



# Idaho State Judiciary

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## Report to Idaho Courts:

### Uniform Business Practices to Implement Legislative and Rule Changes

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#### Acknowledgements:

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

December 13, 2013

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# HB 147

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**Amends procedures for the appointment of counsel for indigent defendants; replaces “needy” with indigent; sets presumptive standards for a finding of indigency; requires counsel to be appointed for indigent defendants in all cases in which the penalty set by law includes a term of incarceration; provides that only persons who plead or are found guilty can be required to pay reimbursement for public defender services.**

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## **Guidelines for Appointment of Counsel in Criminal Cases Under HB 147**

HB 147, which goes into effect on July 1, 2013, makes several significant changes in the appointment of counsel in criminal cases. Amendments consistent with these changes have been made to Rules 5 and 10 of the Idaho Criminal Rules and Rule 6 of the Idaho Misdemeanor Criminal Rules.

### **Terminology**

Previously, the statutes that addressed the appointment of counsel in criminal cases used the term “needy person.” This has been amended to the term “indigent person.” I.C. § 19-851(4). So “indigent,” rather than “needy,” should be used in court documents addressing appointment of counsel.

### **Cases in which counsel must be appointed – “serious crime”**

The statutes require the appointment of counsel where a person is charged or detained for a serious crime. Previously, “serious crime” was defined as a felony or “any misdemeanor or offense the penalty for which, excluding imprisonment for nonpayment of a fine, includes the possibility of confinement.” HB 147 has amended this definition. I.C. § 19-852(5) now provides that “serious crime” means “any offense the penalty for which includes the possibility of confinement, incarceration, imprisonment or detention in a correctional facility, regardless of whether actually imposed.”

The intent of this change was to provide a right to appointed counsel for indigent persons when they are accused of any crime, which carries a possible penalty of incarceration, regardless of whether the court will actually impose incarceration as part of the punishment. Under the previous law, a judge might determine at the outset of a misdemeanor case that jail time would not be imposed in the event of a conviction, and on that basis might decide not to appoint counsel for an indigent defendant. This is no longer a permissible option. If the law provides for possible incarceration for an offense, it is a serious crime, and counsel must be appointed for an indigent defendant who has not waived the right to counsel.

This change is also reflected in the amendment to IMCR 6. Previously, this rule provided that a defendant shall be advised of his right to appointed counsel if he is indigent when the offense with which the defendant is charged “has a permissible penalty of imprisonment which will be

considered as possible punishment by the court, or if the conviction of the offense could cause a subsequent conviction to be enhanced from a misdemeanor to a felony.” The words “which will be considered as possible punishment by the court” have been dropped from this rule.

### **Payable misdemeanors**

IMCR 14 provides that a person charged with a misdemeanor may sign a written plea of guilty on the citation and pay the fine and courts costs, the amount of which will be the bail bond amount provided in IMCR 13 for the offense. This option is available only if the required bail bond amount for the offense under IMCR 13 does not exceed a certain amount. This option also does not apply if the defendant appears before a judge, or if a judge reviews the file and finds that summary disposition in this manner is not appropriate.

The Supreme Court has not amended IMCR 14, and the procedure set out in that rule for entry of a written plea of guilty and payment of fines and court costs should still be followed. It should be noted that a defendant who chooses to plead guilty in writing and pay the fines and costs for a misdemeanor as provided in IMCR 14 is not facing a possible penalty of incarceration. Incarceration becomes a possibility in such a case only if a judge reviews the file and finds that this disposition of the case is not appropriate. At that point, of course, the right to appointed counsel for an indigent defendant would come into effect.

### **The Presumption of Indigency and the Factors to be Considered in Determining Indigency**

I.C. § 19-854 has been amended to create a presumption of indigency when certain circumstances are present. The circumstances that give rise to the presumption are:

- (1) the defendant’s monthly income does not exceed 187% of the federal poverty guidelines;
- (2) the defendant or the defendant’s dependents receive public assistance pursuant to title 56, Idaho Code, in the form of food assistance, health coverage, cash assistance or child care assistance; or
- (3) the defendant is currently serving a sentence in a correctional facility or is being housed in a mental health facility.

“Correctional facility” is defined in I.C. § 18-101A and includes a wide range of detention facilities, including state prisons and penitentiaries, county jails, juvenile correctional centers, and juvenile detention centers.

Where any of the listed circumstances is present, the court shall presume that the defendant is indigent “unless such a determination is contrary to the interests of justice.” I.C. § 19-854(2).

The court may determine that the defendant is indigent even in the absence of any of the factors that give rise to the presumption of indigency. In determining whether a person is indigent, the court may consider such factors as income, property owned, outstanding obligations, the number and ages of the defendant’s dependents, and the cost of bail. I.C. § 19-854(3).

A defendant's release on bail does not necessarily prevent the defendant from being considered indigent.

### **Procedure for Determining Indigency**

An Application for Attorney at Public Expense has been prepared and is included with these materials. The information provided on the form should be sufficient in most cases for making a determination of indigency.

You may wish to begin by checking to see whether any of the three factors giving rise to a presumption of indigency is present. To determine whether the defendant's income exceeds 187% of the federal poverty guidelines, you will want to look at the income from employment of the defendant's spouse, and the information concerning any other income received during the past 12 months. You will also want to look at the number of the defendant's dependents, since the guidelines are based not only on income but also on the number of persons in the defendant's family/household. Using this information and the federal poverty guidelines provided with these materials, you can then determine whether the income exceeds 187% of the guidelines.

To determine whether the second factor giving rise to a presumption of indigency is present, you will want to look at the information provided on public assistance and other payments to see whether the defendant or the defendant's dependents are receiving any of the types of assistance that give rise to the presumption of indigency.

To determine whether the third factor giving rise to a presumption of indigency is present, you will want to look at the responses concerning whether the defendant is currently incarcerated for a crime for which the defendant has been found guilty, and whether the defendant is currently housed in a mental health facility.

Even where the presumption applies, the court may decide that a determination of indigency is contrary to the interests of justice. It may be, for instance, that a defendant's income creates a presumption of indigency, but the defendant possesses cash or owns other property in a substantial amount that would enable the defendant to retain private counsel.

On the other hand, a defendant may be determined to be indigent where none of the presumptive factors are present. For example, a defendant may have income well above 187% of the federal poverty guidelines, but may be facing serious or complicated charges that will require a defense whose costs will be beyond the defendant's means.

## **Who Should Make the Determination of Indigency?**

The court has the responsibility of determining whether or not a person is indigent. However, it is possible for a district court clerk or other appropriate official or employee to make the initial determination.

Usually, the presence or absence of the three factors that give rise to a presumption of indigency will guide this determination. If it clearly appears that the defendant is indigent, then the public defender should be notified and the defendant should be given information on how to contact the public defender.

However, if the clerk or other person reviewing the application notices other factors that make the determination of indigency uncertain, the application should be promptly referred to the judge for a determination.

Also, if it appears to the clerk or other person reviewing the application that the defendant is not indigent, the application should **not** be rejected. Rather, it should be referred to the judge for review and a final determination.

If the application is referred to the judge, either because indigency is uncertain or it appears that the defendant is not indigent, the defendant should **not** be told that the application has been rejected. The defendant should simply be told that the application will be reviewed by the judge to determine whether counsel will be appointed to represent the defendant.

## **Use of the Information in the Application**

HB 147 provides limits on the admissibility as evidence of the information provided by a defendant in a public defender application. I.C. § 19-854(5) states that no information provided by a person in applying for a public defender may be used as substantive evidence in any criminal or civil proceeding against the person except:

- (1) for impeachment purposes;
- (2) in a prosecution for perjury or contempt committed in providing the information; or
- (3) in an attempt to enforce an obligation to reimburse the state for the cost of counsel.

## **Reimbursement for the Cost of Counsel at Public Expense**

HB 147 also amended the provisions relating to reimbursement for the services of appointed counsel. First, no order for reimbursement for the services of a public defender should be entered unless or until a defendant has been convicted. It is not appropriate to tell a defendant prior to that time that he or she will be required to pay any particular amount for the services of counsel.

Second, if a defendant pleads guilty to a crime or is found guilty of a crime, regardless of the form of judgment or withheld judgment, the defendant may be ordered to reimburse the county for all or a

portion of the cost of legal services related to the conviction, unless requiring the defendant to do so would impose a manifest hardship on the defendant.

### **Waiver of Counsel**

A waiver of counsel form has been drafted and is included with these materials. This form may be helpful in informing the defendant of the value of counsel and the disadvantages of self-representation. It may also be helpful in making a record to show that there has been a valid waiver of counsel. However, in most cases the judge will want to engage in a colloquy with the defendant to make sure that the defendant understands the consequences of waiving counsel, and to make a determination that the defendant is making a knowing, intelligent and voluntary waiver of the right to counsel.

In addition, care must be taken when a defendant desires to represent himself or herself at trial or in sentencing proceedings. While a defendant has a right to self-representation, *Faretta v. California*, 422 U.S. 806 (1975), the choice should be made with an awareness of the challenges presented by representing oneself at trial. "Although a defendant need not himself have the skill and experience of a lawyer in order to competently and intelligently choose self-representation, he should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that 'he knows what he is doing and his choice is made with eyes open.'" 422 U.S. at 835.

While no particular colloquy or inquiry to alert a defendant to the dangers of self-representation has been approved in Idaho, the bench book for United States district judges includes a model inquiry. It is provided here, modified somewhat for use in Idaho, simply for guidance as to the type of inquiry that a judge may wish to make in such cases:

If defendant states that he or she wishes to represent himself or herself, you should ask questions similar to the following:

1. Have you ever studied law?
2. Have you ever represented yourself in a criminal action?
3. Do you understand that you are charged with these crimes: [state the crimes with which the defendant is charged]?
4. Do you understand that if you are found guilty of the crime charged in Count I the court could sentence you to as many as \_\_\_ years in prison and fine you as much as \$\_\_\_?  
[Ask defendant a similar question for each crime with which he or she may be charged.]
5. Do you understand that if you are found guilty of more than one of these crimes this court can order that the sentences be served consecutively, that is, one after another?

6. Do you understand that if you represent yourself you are on your own? I cannot tell you or even advise you how you should try your case.
8. Are you familiar with the Idaho Rules of Evidence?
9. Do you understand that the Idaho Rules of Evidence govern what evidence may or may not be introduced at trial and that, in representing yourself, you must abide by those rules?
10. Are you familiar with the Idaho Criminal Rules?
11. Do you understand that those rules govern the way a criminal action is tried? [Then, depending on the responses, say to defendant something to this effect:]
12. I must advise you that in my opinion a trained lawyer would defend you far better than you could defend yourself. I think it is unwise of you to try to represent yourself. You are not familiar with the law. You are not familiar with court procedure. You are not familiar with the rules of evidence. I strongly urge you not to try to represent yourself.
13. Now, in light of the penalty that you might suffer if you are found guilty, and in light of all of the difficulties of representing yourself, do you still desire to represent yourself and to give up your right to be represented by a lawyer?
14. Is your decision entirely voluntary?

The defendant can also be questioned on his or her understanding of jury instructions, statutes relating to the crime charged, and available defenses. The defendant should also be informed of the right to request counsel at any stage of the proceedings. The court may also appoint counsel to advise the defendant on the question of whether to waive counsel. It is probably advisable to appoint standby counsel who can assist the defendant or can replace the defendant if the court determines during trial that the defendant can no longer be permitted to proceed pro se.



# In the Supreme Court of the State of Idaho

IN RE: AMENDMENT OF IDAHO CRIMINAL )  
RULES 5 AND 10 (b) and IDAHO MISDEMEANOR ) ORDER  
CRIMINAL RULE 6(c) )  
\_\_\_\_\_)

The Court having reviewed a recommendation from a committee formed to consider changes in rules and procedures in response to HB147, enacted at the 2013 Legislative Session, and also to consider proposed rule changes submitted by the Public Defense Subcommittee of the Criminal Justice Commission, and the Court being fully informed:

NOW, THEREFORE, IT IS HEREBY ORDERED that the Idaho Criminal Rules and the Idaho Misdemeanor Criminal Rules be, and they are hereby, amended as follows:

1. That Rule 5 of the Idaho Criminal Rules be amended as follows:

**Rule 5. Initial appearance before magistrate--Advice to defendant--Plea in misdemeanors--Initial appearance on grand jury indictment**

(a) **Initial Appearance.** The "initial appearance" before a magistrate shall be the first appearance of the defendant before any magistrate. In the event a defendant appears before more than one magistrate, the first appearance before the first magistrate shall constitute the "initial appearance."

(b) **Place of Initial Appearance.** A defendant arrested, whether or not pursuant to a warrant, shall be taken before a magistrate in that judicial district without unreasonable delay. In no event shall the delay be more than twenty-four (24) hours following the arrest excluding Saturdays, Sundays, and holidays. Provided, the court may delay the initial appearance if the defendant is hospitalized or otherwise in a condition which prevents the defendant being taken before the magistrate. The court may immediately, in such instances, appoint counsel for the defendant. In the event it is not possible to take a defendant before a magistrate within the county where the alleged offense occurred within the said time limit, then the defendant shall be taken to any available magistrate within the judicial district without unnecessary delay within the time limit described above.

(c) **Determination of Probable Cause.** In the event the defendant was arrested without a warrant, the magistrate before whom the defendant first appears shall not hold the defendant in custody nor require bail without first making a determination as to whether there is probable cause to believe that an

offense has been committed and that the defendant committed it as provided in Rule 4 unless such a finding has been made by a magistrate in a county in which the offense is alleged to have been committed. The probable cause hearing may be an ex parte hearing which does not require the presence of the defendant and shall be held within forty-eight (48) hours, including Saturdays, Sundays, and holidays, after a defendant is arrested without a warrant. The magistrate may hold the hearing on sworn statements without the officer or witness present.

**(d) Advice to Defendant on Initial Appearance Outside County Where Alleged Offense Occurred.** In the event a defendant is taken before a magistrate in a county other than the county in which the alleged offense occurred, the magistrate shall advise the defendant:

- (1) That the defendant is not required to make a statement and that any statement made may be used against the defendant;
- (2) The charge or charges against the defendant;
- (3) Defendant's right to bail;
- (4) Defendant's right to counsel as provided by law;
- (5) Defendant's right to proceed under Rule 20 of these rules;
- (6) That defendant has a right to communicate with counsel and immediate family, and that reasonable means will be provided for the defendant to do so.

**(e) Setting Bail.** Upon advising the defendant of the above rights, the magistrate shall set bail for the defendant, and in the event the arrest is pursuant to a warrant, said bail shall be in the amount endorsed upon the warrant unless the magistrate finds good cause to alter the amount of the bail. In the event the defendant posts bail, the magistrate shall certify that fact upon the warrant, order the defendant to appear before the court issuing the warrant at a time and place certain, discharge the defendant, and transmit the warrant and undertaking of bail to the court in which the defendant is required to appear.

**(f) Advice to Defendant on Initial Appearance in County Where Alleged Offense Occurred.** In the event a defendant is taken before a magistrate in the county where the alleged offense occurred, the magistrate shall advise the defendant:

- (1) That the defendant is not required to make a statement and that any statement made may be used against the defendant;
- (2) The charge or charges against the defendant;
- (3) Defendant's right to bail;
- (4) Defendant's right to counsel as provided by law;
- (5) Defendant's right to a preliminary hearing, if provided by law, the nature of a preliminary hearing and the effect of a waiver thereof;
- (6) That the defendant has a right to communicate with counsel, or immediate family, and that reasonable means will be provided for the defendant to do so.

**(g) Right to Counsel.**

(1) If a defendant is charged with an offense the penalty for which includes the possibility of confinement, incarceration, imprisonment, or detention in a correctional facility regardless of whether actually imposed, and the defendant appears without counsel, the court shall advise the defendant of:

(A) the right to counsel;

(B) the right to apply for court appointed counsel if the defendant cannot afford to hire private counsel; and

(C) the right to request counsel at any stage of the proceedings.

(2) If the defendant wishes to represent himself or herself, the court shall ensure that a knowing, voluntary, and intelligent waiver of the right to counsel is entered on the record.

(3) Prior to accepting any waiver pursuant to subsection (2), the trial court shall advise the defendant of the following: (A) the nature of the charges;

(B) the range of allowable punishments; (C) that there may be defenses;

(D) that there may be mitigating circumstances; and

(E) all other facts essential to a broad understanding of the consequences of the waiver of the right to counsel, including the dangers and disadvantages of the decision to waive counsel.

(4) The court may appoint counsel for the limited purpose of advising and consulting with the defendant as to the waiver.

**(h) Arraignment on Misdemeanor Complaint.** The arraignment upon a misdemeanor complaint is the reading of the complaint to the defendant, unless waived by the defendant, and taking a plea of the defendant to the complaint. The arraignment upon a complaint for a misdemeanor may take place at the initial appearance, or at such later time as ordered by the court. A plea of the defendant at the arraignment in a county other than the county where the alleged offense occurred may be taken by the magistrate only as provided by Rule 20. The defendant may appear in person at the arraignment and enter a plea to the complaint or the defendant may appear at the arraignment through counsel who shall either appear in person or shall file, at or before arraignment, a written appearance and plea on behalf of the defendant.

**(hi) First Appearance on Indictment by Grand Jury.** A defendant arrested on a warrant issued pursuant to an indictment by grand jury shall be taken before a magistrate judge or district court judge in that judicial district without unreasonable delay. In no event shall the delay be more than twenty-four (24) hours following the arrest excluding Saturdays, Sundays and holidays. The magistrate judge or district court judge shall have the authority to set bail and shall advise the defendant:

- (1) That the defendant is not required to make a statement and that any statement made by defendant may be used against the defendant;
- (2) The charge or charges against the defendant;
- (3) The defendant's right to bail;
- (4) The defendant's right to counsel as provided by law;
- (5) The date that defendant will be arraigned in the district court.

2. That Rule 10(b) of the Idaho Criminal Rules be amended as follows:

**Rule 10. Arraignment on indictment or information.**

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(b) **Right to Counsel.** If the defendant appears for arraignment without counsel, before arraigned, the defendant must be informed by the court that it is defendant's right to have counsel either of defendant's own selection, or if indigent, by court appointment. The defendant must be asked if defendant desires counsel and if defendant is able to provide such counsel. If the defendant desires counsel and is found to be an ~~needy~~ indigent person as defined by section 19-854, Idaho Code, the court shall appoint counsel to represent the defendant. No proceedings may take place prior to the appointment of counsel or until the defendant has had a reasonable period of time to obtain counsel, or unless the defendant waives the right to counsel.

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3. That Rule 6(c) of the Idaho Misdemeanor Criminal Rules be amended as follows:

**Rule 6. First Appearance of Defendant--Plea of a Defendant--Trial Date Notice or Continuance Notice.**

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(c) **Duties of Court to Advise Defendant of Rights.** At the first appearance of the defendant before the court on a uniform citation or sworn complaint, the court shall inform the defendant of his constitutional rights and the rights provided in the Idaho Criminal Rules, and these rules. Such advice of rights may be announced to all defendants at each session of court at the commencement of the court hearing, rather than advising each of the defendants individually when they come before the court. If the offense has a permissible penalty of imprisonment ~~which will be considered as possible punishment by the court~~, or if the conviction of the offense could cause a subsequent conviction to be enhanced from a misdemeanor to a felony, then or in either of such events the defendant shall be advised that he has the right to court appointed counsel at public expense if he is indigent. If the defendant is found by the court to be entitled to court appointed counsel, the court shall appoint such counsel unless the defendant voluntarily waives his right to counsel.

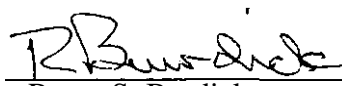
IT IS FURTHER ORDERED, that this order and these amendments shall be effective the first day of July, 2013.

IT IS FURTHER ORDERED, that the above designation of the striking of words from the Rules by lining through them, and the designation of the addition of new portions of the Rules by underlining such new portion is for the purposes of information only as amended, and NO OTHER AMENDMENTS ARE INTENDED. The lining through and underlining shall not be considered a part of the permanent Idaho Criminal Rules and Idaho Misdemeanor Criminal Rules.

IT IS FURTHER ORDERED, that the Clerk of the Court shall cause notice of this Order to be published in one issue of *The Advocate*.

DATED this 25<sup>th</sup> day of June, 2013.

By Order of the Supreme Court

  
\_\_\_\_\_  
Roger S. Burdick,  
Chief Justice

ATTEST: *Stephen Kenyon*  
**Clerk**

IN THE DISTRICT COURT OF THE JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF

STATE OF IDAHO, )  
 )  
 Plaintiff, ) Criminal No. CR  
 )  
 vs. ) WAIVER OF THE RIGHT TO ATTORNEY  
 )  
 )  
 )  
 Defendant. )

1. You have the right to have an attorney advise and represent you at every stage of the proceedings, even when making the decision to waive (give up) your right to an attorney, and when deciding whether to plead guilty to the charge or charges against you.

2. If you cannot afford to hire an attorney, you may apply to have an attorney appointed to represent you at public expense.

3. If you are thinking about pleading guilty, an attorney can assist you in deciding whether you should do that. The attorney can review the facts and circumstances to see if there are any defenses to the charge or charges and advise you on what you should do.

4. If you decide to plead not guilty, an attorney can make sure that your constitutional rights are protected and can help you by:

- Presenting any defenses.
- Investigating facts and evidence.
- Making motions to protect your constitutional rights.
- Properly applying the rules of evidence and procedure.
- Negotiating with the prosecuting attorney and looking into possible plea agreements.
- Taking part in selecting a jury.
- Questioning and cross-examining witnesses.
- Objecting to improper questioning.
- Presenting arguments to the jury.
- Mitigation at sentencing.

5. If you choose to plead not guilty and give up your right to an attorney you will be representing yourself. You will be responsible for properly applying the rules of evidence and procedure. The Court cannot and will not assist you in doing this.

I hereby acknowledge and waive my right to an attorney in the above-captioned case. This waiver is given knowingly, intelligently and voluntarily.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
(Signature)

| <b>Poverty Guidelines</b>                                       |                           |                            |
|---|---------------------------|----------------------------|
| <b>Persons in family/household including defendant.</b>         | <b>187% Yearly Income</b> | <b>187% Monthly Income</b> |
| 1   | \$21,486.00               | \$1,790.00                 |
| 2   | \$29,003.00               | \$2,417.00                 |
| 3   | \$36,521.00               | \$3,043.00                 |
| 4   | \$44,038.00               | \$3,670.00                 |
| 5   | \$51,555.00               | \$4,296.00                 |
| 6   | \$59,073.00               | \$4,923.00                 |
| 7   | \$66,490.00               | \$5,541.00                 |
| 8   | \$74,108.00               | \$6,176.00                 |
| <b>For each additional person in the family household, add:</b> |                           |                            |
|   | \$7,517.00                | \$626.00                   |

**IN THE DISTRICT COURT OF THE JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF**

|                 |   |                             |
|-----------------|---|-----------------------------|
| STATE OF IDAHO, | ) |                             |
|                 | ) |                             |
| Plaintiff,      | ) | Case No. CR                 |
|                 | ) |                             |
| vs.             | ) | APPLICATION FOR ATTORNEY AT |
|                 | ) | PUBLIC EXPENSE              |
|                 | ) |                             |
|                 | ) |                             |
| Defendant.      | ) |                             |

I want to be represented by an attorney in this case and I cannot afford to hire one. I understand that it is important for me to be truthful in answering questions and providing information in this form, and that if I am not I may be subject to penalties for perjury.

I understand that the information in this form cannot be used against me in any criminal case, except:

- To dispute the truth of my testimony if I choose to testify in court.
- In a prosecution for perjury or contempt if I provide information in this form that I know is false.

| Name and Contact Information  |                    |                    |                |
|---|--------------------|--------------------|----------------|
| Name:   | Home phone number: |                    |                |
| Current Address:  |                    |                    |                |
| Mailing address if different:   |                    |                    |                |
| Cell phone number:  | Date of birth:     |                    |                |
| Employment  |                    |                    |                |
| Are you employed? (Circle One)    Yes                      No                      Self-employed  |                    |                    |                |
| If Yes: Name and address of employer:   |                    |                    |                |
| How much do you earn per month? \$  |                    |                    |                |
| If No, give month and year of last employment:  |                    |                    |                |
| How much did you earn per month?  |                    |                    |                |
| Are you married? Spouse's name:   |                    |                    |                |
| Is your spouse employed: (Circle One)    Yes                      No  |                    |                    |                |
| If Yes, name and address of employer:   |                    |                    |                |
| If Yes, how much does your spouse earn per month?   |                    |                    |                |
| Current Status  |                    |                    |                |
| Are you currently serving a sentence of incarceration for a crime for which you have been found guilty? (Circle One)    Yes                      No   |                    |                    |                |
| If yes, in what jail, penitentiary or correctional facility are you being held?   |                    |                    |                |
| Are you currently housed in a mental health facility? (Circle One)    Yes                      No   |                    |                    |                |
| If yes, what is the name of the mental health facility in which you are housed?   |                    |                    |                |
| Public Assistance and Other Payments  |                    |                    |                |
| Do you or any of your dependents receive public assistance, including Social Security Supplemental Income (SSI), Social Security Disability (SSD), Medicaid, AFDC, food stamps, or child care assistance? (Circle One)    Yes                      No |                    |                    |                |
| If Yes, list persons who receive the assistance, how they are related to you, the type of assistance or payment, and the monthly amount received.   |                    |                    |                |
| Dependents  | Relationship       | Type of Assistance | Monthly Amount |
|   |                    |                    |                |
|   |                    |                    |                |
|   |                    |                    |                |
|   |                    |                    |                |



| <b>Other Income</b>  |                                      |                                   |
|--|--------------------------------------|-----------------------------------|
| Within the past 12 months, have you received any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, retirement or annuity payments, or other sources?<br>(Circle One)      Yes                  No |                                      |                                   |
| If Yes, give the amount received and identify the sources.   |                                      |                                   |
| <b>Source</b>  | <b>Amount for the Past 12 Months</b> |                                   |
|  |                                      |                                   |
|  |                                      |                                   |
| <b>Cash</b>  |                                      |                                   |
| Do you have any cash on hand or money in savings or checking accounts? (Circle One)      Yes                  No   |                                      |                                   |
| If Yes, what is the total amount?:   |                                      |                                   |
| <b>Property</b>  |                                      |                                   |
| Do you own any homes or land? (Circle One)      Yes                  No  |                                      |                                   |
| <b>County</b>  | <b>State</b>                         | <b>Value minus amount you owe</b> |
|  |                                      |                                   |
|  |                                      |                                   |
| Do you own any stocks, bonds, notes, coins, or precious metals? (Circle One)      Yes                  No  |                                      |                                   |
| <b>Property</b>  | <b>Value</b>                         |                                   |
|  |                                      |                                   |
|  |                                      |                                   |
| Do you own any vehicles or other items of property with a value in excess of \$1,000, excluding ordinary household furnishings and clothing? (Circle One)      Yes                  No   |                                      |                                   |
| If yes, list the property and its value.   |                                      |                                   |
| <b>Property</b>  | <b>Value</b>                         |                                   |
|  |                                      |                                   |
|  |                                      |                                   |
|  |                                      |                                   |
| Do you receive child support payments for any of the dependents you have listed?<br>(Circle One)      Yes      No  |                                      |                                   |
| <b>Name of Child</b>   | <b>Monthly Amount</b>                |                                   |
|  |                                      |                                   |
|  |                                      |                                   |
|  |                                      |                                   |
| <b>Debts</b>   |                                      |                                   |
| <b>Nature of Debt</b>  | <b>Monthly Amount Paid</b>           |                                   |
|  |                                      |                                   |
|  |                                      |                                   |
|  |                                      |                                   |
|  |                                      |                                   |

I certify under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature)

**NOTICE:** If an attorney is appointed to represent you at public expense, and if you plead guilty or are found guilty of any crime, you may be required by the court to reimburse the county for all or a portion of the cost of the legal services you have received.

# HB 148

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Amends I.C. § 16-1614 to provide that counsel shall be appointed for a guardian ad litem in a CPA case when the child is under 12, and may appoint counsel for the child as well; if a guardian ad litem cannot be appointed, the court shall appoint counsel for the child; provides that where the child is 12 or older the court shall appoint counsel for the child and may also appoint a guardian ad litem, and where appointment of counsel is not practicable or appropriate may appoint counsel to represent the guardian ad litem.

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HB 148 amends I.C. 16-1614 regarding the appointment of counsel for children and GAL's in child protection cases. Detailed guidance on how the changes impact the judiciary is provided in the Child Protection Bench Cards.

## Overview of House Bill 148

- Amends Idaho Code §16-1614, relating to appointment of Counsel, Guardian ad Litem.
- Effective July 1, 2013.
- History: Amendments proposed by Child Protection Committee.
- Public Defender Subcommittee of the Criminal Justice Commission introduced the legislation.

### 1. Removes Ethical Conflict:

- In the current statute, attorneys can be appointed and serve in a dual capacity as both a guardian *ad litem* (GAL) and an attorney for the child which may require the attorney to violate Rules of Professional Conduct.
- New language clarifies that an attorney may be appointed as an attorney for a child OR a GAL for the child, but may NOT serve in both roles in the same case.
- As amended, an attorney appointed as a GAL has the same rights and responsibilities as a non-lawyer GAL.

### 2. Ensures Attorney for Child or GAL in Every Case:

- Intended to ensure an attorney acting on behalf of a child, in some capacity, in **every** case.
- *Children 12 and over:* An attorney shall be appointed to represent the child UNLESS the court finds that such an appointment is not appropriate or not practicable. The court may also appoint a GAL if appropriate.
- *Children Under 12:* The court shall appoint a GAL unless no GAL available (then must appoint an attorney). In addition, an attorney must be appointed to represent the GAL. The court may also appoint an attorney to represent the child when appropriate.

### 3. Practical Implications:

- Some districts already have this structure in place.
- For those that don't, judges need to be thinking about process/procedure in their district for appointment. Consider how to increase the number of available attorneys. Seek help from local bar association; offer free CLE in exchange for pro bono case.
- In many districts, there already is an attorney appointed for the GAL. In those cases in which the child is 12 or over, that attorney could be appointed to represent the child. (Caveat: Cannot be a GAL for one child and an attorney for sibling in same case).

## Business Practices for Court Clerks:

There are no changes in business practices for deputy clerks. Following is a review of the steps to add a GAL in a CPA case.

Step 1: Add the GAL as an "Other Party" so he/she can be connected to the appropriate child using the relationship tab. See the example shown below.

The screenshot displays a software interface for managing court cases. At the top, there are tabs for '0 Plaintiffs', '0 Defendants', '1 Subject', '1 Other Party', 'Ledger', and 'Compliance'. The main area is titled 'Other Party 1 of 1' and contains the following information:

- Name:** Helpful, James Very
- Attorney:** [none]
- Money due date:** 00/00/0000
- Send notices:**
- Extension date:** 00/00/0000
- Family law licensor:**
- Total Amount Due:** .00
- Comment:** [Empty text box]
- Relationships:** Counter claimant, Counter defendant, Cross claimant, Cross defendant, Guardian Ad Litem (checked), Third party plaintiff, Third party defendant, Intervenor, Amicus curiae, Non party, Other party, Surviving spouse, Interpleader, Conservator, Guardian, Appointed date, Removed date, Periodic report months.
- Party type:** [Dropdown menu]
- Civil Penalty Report Date:** 00/00/0000
- Report History:** [Button]
- Created by:** ISC1 on 06/05/2013 10:29 AM
- Updated by:** ISC1 on 06/05/2013 10:31 AM

On the right side, there is a sidebar with various options and counts:

- 0 Prosecutors
- 0 Reminders
- 3 ROA's
- Status History
- Litigant Options
  - 0 Attorneys (Alt K)
  - 0 Bonds (Alt Q)
  - 0 Orders
  - Party
  - 0 Document Service
  - 0 Supervisions
  - 0 Time Limits
  - 0 Warrants
  - Civil Penalty/Fees
  - No costs assessed

At the bottom, there are buttons for 'Label', 'Reports', 'CaseMail', 'New', 'Save', 'Delete', and 'Close'.

Step 2: Once the children and other parties have been entered, go to the Child Protection Relationship Entry Tab and select the Subject(s) and Other Parties to make the relationship connection to each child.

The screenshot shows a dialog box titled 'Child Protection Relationship Entry'. The main title is 'In The Matter Of Joe Child A Child'. The dialog has the following sections:

- Select the Subject(s):** A list box containing 'Child, Joe'.
- Select the Other Party:** A list box containing 'Helpful, James Ve'.
- Select the relationship:** A dropdown menu with 'Guardian ad litem' selected.
- Date:** A text field with 'appointed (if applicable)' and 'late found (if applicable)' as options, and the date '06/05/2013' entered.
- Specified as Parent:** Radio buttons for 'No' (selected), 'Mother', and 'Father'.
- Buttons:** 'Save', 'Close', and 'Help'.

Red arrows point from the 'Child, Joe' and 'Helpful, James Ve' entries in their respective list boxes to the 'Guardian ad litem' relationship dropdown.

In the illustration to the left, the child has been selected, and then the appointed GAL. The clerk then selects the relationship of "Guardian ad litem" for each child to which this GAL has been appointed. The list of possible relationships is quite extensive, so be certain you are entering this information correctly.

Step 3: In the Minutes tab, it is important to indicate what parties are present.

Minutes

CV-2013-0000004-CP Case is Pending In The Matter Of Joe Child A Child

Master Detail

Hearing type: CPA Shelter Care Hearing Minutes date: 06/05/2013 Minutes 1 of 1

Hearing judge: Calhoun, Stephen L. Start time: 10:38 AM

Parties: Party: James Helpful Party: Joe Child Stop time: 12:00 AM

Court reporter: Audio tape number:

Minutes clerk: Julie Cottrell

Created by: ISC1 on 06/05/2013 10:39 AM Updated by: ISC1 on 06/05/2013 10:39 AM

Oldest First Copy Header to Clipboard Add Party Save New Delete

Print ROA Results Hearings Exhibits Copy Change Tab Close

Step 4: Select “Copy Header to Clipboard” and then paste that information into the minutes. The court minutes document will include the party attendees in the format shown below:

CV-2013-0000004-CP  
In The Matter Of Joe Child A Child  
Hearing type: CPA Shelter Care Hearing  
Hearing date: 6/5/2013  
Time: 10:38 am  
Judge: Stephen L. Calhoun  
Courtroom:  
Court reporter:  
Minutes Clerk: Julie Cottrell  
Tape Number:  
Party: James Helpful  
Party: Joe Child

In the event an attorney is appointed for the GAL or the child, add the attorney for each appropriate party in the CPA case, just as you would for any other case type. The child's attorney must be added to the appropriate "subject" (child) for that child. A parent's attorney would be added to the appropriate "other party" (parent). The GAL's attorney would be added to the "other party" listed as the GAL. See the example shown below.

The screenshot displays a software interface for a Civil Case (Child Protective Act). The main window shows case details for CV-2013-000004-CP, including the judge Stephen L. Calhoun, filing date 06/05/2013, and case subtype Child Protective Act. A sidebar on the right lists case options such as Case Time Limits, Change Status, and Dispositions. Below the main window, a summary bar indicates 0 Plaintiffs, 0 Defendants, 1 Subject, and 1 Other Party.

An inset window titled "Other Party Attorneys" shows details for the attorney Daniel R. Acevedo, who is appointed for the "Other Party 1 of 1". The attorney's contact information is listed, and a set of checkboxes includes "Guardian ad litem", which is currently unchecked. A callout box with a red arrow pointing to this checkbox contains the following text:

Do not check this box if the attorney is appointed FOR the GAL. Checking this box indicates to the system that the attorney IS the GAL, which may be used in other case types.

Other visible details in the attorney window include the appointment date of 06/05/2013 and the status "Case is Pending 1 Attorney".

# HB 149

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**Amends provisions relating to appointment of counsel in JCA proceedings; requires waivers of counsel to be in writing and on the record, and subject to certain findings; does not permit waiver where the juvenile is under 14, where there is a recommendation that the juvenile be committed to the custody of DJC, where a sex crime is charged, where the charge is a felony, in hearings to waive jurisdiction, in competency proceedings, and in recommitment proceedings.**

---

## **Guidance for Appointment of Counsel under New Amendments to Juvenile Code I.C. 20-514**

1. The Idaho Legislature substantially amended I.C. § 20-514(1)(2) and (3).

First, the legislation defines when the right to counsel in a juvenile proceeding attaches. I.C. § 20-514(1).

Second, the legislation denotes what entitlements a juvenile is expected to receive under their right to counsel. The entitlement rights are the same as those accorded adults. I.C. § 20-514(1)(a-c) and (2)(a-c)

Third, the legislation provides a prior waiver of counsel does not affect their continuing right to counsel. I.C. § 20-524(3)

2. Idaho Code 20-514(4) which is the section dealing with indigence in juvenile proceedings was not substantially changed, but judges may wish to refer to the amended version of I.C. § 19-854 that discusses indigence criteria for adults. The juvenile indigence standard remains the same which is “the juvenile or his parents or guardian desire counsel but are financially unable to pay for such legal services.”

A word of caution; while the two new following provisions specifically discuss waiver of counsel by the juvenile, this section still contains language regarding the court’s consideration of a juvenile’s desire to waive counsel in the case of a conflict between the juvenile and his parent or guardian. This statute requires the court to appoint counsel in such cases, “unless there is an intelligent waiver of the right of counsel by the juvenile and the court further determines that the best interest of the juvenile does not require the appointment of counsel.” Some judges have determined that this “best interest” test is required in all cases where a juvenile wishes to waive counsel.

3. The Idaho legislature added two new provisions regarding a juvenile offender's ability to waive counsel. Idaho Code 20-514(5) requires the waiver be made in writing and on the record and the court makes the following specific findings:

First, the court must find the juvenile was informed of his/her right to counsel **and the dangers and disadvantages of self-representation. (This is a new requirement.)**

Second, the court must find:

The waiver is intelligently made after consideration of the totality of the circumstances including, but not limited to:

- (i) The age, maturity, intelligence, education, competency and comprehension of the juvenile;
  - (ii) The presence of the juvenile's parents or guardian;
  - (iii) The seriousness of the offense;
  - (iv) The collateral consequences of adjudication of the offense; and
  - (v) Whether the interests of the juvenile and his parents or guardian conflict.  
(I.C. § 20-514 (5)(b)(i-v))
4. The new legislation provides that in certain proceedings juvenile offenders cannot waive their right to counsel. Those circumstances are:
    - (a) If the juvenile is under the age of fourteen (14) years;
    - (b) In sentencing proceedings in which it has been recommended that the juvenile be committed to the legal custody of the department of juvenile corrections;
    - (c) In proceedings in which the juvenile is being adjudicated for commission of a crime of a sexual nature;
    - (d) In proceedings in which the juvenile is being adjudicated for commission of a felony;
    - (e) In hearings upon a motion to waive jurisdiction under the Juvenile Corrections Act pursuant to section 20-508, Idaho Code;
    - (f) In hearings upon a motion to examine the juvenile to determine if he/she is competent to proceed pursuant to section 20-519A, Idaho Code; or
    - (g) In recommitment proceedings. I.C. § 20-514(6)(a-g)

5. Idaho Code 20-514(7) provides for new standards to consider about the juvenile and his/her parent or guardian's responsibility to reimburse for public representation. A juvenile or his/her parent or guardian is only required to reimburse if the juvenile is found within the purview of the act. The court is directed to consider the adult indigence standards in determining whether the juvenile or his/her parent or guardian can be required to pay for appointed counsel and contains the same language as in the adult law on not requiring payment if ordering payment would result in a "manifest hardship".

**Practice's for implementing the new provisions:**

1. I.J.R. 9(4) requires that a juvenile offender be made aware of his/her right to counsel and public representation at the earliest possible time. I.J.R. 4 contains a recommended summons form that notes the juvenile's right to counsel and public representation. Court's may wish to provide a written notification of the right to an attorney and public representation as well as the dangers and disadvantages of representation with the summons. *(Attached is a draft plain language form providing instructional information about a juvenile's right to counsel.)*

2. Assure that the record reflects the judge has advised the juvenile of his/her rights including his/her right to counsel and public representation and the dangers and disadvantages of self-representation. Currently in Idaho, judges follow three models for advising juveniles of their rights including their right to counsel and public representation:

First, some judges engage in a mass colloquy to all juveniles and their parents ordered to attend the initial hearing on a given day. Some courts do this by a recorded video. If this model is used each individual juvenile and their parents are then quizzed when they appear before the judge about their having heard the colloquy, their understanding or questions about their rights and what course they wish to take regarding their right to counsel.

Second, some judges provide a written form advising the juvenile and their family of the juvenile's rights and request the form be read and signed by the juvenile and their parent or guardian then the judge inquires at the initial hearing about whether they have read the form, have any questions and what course they wish to take regarding their right to counsel.

Third, some judges prefer to advise each juvenile and his/her parents or guardians individually at the initial hearing of his/her rights including his/her right to an attorney and public representation.

What is essential is that the record reflects the judge has advised the juvenile of their right to counsel and the dangers and disadvantages of self-representation.



3. If a juvenile waives counsel, the judge should inquire at the start of each hearing where the juvenile appears as to whether the juvenile wishes to have counsel appointed or continue with their previous waiver.
4. Attached are some forms that judges may use or adapt to implement the new statutory requirements of advising the juvenile of his/her right to counsel and the dangers and disadvantages of self-representation.
  - a. A draft plain language form providing instructional information about a juvenile's right to counsel.
  - b. A colloquy discussing the juvenile's right to counsel, his/her right to public representation and the dangers and disadvantages of self-representation.
  - c. A form order denoting the waiver of counsel by a juvenile with the appropriate findings by the judge to be signed by the judge and placed in the file.

## Juvenile's Right to an Attorney

### What are my rights to an attorney?

- You have the right to have an attorney represent you at all hearings and throughout the process.
- If you do not have an attorney, you can ask the court to reschedule your admit/deny hearing so that you can hire your own attorney.
- If you cannot pay for an attorney, you can ask the court to assign an attorney to represent you.
- If there is a conflict between yourself and your parents a separate attorney can be appointed to represent them.

### How can an attorney help me?

Attorneys know the laws and understand how the court works. Attorneys can:

- Protect your rights and speak for you.
- Give the court evidence that shows you are not guilty.
- Explain the charges and give you advice on your best options.
- Negotiate for reduced charges and/or a reduced sentence.

### Do I have to have an attorney?

#### Serious Charges

You must have an attorney in certain cases where the charges are more serious and complex. The court must either assign an attorney to represent you or you must choose and pay for your own attorney in these cases.

#### Other Charges

If you do not want an attorney your parent/guardian must consent, and the judge must also agree. The judge does not have to agree with your decision. You must have an attorney represent you in certain cases.

Even if your parents do not want you to have an attorney you still have the right to have an attorney represent you.

### When do I look for an attorney?

You should contact an attorney as soon as possible, even before coming to court for the first time. You can even apply for a public defender before coming to court.

### What are the dangers and disadvantages of not having an attorney?

- You will not get a more detailed explanation of the charges or the facts that the prosecutor must prove to the court.
- No one will examine possible defenses or excuses that you might have.
- No one will explain how the proof of the "intent" to commit a crime may keep you from being found guilty.
- No one will speak to the judge on your behalf. You will have to speak for yourself even if you do not understand the law.
- You may not understand all possible consequences of being found guilty.
- No one will meet with the prosecutor on your behalf to discuss options.
- The court cannot help you present evidence or defend yourself against an experienced prosecutor who knows the laws and court rules.

### Representing yourself would mean that you:

Must speak for yourself at detention hearings, pretrial, trial, sentencing, and all other hearings.

Would have to question witnesses, write your own court documents, and present your own defenses without knowing all the court rules or understanding the court process.

IN THE DISTRICT COURT OF THE \_\_\_\_\_ JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF \_\_\_\_

In the Interest of

DOB:

A Child Under Eighteen

CaseNo.

Waiver of the Right to Attorney

**Advice of Rights**

- You have the right to have an attorney represent you at all hearings and throughout the court process.
- If you do not have an attorney, you can ask the court to reschedule your hearing to admit or deny the charges so that you can hire your own attorney.
- If you cannot pay for an attorney, you can ask the court to assign an attorney to represent you.
- If there is a conflict between yourself and your parents, a separate attorney can be assigned to represent them.

**Dangers and disadvantages of self-representation:**

Some, but not all, of the dangers and disadvantages of representing yourself include:

- An attorney investigates the facts and law of your case and can give you advice about how to handle your case.
- An attorney is trained to assist you through the legal process.
- An attorney understands how courts work, the rules of court, and the laws.
- An attorney can help you with your case and help you to understand what you are accused of doing and what your options are in resolving the case.
- An attorney can speak with the state's attorney, on your behalf, to obtain a lesser charge, which could result in you receiving a more favorable sentence from the judge.
- An attorney can make sure that your legal rights are protected.
- An attorney can present evidence to show that you are not guilty of the offense as charged.
- An attorney can speak to the court on your behalf towards getting a lesser sentence if you are found to be guilty.

**Juvenile’s Waiver**

I, \_\_\_\_\_, have come to court and I am aware of and understand my rights, and the dangers and disadvantages of representing myself without the help of an attorney and, being older than 14 years, I give up the right to be represented by an attorney.

\_\_\_\_\_  
Juvenile

\_\_\_\_\_  
Parent/Guardian

**THE COURT HAVING FOUND** that the above named juvenile has been informed of the right to counsel and the dangers and disadvantages of self-representation; and

**THE COURT HAVING FOUND** that the above named juvenile's waiver of counsel was intelligently made after consideration of the totality of the circumstances including, but not limited to:

- The age, maturity, intelligence, education, competency and comprehension of the juvenile;
- The presence of the juvenile’s parent(s) or guardian;
- The seriousness of the offense;
- The collateral consequences of adjudication of the offense; and
- Whether the interests of the juvenile and his/her parent(s) or guardian conflict.

**NOW, THEREFORE**, it is found by the Court that it is in the juvenile's best interest not to be represented by an attorney at this time.

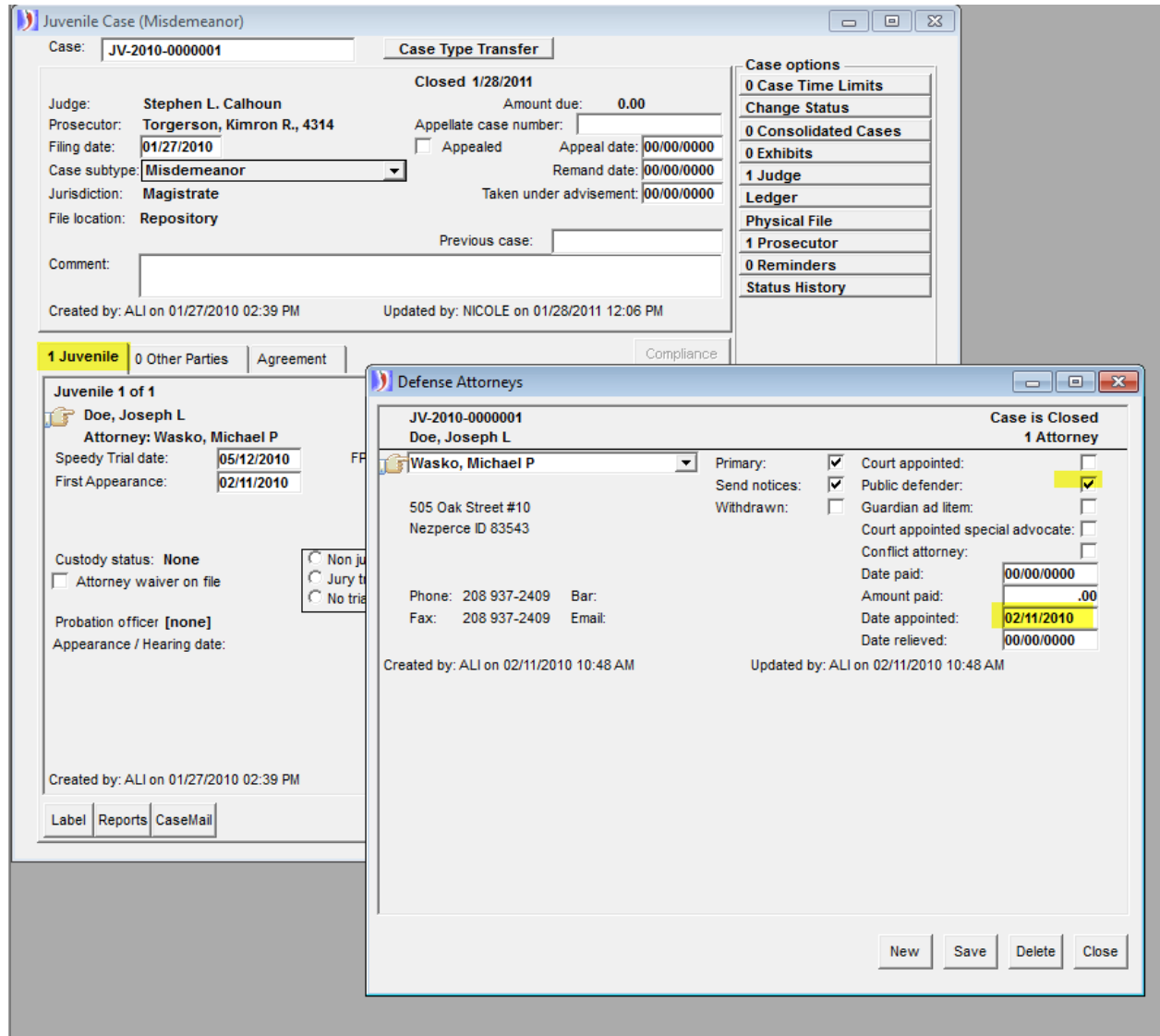
Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
MAGISTRATE JUDGE

### **Business Practices for Court Clerks:**

From the juvenile tab on the case screen click on attorney, then new. If the attorney is a public defender appointed by the court, please indicate by checking the box to the right of public defender (as shown below) and enter the date appointed.

If at any time an attorney withdraws from the case then check the box to the right of "primary" and check the box to the right of withdrawn. Do not delete attorneys from a case unless the attorney was entered in error.



# HB 256

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**Amends provisions of the Child Protective Act and parental termination statutes; amends definition of aggravated circumstances; clarifies definition of protective order and protective supervision; clarifies timelines for reunification, guardianship, termination, and adoption.**

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HB 256 amends the Child Protective Act and Termination of Parent Child Relationship statutes. Detailed guidance on how the changes impact the Judiciary is provided in the Child Protection Benchcards.

## Overview of House Bill 256 and I.J.R. 33, 39, 41, 44, 45, 46, and 51

### **I. What do they do?**

- Clarify timelines for reunification, guardianship, termination, and adoption.
- Clarify definitions--“aggravated circumstances”, “protective supervision”, “protective order”, “15 of the last 22 months.”
- Merge language from rules and statutes to ensure roles/responsibilities/ expectations of various C.P. hearings are clearly set forth in one location.
- General Clean-up.

### **II. Timelines**

- Petition to terminate within 30 days of Order approving permanency plan with permanency goal of termination and adoption (I.C. § 16-1624(2); I.J.R. 44 and 46).
- Proposed timeline for finalizing termination of parental rights is within 6 months of approval of permanency plan (I.J.R. 44).
- Proposed timeline to finalize an adoption is within 12 months of approval of plan with goal of termination and adoption (I.J.R. 44).
- Proposed timeline to finalize when permanency goal is termination and adoption: finalize termination within 18 months of removal; finalize adoption within 24 months of removal (I.J.R. 46).
- Proposed timeline for finalization for reunification is 12 months from date of removal. Court may approve a 3-month extension. (I.J.R. 44).
- Proposed timeline for finalization for guardianship is within 13 months from date of removal (or within 5 months if aggravated circumstances) (I.J.R. 44).

### **III. Definitional Changes: Clarification of Terms**

#### **1. Aggravated Circumstances (I.C. 16-1602)**

- Moved to definition section (from adjudicatory statute) to clarify it can be raised at any time.
- Adds cross-references to Idaho criminal code to help provide guidance as to the types of behavior that would fall within this definition.
- Adds chronic neglect and defines chronic neglect and chronic abuse.
- Replaces old “aggravated circumstances” language in termination statute with new definition (I.C. § 16-2005(2)(b)).

#### **2. Protective Order – to clarify broader than DV situations.**

3. **Protective Supervision** – clarifies child is in legal custody of parent subject to supervision of department (deletes “permitted to remain in his home” which was confusing as the child is not necessarily in same home).
  
4. **15 out of 22 months language**: Several conflicting court opinions demonstrated language needed to be clarified.
  - New language taken directly from federal regulations.
  - Reference deleted from I.C. 16-1629 (Powers and Duties of Department)—did not belong there.
  - A. **Review and Permanency Hearings (I.C. 16-1622)**:

If child is in the custody of IDHW for 15 of the last 22 months, IDHW shall file, prior to the last day of the 15th month, a petition to terminate parental rights unless:

    - i. The child is permanently with a relative;
    - ii. There are compelling reasons why not in the child’s best interests; or
    - iii. IDHW has failed to provide reasonable efforts to family.
  - B. **Definition of neglect in termination statute (I.C. § 16-2003(3)(b))**.

Deletes reference to 16-1629 and now provides:  
“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 department.”
  
5. **Consolidation of Statute and Rules**
  - Consolidation of statutes and rules so roles/ responsibilities and expectations in one location.
  - Permanency Plan (I.C. 16-1620 and I.J.R. 44)
  - Case Plan Hearing (I.C. 16-1621 and I.J.R. 44)
  - Review and Permanency Hearing (I.C. 16-1622 and I.J.R. 46)

\*\*\* <http://isc.idaho.gov/cp/benchcards/2013%20CP%20Benchcards%20FINAL%2010-24-13.pdf>

**For additional information on Benchcards please contact Debra Alsaker-Burke JD at [dburke@idcourts.net](mailto:dburke@idcourts.net) or (208)947-7457.**

## **Business Practices for Court Clerks:**

There are no changes in business practices for deputy clerks. Following is a brief review of the ISTARS data entry requirements when aggravated circumstances are found in a CPA case.

Step 1: Go to the Child Protection Action Results Entry Tab and select “CPA Adjudicatory Hearing 30 days after”

Step 2: Select the subjects to whom the results apply

Step 3: Select “Aggravated Circumstances”

Step 4: Click on “Save”

Child Protection Action Results Entry

In The Matter Of Joe Child A Child

Select the action to be resulted:

|  |            |
|--|------------|
| CPA Shelter Care Hearing 48 business hours after | 06/05/2013 |
| CPA Adjudicatory Hearing 30 days after           | 06/05/2013 |

Result date: 06/05/2013

Hearing: CPA Adjudicatory Hearing

Scheduled: 6/5/2013 12:30 PM

Select the subject(s) to whom these results apply:

|            |
|------------|
| Child, Joe |
|------------|

Select the results to be applied:  Findings  Other Results  Reasons

Basis: Homeless  
Basis: Lacks stable home  
Basis: Sibling of such a child  
Reasonable efforts to prevent removal  
Contrary to welfare AND best interest to place  
Aggravated circumstances

Help Save Close

Upon entering the hearing results, ISTARS will automatically write the data over to the Compliance Tab and will adjust the timelines to the correct dates on the Critical Deadlines Tab as shown below.



### Child Protection Detail of the Compliance Tab:

Child Protection Detail

Case: CV-2013-0000004-CP Status: Case is Pending  
 For Child: Child, Joe In The Matter Of Joe Child A Child

Special Circumstances exist for this child

Summary Detail Relationships Critical Deadlines Hearing Attendees

Action date: 06/05/2013 12:30 PM CPA Adjudicatory Hearing 30 days after CPA petition filed

ACTION comment:

RESULTS comment:

Override compliance  First order of Removal

Override reason:

Created by: ISC1 on 06/05/2013 11:01 AM Updated by: ISC1 on 06/05/2013 11:01 AM

Results date Last updated

Findings

|            |                          |                             |
|------------|--------------------------|-----------------------------|
| 06/05/2013 | Aggravated circumstances | ISC1 on 06/05/2013 11:02 AM |
|------------|--------------------------|-----------------------------|

Reports The designation of First or Subsequent for a Review or Permanency Hearing will not appear on this window

New Save Delete Close

Label Reports CaseMail New Save Delete Close

### Critical Deadlines Tab:

Child Protection Detail

Case: CV-2013-0000004-CP Status: Case is Pending  
 For Child: Child, Joe In The Matter Of Joe Child A Child

Special Circumstances exist for this child

Summary Detail Relationships Critical Deadlines Hearing Attendees

Child removed from home: 06/04/2013 10:00 PM  
 Aggravated circumstances found: 06/05/2013 12:00 AM

| Watch item   | Deadline date                              | Deadline satisfied? |
|--|--|---------------------|
| Deadline time frame  | Action date                                |                     |
| <b>Shelter Care Hearing</b><br>within 48 hours of removal of child   | 06/06/2013 10:00 PM<br>06/05/2013 11:00 AM | YES                 |
| <b>Finding: Reasonable efforts to prevent removal</b><br>within 60 days of removal of child  | 8/2/2013<br>6/5/2013                       | YES                 |
| <b>Finding: Contrary to welfare AND best interest to place</b><br>must be in first order sanctioning removal of child<br>1st Order: CPA Shelter Care Hearing | 6/5/2013<br>6/5/2013                       | YES                 |
| <b>Permanency Hearing</b><br>within 30 days of Adjudicatory Hearing  | 7/4/2013<br>7/2/2013                       | YES                 |

Reports

New Save Delete Close

# HB 274

This legislation authorizes cities to offer a traffic safety education program to all drivers issued an infraction citation by a city officer; participants would be subject to payment of all fines and costs for the violation, but by attending the program they would avoid being assessed points and having the infraction count as a moving violation for insurance purposes; cities could charge a fee of up to \$25 for attending the program.

This legislation contained a delayed effective date of January 1, 2014.

As you can see below, the Idaho uniform citation will be changed to allow for use of a check box in which an officer can indicate that the program has been ordered.

The \$25.00 fee, or lesser-designated amount, for the program will be collected by the city and will not be paid to the court.

### In ISTARs:

The ISTARs system has been modified to allow both the electronic import and manual insertion of the "Traffic Safety Program Offered". (The clerk will enter this at the time the citation is entered.)

The screenshot shows a software window titled "Citation Entry" with the following fields and values:

- Search by:** Name/DOB/SSN/Company (selected), Name/DOB, SSN, Company, DOB, Exact Name
- Name:** Last: Mars, First: Michael, Middle: , Suffix: , DOB: 00/00/0000
- Address:** City: Nezperce, State: ID, Zip: 83543
- Personal Info:** Race: , Ethnicity: , Language: , Eyes: BRO, Sex: , Height: Ft: , In: 00, Weight: , SSN: - -
- Citation Info:** Citation number: 1234, Officer: ANDERSON, RAFAEL (1000), Infraction: Driving Lane-Violation of Restrictions in a High Occupancy
- Vehicle Info:** Vehicle plate: , State: , Make: , Model: , Year: , County: [none]
- Violation Info:** Statute: 201207, 149-1421A, Cited speed: , Posted speed: , Pounds over wt: , Appear date/time: 00/00/0000 00:00 AM, Room: 001, Disposition date: 00/00/0000
- Program Info:** Traffic Safety Program offered:

Within 15 days of successful completion of the program, the city will notify the court of the completion. At that time, the clerk will go into the charge screen on the case and enter the date provided, indicating the program was completed by the cited driver.

The screenshot shows a software window titled "Criminal Charges" with the following details:

- Case: CR-2013-0000006-IN
- Defendant: Mars, Michael
- Status: Case is Pending
- Charge: 201207 I49-1421A Driving Lane-Violation of Restrictions in a High Occupancy Lane
- Statute: 201207 I49-1421A Driving Lane-Violation of Restrictions in a High Occupancy Lane
- County: [none]
- Officer: ANDERSON, RAFAEL (1000)
- Plea: [dropdown]
- Plea date: 00/00/0000 00:00 AM
- Violation date: 11/27/2013 12:00 AM
- Bond set at: .00
- Bond schedule: 156.50 Fixed fine amount
- Police reference: [text box]
- Comment: [text box]
- Domestic violence:
- Withheld reported date: 00/00/0000
- BCI reported date: 00/00/0000
- JCA reported date: 00/00/0000
- Agency reported date: 00/00/0000
- ITD disposition reported date: 00/00/0000
- Traffic Safety Program offered:  Reported: 00/00/0000 Program completed: 00/00/0000 Reported: 00/00/0000
- Created by: ISC1 on 11/27/2013 01:10 PM
- Updated by: ISC1 on 11/27/2013 01:10 PM

Buttons at the bottom include: Statute Lookup, New, Save, Delete, Close.

Automated reporting will pick up these data elements and will report the successful completion to ITD. The Idaho Transportation Department will, if timely, and appropriate, adjust the points assessed against the driver.

**Recommended Format for Cities to Report Program Completion to the Court: (example)**

The document below was designed as an example, which may be provided to any city offering the Traffic Safety Education Program. This allows the city to provide one document to the court for the successful completion of participants in each class.

In the event that a city has their own document for submission, that document will be accepted by the court, as long as the driver’s name, citation number, and successful completion date are included.

It is the city’s responsibility to submit copies of the completed form to each county court in which the original citation was issued.

Proof of successful completion will be kept by the court.

**State of Idaho  
In and For the \_\_\_\_\_ County**

**AFFIDAVIT OF SUCCESSFUL COMPLETION OF TRAFFIC SAFETY PROGRAM**

The following driver(s) have completed the Traffic Safety Education Program offered by \_\_\_\_\_ city which were submitted to the above entitled County.

| Citation Number<br>(Required) | Driver's Name<br>(Required) | Driver's Address:<br>(Required) | Successful Completion Date:<br>(Required) |
|-------------------------------|-----------------------------|---------------------------------|---|
|                               |                             |                                 |   |
|                               |                             |                                 |   |
|                               |                             |                                 |   |
|                               |                             |                                 |   |
|                               |                             |                                 |   |

Today's Date: \_\_\_\_\_ Signed by: \_\_\_\_\_  
City Clerk (or title for who signed the document)

## HB 648

---

Originally enacted during the 2007 Legislative Session and amended in the 2012 Legislative Session with an effective date of March 1, 2013 - Amends I.C. 19-2522 to permit any report of a mental examination to be used to satisfy the requirements of the statute, so long as it provides the information needed for sentencing and is sufficiently recent (excludes I.C. 18-210 and 18-211 competency evaluations); amends I.C. 19-2524 to provide for screening of all defendants for substance use disorder or serious mental illness, unless the court waives such screening; provides for substance use disorder assessments by DOC and mental health examinations by DHW if need for such is identified by the screening; provides for the court to order community-based treatment if the defendant is placed on probation; and permits the court to order such/additional screening, followed by assessment and examination if indicated, at any time after sentencing when the court exercises jurisdiction over defendant. Also statutorily realigns appropriation issues.

---

This legislation is designed to provide district judges better and more complete information in the presentence report or probation violation stages of sentencing defendants who have been convicted of felonies. Specifically, the statutory framework provides an improved process for the screening, assessment and evaluation of individuals in order to identify those who have a substance use disorder or serious mental illness.

**The judge may order the screening under I.C. 19-2524, but can only order a full mental health evaluation after receiving the results of the mental health examination or mental health recommendation with a plan of treatment, consistent with the screening process.**

This objective, assessment driven approach will result in more offenders being supervised in the community with specified treatment plans rather than being incarcerated, resulting in a more effective rehabilitation and a reduction in correction costs.

The major changes in processing cases under I.C. 19-2524 are the following:

1. Previously, when the judge ordered a presentence investigation (PSI), the judge also had to order a I.C. 19-2524 evaluation if one was desired. Under the new law, when a PSI is ordered, the I.C. 19-2524 evaluation automatically occurs unless the court waives the evaluation.
2. For the process to work properly and be timely, the clerk must forward the completed order for the PSI to IDOC as soon as practicable, and the defendant and/or the defendant's counsel must timely complete the PSI face sheet and PSI questionnaire. Thereafter, the defendant must keep all scheduled visits with IDOC and/or IDHW.

With recent changes to I.C.R. 32 dealing with PSI, if a defendant already has a recent PSI and I.C. 19-2524 evaluation, at the discretion of the judge, these can be used in lieu of ordering a new PSI.

Lastly, at any time the court has jurisdiction over a defendant following sentencing, the court can order I.C. 19-2524 evaluations. For instance, these could be ordered when determining whether to revoke probation, or following return from a retained jurisdiction.

Following is the identified PSI evaluation process and timelines:

| <b>No later than:</b>  | <b>Actions:</b>  |
|--|--|
| <b>Day 1</b>   | PSI Order <b>IMMEDIATELY</b> sent to IDOC District Offices   |
| <b>Day 24</b>  | IDOC or private provider completes GAIN-I Core for every felony offender with a PSI Order          |
| <b>Day 25</b>  | IDOC receives GAIN-I Core report (GRRS) and submits to DHW for mental health review                |
| <b>Day 27</b>  | DHW reviews collateral information, GRRS, and applies mental health criteria                       |
| <b>Day 32</b>  | DHW mental health recommendation or identification of no mental health issues are forwarded to PSI |
| If a full mental health assessment is necessary, DHW immediately informs PSI                     |  |
| <b>Day 39</b>  | PSI Report submitted to Court for review with a GAIN-I Core Report & mental health recommendations |
| <b>FOR THE MAJORITY OF ALL CASES, JUDGES WILL RECEIVE A PSI WITHIN 39 DAYS</b>                   |  |
| <b>Day 47</b>  | DHW conducts full mental health assessment   |
| <b>Day 52</b>  | PSI Report submitted to Court with GAIN-I Core & full mental health recommendation                 |
| <b>IF A FULL MENTAL HEALTH ASSESSMENT IS NECESSARY, JUDGES WILL RECEIVE A PSI WITHIN 52 DAYS</b> |  |

With tight timeframes and no room for missed appointments, the expectation remains that pre-sentence investigation reports will be submitted to the court within 4 to 6 weeks. In those cases where a full mental health evaluation is necessary, some delays are anticipated during the implementation of the new process and a notification to the court from the PSI writer in case of delays.

In the event the court needs an updated PSI with updated evaluations or mental health recommendations, the judge may select the updated PSI checkbox that will initiate the screening and assessment process identified above with the same timeframes.

**Business practices for implementing the new provisions:**

1. To increase the timely submission of evaluations to the court as part of the PSI, a PSI Face Sheet will be completed by the defendant and submitted to the court when a PSI is ordered by the court whether as part of the change of plea hearing or at the end of a trial with a finding of guilty. A PSI Face Sheet form has been loaded into all ISTARs county databases and is included in these materials. This document is also available on the Supreme Court website with a notification to public defenders. It is critical that judges communicate to offenders the importance of making all of their evaluation appointments with IDOC and IDHW during the PSI process. To that end, below is an example of language for inclusion at the change of plea hearing:

***It is very important that you immediately schedule your appointment with the IDOC district office within 48 hours. You must timely complete your PSI questionnaire. You must keep all appointments during the Pre-Sentence Investigation process, including those for your substance abuse evaluation or a potential mental health examination. Missing one appointment may/will/shall result in a bench warrant for your arrest.***

2. The PSI Order has been revised. A copy of the order is included in these materials and has also been loaded into all ISTARs county databases. Previously, there were check boxes for identifying if a substance use disorder evaluation or a mental health evaluation is ordered by the Court, but with the new process, those individual requests are no longer required for the majority of orders. There are two additional check boxes for judicial consideration: 1) a check box indicating if a judge wishes to waive all behavioral health assessments (both substance abuse and mental health); and 2) a check box for a judge to waive under I.C. § 19-2524 2 (e) the requirement that the assessment and evaluation are conducted by different persons or facilities. This is an area for potential statutory language change, pending further discussion.

If the judge orders other evaluations such as a sex offender or domestic violence, place a check next to the appropriate box.

3. After a judge signs the PSI Order, the deputy clerk will file stamp the order and PSI face sheet, enter the appropriate ROA codes in ISTARs (PSIO1 for the order and PSIO2 for the face sheet), and transmit both immediately to the Idaho Department of Corrections (IDOC). ***To meet the new timeframes outlined above, it is imperative the clerk immediately (within 24 hours) transmit this information to IDOC.***

Both forms should be scanned for each individual case. The following file naming convention should be used: defendant last name (space) case # (space) Judge last name. When possible, the electronic file should be e-mailed to IDOC and DHW simultaneously, using the IDOC e-mail address formula (with the “d1” changed for the appropriate district): [d1sudintake@idoc.idaho.gov](mailto:d1sudintake@idoc.idaho.gov), and to DHW central office: [19-2524@dhw.idaho.gov](mailto:19-2524@dhw.idaho.gov).

If scanning the documents is not possible, FAX the documents together to the existing IDOC district office fax number, using the following fax numbers as identified by IDOC District Offices for this expressed purpose:

D1 FAX (208) 769-1481

D2 FAX (208) 799-8556

D3 FAX (208) 454-7624

D4 Fax (208) 334-3252

D5 FAX (208) 736-3054

D6 FAX (208) 237-2646

D7 FAX (208) 525-7015

If scanning or faxing the documents is not possible, a final alternative is to use a physical IDOC drop box with both documents stapled together, in those areas where this is a current and acceptable practice. These documents should no longer be mailed to IDOC.

4. Following transmission to IDOC, place the order for the PSI report in the file. Place the PSI face sheet in a confidential envelope, which will also contain the PSI when it is received by the clerk.

**ORIGINAL OF THIS DOCUMENT TO IDOC**

Assigned to: \_\_\_\_\_

\_\_\_\_\_

Assigned: \_\_\_\_\_

**CourtDistrict Judicial District Court, State of Idaho  
In and For the County of CourtCounty**

**ORDER FOR PRE – SENTENCE  
INVESTIGATION  
REPORT**

STATE OF IDAHO )  
Plaintiff, )  
vs. )

DefendantName )

DefendantMailingAddress )

DefendantCity, DefendantState DefendantZip )

) CaseNumber

Case No: \_\_\_\_\_

) **CHARGE(s):**

) AllChargeStart

) AllChargeStatuteNumber

) AllChargeStatuteDescription

) AllChargeEnd

**ROA : PSIO1-** Order for Presentence  
Investigation Report

On thisTodayDateLong, a **Pre-sentence Investigation Report** was ordered by the Honorable  
CurrentJudge to be completed for Court appearance on:

**CourtHearingStartDateLong at: CourtHearingStartTime at the above stated courthouse.**

**Behavioral Health Assessments waived by the Court (PSIO1 ROA code)**

**Waiver under I.C. § 19-2524 2 (e) allowing assessment and treatment services by the  
same person or facility**

**Updated PSI**

**Other non- I.C. §19-2524 evaluations/examinations ordered for use with the PSI:**

Sex Offender  Domestic Violence  Other\_\_\_\_\_. Evaluator: \_\_\_\_\_

**PLEA AGREEMENT:** State recommendation

WHJ/JOC  Probation  PD Reimb  Fine  ACJ  Restitution  Other: \_\_\_\_\_

DEFENSE COUNSEL: PrimaryDefenseAttorneyNameOrLine\_\_\_\_\_

PROSECUTOR: PrimaryProsecutorNameOrLine\_\_\_\_\_

THE DEFENDANT IS IN CUSTODY:  YES  NO If yes where:\_\_\_\_\_

DO YOU NEED AN INTERPRETER?  NO  YES if yes, what is the  
language?\_\_\_\_\_



Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Judge



## SB 1067

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**Enacted during the 2011 Legislative Session with an effective date of July 1, 2013 – Requires collection of a DNA sample and thumbprint from all persons found guilty of a felony, rather than those found guilty of only certain specified felonies in I.C. 19-5506.**

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Idaho Code section 19-5506(1) states, “Any person, including any juvenile tried as an adult, who is convicted of, or pleads guilty to, any felony crime, or the attempt to commit any felony crime, regardless of the form of judgment or withheld judgment, and regardless of the sentence imposed or disposition rendered, shall be required to provide to the Idaho state police, a DNA sample and a right thumbprint impression.”

Idaho Code section 19-5507(2) provides that when a person is not incarcerated at the time of sentencing and is granted probation, the court shall order the person to report within ten working days to the facilities designated for the collection of DNA samples and thumbprints. The order to this effect can be included in the judgment of conviction if the judgment can be prepared and a copy provided to the defendant at the time of sentencing.

In some cases, ISP will already have a DNA sample from the defendant. In those cases, ISP will not wish to obtain an additional sample from that individual. Whether or not ISP needs a DNA sample from the defendant will be ascertained during the presentence investigation process and will be indicated on the cover sheet of the PSI. The court will need to order the defendant to provide a DNA sample and right thumbprint only if the need for a DNA sample is indicated on the cover sheet.

Idaho Code section 19-5506(5) through (8) provides that the court shall order restitution to help offset costs incurred by law enforcement agencies for the expense of DNA analysis, unless the court determines that an order of restitution would be inappropriate or undesirable. The current cost to ISP for DNA analysis of a sample is \$100.00. This is the amount that can be entered as restitution to ISP for analysis of any DNA sample that will be taken from the defendant as a result of the conviction. Of course, in certain cases DNA analysis may have been conducted, either by ISP or other agencies, in the course of the investigation. In those cases, additional restitution may be ordered based on information provided by the state. Idaho Code section 19-5506(6) provides that the maximum amount that can be ordered for DNA analysis of a sample is \$500, and the total amount ordered as restitution for all DNA analysis in a cases cannot exceed \$2,000.

The moneys ordered to be paid to ISP or other agencies for DNA analysis are labeled as restitution in I.C. § 19-5506. Therefore, as in the cases of other restitution, these moneys ordinarily should be paid through the clerk of the court.

Where the defendant is incarcerated at the time of sentencing, or is being sentenced to the custody of the Board of Correction and will be processed through RDU, the court can include the following language in the judgment:

DNA Requirement:

The defendant, having been convicted of, or pled guilty to, a felony, is hereby ordered to provide a DNA sample and right thumbprint impression as required by I.C. § 19-5506, and the defendant is ordered to pay restitution for analysis of the DNA sample in the amount of \$100.00, which is to be paid to the clerk of the district court and distributed to Idaho State Police.

Where the defendant is not incarcerated at the time of sentencing and is being placed on probation, the following language may be included in the judgment:

Pursuant to I.C. § 19-5507(2) defendant shall report within ten (10) working days from the date of sentencing to the following designated sample collection facility for the collection of a DNA sample and thumbprint impression in accordance with procedures established by the bureau of forensic services,

\_\_\_\_ Department of Probation and Parole

(address) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_ Other \_\_\_\_\_

\_\_\_\_\_

Defendant is notified that failure to provide the required DNA sample and/or thumbprint impression is a felony. Defendant's compliance with this order is a condition of probation and failure to comply with this order may result in violation of probation. The defendant is ordered to pay restitution for analysis of the DNA sample in the amount of \$100.00, which is to be paid to the clerk of the district court and distributed to Idaho State Police.

For courts which are not currently entering judgments on the day of sentencing, the following order has been downloaded to ISTARs.

IN THE DISTRICT COURT OF THE \_\_\_\_\_ JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF \_\_\_\_\_

|                 |   |                                   |
|-----------------|---|-----------------------------------|
| STATE OF IDAHO, | ) |                                   |
|                 | ) |                                   |
| Plaintiff,      | ) | Criminal No. CR                   |
|                 | ) |                                   |
| vs.             | ) | ORDER FOR DNA SAMPLE AND          |
|                 | ) | THUMBPRINT IMPRESSION             |
|                 | ) | I.C. § 19-5507(2) (at sentencing) |
|                 | ) |                                   |
| Defendant.      | ) |                                   |

---

Defendant is not incarcerated. Pursuant to I.C. § 19-5507(2) defendant shall report within ten (10) working days from the date of sentencing to the following designated sample collection facility for the collection of a DNA sample and thumbprint impression in accordance with procedures established by the bureau of forensic services,

\_\_\_\_ Department of Probation and Parole  
(address) \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_ Other \_\_\_\_\_  
\_\_\_\_\_

Defendant is notified that failure to provide the required DNA sample and/or thumbprint impression is a felony. If defendant was placed on probation at the time of sentencing, defendant's compliance with this order is a condition of probation and failure to comply with this order may result in violation of probation. The defendant is ordered to pay restitution for analysis of the DNA sample in the amount of \$100.00, which is to be paid to the clerk of the district court and distributed to Idaho State Police.

SO ORDERED

Dated: \_\_\_\_\_

\_\_\_\_\_  
District Judge

## SB 1119

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**Requires income withheld by employer for child support to be sent to the Department of Health and Welfare; requires income withholding orders to be issued using the required income withholding form.**

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This law requires all income withholding orders to be issued using the Uniform Income Withholding Order and that all income withheld by employers be sent to the Department of Health and Welfare. The uniform order can be found on the home page of the Court Assistance website along with the instructions (<http://www.courtselfhelp.idaho.gov/>).

The uniform order will be treated like all other orders in cases involving children. The order does not have to be redacted by the parties in order to file it because the content is required by statute. However, since the order includes SSN, dates of birth, and other private information, it should be placed in a confidential envelope and maintained with the file. If there is a request from a non-party to view the uniform order, the clerk must provide a redacted order.

For purposes of the uniform order, the employer that is withholding the wages is to be considered a party to the action and can view the un-redacted version.

## INCOME WITHHOLDING FOR SUPPORT

### Instructions

The Income Withholding for Support (IWO) is the OMB-approved form used for income withholding in Tribal, intrastate, and interstate cases as well as all child support orders which are initially issued in the State on or after January 1, 1994, and all child support orders which are initially issued (or modified) in the State before January 1, 1994, if arrearages occur. This form is the standard format prescribed by the Secretary in accordance with USC 42 §666(b)(6)(A)(ii). Except as noted, the following information must be included.

#### Please note:

- ☐ For the purpose of this IWO form and these instructions, “State” is defined as a State or Territory.

#### COMPLETED BY SENDER:

- 1a. **Original Income Withholding Order/Notice for Support (IWO).** Check the box if this is an original IWO.
- 1b. **Amended IWO.** Check the box to indicate that this form amends a previous IWO. Any changes to an IWO must be done through an amended IWO.
- 1c. **One-Time Order/Notice for Lump Sum Payment.** Check the box when this IWO is to attach a one-time collection of a lump sum payment. When this box is checked, enter the amount in field 14, Lump Sum Payment, in the *Amounts to Withhold* section. Additional IWOs must be issued to collect subsequent lump sum payments.
- 1d. **Termination of IWO.** Check the box to stop income withholding on an IWO. Complete all applicable identifying information to aid the employer/income withholder in terminating the correct IWO.
- 1e. **Date.** Date this form is completed and/or signed.
- 1f. **Child Support Enforcement (CSE) Agency, Court, Attorney, Private Individual/Entity (Check One).** Check the appropriate box to indicate which entity is sending the IWO. If this IWO is **not** completed by a State or Tribal CSE agency, the sender should contact the CSE agency (see [http://www.acf.hhs.gov/programs/cse/newhire/employer/contacts/contact\\_map.htm](http://www.acf.hhs.gov/programs/cse/newhire/employer/contacts/contact_map.htm)) to determine if the CSE agency needs a copy of this form to facilitate payment processing.

## NOTE TO EMPLOYER/INCOME WITHHOLDER:

This IWO must be regular on its face. Under the following circumstances, the IWO must be rejected and returned to sender:

- IWO instructs the employer/income withholder to send a payment to an entity other than a State Disbursement Unit (e.g., payable to the custodial party, court, or attorney). Each State is required to operate a State Disbursement Unit (SDU), which is a centralized facility for collection and disbursement of child support payments. Exception: If this IWO is issued by a Court, Attorney, or Private Individual/Entity and the initial child support order was entered before January 1, 1994 or the order was issued by a Tribal CSE agency, the employer/income withholder must follow the payment instructions on the form.
- Form does not contain all information necessary for the employer to comply with the withholding.
- Form is altered or contains invalid information.
- Amount to withhold is not a dollar amount.
- Sender has not used the OMB-approved form for the IWO (effective May 31, 2012).
- A copy of the underlying order is required and not included.

If you receive this document from an Attorney or Private Individual/Entity, a copy of the underlying order containing a provision authorizing income withholding must be attached.

### COMPLETED BY SENDER:

- 1g. **State/Tribe/Territory.** Name of State or Tribe sending this form. This must be a governmental entity of the State or a Tribal organization authorized by a Tribal government to operate a CSE program. If you are a Tribe submitting this form on behalf of another Tribe, complete line 1i.
- 1h. **Remittance Identifier (include w/payment).** Identifier that employers must include when sending payments for this IWO. The remittance identifier is entered as the case identifier on the Electronic Funds Transfer/Electronic Data Interchange (EFT/EDI) record.

## NOTE TO EMPLOYER/INCOME WITHHOLDER:

The employer/income withholder must use the Remittance Identifier when remitting payments so the SDU or Tribe can identify and apply the payment correctly. The remittance identifier is entered as the case identifier on the EFT/EDI record.

### COMPLETED BY SENDER:

- 1i. **City/County/Dist./Tribe.** Name of the city, county or district sending this form. This must be a governmental entity of the State or the name of the Tribe authorized by a Tribal government to operate a CSE program for which this form is being sent. (A Tribe should leave this field blank unless submitting this form on behalf of another Tribe.)



- 1j. **Order Identifier.** Unique identifier that is associated with a specific child support obligation. It could be a court case number, docket number, or other identifier designated by the sender.
- 1k. **Private Individual/Entity.** Name of the private individual/entity or non-IV-D Tribal CSE organization sending this form.
- 1l. **CSE Agency Case Identifier.** Unique identifier assigned to a State or Tribal CSE case. In a State CSE case, this is the identifier that is reported to the Federal Case Registry (FCR). For Tribes this would be either the FCR identifier or other applicable identifier.

Fields 2 and 3 refer to the employee/obligor's employer/income withholder and specific case information.

- 2a. **Employer/Income Withholder's Name.** Name of employer or income withholder.
- 2b. **Employer/Income Withholder's Address.** Employer/income withholder's mailing address including street/PO box, city, state and zip code. (This may differ from the employee/obligor's work site.) If the employer/income withholder is a federal government agency, the IWO should be sent to the address listed under Federal Agencies – Addresses for Income Withholding Purposes at [http://www.acf.hhs.gov/programs/cse/newhire/contacts/iw\\_fedcontacts.htm](http://www.acf.hhs.gov/programs/cse/newhire/contacts/iw_fedcontacts.htm).
- 2c. **Employer/Income Withholder's FEIN.** Employer/income withholder's nine-digit Federal Employer Identification Number (FEIN) (if available).
- 3a. **Employee/Obligor's Name.** Employee/obligor's last name, first name, middle name.
- 3b. **Employee/Obligor's Social Security Number.** Employee/obligor's Social Security number or other taxpayer identification number.
- 3c. **Custodial Party/Obligee's Name.** Custodial party/obligee's last name, first name, middle name.
- 3d. **Child(ren)'s Name(s).** Child(ren)'s last name(s), first name(s), middle name(s). (Note: If there are more than six children for this IWO, list additional children's names and birth dates in field 33 - Additional Information).

3e. **Child(ren)'s Birth Date(s).** Date of birth for each child named.

3f. **Blank box.** Space for court stamps, bar codes, or other information.

**ORDER INFORMATION** - Fields 5 through 12 identify the dollar amount to withhold for a specific kind of support (taken directly from the support order) for a specific time period.

**NOTE TO EMPLOYER/INCOME WITHHOLDER:**

Payments are forwarded to the SDU within each State, unless the order was issued by a Tribal CSE agency. If the order was issued by a Tribal CSE agency, the employer/income withholder must follow the remittance instructions on the form.

**COMPLETED BY SENDER:**

4. **State/Tribe.** Name of the State or Tribe that issued the order.

5a-b. **Current Child Support.** Dollar amount to be withheld **per** the time period (e.g., week, month) specified in the underlying order.

6a-b. **Past-due Child Support.** Dollar amount to be withheld **per** the time period (e.g., week, month) specified in the underlying order.

6c. **Arrears Greater Than 12 Weeks?** The appropriate box (Yes/No) must be checked indicating whether arrears are greater than 12 weeks so the employer/income withholder can determine the withholding limit.

7a-b. **Current Cash Medical Support.** Dollar amount to be withheld **per** the time period (e.g., week, month) specified in the underlying order.

8a-b. **Past-due Cash Medical Support.** Dollar amount to be withheld **per** the time period (e.g., week, month) specified in the underlying order.

9a-b. **Current Spousal Support.** (Alimony) dollar amount to be withheld **per** the time period (e.g., week, month) specified in the underlying order.

10a-b. **Past-due Spousal Support.** (Alimony) dollar amount to be withheld **per** the time period (e.g., week, month) specified in the underlying order.

11a-c. **Other.** Miscellaneous obligations dollar amount to be withheld **per** the time period (e.g., week, month) specified in the underlying order. **Must specify.** Description of the obligation.

12a-b. **Total Amount to Withhold.** The total amount of the deductions **per** the corresponding time period. Fields 5a, 6a, 7a, 8a, 9a, 10a, and 11a should total the amount in 12a.

**AMOUNTS TO WITHHOLD** - Fields 13a through 13d specify the dollar amount to be withheld for this IWO if the employer/income withholder's pay cycle does not correspond with field 12b.

- 13a. **Per Weekly Pay Period.** Total amount an employer/income withholder should withhold if the employee/obligor is paid weekly.
- 13b. **Per Semimonthly Pay Period.** Total amount an employer/income withholder should withhold if the employee/obligor is paid twice a month.
- 13c. **Per Biweekly Pay Period.** Total amount an employer/income withholder should withhold if the employee/obligor is paid every two weeks.
- 13d. **Per Monthly Pay Period.** Total amount an employer/income withholder should withhold if the employee/obligor is paid once a month.
- 14. **Lump Sum Payment.** Dollar amount to be withheld when the IWO is used to attach a lump sum payment. This field should be used when field 1c is checked.

**REMITTANCE INFORMATION**

- 15. **State/Tribe.** Name of the State or Tribe sending this document.
- 16. **Days.** Number of days after the effective date noted in field 17 in which withholding must begin according to the State or Tribal laws/procedures for the employee/obligor's principal place of employment.
- 17. **Date.** Effective date of this IWO.
- 18. **Working Days.** Number of working days within which an employer/income withholder must remit amounts withheld pursuant to the State or Tribal laws/procedures of the principal place of employment.
- 19. **% of Disposable Income.** The percentage of disposable income that may be withheld from the employee/obligor's paycheck.

**NOTE TO EMPLOYER/INCOME WITHHOLDER:**

For State orders, the employer/income withholder may not withhold more than the lesser of: 1) the amounts allowed by the Federal Consumer Credit Protection Act (15 U.S.C. § 1673(b)); or 2) the amounts allowed by the State of the employee/obligor's principal place of employment.

For Tribal orders, the employer/income withholder may not withhold more than the amounts allowed under the law of the issuing Tribe. For Tribal employer/income withholders who receive a State order, the employer/income withholder may not withhold more than the limit set by the law of the jurisdiction in which the employer/income withholder is located or the maximum amount permitted under section 303(d) of the Federal Consumer Credit Protection Act (15 U.S.C. §1673 (b)).

A federal government agency may withhold from a variety of incomes and forms of payment, including voluntary separation incentive payments (buy-out payments), incentive pay, and cash awards. For a more complete list, see 5 Code of Federal Regulations (CFR) 581.103.

**COMPLETED BY SENDER:**

20. **State/Tribe.** Name of the State or Tribe sending this document.
21. **Document Tracking Identifier.** Optional unique identifier for this form assigned by the sender.
22. **FIPS Code.** Federal Information Processing Standards (FIPS) code.
23. **SDU/Tribal Order Payee.** Name of SDU (or payee specified in the underlying Tribal support order) to which payments are required to be sent. Federal law requires payments made by IWO to be sent to the SDU except for payments in which the initial child support order was entered before January 1, 1994 or payments in Tribal CSE orders.
24. **SDU/Tribal Payee Address.** Address of the SDU (or payee specified in the underlying Tribal support order) to which payments are required to be sent. Federal law requires payments made by IWO to be sent to the SDU except for payments in which the initial child support order was entered before January 1, 1994 or payments in Tribal CSE orders.

**COMPLETED BY EMPLOYER/INCOME WITHHOLDER:**

25. **Return to Sender Checkbox.** The employer/income withholder should check this box and return the IWO to the sender if this IWO is not payable to an SDU or Tribal Payee or this IWO is not regular on its face. Federal law requires payments made by IWO to be sent to the SDU except for payments in which the initial child support order was entered before January 1, 1994 or payments in Tribal CSE orders.

**COMPLETED BY SENDER:**

26. **Signature of Judge/Issuing Official.** Signature (if required by State or Tribal law) of the official authorizing this IWO.
27. **Print Name of Judge/Issuing Official.** Name of the official authorizing this IWO.
28. **Title of Judge/Issuing Official.** Title of the official authorizing this IWO.
29. **Date of Signature.** Optional date the judge/issuing official signs this IWO.
30. **Copy of IWO checkbox.** If checked, the employer/income withholder is required to provide a copy of the IWO to the employee/obligor.

***ADDITIONAL INFORMATION FOR EMPLOYERS/INCOME WITHHOLDERS***

The following fields refer to Federal, State, or Tribal laws that apply to issuing an IWO to an employer/income withholder. State or Tribal-specific information may be included only in the fields below.

**COMPLETED BY SENDER:**

31. **Liability.** Additional information on the penalty and/or citation of the penalty for an employer/income withholder who fails to comply with the IWO. The State or Tribal law/procedures of the employee/obligor's principal place of employment govern the penalty.
32. **Anti-discrimination.** Additional information on the penalty and/or citation of the penalty for an employer/income withholder who discharges, refuses to employ, or disciplines an employee/obligor as a result of the IWO. The State or Tribal law/procedures of the employee/obligor's principal place of employment govern the penalty.
33. **Additional Information.** Any additional information, e.g., fees the employer/income withholder may charge the obligor for income withholding or children's names and DOBs if there are more than six children on this IWO. Additional information must be consistent with the requirements of the form and the instructions.

**COMPLETED BY EMPLOYER/INCOME WITHHOLDER:**

***NOTIFICATION OF EMPLOYMENT TERMINATION OR INCOME STATUS***

The employer must complete this section when the employee/obligor's employment is terminated, income withholding ceases, or if the employee/obligor has never worked for the employer.

**Please Note:** Employer's Name, FEIN, Employee/Obligor's Name, CSE Agency Case Identifier, and Order Identifier must appear in the header on the page with the Notification of Employment Termination or Income Status.

- 34a-b. **Employment/Income Status Checkbox.** Check the employment/income status of the employee/obligor.
35. **Termination Date.** If applicable, date employee/obligor was terminated.
36. **Last Known Phone Number.** Last known (home/cell/other) phone number of the employee/obligor.
37. **Last Known Address.** Last known home/mailling address of the employee/obligor.
38. **Final Payment Date.** Date employer sent final payment to SDU/Tribal payee.
39. **Final Payment Amount.** Amount of final payment sent to SDU/Tribal payee.
40. **New Employer's Name.** Name of employee's/obligor's new employer (if known).
41. **New Employer's Address.** Address of employee's/obligor's new employer (if known).

**COMPLETED BY SENDER:**

***CONTACT INFORMATION***

42. **Issuer Name (Employer/Income Withholder Contact).** Name of the contact person that the employer/income withholder can call for information regarding this IWO.
43. **Issuer Phone Number.** Phone number of the contact person.
44. **Issuer Fax Number.** Fax number of the contact person.
45. **Issuer Email/Website.** Email or website of the contact person.
46. **Termination/Income Status and Correspondence Address.** Address to which the employer should return the Employment Termination or Income Status notice. It is also the address that the employer should use to correspond with the issuing entity.
47. **Issuer Name (Employee/Obligor Contact).** Name of the contact person that the employee/obligor can call for information.
48. **Issuer Phone Number.** Phone number of the contact person.
49. **Issuer Fax Number.** Fax number of the contact person.
50. **Issuer Email/Website.** Email or website of the contact person.

The Paperwork Reduction Act of 1995

This information collection and associated responses are conducted in accordance with 45 CFR 303.100 of the Child Support Enforcement Program. This form is designed to provide uniformity and standardization. Public reporting for this collection of information is estimated to average two to five minutes per response. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

## INCOME WITHHOLDING FOR SUPPORT

### ORIGINAL INCOME WITHHOLDING ORDER/NOTICE FOR SUPPORT (IWO) AMENDED IWO ONE-TIME ORDER/NOTICE FOR LUMP SUM PAYMENT TERMINATION of IWO

Date: \_\_\_\_\_

Child Support Enforcement (CSE) Agency    Court    Attorney    Private Individual/Entity (Check One)

**NOTE:** This IWO must be regular on its face. Under certain circumstances you must reject this IWO and return it to the sender (see IWO instructions [http://www.acf.hhs.gov/programs/cse/forms/OMB-0970-0154\\_instructions.pdf](http://www.acf.hhs.gov/programs/cse/forms/OMB-0970-0154_instructions.pdf)). If you receive this document from someone other than a State or Tribal CSE agency or a Court, a copy of the underlying order must be attached.

State/Tribe/Territory \_\_\_\_\_ Remittance Identifier (include w/payment) \_\_\_\_\_  
 City/County/Dist./Tribe \_\_\_\_\_ Order Identifier \_\_\_\_\_  
 Private Individual/Entity \_\_\_\_\_ CSE Agency Case Identifier \_\_\_\_\_

|  |                            |  |
|--|----------------------------|--|
| Employer/Income Withholder's Name          | RE:                        | Employee/Obligor's Name (Last, First, Middle)        |
| Employer/Income Withholder's Address       |                            | Employee/Obligor's Social Security Number            |
| Employer/Income Withholder's FEIN          |                            | Custodial Party/Obligee's Name (Last, First, Middle) |
| Child(ren)'s Name(s) (Last, First, Middle) | Child(ren)'s Birth Date(s) |  |
|  |                            |  |
|  |                            |  |
|  |                            |  |

**ORDER INFORMATION:** This document is based on the support or withholding order from \_\_\_\_\_ (State/Tribe). You are required by law to deduct these amounts from the employee/obligor's income until further notice.

|          |           |  |     |    |
|----------|-----------|--|-----|----|
| \$ _____ | Per _____ | current child support  |     |    |
| \$ _____ | Per _____ | past-due child support - <b>Arrears greater than 12 weeks?</b> | Yes | No |
| \$ _____ | Per _____ | current cash medical support                                   |     |    |
| \$ _____ | Per _____ | past-due cash medical support                                  |     |    |
| \$ _____ | Per _____ | current spousal support  |     |    |
| \$ _____ | Per _____ | past-due spousal support                                       |     |    |
| \$ _____ | Per _____ | other (must specify) _____                                     |     |    |

for a **Total Amount to Withhold** of \$ \_\_\_\_\_ per \_\_\_\_\_

**AMOUNTS TO WITHHOLD:** You do not have to vary your pay cycle to be in compliance with the *Order Information*. If your pay cycle does not match the ordered payment cycle, withhold one of the following amounts:

|  |  |   |
|--|--|---|
| \$ _____ per weekly pay period                     |  | \$ _____ per semimonthly pay period (twice a month) |
| \$ _____ per biweekly pay period (every two weeks) |  | \$ _____ per monthly pay period                     |

\$ \_\_\_\_\_ **Lump Sum Payment:** Do not stop any existing IWO unless you receive a termination order.

**REMITTANCE INFORMATION:** If the employee/obligor's principal place of employment is \_\_\_\_\_ (State/Tribe), you must begin withholding no later than the first pay period that occurs \_\_\_\_\_ days after the date of \_\_\_\_\_. Send payment within \_\_\_\_\_ working days of the pay date. If you cannot withhold the full amount of support for any or all orders for this employee/obligor, withhold up to \_\_\_\_\_% of disposable income for all orders. If the employee/obligor's principal place of employment is not \_\_\_\_\_ (State/Tribe), obtain withholding limitations, time requirements, and any allowable employer fees at [http://www.acf.hhs.gov/programs/cse/newhire/employer/contacts/contact\\_map.htm](http://www.acf.hhs.gov/programs/cse/newhire/employer/contacts/contact_map.htm) for the employee/obligor's principal place of employment.

Document Tracking Identifier \_\_\_\_\_ OMB 0970-0154

For electronic payment requirements and centralized payment collection and disbursement facility information (State Disbursement Unit [SDU]), see [http://www.acf.hhs.gov/programs/cse/newhire/employer/contacts/contact\\_map.htm](http://www.acf.hhs.gov/programs/cse/newhire/employer/contacts/contact_map.htm).

Include the **Remittance Identifier with the payment** and if necessary this FIPS code: \_\_\_\_\_.

**Remit payment to** \_\_\_\_\_ (SDU/Tribal Order Payee)  
at \_\_\_\_\_ (SDU/Tribal Payee Address)

**Return to Sender [Completed by Employer/Income Withholder].** Payment must be directed to an SDU in accordance with 42 USC §666(b)(5) and (b)(6) or Tribal Payee (see Payments to SDU below). If payment is not directed to an SDU/Tribal Payee or this IWO is not regular on its face, you *must* check this box and return the IWO to the sender.

|  |
|--|
| Signature of Judge/Issuing Official (if required by State or Tribal law): _____<br>Print Name of Judge/Issuing Official: _____<br>Title of Judge/Issuing Official: _____<br>Date of Signature: _____ |
|--|

If the employee/obligor works in a State or for a Tribe that is different from the State or Tribe that issued this order, a copy of this IWO must be provided to the employee/obligor.

If checked, the employer/income withholder must provide a copy of this form to the employee/obligor.

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### ADDITIONAL INFORMATION FOR EMPLOYERS/INCOME WITHHOLDERS

State-specific contact and withholding information can be found on the Federal Employer Services website located at: [http://www.acf.hhs.gov/programs/cse/newhire/employer/contacts/contact\\_map.htm](http://www.acf.hhs.gov/programs/cse/newhire/employer/contacts/contact_map.htm)

**Priority:** Withholding for support has priority over any other legal process under State law against the same income (USC 42 §666(b)(7)). If a Federal tax levy is in effect, please notify the sender.

**Combining Payments:** When remitting payments to an SDU or Tribal CSE agency, you may combine withheld amounts from more than one employee/obligor's income in a single payment. You must, however, separately identify each employee/obligor's portion of the payment.

**Payments To SDU:** You must send child support payments payable by income withholding to the appropriate SDU or to a Tribal CSE agency. If this IWO instructs you to send a payment to an entity other than an SDU (e.g., payable to the custodial party, court, or attorney), you must check the box above and return this notice to the sender. Exception: If this IWO was sent by a Court, Attorney, or Private Individual/Entity and the initial order was entered before January 1, 1994 or the order was issued by a Tribal CSE agency, you must follow the "Remit payment to" instructions on this form.

**Reporting the Pay Date:** You must report the pay date when sending the payment. The pay date is the date on which the amount was withheld from the employee/obligor's wages. You must comply with the law of the State (or Tribal law if applicable) of the employee/obligor's principal place of employment regarding time periods within which you must implement the withholding and forward the support payments.

**Multiple IWOs:** If there is more than one IWO against this employee/obligor and you are unable to fully honor all IWOs due to Federal, State, or Tribal withholding limits, you must honor all IWOs to the greatest extent possible, giving priority to current support before payment of any past-due support. Follow the State or Tribal law/procedure of the employee/obligor's principal place of employment to determine the appropriate allocation method.

**Lump Sum Payments:** You may be required to notify a State or Tribal CSE agency of upcoming lump sum payments to this employee/obligor such as bonuses, commissions, or severance pay. Contact the sender to determine if you are required to report and/or withhold lump sum payments.

**Liability:** If you have any doubts about the validity of this IWO, contact the sender. If you fail to withhold income from the employee/obligor's income as the IWO directs, you are liable for both the accumulated amount you should have withheld and any penalties set by State or Tribal law/procedure.

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**Anti-discrimination:** You are subject to a fine determined under State or Tribal law for discharging an employee/obligor from employment, refusing to employ, or taking disciplinary action against an employee/obligor because of this IWO. OMB Expiration Date – 05/31/2014. The OMB Expiration Date has no bearing on the termination date of the IWO; it identifies the version of the form currently in use.



Employer's Name: \_\_\_\_\_ Employer \_\_\_\_\_  
FEIN: Employee/Obligor's Name: \_\_\_\_\_  
CSE Agency Case Identifier: \_\_\_\_\_ Order Identifier: \_\_\_\_\_

**Withholding Limits:** You may not withhold more than the lesser of: 1) the amounts allowed by the Federal Consumer Credit Protection Act (CCPA) (15 U.S.C. 1673(b)); or 2) the amounts allowed by the State or Tribe of the employee/ obligor's principal place of employment (see *REMITTANCE INFORMATION*). Disposable income is the net income left after making mandatory deductions such as: State, Federal, local taxes; Social Security taxes; statutory pension contributions; and Medicare taxes. The Federal limit is 50% of the disposable income if the obligor is supporting another family and 60% of the disposable income if the obligor is not supporting another family. However, those limits increase 5% - to 55% and 65% - if the arrears are greater than 12 weeks. If permitted by the State or Tribe, you may deduct a fee for administrative costs. The combined support amount and fee may not exceed the limit indicated in this section.

For Tribal orders, you may not withhold more than the amounts allowed under the law of the issuing Tribe. For Tribal employers/income withholders who receive a State IWO, you may not withhold more than the lesser of the limit set by the law of the jurisdiction in which the employer/income withholder is located or the maximum amount permitted under section 303(d) of the CCPA (15 U.S.C. 1673 (b)).

Depending upon applicable State or Tribal law, you may need to also consider the amounts paid for health care premiums in determining disposable income and applying appropriate withholding limits.

**Arrears greater than 12 weeks?** If the *Order Information* does not indicate that the arrears are greater than 12 weeks, then the Employer should calculate the CCPA limit using the lower percentage.

**Additional Information:**

**NOTIFICATION OF EMPLOYMENT TERMINATION OR INCOME STATUS:** If this employee/obligor never worked for you or you are no longer withholding income for this employee/obligor, an employer must promptly notify the CSE agency and/or the sender by returning this form to the address listed in the Contact Information below:

This person has never worked for this employer nor received periodic income.

This person no longer works for this employer nor receives periodic income. Please provide the following information for the employee/obligor:

Termination date: \_\_\_\_\_ Last known phone number: \_\_\_\_\_  
Last known address: \_\_\_\_\_

Final payment date to SDU/ Tribal Payee: \_\_\_\_\_ Final payment amount: \_\_\_\_\_

New employer's name: \_\_\_\_\_

New employer's address: \_\_\_\_\_

**CONTACT INFORMATION:**

**To Employer/Income Withholder:**

If you have any questions, contact \_\_\_\_\_

(Issuer name) by phone at \_\_\_\_\_,

by fax at \_\_\_\_\_,

by email or website at: \_\_\_\_\_

Send termination/income status notice and other correspondence to: \_\_\_\_\_

(Issuer address).

**To Employee/Obligor:** If the employee/obligor has questions, contact \_\_\_\_\_

(Issuer name)  
by phone at \_\_\_\_\_, by fax at \_\_\_\_\_, by email or website at \_\_\_\_\_.

IMPORTANT: The person completing this form is advised that the information may be shared with the employee/obligor.

## SB 1122

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**Adds I.C. § 32-720 to require only temporary modification of child custody orders when one of the parents is a service member who is deployed; permits expedited modification hearings to allow a party who is a service member to appear; permits deployed service members to appear at modification hearings by telephone, video teleconference or Internet.**

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In a case involving a modification of a custody order, if one of the parties is a deployed service member and the court finds that a modification is necessary, the court may only issue a temporary modification order. That modification order must expire 60 days after the court and all parties are notified of the completion of the deployment.

The law also allows expedited hearings so that service members can appear at a hearing, and allows a service member to appear by phone, video conference, or internet.

No changes will be made to the CAO forms at this time. Court assistance officers (CAO's) have been informed of the statutory change and have been asked to let litigants know about the law if a party is an active service member. The CAO's have also been asked to provide feedback on any requests they may receive from the public for forms with this new statutory language.

This change will require some planning and coordination of information. The court should provide a hearing time and place on the hearing notice for all parties, as well as the phone number, video conference number, or IP address so the deployed service member may join the hearing remotely. An example of language for the hearing notice is shown below:

**NOTICE IS HEREBY GIVEN** that the above-entitled case is hereby set for:

Temporary Custody Hearing: Tuesday, July 02, 2013 09:00 AM

Judge: Stephen L. Calhoun

Courtroom: #1- second floor

Hearing Call Number: 208-123-4567 (for deployed service member)

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice were served as follows on June 5th, 2013.

If you need assistance with coding a "need prompt" in your hearing notice, please contact your local document editor or contact the Help Desk at [helpdesk@idcourts.net](mailto:helpdesk@idcourts.net).

# SB 1151

Amends I.C. 19-2604 to grant courts discretion to reduce a felony conviction to a misdemeanor if the defendant has been discharged from probation, has not been convicted of any felony since the conviction from which relief is sought, is not currently charged with any crime, and the reduction would be compatible with the public interest; if the application is filed within five years of the discharge from probation, relief could be granted only if the prosecuting attorney stipulates to it; if the application is filed at least five years after discharge, a stipulation from the prosecuting attorney would be required only for certain specified felonies.

Judges are encouraged to closely review the revised statute.

### Business Practices for Court Clerks:

There are no changes in business practices for deputy clerks. Following is a brief review of the steps in ISTARs for reducing a felony conviction to a misdemeanor.

Step 1: Enter the amended charge identified in the court order.

The screenshot shows the 'Criminal Charges' form in the ISTARs system. The case is CR-2013-0000001-FE for defendant Mars, Michael. The current charge is 201207 118-8004 (M) Driving Under the Influence. The form shows an amended statute of 201207 118-8004 (M) Driving Under the Influence, which is highlighted in yellow. The charge is classified as a Misdemeanor. The officer is AIKELE, AARON (1000). The plea date is 00/00/0000 00:00 AM, and the violation date is 01/04/2013 12:00 AM. The bond schedule is 285.50 Bond for resident only. The agency reported date is 05/29/2013. The form includes buttons for Statute Lookup, New, Save, Delete, and Close. The status is 'Case is Closed pending clerk action'.

Step 2: Enter the date of the order in the modified sentence field.

The screenshot displays a software interface for managing criminal charges. The main window, titled "Criminal Charges", shows case details for "CR-2013-000001-FE" and defendant "Mars, Michael". The status is "Case is Closed pending clerk action". The "Disposition" tab is active, showing a finding of "Guilty" and a disposition date of "01/04/2013". The "Modified sentence" field is highlighted in yellow and contains the date "06/05/2013".

An "Automatic Register of Actions" dialog box is open in the foreground, displaying the following information:

- Case: CR-2013-000001-FE, Defendant: Mars, Michael
- ROA date: 06/05/2013, Code: SNMD
- Text: Sentenced ModifiedSentence modified on 6/5/2013. (118-8004 (M) Driving Under the Influence)
- Judge: Calhoun, Stephen L.
- Options:  Document sealed,  Roa sealed