CLERK OF THE DISTRICT COURT MANUAL

13.0 CHILD PROTECTIVE ACT PROCEEDINGS

Revised August 2007

13.1 INTRODUCTION

The Child Protective Act (CPA) governs the judicial processing of child abuse, abandonment and/or neglect cases, and the protection of children whose life, health or welfare is endangered, while preserving (if possible) the family's privacy and unity. I.C. § 16-1601. The CPA is found in Idaho Code, Title 16, Chapter 16.

13.2 CONFIDENTIALITY

CPA cases are made confidential and exempt from disclosure by Idaho Court Administrative Rule 32(g)(9)(A). Both the case file and the courtroom proceedings are closed to the general public. The judge, however, may permit persons with a direct interest in the case to attend the proceedings, and may allow a friend, counselor or supporter of the child to remain in court while the child testifies. I.C. § 16-1613. ISTARS access to CPA case information is determined by the user's security level. A public user profile does not have access to CPA cases. Case related information (including the existence of the case itself) should be released only pursuant to Idaho Court Administrative Rule 32 (c) and 32 (h) or as directed by the presiding judge.

13.3 CPA CASE PROCESSING

How a CPA case is processed will depend on whether and when the child has been removed from the home, whether the alleged offender has been removed, or if no one has been removed. Regardless, all CPA cases require the filing of a Petition and the issuance of a summons for the parent(s), guardian or other legal custodian. I.C. §§ 16-1610; 16-1611. An adjudicatory hearing will be scheduled within thirty (30) days of the petition's filing to determine if the child needs protection. I.C. § 16-1619. The parent, guardian, or custodian are entitled to be represented by counsel in CPA cases. I.C. § 16-1612(6), I.J.R. 39(g). They are entitled to court appointed counsel if they are indigent. I.J.R. 37(d). A pre-trial conference must be scheduled with all parties within 3 to 5 days prior to the adjudicatory hearing. I.C. § 16-1619(2). Following the adjudicatory hearing, the court will decide whether to dismiss the petition, vest custody of the child in the department of Health and Welfare, or place the child back in the home under supervision by the Department of Health and Welfare. I.C. 16-1619.

A. Guardians Ad Litem (Court Appointed Special Advocates)

The court shall appoint a guardian ad litem in all CPA cases to look out for the best interests of the child during the proceedings. I.C. § 16-1614. Guardians ad litem (who may also be called guardians, special advocates, or CASA volunteers) have the right and duty, subject to the direction of the court, to review case records and conduct an

independent investigation and file written reports with the court. I.C. § 16-1633. In some cases, children and/or guardians ad litem may be represented by court appointed or private counsel.

B. Notice Requirements--Native Americans

In any child custody proceeding where the court or any party knows that a child is the biological child of an Alaskan native or a member of an Indian tribe, the parties and the court shall provide notice of the proceedings to the child's parent(s) or Indian custodian and to the Indian tribe and otherwise comply fully with 25 U.S.C. 1901, et seq., (Indian Child Welfare Act) and the notice requirements of 25 C.F.R. § 23.11. I.J.R. 58.

C. Removal of the Child

A child may be removed from the home by a peace officer before a petition is filed, or by a person appointed by the court after the filing of a petition, if the child is endangered in his/her surroundings and prompt removal is necessary to prevent serious physical or mental injury, or where the child is abandoned. I.C. § 16-1608(1)(a). When a child is removed, he or she may be held for a maximum of 48 hours, unless a hearing is held. I.C. § 16-1608(2). This hearing is called a “shelter care” hearing. This hearing is mandatory if the child is removed and not released. I.C. §16-1615.

Each parent or custodian from whom the child is removed must receive notice of the shelter care hearing at least twenty-four (24) hours beforehand, excluding weekends and holidays. I.C. § 16-1615(2). A petition should be filed by the time of that hearing. The judge will appoint a guardian ad litem or attorney for the child. I.C. § 16-1614.

At the shelter care hearing the judge will decide if the child is to remain outside the home (in shelter care), be returned to the home with protections, or if the case is to be dismissed. IC § 16-1615. If the judge determines that the child should remain in shelter care, he/she will enter a temporary order of custody. I.C. § 16-1615(5)(f). If the judge determines that the child is to be returned to the home, he/she may issue a protective order or dismiss the case. I.C. §16-1615(7).

If, after the shelter care hearing, the case is not dismissed, the Court will order the Department to conduct an investigation (IC § 16-1616) and set the adjudicatory hearing no more than 30 days from the filing of the petition. IC § 16-1615(6). A pre-trial conference must also be set within 3 to 5 days prior to the adjudicatory hearing. I.C. § 16-1619(2).

Following the adjudicatory hearing, the judge may dismiss the petition, place the child back in the home under protective supervision by the Department of Health and Welfare, or vest legal custody with the Department. I.C. § 16-1619(5). If the petition is not dismissed, a Case Plan Hearing shall be held within 30 days of the adjudicatory hearing. I.C. § 16-1621(1). Notice of this hearing must be given to the parents, legal guardians, guardian ad litem and foster parents. I.C. § 16-1621(2). A review of the case and the

permanent plan for the child must be held no later than 6 months after the court took jurisdiction and every 6 months thereafter. I.C. § 16-1622(2).

D. Removal of the Offender

An alleged offender may be removed from the home of an abused or neglected child without a court order where the child is endangered and prompt removal is necessary to prevent serious injury to the child. I.C. § 16-1608(1)(b). When the alleged offender has been removed from the home before the Petition is filed, a motion based on an affidavit requesting approval for the offender's removal is to be filed simultaneously with the petition. I.C. § 16-1608(3). A shelter care hearing must be held within twenty-four (24) hours of the filing, excluding weekends and holidays, to determine if the removal was appropriate. IC § 16-1608(3). At that hearing the Court will enter orders regarding the child, order such investigations as may be needed and set a date and time for the adjudicatory hearing and the matter will be processed as stated in the clerical duties at the end of this section.

E. When no one has been removed from the home.

When removal of the child or offender is not necessary to prevent serious injury, CPA proceedings may still be initiated to address other instances of abuse, neglect or abandonment or situations where the parent or guardian fails to provide a stable home environment. I.C. § 16-1604(1). These proceedings begin with the filing of a Petition signed by either the prosecuting attorney or a deputy attorney general. I.C. § 16-1610(1). A Summons should be issued directing all interested parties to appear in court for the Adjudicatory Hearing, which shall be set no later than thirty (30) days after the filing of the petition. I.C. §§ 16-1611, 16-1619. This summons will usually be delivered by personal service, but the judge may order service by registered mail or by publication. I.C. § 16-1612. There is no need for a shelter care hearing. These cases are processed as stated in the clerical duties below, except for the provisions related to shelter care hearings.

F. Terminations of Parental Rights

The Department of Health and Welfare may petition the court for termination of the parent-child relationship at any time after the entry of a decree finding that the child is within the court’s jurisdiction under the CPA. I.J.R. 48(a). The Department is required to file such a petition within 60 days of the court’s determination that an infant has been abandoned or subjected to aggravated circumstances. I.C. § 16-1624. The Department is required, unless excused by the court, to file a petition to terminate if the child has been placed out of the home for 15 of the last 22 months from the date the child was removed. I.C. §16-1629. The petition is filed in the original CPA case. I.J.R. 48(b).

G. Appeals

Following the filing of any order or decree of the court, an aggrieved party has thirty (30) days to file an appeal to the district court. I.C. § 16-1625(1). Filing an appeal to the district court in a CPA case does not alter custody of the child, but where custody is at issue, the hearing on the appeal should be set for the earliest possible time. I.C. § 16-1625(2).

H. Juvenile Case Becoming a CPA Case

During the processing of a juvenile case, under the Juvenile Corrections Act, the Court may order the juvenile case to be expanded into a Child Protective Act proceeding, pursuant to I.J.R. 16. See also section 12.0 relating to JCA cases.

Clerical Duties:
The following is a general outline of the duties to be performed. For more specific detail of the process, refer to the ISTARS CPA Case Management Users' Manual.

1. File stamp the petition and the requisite number of copies upon receipt, open a file and assign a case number and judge, and issue a summons. The case will be sealed and should be marked accordingly.
2. Clerks are responsible to update all information required by the ISTARS CPA Case Management Users' Manual.
3. To assist in tracking whether a child is a member of an Indian Tribe or Alaskan Native ISTARS has information on the party tab which is referred to as "ICWA" status. ICWA stands for "Indian Child Welfare Act". If indicated on the petition you will insert the information on the child's party detail whether they are "Confirmed Indian", "Non-Indian", "Not confirmed" (default), and the date confirmed. Then, if known, you will insert the tribal name on the line that indicates Tribe. If not indicated on the initial petition the hearing cover sheet assists the court in remembering to ask the question of the parents of the child at future hearings so that the ICWA status can be determined and documented. Once established, the tribe needs to be added as an "other party" and included on the relationship tab for the child(ren) who are members of the tribe. Copies of the case file and notices of all future hearings must be sent to that tribe by the court. (The Department of Health and Welfare or your local prosecutor may be of assistance to you in establishing this information and in getting the tribal addresses for you to send notices if applicable.)
4. Process the order appointing Guardian Ad Litem and Public Defender. For noticing purposes, guardians are to be added as a party in the ISTARS record, and are to be added in the CPA ISTARS module on the relationship tab.
5. Schedule the Shelter Care Hearing. Arrange for service of the notice of hearing to all appropriate parties. Time Limits related to Shelter Care Hearings indicating when these hearings must be held:
    a) Shelter Care Hearing Removal of Offender – 24 hours from the removal of offender OR

b Shelter Care Hearing Removal of Child - 48 hours from the removal of child (Note: both of the above shelter care hearing times are measured by court working days – and so would not include weekends and holidays.)

6. Make appropriate ROA entries, print the hearing Cover Sheet, and place all documents in the file.
7. After the hearing, enter the hearing result and enter the information from the cover sheet on the Compliance screen of the ISTARS CPA module including the Summary, Detail, Relationships, Critical Deadlines, and Hearing Attendees screens.
8. Schedule future hearings and print the appropriate cover sheet prior to that hearing.
   c) Adjudicatory Pretrial Conference - 25 days after shelter care hearing.
   d) Adjudicatory Hearing - 30 days after shelter care hearing.
   e) Review Hearing- 6 months after the entry of the court's order taking jurisdiction.
   f) Permanency Hearing - 12 months or 365 days after adjudicatory hearing.
   g) Petition to Terminate Parental Rights-15 months after the removal of the child.
   h) Subsequent review hearings - every 6 months from the initial review hearing for as long as the child is in the custody of the department. (Note: these hearing times are measured including weekends and holidays.)
9. Termination of parental rights information needs to be entered in the CPA ISTARS module on the relationship tab. The date of the filing of the TPR petition and the date of finalization and the TPR status (Granted or Denied) needs to be indicated for each parent applicable.
10. Regularly check the Non-compliance and Warning reports to ensure that Court proceedings follow Federal guidelines.