIONAL QUESTIONS

1. For youth 15 and older, what services are the youth accessing to help him/her acquire independent living skills?
2. For youth 17 and older, what are the contents of the youth's transition plan?
3. If a youth is aging out of foster care, what is the youth's plan for living independently?

OLDER YOUTH IN CARE

Bench Card

4. Have arrangements been made in the following areas:
 - a. Health care power of attorney
 - b. Educational training vouchers (ETVs)
 - c. Support structure and contacts in the community
5. What is the youth's current educational level and plans for completion of high school and/or post-secondary education?
6. If the youth has a developmental or physical disability, or a serious mental health diagnosis:
 - a. What has been completed to ensure the youth has the skills necessary to live independently?
 - b. Has SSI been applied for?
 - c. Has the youth been referred to adult services for disabilities?
7. If the youth is in court:
 - a. What are your future educational plans?
 - b. Where are you going to live when you turn 18?
 - c. How do you plan to access health care when you turn 18?
 - d. Are you getting the help you need?
 - e. Who will you call when you need help? Do you have that person's contact information?

ENDNOTES

¹ I.J.R. 45(c), 42 U.S.C. §675(5)(c)(ii).

² 42 U.S.C. § 675(5)(c)(ii).

³ The "Working With Older Youth Standard", Idaho Department of Health and Welfare, Division of Family and Community Services, Child and Family Services (2010). Can be found at:

www.healthandwelfare.idaho.gov/Children/AdoptionFosterCareHome/ChildWelfareStandards/tabid/429/Default.aspx

Last accessed on June 30, 2012.

⁴ I.C. §16-1622(2)(e).

⁵ 42 U.S.C. § 677

⁶ The "Working With Older Youth Standard", Idaho Department of Health and Welfare, Division of Family and Community Services, Child and Family Services (2010). Can be found at:

www.healthandwelfare.idaho.gov/Children/AdoptionFosterCareHome/ChildWelfareStandards/tabid/429/Default.aspx

Last accessed on June 30, 2012.