

# EVALUATION REPORT

The Informal Custody Trial (ICT) process was developed by the Idaho Children and Family in the Courts Committee (CFCC) in 2008 as a potentially less contentious alternative trial process to resolve custody disputes.

**Prepared by:** Planning and Research  
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Informal  
Custody Trial  
(ICT)

Evaluation 2010

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## TABLE OF CONTENTS

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Executive Summary.....	1
Introduction .....	2
Evaluation Overview .....	3
Findings .....	4
Conclusion.....	13
Appendix A: Parent Survey .....	14
Appendix B: Judge Interview Questions .....	16
Appendix C: ICT Waiver and Consent Form .....	17
Appendix D: Number of ICT Cases 2011 & 2012.....	21

# EXECUTIVE SUMMARY

On September 29, 2008, Idaho Rules of Civil Procedure 16(p) was adopted to include a Consent and Waiver for Informal Custody Trial (ICT). The goal of the ICT was to provide judges and litigants a potentially less contentious alternative trial process. The basic premise of the ICT was suspension of the rules of evidence, waiver of the rules of discovery, and waiver of the traditional question and answer manner of trial that allows litigants to directly present their case, issues, and concerns to the court. The ICT excludes cross-examination which can potentially increase conflict in an already highly emotional and often hostile environment.

This evaluation sought to provide deeper understanding of the potential advantages and disadvantages of the ICT through data collection from litigants and judges who utilized the ICT process between November 2008 and October 2010. Litigants were provided surveys by mail and judges were personally interviewed.

Findings from the data demonstrate that, overall, litigants appeared to lean towards agreement that the ICT model had been beneficial and that they believed the judge had listened to and respected them. Judges interviewed noted that the ICT model appeared to have some potential distinct advantages over the traditional trial process, primarily a savings of judicial time, the savings of money for litigants, the potential for reduced conflict, and the potential for litigants to feel heard through openly sharing their side of the story. However, the judges did not recommend the ICT for all cases and noted a few disadvantages including the potential for relying on improper evidence and the potential for judges feeling rushed to make decisions. Judges did not recommend the ICT for complicated cases requiring expert witnesses such as domestic violence, mental illness, etc.

# INTRODUCTION

The Informal Custody Trial (ICT) model is based on a similar model from Australia called *The Children's Cases Pilot Project*. The Australia family court was looking for a less adversarial way to conduct family law litigation and this type of trial was suggested by former Australian Chief Justice Alastair Nicholson. He discovered and successfully utilized the technique "after his many years of experience grappling with the difficulties and inadequacies of an adversarial system dealing with children's best interests."<sup>1</sup>

Idaho District Judge Benjamin Simpson, a former Chair of the Children and Families in the Courts Committee (CFCC), recognized the need for a less adversarial process in family law cases in Idaho. After experimenting with various processes for some time, Judge Simpson became aware of the Australian model. Beginning in 2006, the CFCC and Judge Simpson developed the Informal Custody Trial model based on the Australian model and Judge Simpson's personal experience.

On September 29, 2008, Idaho Rules of Civil Procedure 16(p) was adopted to include a Consent and Waiver for Informal Custody Trial (ICT). The basic premise of the ICT is suspension of the formal rules of evidence, waiver of the rules of discovery, and waiver of the normal question and answer format of trial that allows litigants to directly present their case, issues, and concerns to the court. The ICT model excludes cross-examination, a procedure that can increase conflict in an already highly emotional and often hostile environment.

In the ICT model the judge still directs the proceeding, allowing the parties to speak, and the judge is allowed to ask parties additional questions designed to clarify and keep the testimony focused. Although the parties waive their rights to formal rules of evidence and other trial rights, including the right to direct and cross-examination, the judge still hears the evidence, makes a decision for the parties, and enters the orders based on his or her decision. This decision may consist of creating, modifying, or enforcing an order.

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<sup>1</sup> Nicholson, A. (2005). *Association of Family and Conciliation Courts Conference*. Seattle, WA.

# EVALUATION OVERVIEW

On September 29, 2008, Chief Justice Daniel T. Eismann issued an order directing that the frequency, use and experience of the parties that have used the ICT procedure shall be monitored and an annual report prepared for the Idaho Supreme Court.

## **Parent Survey**

Based on this order, an evaluation was designed to monitor litigant's experience of the ICT process through surveys. Every 30 days, starting in March 2009 and ending in October 2010, surveys were sent to both parties of an ICT. If the parties were represented by counsel, a letter was sent to the party's counsel explaining the evaluation with a request for the attorney to forward the survey on to their client. The letter explained that parties may choose to complete the enclosed survey one of two ways: by paper with addressed envelope or online through a survey link. A copy of the survey is provided as Appendix A.

Survey completion was monitored and a second survey was sent to parties (or counsel) who had not completed the survey within 30 days. For parties who had counsel and had not completed a survey after two requests, the attorney was telephoned directly to inquire the status of the survey and request permission to forward the survey directly to their client.

## **Judge Interviews**

In addition to parent surveys, the evaluation sought to gain further insight from judges regarding their interaction with and utilization of the ICT. Eighteen (18) interviews were conducted with judges from across the state. The interview questions are provided for reference in Appendix B.

## **LIMITATIONS**

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The primary limitation of this evaluation is the lack of comparison group which hinders the ability to draw conclusions on the usefulness of this model as compared to the traditional trial process. An additional limitation of this study is the lack of input from attorneys who provided representation in an ICT.

# FINDINGS

A total of 99 cases in 11 Idaho counties participated in an ICT between November 25, 2008, and July 6, 2010. Kootenai County and Ada County had the highest number of ICT during the evaluation period with 54 cases and 20 cases respectively. The other nine counties each had seven or fewer ICT during the evaluation period. These 99 cases were heard by 22 different judges.

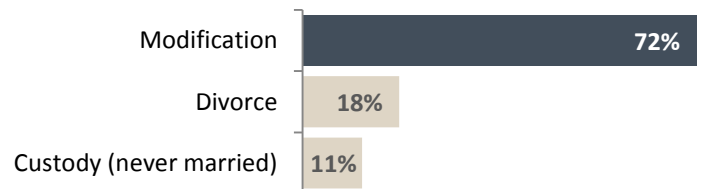
## PARENT SURVEY

Surveys were sent to 179 parents. Surveys were mailed out to parents monthly starting in March of 2009 until October 2010 to parties on cases identified in ISTARs, the case management system for the Idaho courts.

Seventy-five (75) individuals completed the survey for a response rate of 42%. Four (4) surveys were completed by paper and returned by mail while the remaining 71 were submitted on-line by following the survey link. Survey respondents were almost equally representative of both genders: 39 male and 35 female.

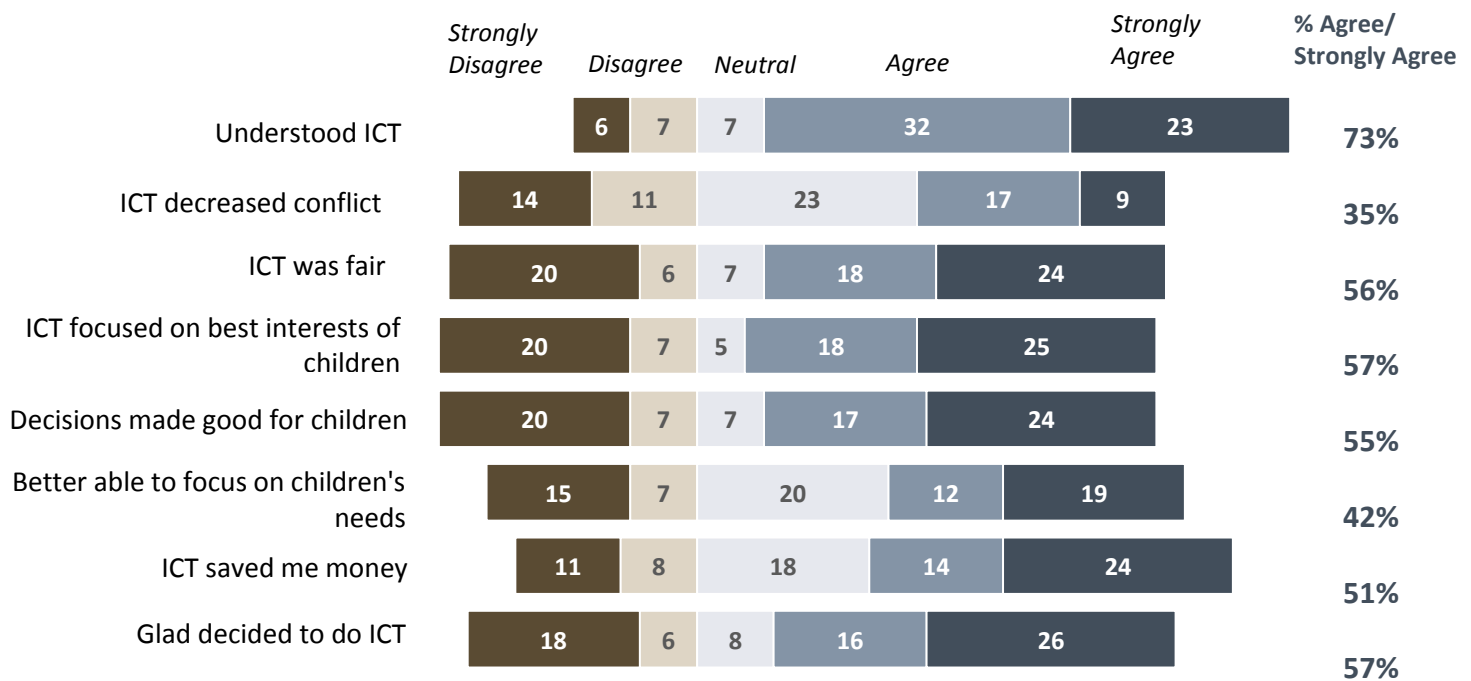
Parents reported utilizing the ICT primarily to modify existing custody arrangements (72%) and for divorce proceedings (18%) (Figure 1).

FIGURE 1: CIRCUMSTANCES THAT PROMPTED AN ICT



The survey presented parents with eleven statements and asked them to answer to what extent they agreed or disagreed with the statement. Response categories were: strongly disagree, disagree, neutral, agree, and strongly agree.

Statements attempted to encompass a range of areas that might indicate satisfaction with the ICT such as participant perceptions of whether or not the ICT model was fair, decreased conflict, focused on the best interests of children, saved money, etc. There was much variation in parent agreement to these statements as demonstrated below in Figure 2.

**FIGURE 2: FREQUENCIES OF PARENT RESPONSES**


An encouraging finding is that 73% of parents reported that they understood the ICT before agreeing to participate. The data also shows that parents overall more often than not agreed that the ICT was fair (56%), focused on the best interests of the children (57%), that decisions made were good for the children (55%), and were glad they had decided to do an ICT (57%). Of note, statements on whether or not the ICT focused on the best interests of their children or whether the decisions made were good for their children garnered the most “strongly disagree” responses (36% strongly disagreed/disagreed for both statements). Also of note, parents were the most evenly split on perceptions of whether or not the ICT model decreased conflict: 34% agree/strongly agree, 31% neutral, and 34% disagree/strongly disagree.

Parents were also presented with two questions about their perceptions of the judge presiding on their case. The majority of parents (74%) agreed or strongly agreed the judge treated them with respect, and 60% believed the judge listened to them.

In the middle of the data collection period, it was determined that the parent survey should be enhanced with an additional statement: “The outcome of the informal custody trial was in my favor.” This statement was added in order to better understand the extent to which the outcome of the ICT influenced parent responses to other survey questions.



Thirty-two (32) of the 75 respondents completed a survey with this additional question.<sup>2</sup> A comparison was then done of those who believed the outcome was in their favor to those who did not believe the outcome was in their favor. Individuals who agreed or strongly agreed the outcome was in their favor also more often believed the ICT was fair, focused on the best interests of the children, and believed the decisions were good for their children (Figure 3).

**FIGURE 3: % RESPONSES WHO AGREED WITH THE STATEMENT DEPENDING ON OUTCOME OF ICT**

Question	Outcome NOT in Favor		Outcome in Favor	
	% Agreed or Strongly Agreed	N	% Agreed or Strongly Agreed	N
ICT was fair	0%	13	100%	14
ICT focused on best interests of my children	23%	13	100%	14
Decisions made during the ICT were good for my children	15%	13	100%	14
I am glad the other parent and I decided to use the ICT	23%	13	92%	13
I feel like the judge listened to me	23%	13	100%	13
I feel like the judge treated me with respect	42%	12	100%	13
I am better able to focus on the needs of my children as a result of the ICT	8%	13	77%	13
ICT decreased conflict	17%	12	50%	14

One positive finding (as seen in Figure 3) was that 42% of parents who believed the outcome of the ICT was not in their favor still agreed or strongly agreed that the judge treated them with respect.

### Suggestions for Improvement

Parents were then asked if they had any suggestions for ways to improve the ICT. Forty-six (46) of the 75 parents provided a comment or suggestion. The two most common themes were general comments about judicial bias (9) (such as, “Judge seemed to favor the father,” and “Judge – was a biased judge”) and the desire for more education and preparation prior to the ICT (8). Five individuals expressed appreciation for the ICT process while four were angry or frustrated at the outcome. Other suggestions included the desire for more time to speak, the desire to comment on the other party’s testimony, concern over the poor evidence and “lies

<sup>2</sup> This is a small number and making conclusions on this data is discouraged. The data presented is for informational purposes but cannot be considered conclusive. More study is warranted.

of the other party”, the desire for more mediation, automatic drug testing, witnesses, time limit for ICT with no delays, and for both parties to be able to review all of the evidence prior to being submitted to the court.

### **Additional Comments**

Parents completing the survey were then provided an opportunity to share “anything else” about their experience using the ICT. Parents took the opportunity primarily to comment on their perception of the ICT process, the judge, and the outcome. Approximately half of the comments were positive expressing appreciation for the judge, outcome, and process. Specifically, several parents noted that they believed the ICT to be a less stressful approach.

*“I felt like my case changed significantly because presenting it pro se was from the heart and it benefitted my children’s lives more positively because of it.”*

*“I was able to tell exactly what had transpired for me to request a change in custody. I was able to tell everything, which helped the judge make a good choice for the kids.”*

*“I think the judge listened more. It was a more relaxed setting instead of attacking each other.”*

The other approximate half of the comments was frustrations regarding the judge and outcome of their ICT and dissatisfaction with the process.

*“The concept of an informal custody trial is a great idea. But the judge was biased against women and did not listen to me.”*

*“I feel I was treated with utter disregard and disrespect...My children are now very distressed and are worse off.”*

*“For me this was an extremely bad experience.”*

Other comments included the desire for more explanation of the process and more preparation. One additional comment was the desire for the attorney to have been able to speak more on the client’s behalf:

*“I had wished my attorney could have spoke more on my behalf. I was terrified of my ex-husband because of the threats and I could not speak as clear as I wanted to in fear of repercussions and fear for my life and my children’s.”*

## JUDGE INTERVIEWS

Eighteen interviews were conducted with magistrate judges from 10 counties representing 6 of the 7 judicial districts in Idaho (Table 1). These judges had used the ICT process anywhere from one to fifteen times, with an exception noted for Judge Simpson who had used the process in approximately 60 cases. As Table 1 shows, more judges were interviewed from Kootenai County and Ada County which is appropriate considering these counties had markedly more ICT cases than the other eight counties.

TABLE 1

District	County	# Interviews
1	Kootenai	5
	Benewah	1
	Bonner	2
2	Clearwater	1
3	Canyon	1
	Payette	1
4	Ada	4
	Boise	1
5	Twin Falls	1
6	Bannock	1
TOTAL		<b>18</b>

Judges were asked 16 questions regarding their interaction with and utilization of the ICT model in their courtroom. Questions ranged from asking about their process of utilization to perceptions of forms and perceptions of potential advantages and disadvantages of the ICT model.

Most judges reported that a typical ICT lasted anywhere from two hours to half a day, and 78% of judges (14) agreed that the process was more efficient than a traditional court trial.

Additionally, a majority of judges interviewed believed the ICT was a more effective use of judicial time. A small percentage

(less than 20%), were either unsure or had not done enough ICTs to accurately gauge whether or not it was a more effective use of judicial time.

While the ICT was considered potentially beneficial, it was not recommended for all cases. The majority of judges did not feel that it was a good option for cases involving domestic violence, or cases with a history of alleged child abuse or mental health or substance abuse issues. One judge specifically indicated that the ICT was probably not the best process for a case that had pending criminal charges. Also, the inability of an individual to provide adequate testimony as a result of limited cognitive capacity should be considered.

Regarding the Consent and Waiver form, none of the judges had concerns with the form or suggestions for ways to improve it.

The majority of judges reported that the ICT model was introduced and discussed at the litigant education class and was introduced again at the scheduling conference. Of the 18 judges interviewed, 11 indicated that they also introduced it at the pre-trial conference. However, some concerns were raised by two judges as to the

best time to introduce the ICT process. These judges were of the opinion that it was best not to introduce the ICT until later in the case (right before trial), and should not be an option early on in the process.

Factors that indicated a particular case was especially well-suited to an ICT, as reported by judges, included self-represented litigants and simple-issue custody cases, including modification cases. Several judges commented that the process was not well-suited for cases that presented with domestic violence or mental health issues because it was difficult to get at the bottom of these issues without expert witnesses. Also, parties generally did not understand that all evidence was not given equal weight. Most judges commented that they felt that ICTs were especially well-suited to modifications or initial filings that involved only custody and visitation disputes. However, some judges felt that there were no factors that could “disqualify a case from an ICT”. Additionally, a few judges indicated that they had used the ICT very successfully in high-conflict cases, including a case involving domestic violence.

To ensure the parties understood the ICT process prior to agreeing to participate, 17 of the 18 judges (94%) indicated they used the Waiver and Consent form that had been developed for the ICT process, in addition to a verbal review of the process with the parties. Another 44% of judges (8) indicated that when parties were represented by attorneys, they asked the attorneys to review the ICT process with their clients.

### **Influence of ICT on Conflict**

Half of the judges believed the ICT process reduced conflict, 33% were unsure, and 17% believed that it did not reduce conflict. The judges primarily believed it reduced conflict because parties were not subject to cross-examination, were not able to question each other, and both parties were able to freely tell their side of the story without objection or argument. Other ways judges believed the ICT reduced conflict included:

1. **How the case was managed.** One judge attempted to make the experience positive by asking the parties to name positive aspects about the other party and attempted to help parties see their requests from the other party’s perspective. Another judge believed that to the extent the parties felt they had been heard and that the judge had listened to them, it enhanced the likelihood of acceptance of the decision which potentially reduced conflict.
2. **Reducing courtroom time.** One judge believed the ICT reduced conflict by reducing the number of times parties were in courtrooms involved in high stress conversations.

For those who did not believe the ICT reduced conflict, reasons provided were that both parties are experiencing hurt in both the ICT and the traditional process regardless of how the case is tried and that the potential to increase conflict is actually raised by the ICT because of the difficulty of controlling the amount of venting, or “mudslinging,” the parties did during the hearings.

All judges interviewed agreed that the model did have the potential to promote a sense of fairness, depending on the judge, and the majority of judges (over 95%) felt the model was an effective means of increasing access to the courts for self-represented parties. Some reasons judges gave for why they believed the model promoted fairness were:

- Parties potentially feel their voices are being heard
- Parties are allowed to say everything they want to say
- No cross-examination
- Enhanced questioning from the judge

Fairness, however, according to one judge, is about perception, and perception depends on how the judge handles the case. If the judge handles it well, there will likely be a perception of fairness. “Handling it well”, according to this judge, included validating feelings while explaining what factors were relevant in the decision making as well as explaining the ruling.

### **Best Interests of Children**

Judges appeared to be evenly mixed on whether or not they believed the ICT advanced the best interests of the children. Some judges expressed concern that the best interests of the children were not as easily advanced because of the risk that the judge is not getting all the information needed to make a quality decision: either the party could not articulate well, or the party did not understand the legal impact of something as well as an attorney might. Also, because there is no foundational basis for entering the information, the judge might be relying on stale or improper evidence. One judge was not sure the best interests of the children were being advanced because he believed that the parties did not always adequately offer relevant information.

An equal number of judges felt that the information provided in the informal setting did promote the best interests of the children because the judge could ask the questions he/she needed to in order to get at the necessary information. Judges also appreciated having the potential to see evidence they might not have been able to see in a traditional trial setting including report cards, letters written by children to parents, etc. In fact, one judge believed that over 90% of the information received during a recent specific case would not have been allowed in a traditional trial.

Another judge leaned slightly towards agreeing the ICT enhanced the advancement of the best interests of the children because it allowed individuals who had a difficult time presenting evidence to still get information to the judge that the regular rules of evidence might not have allowed.

## Attorney Involvement

Several judges reported that attorneys, at the time of the interviews, were just beginning to figure out the ICT process in their part of the state. Judges saw the attorney role in ICT cases as primarily educating and preparing their clients and helping clients to organize how the case would be presented. Other roles included giving opening and closing statements and providing counsel throughout the ICT.

## Perceived Benefits of ICT

The judges were asked what benefits the ICT presented over the traditional trial process, if any. Many judges provided multiple perceived benefits. The benefit most often noted by judges (25%) was the increased efficiency of trial time and judicial time. Judges also believed the ICT was beneficial to parties because it potentially saved money, increased satisfaction by allowing parties to openly share their side of the story, reduced conflict, reduced time to decision, and allowed judges to focus on gathering information directly related to the best interests of the child.

## Perceived Disadvantages of ICT

Judges were also asked about the potential disadvantages of the ICT over the traditional trial process. Judges most often mentioned the potential of the ICT to increase conflict because of the nature of open testimony where parties could vent and bring up contested issues that are irrelevant to the case. Additionally, there was also the perceived potential problem of no cross-examination considering the ICT is not very effective at judging the credibility of witnesses. Quality of evidence was also a concern as was the danger of judges being “persuaded by information that judges would not ordinarily hear” and the “danger of placing too great a weight on untested evidence.”

Judges, as stated earlier, were concerned that some cases were not appropriate for the ICT model, such as domestic violence, substance abuse, and mental health, where expert witnesses would be needed. However, some judges noted that there could be concern regarding the quality of judicial decisions in the absence of expert witnesses even for cases that did not involve these issues.<sup>3</sup> Quality of decisions was also of concern for judges who felt pressured to make quick decisions in the condensed trial time frame. One judge cautioned that the ICT process works for those judges who are willing to be patient and intentional with questioning and should

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<sup>3</sup> The ICT does not prohibit the use of expert testimony. This appeared to be a misunderstanding among some of the judges interviewed. I.R.C.P. 16(p)(1)d. states: “If there is a Guardian ad Litem or other expert, the expertis [sic] report is entered into evidence as the court's exhibit. If either party desires, the expert is sworn and subjected to questioning by counsel, parties or the court.”

not be used simply to save time. The ICT was also perceived to be potentially problematic for cases involving a marked power differential between the parties.

### **Suggestions for Improvement**

Suggestions that judges provided for improving the ICT model included:

- Attorney training from the Idaho State Bar
- Enhanced judicial education
- Allow the ability to include expert testimony in proceeding
- Discussion of ways to filter the information coming in to the Court
- Set date for exhibits to be submitted by parties to allow judges adequate time to review exhibits and prepare for the decision
- Enhanced flexibility with the process
- Development of a “how-to” for self-represented litigants

# CONCLUSION

Overall, parents more often than not agreed that the ICT model had been beneficial. Encouragingly, a majority of parents (76%) believed the judge had listened to them and 60% believed the judge had respected them.

Based on the interviews with judges across the state who had utilized the ICT in custody cases, there were several themes that emerged. First of all, in general, judges found the ICT to have some distinct advantages over the traditional trial process. Primary advantages of the ICT were the perceived decrease in judicial time needed to resolve cases, the savings of money for litigants, the potential for reduced conflict, and the potential for litigants to feel heard through openly sharing their side of the story.

However, there was also caution from the judges. ICT may not be for every family, just as it is not the process for every judge. Judges cautioned that the ICT would be ill fitted to complicated cases that would benefit from the traditional trial process and rules of evidence such as those that require expert witnesses. Additionally, some judges cautioned that the ICT presents risk in relying on incomplete or improper evidence therefore potentially influencing the quality of the decisions coming from the bench. The ICT should not be used simply for the sake of efficiency but rather should be considered on a case to case basis.

In conclusion, the ICT appears to be a potentially viable option for families and judges in Idaho who seek a less contentious alternative to the traditional trial process.



## Appendix A: Parent Survey

The following questions are intended to assess the benefits of informal custody trials to children and parents. Please indicate your level of agreement or disagreement with the following statements by checking the appropriate box.

	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
1. I understood the informal custody trial fairly well before agreeing to participate.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. The informal custody trial decreased the level of conflict between myself and the other parent.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. The informal custody trial was fair.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. The informal custody trial focused on the best interests of my child(ren).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Decisions made during the informal custody trial were good for my child(ren)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. I am better able to focus on the needs of my child(ren) as the result of going through the informal custody trial.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. The informal custody trial saved me money.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. I am glad that the other parent and I decided to use the informal custody trial.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. I feel like the Judge listened to me.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. I feel like the Judge treated me with respect.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. The outcome of the informal custody trial was in my favor.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

12. What best describes the circumstances which brought you into court?

- ☐ The other parent and I were divorcing or separating
- ☐ I wished to modify an existing custody arrangement
- ☐ The other parent wished to modify an existing custody arrangement
- ☐ I was moving to another town or state
- ☐ The other parent was moving to another town or state
- ☐ The other parent and I were never married and wished to obtain a custody order
- ☐ Other: \_\_\_\_\_

13. What suggestions do you have for how informal custody trials might be improved?

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14. Is there anything else you would like to share about your experience using the informal custody trial?

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*Thank you for participating in this survey!*

## Appendix B: Judge Interview Questions

1. About how many informal custody trials have you done?
2. At what point in a case do you usually introduce the ICT as an option (early in the case, before ADR options have been tried, after all ADR options have been exhausted)?
3. In your opinion, what factors might indicate that a particular case is especially well-suited to an ICT (parties are pro se, mediation has been unsuccessful, move-away cases, etc.)?
4. Are there any factors that you think might indicate that a case is not appropriate for an ICT (history of domestic violence, substance abuse, etc.)
5. What steps do you take to ensure that the parties understand the ICT process prior to agreeing to participate?
6. About how long does an ICT generally last? How does this compare to the length of traditional custody trials?
7. Do you believe that the ICT model helps to reduce conflict between parents involved in custody disputes?
8. In your opinion, does the ICT model help to promote fairness for parents involved in custody disputes? Is it an effective means of increasing access to the courts for self-represented parties?
9. Are the best interests of children more or less easily advanced using ICTs as compared to the traditional trial process?
10. In your opinion, does the ICT model help parents to focus on the best interests of their children? How does it compare with the traditional trial process in this regard?
11. Are ICTs a more or less effective use of judicial time as compared to the traditional trial process?
12. In cases where parties are represented, what role do attorneys play in ICTs?
13. What are your thoughts about the consent and waiver form? Is the information presented in a clear and understandable way? Does it provide sufficient information? Do you have any ideas about how it might be improved?
14. Can you think of any other benefits of ICTs?
15. Are there any disadvantages to using the ICT model?
16. How might the ICT model be improved?

*Note: If the Judge has only done one ICT, be sure their responses provide insight into why this is this is so. If they do not, ask directly.*

**Appendix C: ICT Waiver and Consent Form**

**IN THE DISTRICT COURT OF COURTDISTRICT JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF COURTCOUNTY  
MAGISTRATE'S DIVISION**

_____ PETITIONER,	)	Case No: _____
	)	
	)	<b>WAIVER OF THE RULES OF</b>
	)	<b>EVIDENCE FOR INFORMAL</b>
_____ RESPONDENT.	)	<b>CUSTODY</b>

**I consent to proceed as follows:**

**Section A: My Rights**

- I have been told I should discuss the Informal Custody Trial process with my lawyer. I have had the chance to discuss the Informal Custody Trial Process with a lawyer or I have decided not to discuss the process with a lawyer.
- I waive the normal question and answer manner of trial and I agree the court may ask me questions about the case.
- I agree to waive the rules of evidence in this Informal Custody Trial. Therefore:
  - The other party can submit any document or physical evidence he or she wishes into the record.
  - The other party can tell the court anything he or she feels is relevant.

**Section B: Voluntary Acknowledgement**

- I understand the following:
  - My participation in this Informal Custody Trial process is strictly voluntary, and that no one can force me to agree to this process.

- Documents, physical evidence, and testimony will be admitted during the Informal Custody Trial process, and the court will determine what weight will be given to the evidence.
- My rights on an appeal are extremely limited. I understand that, if I appeal, the court will be reviewing a transcript of the hearing and I will not be able to challenge any of the documents or testimony that was considered during the Informal Custody Trial Process. The only issue on appeal will be whether the court abused its discretion in reaching its findings and conclusions and it is unlikely an appeal will result in a different outcome.
- I have told my lawyer (if I have one), all the details of my situation or I have considered all the facts I believe the other person will testify to about me, whether true or not.
- I give this matter to the court freely and voluntarily to make a decision on the terms of child custody and child support.
- I am confident I understand the Informal Custody Trial process.
- I have not been threatened or promised anything for agreeing to this Informal Custody Trial process.

Dated this day of \_\_\_\_\_.

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Signature

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Printed Name

**IN THE DISTRICT COURT OF COURTDISTRICT JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF COURTCOUNTY  
MAGISTRATE'S DIVISION**

PETITIONER,	)	Case No: _____
	)	
	)	<b>ISTARS ROA CODE: CICT1</b>
	)	
RESPONDENT.	)	<b>CONSENT TO INFORMAL CUSTODY TRIAL</b>

**I consent to proceed as follows:**

1. The person bringing the action before the court presents their case first, under oath. The person is not questioned by lawyers, but may be questioned by the court to develop evidence required by the Idaho Child Support Guidelines and child custody evidence required by Idaho Code 32-717.
2. The court asks the lawyer, if any or the moving party if there are any other items to be discussed.
3. The process is then repeated for the other person.
4. If there is a guardian ad litem or other expert, the expert's report is entered into evidence as the court's exhibit. If either party or the court desires, the expert may be questioned under oath.
5. The parties present any documents they want the court to consider.
6. Next, the parties may present testimony and documents to contradict or oppose the other party's testimony.
7. The lawyers involved or self-represented parties are given the opportunity to make legal argument.
8. The court will make a decision.

**I consent to submit the following information to the Court:**

- The names of my children and their ages.
- The current parenting arrangement, (i.e. when the children are with each parent).
- What I want for a custody schedule, (i.e. what days, holidays, etc. I want the children with me).
- The reasons I want this schedule.

- Why my proposed schedule protects the best interests of the children.
- How my schedule makes certain the other parent will also have a significant and meaningful opportunity to parent.
- My gross income.
- Whether I provide health insurance for the children, and if so, what it costs.
- The medical co-payments and deductibles for the children.
- The amount of support I pay for the support of other children I have with another person.

I have had the opportunity to ask the court about the Informal Custody Trial process. In order to minimize the negative effects of the parent's separation, I agree to have the court decide the child custody and child support issues in this case.

Dated this day of \_\_\_\_\_.

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Signature

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Printed Name

## Appendix D: Number of ICT Cases in Idaho 2011 & 2012

### ICT Cases in Idaho 2011

District	County	Number
1	Bonner	2
	Kootenai	27
	Shoshone	1
3	Payette	1
4	Ada	10
5	Twin Falls	12
6	Bannock	3
Total		56

### ICT Cases in Idaho 2012

District	County	Number
1	Bonner	1
	Kootenai	36
4	Ada	7
5	Twin Falls	16
6	Bannock	4
Total		64