Purpose

- ✓ Phase I: Adjudication.
  - To decide whether the child is within the jurisdiction of the CPA. Idaho Code § 16-1619(4); IJR 41(1). A child is within the jurisdiction of the CPA if the child is abandoned, abused, neglected, homeless, lacks a stable home environment, or is a sibling of such a child and is living or having custodial visitation in the same household. Idaho Code § 16-1603.
  - If the petition alleges aggravated circumstances, to determine if the parent(s) subjected the child to aggravated circumstances. If aggravated circumstances are found, then reasonable efforts to reunify are not required. Idaho Code § 16-1619(6)(d); IJR 41(1).
- ✓ Phase II: Disposition. If the child comes within the jurisdiction of the CPA, to decide if the child should be placed in the legal custody of IDHW or in the child's own home under IDHW supervision. Idaho Code 16-1619(5)(a)&(b).

Best Practice Recommendation:

Open the hearing by explaining the purpose of the hearing in plain language.

When

- ✓ No more than 30 days after the Petition is filed. Idaho Code § 16-1619(1).
- ✓ A pretrial conference must be held within 3-5 days prior to the Adjudicatory Hearing. Idaho Code §16-1619(2).
- ✓ No later than 60 days after the child is removed from home, if the "reasonable efforts to prevent placement" finding required by federal law has not already been made. *See* "Federal Law Requirements" below; IJR 41(2).

Best Practice Recommendations:

- Grant continuances only when absolutely necessary, only for a short time, and subject to appropriate orders to ensure that the parties will be ready to proceed on the next court date.
- Incarceration should not be a basis for continuance – the court can enter a transport order or arrange for the party to appear by phone.
- NEVER continue more than 60 days after the date the child was removed from the home, unless the "reasonable efforts to prevent placement finding" has already been made.

Who should be Present

- ✓ Judge
- ✓ Parents whose rights have not been terminated, including putative fathers
- ✓ Relatives with legal standing and other custodial adults
- ✓ The child's tribal custodian, tribe, and tribal attorney, if applicable
- ✓ Assigned IDHW caseworker
- ✓ County Prosecutor or Deputy Attorney General
- ✓ Attorney for parents (separate counsel if conflict warrants)
- ✓ Guardian ad litem, attorney for guardian *ad litem*, and/or attorney for child
- ✓ Age-appropriate child
- ✓ Court reporter or suitable technology, security personnel, and interpreter(s), if applicable

Adjudicatory Hearing: Phases I & II

Evidentiary Issues

- ✓ Phase I (Adjudication): The standard of proof is preponderance of the evidence, the rules of evidence apply, and the reports of the GAL and IDHW may not be considered. Idaho R. Evid. 101, Idaho Code §§ 16-1619(4), 16-1616(3) 16-1633(2).
- ✓ Phase II (Disposition): The court may consider any relevant information, including the GAL and IDHW reports.

State Law Requirements

- ✓ Phase I Findings –
  - Is the child within the jurisdiction of the CPA pursuant to Idaho Code § 16-1603? If so, the court must enter a decree and include, on the record, findings of fact and conclusions of law as to the basis for jurisdiction in the decree. Idaho Code § 16-1619(4) & (6).
  - If the petition alleges aggravated circumstances, did the parent(s) subject the child to aggravated circumstances? (Aggravated circumstances are defined at Idaho Code § 16-1619(6)(d)).
- ✓ Phase II Findings –
  - If the child comes within the jurisdiction of the CPA, should the child be placed in the legal custody of IDHW or in the child's own home under agency supervision? Idaho Code §16-1619(5)(a)&(b)
  - If the child is placed in the custody of IDHW, the court must make detailed written findings based on facts in the record as to the child's best interest and reasonable efforts to prevent placement in foster care.
  - With respect to the best interest finding, the court must find that:
    - ➢ It would be in the child's best interest to be placed in state custody.
    - ➢ It would be contrary to the welfare of the child to remain in the home.
  - With respect to the reasonable efforts finding, the court must find that:
    - ➢ Reasonable efforts were made but were not successful in eliminating the need for placement of the child in foster care, OR
    - ➢ The department made reasonable efforts to prevent removal but was not able to safely provide preventive services, OR
    - ➢ Reasonable efforts to temporarily place the child with related persons were made but were not successful OR
    - ➢ Reasonable efforts were not required because the parent(s) subjected the child to aggravated circumstances.
  - Is it in the best interest of the child to enter a protective order? If so, the terms and conditions of the order must be stated in the decree.

Practice Note:

When the court places a child in state custody or under supervision, the order remains in effect until the child turns eighteen, unless the court modifies the order or terminates the case. The CPA provides for regular review by the court, to enable timely modification as appropriate under the circumstances of the individual case. Idaho Code § 16-1622.

- ✓ Indian Child Welfare Act – Is the child an Indian Child (a member or eligible for membership in an Indian Tribe)? **If yes, see ICWA Benchcard.**
- ✓ Best Interest / Contrary to the Welfare – If this is the first order sanctioning removal of the child, the court must make a finding that removal of the child is in the child's **best interest** or that it is **contrary to the welfare** of the child to remain in the home.
  - The finding must be **case-specific** and **documented** in the order. The finding can incorporate by reference an affidavit that describes the specific circumstances.
  - **If the finding is not made, the child will not be eligible for federal IV-E or adoption assistance funds, and the omission cannot be corrected at a later date to make the child eligible**.

Federal Law Requirements

- ✓ Reasonable Efforts – Unless the court has determined that the parent(s) subjected the child to aggravated circumstances, it must make a finding that IDHW either made, or did not make **reasonable efforts to prevent removal** of the child from the home.
  - The finding must be made **within 60 days after removal** of the child from the home. Recommended best practice is to make the finding at the earliest opportunity, so the finding may have been made at the endorsement on summons or at the shelter care hearing. If not, it must be made at the adjudicatory hearing.
  - The finding must be **case-specific** and **documented** in the court order. The finding can incorporate by reference an affidavit that describes the specific circumstances.
  - **If this finding is not made within 60 days after the child's removal from the home, the child will not be eligible for federal IV-E funds, and the omission cannot be corrected at a later date to make the child eligible**.
  - If the child was removed under circumstances posing an imminent danger, the court must find that the efforts to prevent the child's removal from his/her home were reasonable given that the department's assessment accurately determined that no preventive services could be safely provided.

Best Practice Recommendations:

- ✓ For the decree and order, use the form provided in the Benchguide or found on the Idaho Supreme Court's website: http://www.isc.idaho.gov/childapx.htm .
- ✓ Agreements of the parties:
  - determine whether the agreement was entered into knowingly and voluntarily, including sufficient facts for the case-specific findings of the basis for jurisdiction, best interest, and reasonable efforts.
  - If the stipulation is to dismiss, inquire whether there has been adequate investigation.
- ✓ If the child is to be placed in the custody of IDHW:
  - inquire as to whether IDHW's placement is the least disruptive and most family-like setting that meets the needs of the child.
  - IDHW decides where to place the child, subject to judicial review. Under both state and federal law, there are substantial questions as to the nature and extent of that review. Please refer to the Idaho Child Protection Manual (which can be found on the Idaho Supreme Court's website) for more information.
- ✓ Inquire as to the health/medical needs of the child.
- ✓ Inquire as to the educational needs of the child (see Educational Needs Benchcard).

(con't.)

Adjudicatory Hearing: Phases I & II.

Best Practice Recommendations: (con't.)

- ✓ A child may not be placed out-of-state without a court order. Idaho Code § 16-1629(8). The court should require that any out-of-state placement be made in accordance with the Interstate Compact on the Placement of Children, Idaho Code §16-2101-2108. Please refer to the Idaho Child Protection Manual (which can be found on the Idaho Supreme Court's website) for more information.
- ✓ If the child is to be placed in the child's own home under agency supervision, determine the terms and conditions needed to ensure the child's safety and welfare in the home.
- ✓ Determine whether further efforts are needed to join essential parties.
- ✓ Determine whether further efforts are needed to ascertain whether the child is an Indian child, and/or whether further efforts are needed to give notice as required by the Indian Child Welfare Act. 25 USC §§1901 et seq. If notice has been given and the tribe did not appear, ensure that there is an affidavit of service in the file, and make appropriate findings in the decree.
- ✓ Determine whether further efforts are needed to identify, locate, and serve missing parent(s), including putative fathers. (Idaho Code § 16-1611(3) requires notice to each parent.) If notice has been given and a parent did not appear, ensure that this is documented in the file and make appropriate findings in the decree. Order paternity testing where appropriate to establish parentage.
- ✓ Schedule the next hearing. Document that notice of next hearing was given to parties and appropriate participants.
- ✓ If aggravated circumstances were found: Schedule the permanency hearing. *See* Idaho Code § 16-1619(6)(d) and 16-1620). Order the assigned caseworker and the GAL to attend. Order IDHW to prepare, file, and serve a permanency plan at least five days prior to the permanency hearing.
- ✓ If aggravated circumstances were not found: Schedule the case plan hearing. *See* Idaho Code § 16-1621. Order the parents, the assigned caseworker, and the GAL to attend.
- ✓ Order IDHW to prepare, file, and serve a case plan at least five days prior to the case plan hearing. Require IDHW to notify the foster parents of the hearing.
- ✓ The court may also order the GAL to file a written report.
- ✓ Enter orders as needed to ensure the progress of the case and to prepare for the next hearing.
- ✓ Identify services to be provided by IDHW to the child and/or the parents pending the case plan or permanency hearing.
- ✓ Set terms for visitation (both parent and SIBLING visitation) and child support, as appropriate.
- ✓ Enter transport orders to the hearing for parents or children in state or local custody.
- ✓ Address the potential for mediation.