

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 496

BY SCOTT

AN ACT

1 RELATING TO CHILD PROTECTION; AMENDING SECTION 16-1601, IDAHO CODE, TO RE-  
2 VISE A STATEMENT OF POLICY; AMENDING SECTION 16-1629, IDAHO CODE, TO RE-  
3 VISE PROVISIONS REGARDING POWERS AND DUTIES OF THE DEPARTMENT OF HEALTH  
4 AND WELFARE; AND DECLARING AN EMERGENCY.  
5

6 Be It Enacted by the Legislature of the State of Idaho:

7 SECTION 1. That Section 16-1601, Idaho Code, be, and the same is hereby  
8 amended to read as follows:

9 16-1601. POLICY. The policy of the state of Idaho is hereby declared  
10 to be the establishment of a legal framework conducive to the judicial pro-  
11 cessing, including periodic review of child abuse, abandonment and neglect  
12 cases, and the protection of any child whose life, health or welfare is en-  
13 dangered. At all times, the health and safety of the child shall be the pri-  
14 mary concern, but nothing in this chapter shall invalidate parental protec-  
15 tions and rights recognized in sections 32-1010 through 32-1012, Idaho Code.  
16 Each child coming within the purview of this chapter shall receive, prefer-  
17 ably in his own home, the care, guidance and control that will promote his  
18 welfare and the best interest of the state of Idaho, and if he is removed from  
19 the control of one (1) or more of his parents, guardian or other custodian,  
20 the state shall secure adequate care for him; provided, however, that the  
21 state of Idaho shall, to the fullest extent possible, seek to preserve, pro-  
22 tect, enhance and reunite the family relationship. Nothing in this chapter  
23 shall be construed to allow discrimination on the basis of disability. This  
24 chapter seeks to coordinate efforts by state and local public agencies, in  
25 cooperation with private agencies and organizations, citizens' groups, and  
26 concerned individuals, to:

- 27 (1) Preserve the privacy and unity of the family whenever possible;  
28 (2) Take such actions as may be necessary and feasible to prevent the  
29 abuse, neglect, abandonment or homelessness of children;  
30 (3) Take such actions as may be necessary to provide the child with per-  
31 manency including concurrent planning;  
32 (4) Clarify for the purposes of this act the rights and responsibil-  
33 ities of parents with joint legal or joint physical custody of children at  
34 risk; and  
35 (5) Maintain sibling bonds by placing siblings in the same home when  
36 possible, and support or facilitate sibling visitation when not, unless such  
37 contact is not in the best interest of one (1) or more of the children.

38 SECTION 2. That Section 16-1629, Idaho Code, be, and the same is hereby  
39 amended to read as follows:

1           16-1629.   POWERS AND DUTIES OF THE DEPARTMENT. The department, working  
2 in conjunction with the court and other public and private agencies and per-  
3 sons, shall have the primary responsibility to implement the purpose of this  
4 chapter. To this end, the department is empowered and shall have the duty to  
5 do all things reasonably necessary to carry out the purpose of this chapter,  
6 including, but not limited to, the following:

7           (1) The department shall administer treatment programs for the protec-  
8 tion and care of neglected, abused and abandoned children, and in so doing  
9 may place in foster care, shelter care, or other diagnostic, treatment, or  
10 care centers or facilities children of whom it has been given custody. The  
11 department is to be governed by the standards found in chapter 12, title 39,  
12 Idaho Code.

13           (2) On December 1, the department shall make an annual statistical  
14 report to the governor covering the preceding fiscal year showing the num-  
15 ber and status of persons in its custody and including such other data as  
16 will provide sufficient facts for sound planning in the conservation of  
17 children and youth. All officials and employees of the state and of every  
18 county and city shall furnish the department, upon request, such information  
19 within their knowledge and control as the department deems necessary. Lo-  
20 cal agencies shall report in such uniform format as may be required by the  
21 department.

22           (3) The department shall be required to maintain a central registry for  
23 the reporting of child neglect, abuse and abandonment information. Provided  
24 however, that the department shall not retain any information for this pur-  
25 pose relating to a child, or parent of a child, abandoned pursuant to chapter  
26 82, title 39, Idaho Code.

27           (4) The department shall make periodic evaluation of all persons in its  
28 custody or under its protective supervision for the purpose of determining  
29 whether existing orders and dispositions in individual cases shall be modi-  
30 fied or continued in force. Evaluations may be made as frequently as the de-  
31 partment considers desirable and shall be made with respect to every person  
32 at intervals not exceeding six (6) months. Reports of evaluation made pur-  
33 suant to this section shall be filed with the court that has jurisdiction.  
34 Reports of evaluation shall be provided to persons having full or partial le-  
35 gal or physical custody of a child. Failure of the department to evaluate a  
36 person or to reevaluate him within six (6) months of a previous examination  
37 shall not of itself entitle the person to a change in disposition but shall  
38 entitle him, his parent, guardian or custodian or his counsel to petition the  
39 court pursuant to section 16-1622, Idaho Code.

40           (5) In a consultive capacity, the department shall assist communities  
41 in the development of constructive programs for the protection, ~~prevention~~  
42 and care of children and youth.

43           (6) The department shall keep written records of investigations, eval-  
44 uations, prognoses and all orders concerning disposition or treatment of ev-  
45 ery person over whom it has legal custody or under its protective supervi-  
46 sion. Department records shall be subject to disclosure according to chap-  
47 ter 1, title 74, Idaho Code, unless otherwise ordered by the court, the per-  
48 son consents to the disclosure, or disclosure is necessary for the delivery  
49 of services to the person. Notwithstanding the provisions restricting dis-  
50 closure or the exemptions from disclosure provided in chapter 1, title 74,

1 Idaho Code, all records pertaining to investigations, the rehabilitation of  
2 youth, the protection of children, evaluation, treatment and/or disposi-  
3 tion records pertaining to the statutory responsibilities of the department  
4 shall be disclosed to any duly elected state official carrying out his offi-  
5 cial functions.

6 (7) The department shall establish appropriate administrative proce-  
7 dures for the processing of complaints of child neglect, abuse, and abandon-  
8 ment received and for the implementation of the protection, treatment, and  
9 care of children formally or informally placed in the custody of the depart-  
10 ment or under its protective supervision under this chapter, including but  
11 not limited to:

12 (a) Department employees whose job duties are related to the child pro-  
13 tective services system under this chapter shall first be trained as to  
14 their obligations under this chapter regarding the protection of chil-  
15 dren whose health and safety may be endangered. The curriculum shall  
16 include information regarding their legal duties, how to conduct their  
17 work in conformity with the requirements of this chapter, information  
18 regarding applicable federal and state laws with regard to the rights  
19 of the child, parent and others who may be under investigation under the  
20 child protective services system, and the applicable legal and consti-  
21 tutional parameters within which they are to conduct their work.

22 (b) Department employees whose job duties are related to the child pro-  
23 tective services system shall advise the individual of the complaints  
24 or allegations made against the individual at the time of the initial  
25 contact, consistent with protecting the identity of the referent.

26 (c) Department employees whose job duties are related to the child  
27 protective services system shall be trained as to the constitutional  
28 rights retained by the child, parent, and others who may be under inves-  
29 tigation. The training shall include but not be limited to instruction  
30 that those under investigation may:

31 (i) Refuse entry to their home or other premises unless there is a  
32 warrant of a court of competent jurisdiction permitting entry;

33 (ii) Refuse interviews and refuse to answer questions;

34 (iii) Refuse interviews and examinations of minor children in  
35 their legal care and custody unless there is a warrant of a court  
36 requiring particular examinations; and

37 (iv) Hire an attorney at their own expense and have that attorney  
38 represent them during all interactions with the department.

39 (8) The department, having been granted legal custody of a child,  
40 shall have the right to determine where and with whom the child shall live,  
41 provided that the child shall not be placed outside the state without the  
42 court's consent. The court shall retain jurisdiction over the child, which  
43 jurisdiction shall be entered on any order or petition granting legal cus-  
44 tody to the department, and the court shall have jurisdiction over all  
45 matters relating to the child. The department shall not place the child in  
46 the home from which the court ordered the child removed without first ob-  
47 taining the approval of the court. Notwithstanding the provisions of this  
48 subsection, all other determinations relating to where and with whom the  
49 child shall live shall be subject to judicial review by the court and, when  
50 contested by any party, judicial approval.

1 (9) The department shall give to the court any information concerning  
2 the child that the court may at any time require, but in any event shall re-  
3 port the progress of the child under its custody or under its protective su-  
4 pervision at intervals of not to exceed six (6) months. The department shall  
5 file with the court at least five (5) days prior to the permanency hearing ei-  
6 ther under section 16-1622, Idaho Code, or, in the case of a finding of aggra-  
7 vated circumstances, section 16-1620, Idaho Code, the permanency plan and  
8 recommendations of the department.

9 (10) The department shall establish appropriate administrative proce-  
10 dures for the conduct of administrative reviews and hearings as required by  
11 federal statute for all children committed to the department and placed in  
12 out-of-the-home care.

13 (11) At any time the department is considering a placement pursuant to  
14 this chapter, the department shall make a reasonable effort to place the  
15 child in the least restrictive environment to the child and in so doing shall  
16 consider, consistent with the best interest and special needs of the child,  
17 placement priority of the child in the following order:

18 (a) A fit and willing relative;

19 (b) A fit and willing nonrelative with a significant relationship with  
20 the child;

21 (c) Foster parents and other persons licensed in accordance with chap-  
22 ter 12, title 39, Idaho Code, with a significant relationship with the  
23 child;

24 (d) Foster parents and other persons licensed in accordance with chap-  
25 ter 12, title 39, Idaho Code.

26 (12) If the caseworker assigned to a foster care case recommends re-  
27 moving the child from a foster home in which the child has been placed for  
28 sixty (60) or more days, for placement in another foster home, then the case  
29 worker's supervisor shall conduct a review of the foster care case and must  
30 approve such recommendation before a change in foster home placement occurs.  
31 The supervisor shall consider the best interests and special needs of the  
32 child, including:

33 (a) The clearly stated reasons for the recommended change in placement;

34 (b) The number of times the child's placement has been changed since re-  
35 moval from the child's home and the reasons for each change;

36 (c) Whether the child will change schools as a result of the change in  
37 placement; and

38 (d) Whether the change in placement will separate or reunite siblings  
39 or affect sibling visitation.

40 (13) If the supervisor determines that the recommended change in fos-  
41 ter care placement is in the best interests of the child, then the department  
42 may change the placement of the child; provided that, the department shall  
43 give the foster parents and the court written notice of the planned change at  
44 least seven (7) days before the change in placement.

45 (14) If the caseworker determines that there is abuse or neglect or a  
46 substantial risk of abuse or neglect in the foster home, then the department  
47 may change the placement of the child without a supervisor's review; pro-  
48 vided that, the department shall give the foster parents and the court writ-  
49 ten notice of the unplanned change within seven (7) days after the change in  
50 placement.

1           (15) In its written notice of a planned or unplanned change required  
2 under this section, the department shall clearly state the reasons for the  
3 change in placement of the child.

4           SECTION 3. An emergency existing therefor, which emergency is hereby  
5 declared to exist, this act shall be in full force and effect on and after its  
6 passage and approval.