

# EXTENDED FOSTER CARE

## Bench Card

*Bench Cards have been created by the Administrative Office of the Court as a resource for judges. Bench Cards do not represent statements of law by the Idaho Supreme Court and do not constitute legal advice.*

### PURPOSE

To provide the option for a youth who turns 18 while in the legal custody of the Department and who meets the eligibility criteria, to remain in foster care up to age 23.

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

1. The court shall hold a hearing no later than 60 days prior to the youth's 18<sup>th</sup> birthday to discuss and review the youth's Transition to Successful Adulthood plan.<sup>2</sup> The hearing may be combined with a permanency or review hearing.
2. The Department shall file the youth's transition plan no later than 7 days prior to the hearing.
3. The extension of foster care shall be for a fixed period of time and shall not extend past the youth's 23<sup>rd</sup> birthday.

### WHO MAY BE PRESENT

1. The general public is excluded, and only such persons found by the court to have a direct interest in the case may be admitted.
2. The Department must provide notice of the hearing, and confirm to the court that the notice was given, to:
  - a. the youth;
  - b. the foster parents; and
  - c. a relative who is providing care to a child who is in the custody of the Department.<sup>3</sup>
3. The youth is required to attend the hearing, in person or remotely, unless the youth declines in writing prior to the hearing, declines through counsel, or the court finds good cause to excuse the youth from attending the hearing.<sup>4</sup>

### EVIDENCE<sup>5</sup>

The Rules of Evidence do not apply.

### FINDINGS<sup>6</sup>

The court must find that the youth meets the criteria for eligibility and that extended foster care will help the youth achieve a successful transition to adulthood. The extension shall be for a fixed period of time and shall not extend past the youth's 23<sup>rd</sup> birthday. The appointment of the youth's attorney(s) shall remain in effect throughout the extension, unless otherwise ordered by the court.<sup>7</sup>

### CRITERIA FOR ELIGIBILITY<sup>8</sup>

The transition plan shall include the youth's desire regarding extended foster care. If the youth wishes to remain in foster care beyond age 18, the court may extend foster care if:

1. The youth will be in the custody of the Department until the youth's 18<sup>th</sup> birthday; and
2. The youth meets one or more of the following criteria set forth in 42 U.S.C. 675(8)(B)(iv):
  - a. is completing secondary education or a program leading to an equivalent credential;

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- b. is enrolled in an institution which provides post-secondary or vocational education;
- c. is participating in a program or activity designed to promote, or remove barriers to, employment;
- d. is employed for at least 80 hours per month; or
- e. is incapable of doing any of the activities described above due to a medical condition, which incapability is supported by regularly updated information in the case plan of the youth.

If at any time the youth no longer meets the requirements the court shall terminate extended foster care.<sup>9</sup>

### ICWA

After the age of 18, ICWA no longer applies. It is recommended that the Department continue to contact the tribe regarding available services for the youth.

### ENDNOTES

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<sup>1</sup> I.J.R. 59.

<sup>2</sup> The Department's transition plan may come in the form of an Affidavit for Review of Transition Plan and Notice of Extended Foster Care. The plan shall include the youth's desire regarding extended foster care. I.J.R. 59(b).

<sup>3</sup> I.J.R. 40 (a) and (b).

<sup>4</sup> I.J.R. 40(c).

<sup>5</sup> I.R.E. 101(e)(6); I.J.R. 51(b).

<sup>6</sup> I.C. § 16-1622(5); I.J.R. 59. *See also Order for Extended Foster Care.*

<sup>7</sup> I.C. § 16-1614.

<sup>8</sup> I.C. § 16-1622(5); I.J.R. 59.

<sup>9</sup> I.J.R. 59(c).