

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 159

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO THE CHILD PROTECTIVE ACT; AMENDING SECTION 16-1602, IDAHO CODE,
2 TO DEFINE A TERM AND TO REMOVE A DEFINITION; AMENDING SECTION 16-1608,
3 IDAHO CODE, TO REMOVE PROVISIONS REGARDING EMERGENCY REMOVAL; AMENDING
4 SECTION 16-1611, IDAHO CODE, TO ESTABLISH PROVISIONS REGARDING AN OR-
5 DER TO PREVENT REMOVAL; AMENDING SECTION 16-1615, IDAHO CODE, TO REMOVE
6 A PROVISION REGARDING ISSUANCE OF A PROTECTIVE ORDER; AMENDING SECTION
7 16-1619, IDAHO CODE, TO REMOVE A PROVISION REGARDING EXTENDING OR INI-
8 TIATING OF A PROTECTIVE ORDER; AND DECLARING AN EMERGENCY AND PROVIDING
9 AN EFFECTIVE DATE.
10

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

12 SECTION 1. That Section 16-1602, Idaho Code, be, and the same is hereby
13 amended to read as follows:

14 16-1602. DEFINITIONS. For purposes of this chapter:
15 (1) "Abused" means any case in which a child has been the victim of:
16 (a) Conduct or omission resulting in skin bruising, bleeding, mal-
17 nutrition, burns, fracture of any bone, head injury, soft tissue
18 swelling, failure to thrive or death, and such condition or death is not
19 justifiably explained, or where the history given concerning such con-
20 dition or death is at variance with the degree or type of such condition
21 or death, or the circumstances indicate that such condition or death may
22 not be the product of an accidental occurrence; or
23 (b) Sexual conduct, including rape, molestation, incest, commercial
24 sexual activity, obscene or pornographic photographing, filming or de-
25 piction for commercial purposes, human trafficking as defined in chap-
26 ter 86, title 18, Idaho Code, or other similar forms of sexual exploita-
27 tion harming or threatening the child's health or welfare or mental in-
28 jury to the child.
29 (2) "Abandoned" means the failure of the parent to maintain a normal
30 parental relationship with his child including, but not limited to, reason-
31 able support or regular personal contact. Failure to maintain this rela-
32 tionship without just cause for a period of one (1) year shall constitute
33 prima facie evidence of abandonment.
34 (3) "Adaptive equipment" means any piece of equipment or any item that
35 is used to increase, maintain or improve the parenting capabilities of a par-
36 ent with a disability.
37 (4) "Adjudicatory hearing" means a hearing to determine:
38 (a) Whether the child comes under the jurisdiction of the court pur-
39 suant to the provisions of this chapter;
40 (b) Whether continuation of the child in the home would be contrary to
41 the child's welfare and whether the best interest of the child requires

1 protective supervision or vesting legal custody of the child in an au-
2 thorized agency.

3 (5) "Age of developmentally appropriate" means:

4 (a) Activities that are generally accepted as suitable for children of
5 the same chronological age or level of maturity or that are determined
6 to be developmentally appropriate for a child, based on the development
7 of cognitive, emotional, physical and behavioral capacities that are
8 typical for an age or age group; and

9 (b) In the case of a specific child, activities or items that are suit-
10 able for the child based on the developmental stages attained by the
11 child with respect to the cognitive, emotional, physical and behavioral
12 capacities of the child.

13 (6) "Aggravated circumstances" includes, but is not limited to:

14 (a) Circumstances in which the parent has engaged in any of the follow-
15 ing:

16 (i) Abandonment, chronic abuse or chronic neglect of the child.
17 Chronic neglect or chronic abuse of a child shall consist of abuse
18 or neglect that is so extreme or repetitious as to indicate that
19 return of the child to the home would result in unacceptable risk
20 to the health and welfare of the child.

21 (ii) Sexual abuse against a child of the parent. Sexual abuse, for
22 the purposes of this section, includes any conduct described in
23 section 18-1506, 18-1506A, 18-1507, 18-1508, 18-1508A, 18-6101,
24 or 18-6604, or chapter 86, title 18, Idaho Code.

25 (iii) Torture of a child. Any conduct listed in section
26 18-8303(1), Idaho Code; battery or an injury to a child that re-
27 sults in serious or great bodily injury to a child; voluntary
28 manslaughter of a child, or aiding or abetting such voluntary
29 manslaughter, soliciting such voluntary manslaughter or attempt-
30 ing or conspiring to commit such voluntary manslaughter;

31 (b) The parent has committed murder, aided or abetted a murder, so-
32 licited a murder or attempted or conspired to commit murder; or

33 (c) The parental rights of the parent to another child have been termi-
34 nated involuntarily.

35 (7) "Authorized agency" means the department, a local agency, a person,
36 an organization, corporation, benevolent society or association licensed
37 or approved by the department or the court to receive children for control,
38 care, maintenance or placement.

39 (8) "Caregiver" means a foster parent with whom a child in foster care
40 has been placed or a designated official for a child care institution in
41 which a child in foster care has been placed.

42 (9) "Case plan hearing" means a hearing to approve, modify or reject the
43 case plan as provided in section 16-1621, Idaho Code.

44 (10) "Child" means an individual who is under the age of eighteen (18)
45 years.

46 (11) "Child advocacy center" or "CAC" means an organization that ad-
47 heres to national best practice standards established by the national
48 membership and accrediting body for children's advocacy centers and that
49 promotes a comprehensive and coordinated multidisciplinary team response to
50 allegations of child abuse by maintaining a child-friendly facility at which

1 appropriate services are provided. These services may include forensic in-
2 terviews, forensic medical examinations, mental health services and other
3 related victim services.

4 (12) "Circumstances of the child" includes, but is not limited to, the
5 joint legal custody or joint physical custody of the child.

6 (13) "Commit" means to transfer legal and physical custody.

7 (14) "Concurrent planning" means a planning model that prepares for and
8 implements different outcomes at the same time.

9 (15) "Court" means district court or magistrate division thereof or, if
10 the context requires, a magistrate or judge thereof.

11 (16) "Custodian" means a person, other than a parent or legal guardian,
12 to whom legal or joint legal custody of the child has been given by court or-
13 der.

14 (17) "Department" means the department of health and welfare and its au-
15 thorized representatives.

16 (18) "Disability" means, with respect to an individual, any mental or
17 physical impairment that substantially limits one (1) or more major life
18 activities of the individual including, but not limited to, self-care, man-
19 ual tasks, walking, seeing, hearing, speaking, learning or working, or a
20 record of such an impairment, or being regarded as having such an impairment.
21 Disability shall not include transvestism, transsexualism, pedophilia,
22 exhibitionism, voyeurism, other sexual behavior disorders, or substance use
23 disorders, compulsive gambling, kleptomania or pyromania. Sexual prefer-
24 ence or orientation is not considered an impairment or disability. Whether
25 an impairment substantially limits a major life activity shall be determined
26 without consideration of the effect of corrective or mitigating measures
27 used to reduce the effects of the impairment.

28 (19) "Family or household member" shall have the same meaning as in sec-
29 tion 39-6303(6), Idaho Code.

30 (20) "Foster care" means twenty-four (24) hour substitute parental care
31 for children placed away from their parents or guardians by persons who may
32 or may not be related to the children and for whom the state agency has place-
33 ment and care responsibility.

34 (21) "Foster parent" means a person or persons licensed to provide fos-
35 ter care.

36 (22) "Grant administrator" means the supreme court or any organization
37 or agency as may be designated by the supreme court in accordance with such
38 procedures as may be adopted by the supreme court. The grant administrator
39 shall administer funds from the guardian ad litem account in accordance with
40 the provisions of this chapter.

41 (23) "Guardian ad litem" means a person appointed by the court pursuant
42 to a guardian ad litem volunteer program to act as special advocate for a
43 child under this chapter.

44 (24) "Guardian ad litem coordinator" means a person or entity receiving
45 moneys from the grant administrator for the purpose of carrying out any of
46 the duties set forth in section 16-1632, Idaho Code.

47 (25) "Guardian ad litem program" means the program to recruit, train and
48 coordinate volunteer persons to serve as guardians ad litem for abused, ne-
49 glected or abandoned children.

1 (26) "Homeless," as used in this chapter, shall mean that the child is
2 without adequate shelter or other living facilities, and the lack of such
3 shelter or other living facilities poses a threat to the health, safety or
4 well-being of the child.

5 (27) "Idaho network of children's advocacy centers" means an organiza-
6 tion that provides education and technical assistance to child advocacy cen-
7 ters and to interagency multidisciplinary teams developed pursuant to sec-
8 tion 16-1617, Idaho Code.

9 (28) "Law enforcement agency" means a city police department, the pros-
10 ecuting attorney of any county, state law enforcement officers, or the of-
11 fice of a sheriff of any county.

12 (29) "Legal custody" means a relationship created by court order, which
13 vests in a custodian the following rights and responsibilities:

14 (a) To have physical custody and control of the child, and to determine
15 where and with whom the child shall live.

16 (b) To supply the child with food, clothing, shelter and incidental ne-
17 cessities.

18 (c) To provide the child with care, education and discipline.

19 (d) To authorize ordinary medical, dental, psychiatric, psychologi-
20 cal, or other remedial care and treatment for the child, including care
21 and treatment in a facility with a program of services for children, and
22 to authorize surgery if the surgery is deemed by two (2) physicians li-
23 censed to practice in this state to be necessary for the child.

24 (e) Where the parents share legal custody, the custodian may be vested
25 with the custody previously held by either or both parents.

26 (30) "Mental injury" means a substantial impairment in the intellectual
27 or psychological ability of a child to function within a normal range of per-
28 formance and/or behavior, for short or long terms.

29 (31) "Neglected" means a child:

30 (a) Who is without proper parental care and control, or subsistence,
31 medical or other care or control necessary for his well-being because of
32 the conduct or omission of his parents, guardian or other custodian or
33 their neglect or refusal to provide them; however, no child whose parent
34 or guardian chooses for such child treatment by prayers through spiri-
35 tual means alone in lieu of medical treatment shall be deemed for that
36 reason alone to be neglected or lack parental care necessary for his
37 health and well-being, but this subsection shall not prevent the court
38 from acting pursuant to section 16-1627, Idaho Code; or

39 (b) Whose parent, guardian or other custodian is unable to discharge
40 the responsibilities to and for the child and, as a result of such in-
41 ability, the child lacks the parental care necessary for his health,
42 safety or well-being; or

43 (c) Who has been placed for care or adoption in violation of law; or

44 (d) Who is without proper education because of the failure to comply
45 with section 33-202, Idaho Code.

46 (32) "Order to prevent removal," as described in section 16-1611(5),
47 Idaho Code, means an order to allow a child to remain in the child's present
48 surroundings when there is reasonable cause to believe the child is safe in
49 the sole care of one (1) parent, legal guardian, or legal custodian and when

1 there is alleged neglect or abuse by another parent, legal guardian, or legal
2 custodian.

3 ~~(32)~~ (33) "Permanency hearing" means a hearing to review, approve, re-
4 ject or modify the permanency plan of the department and to review reasonable
5 efforts in accomplishing the permanency plan.

6 ~~(33)~~ (34) "Permanency plan" means a plan for a continuous residence and
7 maintenance of nurturing relationships during the child's minority.

8 ~~(34)~~ "Protective order" means an order issued by the court in a child
9 protection case, prior to the adjudicatory hearing, to enable the child to
10 remain in the home pursuant to section 16-1615(8), Idaho Code, or follow-
11 ing an adjudicatory hearing to preserve the unity of the family and to ensure
12 the best interests of the child pursuant to section 16-1619(10), Idaho Code.
13 Such an order shall be in the same form and have the same effect as a domes-
14 tic violence protection order issued pursuant to chapter 63, title 39, Idaho
15 Code. A protective order shall be for a period not to exceed three (3) months
16 unless otherwise stated in the order.

17 (35) "Protective supervision" is a legal status created by court order
18 in a child protective case whereby the child is in the legal custody of his or
19 her parent(s), guardian(s) or other legal custodian(s), subject to supervi-
20 sion by the department.

21 (36) "Psychotropic medication" means a drug prescribed to affect psy-
22 chological functioning, perception, behavior or mood. Psychotropic medi-
23 cations include, but are not limited to, antidepressants, mood stabilizers,
24 antipsychotics, antianxiety medications, sedatives and stimulants.

25 (37) "Qualified individual" means a trained professional or licensed
26 clinician who is not connected to or affiliated with any placement setting
27 in which children are placed by the department and who is not an employee of
28 child and family services, unless a waiver has been approved by the autho-
29 rized agency.

30 (38) "Qualified residential treatment program" means a program that has
31 a trauma-informed treatment model designed to address the needs of children
32 with serious emotional or behavioral disorders or disturbances, is able to
33 implement the treatment identified for the child by the assessment of the
34 child required under section 16-1619A(2), Idaho Code, and is licensed and
35 accredited in accordance with state and federal law.

36 (39) "Reasonable and prudent parent standard" means the standard of
37 care characterized by careful and sensible parental decisions that main-
38 tain the health, safety and best interests of a child while simultaneously
39 encouraging the emotional and developmental growth of the child that a care-
40 giver shall use when determining whether to allow a child in foster care
41 under the responsibility of the state to participate in extracurricular,
42 enrichment, cultural or social activities.

43 (40) "Relative" means a child's grandparent, great grandparent, aunt,
44 great aunt, uncle, great uncle, brother-in-law, sister-in-law, first
45 cousin, sibling and half-sibling.

46 (41) "Residual parental rights and responsibilities" means those
47 rights and responsibilities remaining with the parents after the transfer of
48 legal custody including, but not necessarily limited to, the right of visi-
49 tation, the right to consent to adoption, the right to determine religious

1 affiliation, the right to family counseling when beneficial, and the respon-
2 sibility for support.

3 (42) "Shelter care" means places designated by the department for tem-
4 porary care of children pending court disposition or placement.

5 (43) "Supportive services," as used in this chapter, shall mean ser-
6 vices that assist parents with a disability to compensate for those aspects
7 of their disability that affect their ability to care for their child and
8 that will enable them to discharge their parental responsibilities. The
9 term includes specialized or adapted training, evaluations or assistance
10 with effectively using adaptive equipment and accommodations that allow
11 parents with a disability to benefit from other services including, but not
12 limited to, Braille texts or sign language interpreters.

13 SECTION 2. That Section 16-1608, Idaho Code, be, and the same is hereby
14 amended to read as follows:

15 16-1608. EMERGENCY REMOVAL. (1) ~~(a)~~ A child may be taken into shelter
16 care by a peace officer without an order issued pursuant to subsection (4) of
17 section 16-1611 or section 16-1619, Idaho Code, only where the child is en-
18 dangered in his surroundings and prompt removal is necessary to prevent se-
19 rious physical or mental injury to the child or where the child is an aban-
20 doned child pursuant to the provisions of chapter 82, title 39, Idaho Code.

21 ~~(b) An alleged offender may be removed from the home of the victim of~~
22 ~~abuse or neglect by a peace officer without an order, issued pursuant~~
23 ~~to subsection (5) of section 16-1611, Idaho Code, only where the child~~
24 ~~is endangered and prompt removal of an alleged offender is necessary to~~
25 ~~prevent serious physical or mental injury to the child.~~

26 (2) When a child is taken into shelter care under subsection (1) of this
27 section, he may be held for a maximum of forty-eight (48) hours, excluding
28 Saturdays, Sundays and holidays, unless a shelter care hearing has been held
29 pursuant to section 16-1615, Idaho Code, and the court orders an adjudica-
30 tory hearing.

31 ~~(3) When an alleged offender is removed from the home under subsection~~
32 ~~(1) (b) of this section, a motion based on a sworn affidavit by the department~~
33 ~~must be filed simultaneously with the petition and the court shall determine~~
34 ~~at a shelter care hearing, held within a maximum of twenty-four (24) hours,~~
35 ~~excluding Saturdays, Sundays and holidays, whether the relief sought shall~~
36 ~~be granted, pending an adjudicatory hearing. Notice of such hearing shall be~~
37 ~~served upon the alleged offender at the time of removal or other protective~~
38 ~~relief.~~

39 SECTION 3. That Section 16-1611, Idaho Code, be, and the same is hereby
40 amended to read as follows:

41 16-1611. SUMMONS. (1) After a petition has been filed, the clerk of the
42 court may issue a summons requiring the person or persons who have custody
43 of the child to bring the child before the court at the adjudicatory hearing
44 held in accordance with section 16-1619, Idaho Code. Each parent or guardian
45 shall also be notified in the manner hereinafter provided of the pendency of
46 the case and the time and place set for the hearing. A summons shall be is-
47 sued and served requiring the appearance of each parent and legal guardian,

1 and a summons may be issued and served for any other person whose presence is
2 required by the child, either of his parents or guardian or any other person
3 whose presence, in the opinion of the court, is necessary.

4 (2) A copy of the petition shall be attached to each summons.

5 (3) The summons shall notify each of the parents, guardian or legal cus-
6 todian of their right to retain and be represented by counsel. Each parent
7 or legal guardian of each child named in the petition shall be notified by the
8 court of the case and of the time and place set for the hearing.

9 (4) If based on facts presented to the court, it appears that the court
10 has jurisdiction upon the grounds set forth in section 16-1603, Idaho Code,
11 and the court finds that the child should be removed from his present condi-
12 tion or surroundings because continuation in such condition or surroundings
13 would be contrary to the welfare of the child and vesting legal custody with
14 the department or other authorized agency would be in the child's best in-
15 terests, the court shall include on the summons an order to remove the child.
16 The order to remove the child shall specifically state that continuation in
17 the present condition or surroundings is contrary to the welfare of the child
18 and shall require a peace officer or other suitable person to take the child
19 at once to a place of shelter care designated by the authorized agency which
20 shall provide shelter care for the child.

21 (5) (a) If it appears that the child is safe in his present condition
22 or surroundings and it is not in his best interest to remove him at this
23 time, the court may issue a protective order based on an affidavit pend-
24 ing the adjudicatory hearing. If the child is in joint custody, the pro-
25 protective order shall state with specificity the rights and responsibil-
26 ities of each parent. Each parent shall be provided with a copy of the
27 protective order. If there is reasonable cause to believe that a child
28 would be safe in the child's present surroundings in the sole care of one
29 (1) parent, legal guardian, or legal custodian and neglect or abuse by
30 another parent, legal guardian, or legal custodian is alleged, then a
31 prosecutor or the attorney general may file a motion with the court for
32 an order to prevent removal of the child that excludes the alleged of-
33 fending parent, legal guardian, or legal custodian from the residence
34 where the child resides. If the court finds reasonable cause to believe
35 that such elements have been demonstrated, the court shall issue an or-
36 der that shall exclude the alleged offending parent, legal guardian, or
37 legal custodian from the dwelling where the child resides, restrain any
38 contact or communication with the child, and restrain the alleged of-
39 fending parent, legal guardian, or legal custodian from coming within
40 one thousand five hundred (1,500) feet, or other appropriate distance,
41 of the child until further order of the court.

42 (b) A motion filed pursuant to paragraph (a) of this subsection shall be
43 accompanied by a sworn affidavit from a law enforcement officer or the
44 department.

45 (c) A copy of an order to prevent removal along with a copy of the peti-
46 tion and summons shall be served on the alleged offending parent, legal
47 guardian, or legal custodian, and all parents, legal guardians, or le-
48 gal custodians shall receive notice of a hearing on whether to continue
49 an order within forty-eight (48) hours, excluding Saturdays, Sundays,
50 and holidays.

1 (d) The court shall continue an order to prevent removal until further
 2 order of the court if, at a hearing on whether to continue the order, the
 3 prosecutor or attorney general shows:

4 (i) A petition and summons have been issued pursuant to subsec-
 5 tion (1) of this section;

6 (ii) There is reasonable cause to believe the child is safe in
 7 the child's current surroundings in the sole care of one (1) par-
 8 ent, legal guardian, or legal custodian but has been neglected or
 9 abused by the other parent, legal guardian, or legal custodian;

10 and

11 (iii) Continuation of the order is in the child's best interest.

12 (e) Any person who fails to abide by an order to prevent removal shall
 13 be guilty of misdemeanor criminal contempt, as described in section
 14 18-1801, Idaho Code.

15 SECTION 4. That Section 16-1615, Idaho Code, be, and the same is hereby
 16 amended to read as follows:

17 16-1615. SHELTER CARE HEARING. (1) Notwithstanding any other provi-
 18 sion of this chapter, when a child is taken into shelter care pursuant to sec-
 19 tion 16-1608 or 16-1611, Idaho Code, a hearing to determine whether the child
 20 should be released shall be held according to the provisions of this section.

21 (2) Each of the parents or custodian from whom the child was removed
 22 shall be given notice of the shelter care hearing. Such notice shall include
 23 the time, place, and purpose of the hearing; and, that such person is enti-
 24 tled to be represented by legal counsel. Notice as required by this subsec-
 25 tion shall be given at least twenty-four (24) hours before the shelter care
 26 hearing.

27 (3) Notice of the shelter care hearing shall be given to the parents or
 28 custodian from whom the child was removed by personal service and the return
 29 of service shall be filed with the court and to any person having joint legal
 30 or physical custody of the subject child. Provided, however, that such ser-
 31 vice need not be made where the undelivered notice is returned to the court
 32 along with an affidavit stating that such parents or custodian could not be
 33 located or were out of the state.

34 (4) The shelter care hearing may be continued for a reasonable time upon
 35 request by the parent, custodian or counsel for the child.

36 (5) If, upon the completion of the shelter care hearing, it is shown
 37 that:

38 (a) A petition has been filed; and

39 (b) There is reasonable cause to believe the child comes within the ju-
 40 risdiction of the court under this chapter and either:

41 (i) The department made reasonable efforts to eliminate the need
 42 for shelter care but the efforts were unsuccessful; or

43 (ii) The department made reasonable efforts to eliminate the need
 44 for shelter care but was not able to safely provide preventive ser-
 45 vices; and

46 (c) The child could not be placed in the temporary sole custody of a par-
 47 ent having joint legal or physical custody; and

48 (d) It is contrary to the welfare of the child to remain in the home; and

1 (e) It is in the best interests of the child to remain in temporary shel-
 2 ter care pending the conclusion of the adjudicatory hearing.
 3 The court shall issue, within twenty-four (24) hours of such hearing, a shel-
 4 ter care order placing the child in the temporary legal custody of the de-
 5 partment or other authorized agency. Any evidence may be considered by the
 6 court which is of the type which reasonable people may rely upon.

7 (6) Upon finding reasonable cause pursuant to subsection (5) (b) of this
 8 section, the court shall order an adjudicatory hearing to be held as soon as
 9 possible, but in no event later than thirty (30) days from the date the peti-
 10 tion was filed. In addition, the court shall inquire whether there is reason
 11 to believe that the child is an Indian child.

12 (7) Upon entry of an order of shelter care, the court shall inquire:

13 (a) If the child is of school age, about the department's efforts to
 14 keep the child in the school at which the child is currently enrolled;
 15 and

16 (b) If a sibling group was removed from their home, about the depart-
 17 ment's efforts to place the siblings together, or if the department has
 18 not placed or will not be placing the siblings together, about a plan
 19 to ensure frequent visitation or ongoing interaction among the sib-
 20 lings, unless visitation or ongoing interaction would be contrary to
 21 the safety or well-being of one (1) or more of the siblings.

22 ~~(8) If there is reasonable cause to believe that the child comes within~~
 23 ~~the jurisdiction of the court under this chapter, but a reasonable effort to~~
 24 ~~prevent placement of the child outside the home could be affected by a pro-~~
 25 ~~TECTIVE ORDER safeguarding the child's welfare, the court may issue, within~~
 26 ~~twenty-four (24) hours of such hearing, a protective order. Any evidence may~~
 27 ~~be considered by the court that is of the type which reasonable people may~~
 28 ~~rely upon.~~

29 ~~(9)~~ (8) If the court does not find that the child should be placed in or
 30 remain in shelter care under subsection (5) of this section, the child shall
 31 be released.

32 ~~(10)~~ (9) If the court does not find reasonable cause pursuant to subsec-
 33 tion (5) (b) of this section, the court shall dismiss the petition.

34 SECTION 5. That Section 16-1619, Idaho Code, be, and the same is hereby
 35 amended to read as follows:

36 16-1619. ADJUDICATORY HEARING -- CONDUCT OF HEARING -- CONSOLIDA-
 37 TION. (1) When a petition has been filed, the court shall set an adjudicatory
 38 hearing to be held no later than thirty (30) days after the filing of the
 39 petition.

40 (2) A pretrial conference shall be held outside the presence of the
 41 court within three (3) to five (5) days before the adjudicatory hearing.
 42 Investigative reports required under section 16-1616, Idaho Code, shall be
 43 delivered to the court with copies to each of the parents and other legal cus-
 44 todians, guardian ad litem and attorney for the child prior to the pretrial
 45 conference.

46 (3) At the adjudicatory hearing, parents or guardians with disabil-
 47 ities shall have the right to introduce admissible evidence regarding how
 48 use of adaptive equipment or supportive services may enable the parent or

1 guardian to carry out the responsibilities of parenting the child by ad-
2 dressing the reason for the removal of the child.

3 (4) If a preponderance of the evidence at the adjudicatory hearing
4 shows that the child comes within the court's jurisdiction under this chap-
5 ter upon the grounds set forth in section 16-1603, Idaho Code, the court
6 shall so decree and in its decree shall make a finding on the record of the
7 facts and conclusions of law upon which it exercises jurisdiction over the
8 child.

9 (5) Upon entering its decree, the court shall consider any information
10 relevant to the disposition of the child but in any event shall:

11 (a) Place the child under the protective supervision of the department
12 for an indeterminate period not to exceed the child's eighteenth birth-
13 day; or

14 (b) Vest legal custody in the department or other authorized agency
15 subject to residual parental rights and subject to full judicial re-
16 view by the court and, when contested by any party, judicial approval
17 of all matters relating to the custody of the child by the department
18 or other authorized agency. If the department has placed the child in
19 a qualified residential treatment program, the court shall approve or
20 disapprove the placement within sixty (60) days of placement in accor-
21 dance with section 16-1619A, Idaho Code.

22 (6) If the court vests legal custody in the department or other autho-
23 rized agency, the court shall make detailed written findings based on facts
24 in the record that, in addition to the findings required in subsection (4) of
25 this section, continuation of residence in the home would be contrary to the
26 welfare of the child and that vesting legal custody with the department or
27 other authorized agency would be in the best interests of the child. In ad-
28 dition, the court shall make detailed written findings based on facts in the
29 record as to whether the department made reasonable efforts to prevent the
30 placement of the child in foster care, including findings, when appropriate,
31 that:

32 (a) Reasonable efforts were made but were not successful in eliminating
33 the need for foster care placement of the child;

34 (b) The department made reasonable efforts to prevent removal but was
35 not able to safely provide preventive services;

36 (c) Reasonable efforts to temporarily place the child with related per-
37 sons were made but were not successful; or

38 (d) Reasonable efforts to reunify the child with one (1) or both parents
39 were not required because aggravated circumstances were present. If
40 aggravated circumstances are found, a permanency hearing for the child
41 shall be held within thirty (30) days of the determination of aggravated
42 circumstances.

43 (7) (a) The court shall also inquire regarding:

44 (i) Whether there is reason to believe that the child is an Indian
45 child;

46 (ii) The efforts that have been made since the last hearing to de-
47 termine whether the child is an Indian child; and

48 (iii) The department's efforts to work with all tribes of which the
49 child may be a member to verify whether the child is a member or el-
50 igible for membership.

1 (b) In addition, if the court vests legal custody of the child in the
2 department or other authorized agency, the court shall inquire as to:

3 (i) If the child is of school age, the department's efforts to
4 keep the child in the school at which the child is currently en-
5 rolled; and

6 (ii) If a sibling group was removed from the home, the depart-
7 ment's efforts to place the siblings together, or if the depart-
8 ment has not placed or will not be placing the siblings together,
9 about a plan to ensure frequent visitation or ongoing interac-
10 tion among the siblings, unless visitation or ongoing interaction
11 would be contrary to the safety or well-being of one (1) or more of
12 the siblings.

13 (c) If the court vests legal custody of the child in the department
14 or other authorized agency and the child is being treated with psy-
15 chotropic medication, these additional requirements shall apply:

16 (i) The department shall report to the court the medications and
17 dosages prescribed for the child and the medical professional who
18 prescribed the medication; and

19 (ii) The court shall inquire about and may make any additional in-
20 quiry relevant to the use of psychotropic medications.

21 (8) A decree vesting legal custody in the department shall be binding
22 upon the department and may continue until the child's eighteenth birthday.

23 (9) A decree vesting legal custody in an authorized agency other than
24 the department shall be for a period of time not to exceed the child's eigh-
25 teenth birthday and on such other terms as the court shall state in its decree
26 to be in the best interests of the child and which the court finds to be ac-
27 ceptable to such authorized agency.

28 ~~(10) In order to preserve the unity of the family system and to ensure~~
29 ~~the best interests of the child, whether issuing an order of protective su-~~
30 ~~perVISION or an order of legal custody, the court may consider extending or~~
31 ~~initiating a protective order as part of the decree. The protective order~~
32 ~~shall be determined as in the best interests of the child and upon a showing~~
33 ~~of continuing danger to the child. The conditions and terms of the protec-~~
34 ~~tive order shall be clearly stated in the decree.~~

35 ~~(11)~~ (10) If the court does not find that the child comes within the ju-
36 risdiction of this chapter pursuant to subsection (4) of this section, it
37 shall dismiss the petition.

38 ~~(12)~~ (11) Where legal custody of a child is vested in the department,
39 any party or counsel for a child may, at or after the disposition phase of
40 an adjudicatory hearing, file and serve a written motion to contest matters
41 relating to the placement of the child by the department. The hearing must
42 be held no later than thirty (30) days from the date the motion was filed.
43 If the court approves the placement, the court shall enter an order denying
44 the motion. If the court does not approve the placement, the court shall en-
45 ter an order directing the department to identify and implement an alterna-
46 tive placement in accordance with applicable law. The court shall consider
47 everything necessary or proper in the best interests of the children. The
48 court shall consider all relevant factors, which may include:

49 (a) The wishes of the child regarding the child's custodian;

- 1 (b) The wishes of the child's parent or parents regarding the child's
- 2 custody, if appropriate;
- 3 (c) The interaction and interrelationship of the child with his parent
- 4 or parents or foster parent or foster parents, and the child's siblings;
- 5 (d) The child's adjustment to his home, school and community;
- 6 (e) The character and circumstances of all individuals involved;
- 7 (f) The need to promote continuity and stability in the life of the
- 8 child; and
- 9 (g) A history of domestic violence as defined in section 39-6303, Idaho
- 10 Code, whether or not in the presence of the child, or a conviction for
- 11 lewd and lascivious conduct or felony injury to a child.

12 SECTION 6. An emergency existing therefor, which emergency is hereby
13 declared to exist, this act shall be in full force and effect on and after
14 July 1, 2025.