

Senate Bill 1328

***REVISED**

2016 PROPOSED AMENDMENTS TO THE CHILD PROTECTIVE ACT

The proposed amendments were prepared by the Idaho Supreme Court Child Protection Committee. The committee was established in 1998 to improve practices in child protection cases, and ultimately, to improve outcomes for children in child protection cases. The committee has broad representation from the primary stakeholders in child protection cases, including a judge from each judicial district, the Idaho Department of Health and Welfare (IDHW), the Office of the Attorney General, prosecutors, public defenders, guardians *ad litem*, Native American Tribes, and the Casey Foundation. Depending on the issues the committee is working on, participants in the committee have included representatives from foster parent groups, foster youth groups, the Idaho Department of Juvenile Corrections, and others.

This degree of representation is important to ensure that the committee has both the broadest range of information and the broadest range of viewpoints available to it. A broad range of information and viewpoints is essential to the committee's efforts, which include identifying the issues the committee is going to tackle, identifying the options for addressing those issues, and selecting and implementing the options best suited to the needs and concerns of Idaho citizens.

The purpose of the proposed amendments is to implement best practices identified and/or developed by the committee. Part of the committee's work is to review best practices used in other jurisdictions or recommended by commentators in the various disciplines related to child protection. This includes practices required by recent federal legislation.

This is a summary of the issues addressed by the proposed changes. In the first three sections, IDHW is required to provide information to the court at certain phases of a child protection case, and/or the court is required to make inquiry and/or findings as to the issue at certain phases of the case. Each subsection below addresses a particular issue, lists the statute with recommended changes, and identifies when IDHW is required to document information to the court, when the court is required to make inquiry, and when the court is required to make findings. The fourth section addresses areas that warranted clarification or minor correction.

A. PSYCHOTROPIC MEDICATIONS

According to 2014 data from the Idaho Medicaid program, 46% of foster kids in Idaho are prescribed psychotropic medications, compared to 16% of children generally. Of the psychotropic medications prescribed to Idaho's foster children, the most commonly prescribed psychotropic medications are for the treatment of ADHD, followed by Antidepressants and Atypical Antipsychotics.

The proposal is that, at every review and permanency hearing, IDHW will report if a child is being prescribed psychotropic medications, and if so, what, how much, and by whom. The court may then inquire as to the circumstances.

- 16-1619(7)(c) - adjudicatory hearing (court will inquire) – **pg. 9 (L. 5-12)**
- 16-1620(4)(c) - permanency hearing, agg circ (IDHW will document and court will inquire)- **pg. 11 (L. 34-40)**
- 16-1621(1)(c) - case plan – **pg. 12 (L. 42-44)**
- 16-1622(1)(a)(ix) – review hearing (document and inquire)- **pg. 17 (L. 29-36)**
- 16-1622(2)(j) – annual permanency hearing (document and inquire)-
pg. 19 (L. 45-49); pg. 20 (L. 1-2)

B. 2014 FEDERAL LEGISLATION: The Preventing Sex Trafficking and Strengthening Families Act, and the Fostering Connections Act

Idaho law enforcement agencies have compelling information as to the nature and extent of sex trafficking of children in Idaho. Improving outcomes for foster youth has been a major focus of child protection efforts in Idaho and nationwide. Both of the recent federal laws contain extensive provisions intended to improve outcomes for foster children, and particularly foster youth.

Both laws are directed primarily at state agencies, and compliance with both is necessary to maintain federal funding (over \$17 million last year). Members of the committee reviewed the laws in detail to identify only those changes to the Idaho statute that were necessary to maintain federal funding AND that the committee believes will improve outcomes for Idaho foster children, particularly foster youth. The further effort required by the courts is not burdensome. The further effort required by IDHW is substantial, but that effort is already required by federal law, and IDHW supports the proposed amendments. Implementing the proposed amendments will not have a direct impact on the general fund, but the failure to do so will result in the loss of funding desperately needed for work that we already do or need to do for Idaho foster children.

1. Transition to Successful Adulthood (from the Sex Trafficking Act)

“Transition to independent living” is now called “transition to successful adulthood,” and the age at which transition planning must start is 14 rather than 16. A transition plan must also be included in case plans (it was previously included in permanency plans). Although not required, the committee recommends it as a consideration at review hearings. The committee also recommends a review and/or permanency hearing 90 days prior to a youth aging out to address the transition plan.

- 16-1620(3)(h) – agg circ permanency plan (document in plan)- **pg. 10 (L. 31-39)**
- 16-1621(3)(a) – case plan- IDHW custody (document in plan) – **pg. 13 (L. 5-17)**
- 16-1621(3)(d)(vi) – concurrent plan (document in plan)- **pg. 14 (L. 25-49)**
- 16-1621(4)(a) – case plan - protective supervision (document in plan)-
pg. 15 (L. 5-18)

- 16-1622(1)(a)(v) – review hearing (review)- pg. 16 (L. 34-39)
- 16-1622(2)(a) and (e) – annual permanency hearing (document in plan by cross reference to contents of case plan, and make findings)- **pg. 18 (L. 12-33), (L. 45-49); pg. 19 (L. 1-2)**
- 16-1622(3) – review hearing prior to aging out- **pg. 20 (L. 7-15)**

2. Youth's rights (from the Sex Trafficking Act)

For youth age 14 and older, the case plan must document that the youth was provided with information about his/her rights (education, health, visitation, court participation, receipt of annual credit report, including signed acknowledgement from IDHW that youth was provided with the information and it was explained in age or developmentally appropriate way).

- 16-1620(3)(h) – agg circ permanency plan- **pg. 10 (L. 31-39)**
- 16-1621(3)(a) – case plan (IDHW custody)- **pg. 13 (L. 5-17)**
- 16-1621(4)(a) – case plan (protective supervision)- **pg. 15 (L. 7-18)**
- 16-1622(2)(a) – annual permanency plan (included by cross-reference to contents of case plan)- **pg. 18 (L. 16)**

3. Youth's desires as to permanency (from the Sex Trafficking Act)

For youth age 12 and older, the court will inquire at review and permanency hearings as to the youth's permanency desires. (The federal statute requires this for youth with another planned permanent living arrangement (APPLA) as a permanency goal. The committee recommends that we do this for all youth 12 and older.)

- 16-1620(4)(a) – permanency hearing with agg circ- **pg. 11 (L. 22-25)**
- 16-1622(1)(a)(v) and (3) – review hearing- **pg. 16 (L. 34-39); pg. 20 (L. 7-15)**
- 16-1622(2)(e) – annual permanency hearing- **pg.18 (L. 45-49); pg. 19 (L. 1-2)**

4. Another Planned Permanent Living Arrangement (APPLA) (from the Sex Trafficking Act)

a. Limited to youth 16 and older

- 16-1620(2) – list of permissible permanency goals- pg. 9 (L. 45-48)
- 16-1622(2)(a) and (f) – list of permissible permanency goals- pg. 18 (L. 16)

b. Youth Activities/Reasonable and Prudent Parent

If the permanency goal is APPLA, the permanency plan must document the steps IDHW is taking to: (1) ensure that the foster parents or child care institution are following the reasonable and prudent parent standard when determining whether to allow the youth to participate in extracurricular, enrichment, and social activities, and (2) the opportunities provided to the youth to engage in age or developmentally appropriate enrichment activities. The impetus for this is that these youth often just get "housed," and don't get opportunities for the normal stuff that other youth get to do.

- 16-1602(34) – definition of reasonable and prudent parent- **pg. 5 (L. 28-34)**
- 16-1620(3)(i)(iii) and (iv) – permanency plan with agg circ- **pg. 11 (L. 4-10)**
- 16-1621(3)(d)(vii)(3) - concurrent plan- **pg. 14 (L. 43-47)**
- 16-1622(1)(a)(vi) – review hearing- **pg. 16 (L. 40-50)**
- 16-1622(2)(a) – annual permanency plan (by cross reference to the contents of a concurrent plan)- **pg. 18 (L. 16)**

d. Best Interest/Compelling Reasons (from the Sex Trafficking Act)

Before approving a permanency goal of APPLA, the statute currently requires the court to make written, case-specific findings as to why a more permanent goal is not in the best interest of the child. The Preventing Sex Trafficking Act refines this finding as follows: 1) as of the date of the hearing, APPLA is the best permanency goal for the youth, and 2) there are compelling reasons why it is not in the best interests of the youth to be placed permanently with a parent, in an adoptive placement, in a guardianship, or in the custody of the Department in a relative placement. (NOTE: Federal law makes long-term foster care with a relative OK for purposes of IV-E funding. That is why “relative placement” is listed here, even though that is not listed as a permanency goal in the state statute.)

- 16-1620(3)(i) and (7) – permanency plan, agg circ (document in plan and make findings)- **pg. 10 (L. 40-50); pg. 11 (L. 1-10); pg. 12 (L. 1-12)**
- 16-1621(3)(d)(vii)(2) – concurrent plan (document in plan)- **pg. 14 (L. 36-42)**
- 16-1622(1)(a)(vii) and (viii) – review hearing (document and make findings)- **pg. 17 (L. 1-28)**
- 16-1622(2)(a) and (f) – annual permanency plan (document in plan, by cross reference to the contents of a case plan, and make findings)- **pg. 18 (L. 16); pg. 19 (L. 3-14)**

5. Siblings (from the Fostering Connections Act)

IDHW must make reasonable efforts to place siblings together, and if siblings can't be placed together, IDHW must provide a plan for frequent visitation or ongoing interaction between the siblings, unless it is contrary to the welfare of one or more of the siblings.

- 16-1615(7)(b) – shelter care hearing (court will inquire)- **pg. 7 (L. 13-18)**
- 16-1619(7)(b)(ii) – adjudicatory hearing (court will inquire)- **pg. 8 (L. 48-50); pg. 9 (L. 1-5)**
- 16-1620(3)(g) – permanency plan, agg circ (document in plan)- **pg. 10 (L. 22-30)**
- 16-1621(3)(b)(iv) – case plan (document in plan)- **pg. 13 (L. 29-35)**
- 16-1622(1)(a)(iv) – review hearings (document and inquire)- **pg. 16 (26-33)**
- 16-1622(2)(h) – annual permanency hearing (document in plan, by cross reference to contents of case plan, and court will inquire)- **pg. 19 (L. 24-36)**

6. Educational Stability (from the Fostering Connections Act)

IDHW must develop a plan to ensure educational stability for a child, including assurances that the child's placement takes into account the appropriateness of the current educational setting and the proximity of the school that the child is enrolled in at the time of the placement, and assurances that IDHW will make reasonable efforts to ensure that the child remains in the school the child is enrolled in at the time of placement.

- 16-1615(7)(a) – shelter care (court will inquire)- **pg. 7 (L. 10-11)**
- 16-1619(7)(b)(i) –adjudicatory hearing (court will inquire)- **pg. 8 (L. 43-47)**
- 16-1620(3)(f) – permanency plan, agg circ (document in plan)- **pg. 10 (L. 14-21)**
- 16-1621(3)(b)(ii) – case plan (document in plan)- **pg. 13 (L. 23-28)**
- 16-1622(1)(a)(iii) – review hearings (document and inquire) – **pg. 16 (L. 20-25)**
- 16-1622(2)(h)(i) and (i) – annual permanency hearing (document in plan, by cross reference to contents of case plan, and court will inquire)- **pg. 19 (L. 25-28); pg. 19 (L. 37-44)**

C. ICWA AND BIA GUIDELINES

The Bureau of Indian Affairs has adopted new guidelines for implementing the Indian Child Welfare Act, and the process is underway for the guidelines to be adopted as regulations. The only change the committee is proposing to the Idaho statute is to require the court, at every hearing, to inquire about the child's possible Indian status. It is essential to identify the child's status as early as possible for two reasons: 1) to ensure compliance with ICWA, and 2) to avoid potential disruption to the child's life and to the judicial proceedings from failure to comply with ICWA. It is necessary to continue the inquiry because new information as to the child's status may arise at any time in the proceeding.

Court will inquire whether there is reason to believe that the child is an Indian child:

- 16-1615(6) – shelter care- **pg. 6 (L. 1-5)**
- 16-1619(7)(a) – adjudicatory hearing- **pg. 8 (L. 35-42)**

If there is reason to believe that the child is an Indian child but there has been no final determination of the child's status, IDHW will document its efforts to determine the child's status and the court will determine whether IDHW is making active efforts to work with all tribes of which the child may be a member to determine whether the child is a member or eligible for membership:

- 16-1620(3)(j) and (4)(b) – permanency plan with agg circ (document in plan and make findings)- **pg. 11 (L. 11-18)**
- 16-1621(3)(b)(v) and (1)(b) - case plan (document in plan and make findings)- **pg. 12 (L. 34-41); pg. 13 (L. 36-43)**
- 16-1622(1)(a)(ii) – review hearing (document and make findings)- **pg. 16 (L. 9-19)**

16-1622(2)(i) – annual permanency hearing (document in plan, by cross-reference to contents of case plan, and make findings)-
pg. 19 (37-44)

D. MISCELLANEOUS CLARIFICATION / CLEANUP

1. Shelter care

The purpose of a shelter care hearing is for the court to decide first, whether there is reasonable cause to believe that a child comes within the jurisdiction of the CPA, and if so, whether it is in the best interest of the child to be placed in temporary shelter care pending the adjudicatory hearing. The court also has the authority to issue a protection order (whether or not the child is placed in shelter care). So there are four potential outcomes:

First, and most commonly, there is reasonable cause, and the child should be placed in shelter care. Second, there is reasonable cause, but it is not necessary to place the child in shelter care, because the child's welfare can be adequately safeguarded by issuing a protection order, in which case the case should continue to an adjudicatory hearing.

Third, there is reasonable cause, but it is not necessary either to place the child in shelter care, or to issue a protection order, and the case should still proceed to adjudicatory hearing. This is rare but it has happened – usually when the state needed to file a petition to spur the parent(s) to action, filing the petition had the desired effect, everyone is reasonably confident that the parent(s) will proceed with the necessary action, but the adjudicatory hearing is still needed to ensure that the parent(s) proceed with the necessary action.

The last possible outcome is that there is not reasonable cause, in which case the petition should be dismissed.

Oddly, the statute explicitly addresses only the first option, and then says that if the court doesn't decide to place or keep the child in shelter care, the petition "may" be dismissed (and the language about issuing a protection order is kind of stuck in the middle of the criteria for option one). This lack of clarity has resulted in some confusion in some cases about the correct outcome when the court doesn't place a child in shelter care.

So, the proposal is to amend 16-1615, which governs shelter care hearings. Subsection (5) continues to address the criteria for shelter care. Issuance of a protection order is separated from the criteria for shelter care and placed in its own subsection (8). Subsection (6) says if reasonable cause is found, the case will be scheduled for an adjudicatory hearing. Subsection (10) says if reasonable cause is not found, the petition will be dismissed.

Pg. 6 (L. 40-49); Pg. 7 (L. 1-30).

2. Status hearings

The committee recommends amending 16-1622 by the addition of a new subsection – now (1)(b) – to distinguish between a review hearing and a status hearing. The proposed language provides that a status hearing is one that does not address all the issues identified in the subsection on review hearings, and written reports are not required unless ordered by the court. It is hoped that the proposed amendment will help to clarify the purpose of a review hearing and create an opportunity for the court to review discrete issues without requiring a report from IDHW and the guardian *ad litem*. **Pg. 17 (L. 40-44).**

3. Redisposition hearings

There is continuing confusion about the hearing that takes place when a child who is under protective supervision is removed from the home pursuant to 16-1623. The proposal is to amend subsection (3) to state that the hearing is a redisposition hearing (not a shelter care hearing). The language also clarifies that this section applies only when a child is removed without prior hearing. **Pg. 20 (L. 7-15).**

Also, subsection (5) currently provides that, if the court amends disposition to place the child in IDHW custody, IDHW shall prepare a written case plan. The proposal is to amend that subsection to provide that the court may order a written case plan. Some judges have found that there are some instances where a new case plan is not needed.

4. Protective orders

Amend the definition of protective order in 16-1602 (subsection 31 in the statute but 32 in the proposed amendment) to delete the language limiting a protective order to one issued prior to an adjudicatory hearing. **Pg. 5 (L. 13-19).**

5. Permanency hearings in aggravated circumstance cases

Amend 16-1620(1) to require annual permanency hearings in addition to the thirty-day permanency hearing. **Pg. 9 (L. 36-37).**

6. Reports at review hearings

Amend 16-1622(1)(a) to provide that reports must be filed at least five days prior to the hearing. **Pg. 15 (L. 47-48).**

7. Defects

16-1621(2): change “deputing” attorney general to deputy attorney general. **Pg. 12 (L. 46).**