

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 245

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO FOSTER CARE; AMENDING SECTION 16-1622, IDAHO CODE, TO REVISE
2 PROVISIONS REGARDING EXTENDED FOSTER CARE AND TO MAKE TECHNICAL COR-
3 RECTIONS; AMENDING SECTION 39-1202, IDAHO CODE, TO REVISE A DEFINITION
4 AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-1211A, IDAHO
5 CODE, TO REVISE PROVISIONS REGARDING RELATIVE FOSTER CARE; AMENDING
6 SECTION 39-1213, IDAHO CODE, TO REVISE PROVISIONS REGARDING LICENSING
7 AUTHORITY AND TO MAKE TECHNICAL CORRECTIONS; PROVIDING THAT CERTAIN
8 ADMINISTRATIVE RULES CONTAINED IN IDAPA 16.06.01 SHALL BE NULL, VOID,
9 AND OF NO FORCE AND EFFECT; AND DECLARING AN EMERGENCY AND PROVIDING AN
10 EFFECTIVE DATE.
11

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

13 SECTION 1. That Section 16-1622, Idaho Code, be, and the same is hereby
14 amended to read as follows:

15 16-1622. REVIEW HEARINGS -- STATUS HEARINGS -- ANNUAL PERMANENCY
16 HEARINGS. (1) Review hearing.

17 (a) A hearing for review of the child's case and permanency plan shall
18 be held no later than six (6) months after entry of the court's order
19 taking jurisdiction under this act and every six (6) months thereafter.
20 The department and the guardian ad litem shall file reports to the court
21 no later than five (5) days prior to the six (6) month review hearing.
22 The purpose of the review hearing is:

- 23 (i) To determine:
24 1. The safety of the child;
25 2. The continuing necessity for and appropriateness of the
26 placement;
27 3. The extent of compliance with the case plan; and
28 4. The extent of progress that has been made toward alle-
29 viating or mitigating the causes necessitating placement in
30 foster care;

31 (ii) To determine or continue to investigate whether the child is
32 an Indian child. If there is reason to believe that the child is an
33 Indian child and there has not been a final determination regard-
34 ing the child's status as an Indian child:

- 35 1. The department shall document and the court shall inquire
36 about the efforts that have been made since the last hearing
37 to determine whether the child is an Indian child; and
38 2. The department shall document and the court shall de-
39 termine that the department is using active efforts to work
40 with all tribes of which the child may be a member to verify
41 whether the child is a member or eligible for membership;

1 (iii) To inquire regarding the child's educational stability. The
2 department shall document and the court shall inquire as to the ef-
3 forts made to ensure educational stability for the child, includ-
4 ing the efforts made to keep the child in the school in which the
5 child is enrolled at the time of placement or the reason that re-
6 maining in the school is not in the child's best interests;

7 (iv) To inquire regarding sibling placement. The department
8 shall document and the court shall inquire whether siblings were
9 placed together or, if siblings were not placed together, the
10 efforts made to place siblings together, the reasons why sib-
11 lings were not placed together, and a plan for ensuring frequent
12 visitation or ongoing interaction between the siblings, unless
13 visitation or ongoing interaction would be contrary to the safety
14 or well-being of one (1) or more of the siblings;

15 (v) To inquire regarding permanency. The court shall ask each
16 youth age twelve (12) years and older about his desired permanency
17 outcome and discuss with the youth his current permanency plan.
18 For a youth age fourteen (14) years and older, the hearing shall
19 include a review of the services needed to assist the youth to make
20 the transition from foster care to successful adulthood;

21 (vi) To document efforts related to the reasonable and prudent
22 parent standard. For a youth whose permanency goal is another
23 planned permanent living arrangement, the department shall docu-
24 ment:

25 1. That the youth's foster parents or child care institution
26 is following the reasonable and prudent parent standard when
27 deciding whether the child may participate in extracurricu-
28 lar, enrichment, cultural and social activities; and

29 2. The regular, ongoing opportunities to engage in age- or
30 developmentally appropriate activities that have been pro-
31 vided to the youth;

32 (vii) To document efforts made to find a permanent placement other
33 than another planned permanent living arrangement. For a youth
34 whose permanency goal is another planned permanent living ar-
35 rangement, the department shall document:

36 1. The intensive, ongoing, and, as of the date of the hear-
37 ing, unsuccessful efforts made to place the youth with a par-
38 ent, in an adoptive placement, in a guardianship, or in the
39 legal custody of the department in a placement with a fit and
40 willing relative, including an adult sibling; and

41 2. Why another planned permanent living arrangement is the
42 best permanency plan for the youth and a compelling reason
43 why, as of the date of the review hearing, it would not be in
44 the best interest of the child to be placed permanently with
45 a parent, in an adoptive placement, in a guardianship, or in
46 the legal custody of the department in a placement with a fit
47 and willing relative, including an adult sibling;

48 (viii) To make findings regarding a permanency goal of another
49 planned permanent living arrangement. For youth whose permanency
50 goal is another planned permanent living arrangement, the court

1 shall make written, case-specific findings, as of the date of the
2 hearing, that:

- 3 1. Another planned permanent living arrangement is the best
4 permanency goal for the youth; and
5 2. There are compelling reasons why it is not in the best in-
6 terest of the youth to be placed permanently with a parent,
7 in an adoptive placement, in a guardianship, or in the legal
8 custody of the department in a placement with a fit and will-
9 ing relative, including an adult sibling;

10 (ix) To document and inquire regarding psychotropic medication.
11 At each review hearing, if the child is being treated with psy-
12 chotropic medication, these additional requirements shall apply:

- 13 1. The department shall report to the court the medication
14 and dosage prescribed for the child and the medical profes-
15 sional who prescribed the medication; and
16 2. The court shall inquire as to, and may make any additional
17 inquiry relevant to, the use of psychotropic medication; and

18 (x) To project, when reasonable, a likely date by which the child
19 may be safely returned to and maintained in the home or placed in
20 another permanent placement.

21 (b) A status hearing is a review hearing that does not address all or
22 most of the purposes identified in paragraph (a) of this subsection and
23 may be held at the discretion of the court. Neither the department nor
24 the guardian ad litem is required to file a report with the court prior
25 to a status hearing, unless ordered otherwise by the court.

26 (c) A motion for revocation or modification of an order issued un-
27 der section 16-1619, Idaho Code, may be filed by the department or any
28 party; provided that no motion may be filed by the respondents under
29 this section within three (3) months of a prior hearing on care and
30 placement of the child. Notice of a motion for review of a child's case
31 shall be provided to the parents and other legal guardians, the prose-
32 cuting attorney or deputy attorney general, the guardian ad litem, the
33 attorney for the child, the department and foster parents.

34 (d) If the motion filed under paragraph (c) of this subsection alleges
35 that the child's best interests are no longer served by carrying out the
36 order issued under section 16-1619, Idaho Code, or that the department
37 or other authorized agency has failed to provide adequate care for the
38 child, the court shall hold a hearing on the motion.

39 (e) The department or authorized agency may move the court at any time
40 to vacate any order placing a child in its custody or under its protec-
41 tive supervision.

42 (2) Permanency plan and hearing.

43 (a) The permanency plan shall include a permanency goal. The per-
44 manency goal may be one (1) of the following: continued efforts at
45 reunification, in the absence of a judicial determination of aggra-
46 vated circumstances; or termination of parental rights and adoption,
47 guardianship or, for youth age sixteen (16) years and older only, an-
48 other planned permanent living arrangement. Every permanency plan
49 shall include the information set forth in section 16-1621(3)(a) and
50 (b), Idaho Code. If the permanency plan has reunification as a per-

1 manency goal, the plan shall include information set forth in section
2 16-1621(3)(c), Idaho Code; however, if the circumstances that caused
3 the child to be placed into protective custody resulted in a conviction
4 for lewd and lascivious conduct or felony injury to a child, if the child
5 has been in protective custody for more than six (6) months, or if a
6 high risk of repeat maltreatment or reentry into foster care exists due
7 to a parent's recent completion of substance abuse treatment or other
8 compelling circumstances, then the permanency plan shall include a
9 period of protective supervision or trial home visit period of no less
10 than ninety (90) days prior to the court vacating the case. During the
11 protective supervision or trial home visit period, the department shall
12 make regular home visits. During the protective supervision or trial
13 home visit period, the court shall hold one (1) or more review hearings
14 for each permanency plan where a period of protective supervision or a
15 trial home visit has been imposed and may require participation in sup-
16 portive services, including community home visiting and peer-to-peer
17 mentoring. Families reunified following a period of protective super-
18 vision or a trial home visit should be encouraged by the department or
19 the court to continue to participate in supportive services when ben-
20 efiticial and appropriate. If the permanency plan has a permanency goal
21 other than reunification, the plan shall include the information set
22 forth in section 16-1621(3)(d), Idaho Code, and if the permanency goal
23 is termination of parental rights and adoption, then in addition to the
24 information set forth in section 16-1620(3), Idaho Code, the permanency
25 plan shall also name the proposed adoptive parents when known. If the
26 adoptive parents are not known at the time the permanency plan is pre-
27 pared, then the department shall amend the plan to name the proposed
28 adoptive parents as soon as such person or persons become known. The
29 court may approve a permanency plan that includes a primary goal and a
30 concurrent goal. As used in this paragraph, "trial home visit" means
31 that a child is returned to the care of the parent or guardian from whom
32 the child was removed with the department continuing to have legal cus-
33 tody of the child.

34 (b) A permanency hearing shall be held no later than twelve (12) months
35 from the date the child is removed from the home or the date of the
36 court's order taking jurisdiction under this chapter, whichever occurs
37 first, and at least every twelve (12) months thereafter, as long as the
38 court has jurisdiction over the child. The court shall approve, reject
39 or modify the permanency plan of the department and review progress in
40 accomplishing the permanency goal. The permanency plan, as approved by
41 the court, shall be entered into the record as an order of the court. A
42 permanency hearing may be held at any time and may be combined with the
43 review hearing required under subsection (1) of this section.

44 (c) The court shall make written, case-specific findings whether the
45 department made reasonable efforts to finalize the primary permanency
46 goal in effect for the child. Lack of reasonable efforts to reunify may
47 be a basis for an order approving a permanency plan with a permanency
48 goal of reunification.

49 (d) Where the permanency goal is not reunification, the hearing shall
50 include a review of the department's consideration of options for

1 in-state and out-of-state placement of the child. In the case of a
2 child in an out-of-state placement, the court shall determine whether
3 the out-of-state placement continues to be appropriate and in the best
4 interest of the child.

5 (e) The court shall ask each youth age twelve (12) years and older about
6 his desired permanency outcome and discuss with the youth his current
7 permanency plan. In the case of a child who has attained the age of four-
8 teen (14) years and older, the hearing shall include a determination of
9 the services needed to assist the youth to make the transition from fos-
10 ter care to successful adulthood.

11 (f) The court may approve a primary permanency goal of another planned
12 permanent living arrangement only for youth age sixteen (16) years or
13 older and only upon written, case-specific findings that, as of the date
14 of the hearing:

15 (i) Another planned permanent living arrangement is the best per-
16 manency goal for the youth; and

17 (ii) There are compelling reasons why it is not in the best inter-
18 est of the youth to be placed permanently with a parent, in an adop-
19 tive placement, in a guardianship, or in the legal custody of the
20 department in a placement with a fit and willing relative, includ-
21 ing an adult sibling.

22 (g) If the child has been in the temporary or legal custody of the de-
23 partment for fifteen (15) of the most recent twenty-two (22) months, the
24 department shall file, prior to the last day of the fifteenth month, a
25 petition to terminate parental rights, unless the court finds that:

26 (i) The child is placed permanently with a relative;

27 (ii) There are compelling reasons why termination of parental
28 rights is not in the best interests of the child; or

29 (iii) The department has failed to provide reasonable efforts to
30 reunify the child with his family.

31 (h) The department shall document and the court shall inquire:

32 (i) As to the efforts made to ensure educational stability for the
33 child, including the efforts made to keep the child in the school
34 in which the child is enrolled at the time of placement or that re-
35 maining in the school is not in the child's best interests; and

36 (ii) That siblings were placed together, or, if siblings were not
37 placed together, the efforts made to place siblings together, the
38 reasons why siblings were not placed together or why a joint place-
39 ment would be contrary to the safety or well-being of one (1) or
40 more of the siblings, and a plan for ensuring frequent visitation
41 or ongoing interaction among siblings, unless visitation or ongo-
42 ing interaction would be contrary to the safety or well-being of
43 one (1) or more of the siblings.

44 (i) If there is reason to believe that the child is an Indian child and
45 there has not been a final determination regarding the child's status as
46 an Indian child, the department shall document and the court shall:

47 (i) Inquire about the efforts that have been made since the last
48 hearing to determine whether the child is an Indian child; and

1 (ii) Determine that the department has made active efforts to work
2 with all tribes of which the child may be a member to verify whether
3 the child is a member or eligible for membership.

4 (j) At each permanency hearing, if the child is being treated with psy-
5 chotropic medication, these additional requirements shall apply:

6 (i) The department shall report to the court the medication and
7 dosage prescribed for the child and the medical professional who
8 prescribed the medication; and

9 (ii) The court shall inquire as to, and may make any additional
10 inquiry relevant to, the use of psychotropic medication.

11 (k) The court may authorize the department to suspend further efforts
12 to reunify the child with the child's parent, pending further order of
13 the court, when a permanency plan is approved by the court and the perma-
14 nency plan does not include a permanency goal of reunification.

15 (3) If a youth is in the legal custody of the department or other autho-
16 rized agency and is within ninety (90) days of his eighteenth birthday, the
17 department shall file a report with the court that includes the department's
18 transition plan for the youth. The court shall have a review or permanency
19 hearing at which the court shall:

20 (a) Discuss with the youth his or her transition plan; and

21 (b) Review the transition plan with the youth for purposes of ensur-
22 ing that the plan provides the services necessary to allow the youth to
23 transition to a successful adulthood.

24 (4) If a child is in the legal custody of the department and the court
25 has approved placement of the child in a qualified residential treatment
26 program, then at each review hearing pursuant to subsection (1) (a) of this
27 section and at each permanency hearing pursuant to subsection (2) (b) of this
28 section the department shall document:

29 (a) That ongoing assessment of the strengths and needs of the child con-
30 tinues to support the determination that the needs of the child cannot
31 be met through placement in a foster family home, that the placement in
32 a qualified residential treatment program provides the most effective
33 and appropriate level of care for the child that is in the least restric-
34 tive environment, and that the placement is consistent with the short-
35 term and long-term goals for the child, as specified in the permanency
36 plan for the child;

37 (b) The specific treatment or service needs that will be met for the
38 child in the placement and the length of time the child is expected to
39 need the treatment or services; and

40 (c) The efforts made by the department to prepare the child to return
41 home or to be placed with a fit and willing relative, a legal guardian,
42 or an adoptive parent or in a foster family home.

43 (5) Notwithstanding any provision of law to the contrary, the court may
44 order extended foster care for a person between the ages of eighteen (18) and
45 ~~twenty-one (21)~~ twenty-three (23) years to help such person achieve a suc-
46 cessful transition to adulthood, provided such person must have been in the
47 custody of the department until his eighteenth birthday and must meet the
48 criteria set forth in 42 U.S.C. 675(8) (B) (iv). The extension shall be for
49 a fixed period of time and shall not extend past the person's ~~twenty-first~~
50 twenty-third birthday.

1 SECTION 2. That Section 39-1202, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 39-1202. DEFINITIONS. For the purposes of this chapter:

4 (1) "Board" means the Idaho board of health and welfare.

5 (2) "Child care" means that care, control, supervision or maintenance
6 of children for twenty-four (24) hours a day provided as an alternative to
7 parental care.

8 (3) "Child" means an individual less than eighteen (18) years of age who
9 is not enrolled in an institution of higher education.

10 (4) "Children's agency" means a person who operates a business for the
11 placement of children in foster homes or for adoption in a permanent home
12 and who does not provide child care as part of that business. Children's
13 agency does not include a licensed attorney or physician assisting or pro-
14 viding natural and adoptive parents with legal services or medical services
15 necessary to initiate and complete adoptive placements.

16 (5) "Children's camp" means a program of child care at a location
17 away from the child's home that is primarily recreational and includes the
18 overnight accommodation of the child and is not intended to provide treat-
19 ment, therapy or rehabilitation for the child.

20 (6) "Children's institution" means a person who operates a residential
21 facility for children not related to that person, if that person is an in-
22 dividual, for the purpose of providing child care. Children's institutions
23 include, but are not limited to, foster homes, maternity homes, children's
24 therapeutic outdoor programs, or any facilities providing treatment, ther-
25 apy or rehabilitation for children. Children's institutions do not include:
26 (a) facilities that provide only daycare as defined in chapter 11, title 39,
27 Idaho Code; (b) facilities and agencies including hospitals, skilled nurs-
28 ing facilities, intermediate care facilities, and intermediate care facil-
29 ities for people with intellectual disabilities licensed pursuant to chap-
30 ter 13, title 39, Idaho Code; (c) day schools; (d) individuals acting in an
31 advisory capacity, counseling a child in a religious context, and providing
32 no child care associated with the advice; or (e) the occasional or irregular
33 care of a neighbor's, relative's or friend's child or children by a person
34 not ordinarily engaged in child care.

35 (7) "Children's residential care facility" means a children's institu-
36 tion, excluding:

37 (a) Foster homes;

38 (b) Residential schools;

39 (c) Children's camps.

40 No facility expressly excluded from the definition of a children's institu-
41 tion is included within the definition of a children's residential care fa-
42 cility.

43 (8) "Children's therapeutic outdoor program" is a program designed to
44 provide behavioral, substance abuse, or mental health services to minors in
45 an outdoor setting. This does not include children's camps, church camps,
46 or other outdoor programs primarily designed to be educational or recre-
47 ational, such as Boy Scouts, Girl Scouts, 4-H or sports camps.

48 (9) "Continued care" means the ongoing placement of an individual in a
49 foster home, children's residential care facility, or transitional living

1 placement who reaches the age of eighteen (18) years but is less than ~~twenty-~~
2 ~~one (21) twenty-three (23)~~ years of age.

3 (10) "Day school" means a public, private, parochial or secular facil-
4 ity offering an educational program in which the children leave the facility
5 each day at the conclusion of the academic, vocational or school-supervised
6 activities.

7 (11) "Department" means the state department of health and welfare.

8 (12) "Director" means the director of the department of health and wel-
9 fare.

10 (13) "Foster care" means child care by a person not related to the child,
11 in lieu of parental care, in a foster home.

12 (14) "Foster home" means a home that accepts, for any period of time,
13 with or without compensation, one (1) or more children who are not related
14 to the foster parent as members of the household for the purpose of providing
15 substitute parental care.

16 (15) "Group care" means foster care of a number of children for whom
17 child care in a family setting is not available or appropriate, in a dormi-
18 tory or cottage type setting, characterized by activities and discipline of
19 a more regimented and less formal nature than found in a family setting.

20 (16) "Juvenile detention" is as defined in section 20-502(8), Idaho
21 Code, of the juvenile corrections act.

22 (17) "Juvenile detention center" means a facility established pursuant
23 to sections 20-517 and 20-518, Idaho Code.

24 (18) "Person" includes any individual, group of individuals, associa-
25 tion, partnership, limited liability company or corporation.

26 (19) "Placement" means finding a suitable licensed foster home or suit-
27 able adoptive home for a child and completing the arrangements for a child to
28 be accepted into and adjusted to such home.

29 (20) "Relative" means a child's grandparent, great grandparent, aunt,
30 great aunt, uncle, great uncle, brother-in-law, sister-in-law, first
31 cousin, sibling ~~and~~ or half-sibling.

32 (21) "Representative" means an employee of the state department of
33 health and welfare.

34 (22) "Residential facility" means any facility where child care is pro-
35 vided, as defined in this section, and that provides day and night accommo-
36 dation.

37 (23) "Residential school" means a residential facility for children
38 that:

39 (a) Provides a planned, scheduled, regular, academic or vocational
40 school program for students in the elementary, middle or secondary
41 grades as defined in section 33-1001, Idaho Code; and

42 (b) Provides services substantially comparable to those provided in
43 nonresidential public schools where the primary purpose is the educa-
44 tion and academic pursuits of the students; and

45 (c) Does not seek, receive or enroll students for treatment of such spe-
46 cial needs as substance abuse, mental illness, emotional disturbance,
47 developmental disability or intellectual disability; and

48 (d) Is not:

49 (i) A college or university;

50 (ii) A children's camp as defined in this section; or

1 (iii) A public or private day school in which the children leave
 2 the facility each day at the conclusion of the academic, voca-
 3 tional ~~and~~ or school-supervised activities.

4 (24) "Transitional living" means living arrangements and aftercare
 5 services for children, or as continued care, to gain experience living on
 6 their own in a supportive and supervised environment prior to emancipation.

7 SECTION 3. That Section 39-1211A, Idaho Code, be, and the same is hereby
 8 amended to read as follows:

9 39-1211A. RELATIVE FOSTER CARE -- LIMITED VARIANCE OR WAIVER. (1) A
 10 relative providing foster care for a related child pursuant to chapter 16,
 11 title 16, Idaho Code, must be licensed in accordance with this chapter.

12 (2) Notwithstanding the provisions of subsection (1) of this section,
 13 the department may expedite placement with a relative, issue a foster care
 14 license, ~~or~~ grant a limited variance or waiver of a licensing standard or re-
 15 quirement, or establish separate standards or requirements for licensure of
 16 relatives if, in the department's judgment, the health and safety of the re-
 17 lated child is not thereby endangered.

18 (3) If the department grants a limited variance or waiver of a licensing
 19 standard or requirement to the child's relative pursuant to this section,
 20 the department shall document the grounds for granting the limited variance
 21 or waiver and the reasons the limited variance or waiver will not compromise
 22 the related child's safety and health.

23 (4) A limited variance or waiver of a licensing standard or requirement
 24 granted to a child's relative pursuant to this section shall be reviewed by
 25 the department for continuing compliance, need, and approval at regular in-
 26 tervals, subject to the provisions of section 39-1113, Idaho Code.

27 ~~(5) The board shall promulgate appropriate rules necessary to imple-~~
 28 ~~ment and enforce the provisions of this section.~~

29 SECTION 4. That Section 39-1213, Idaho Code, be, and the same is hereby
 30 amended to read as follows:

31 39-1213. LICENSING AUTHORITY. ~~(a)~~ (1) The board of health and welfare
 32 is hereby authorized and directed to establish procedures for licensing fos-
 33 ter homes, children's agencies, children's therapeutic outdoor programs and
 34 children's residential care facilities which are maintained and operated in
 35 conformity with the rules and standards authorized herein. Such procedures
 36 shall include the manner and form for making application for license, inves-
 37 tigation upon application and notice of decision.

38 ~~(b)~~ (2) It is recognized that children's agencies may have their own
 39 procedure for approval of foster homes affiliated with their program. Any
 40 foster home which has been approved by a licensed children's agency shall
 41 be exempt from the licensing provisions of this chapter, provided that the
 42 standards for approval by such agency are no less restrictive than rules and
 43 standards established by the board of health and welfare, and provided fur-
 44 ther that such children's agency is maintained and operated in conformity
 45 with rules and standards of the board of health and welfare. The board of
 46 health and welfare may promulgate rules necessary to implement the provi-
 47 sions of this section.

1 ~~(e)~~ (3) The board of health and welfare is hereby authorized to estab-
2 lish rules allowing for continued care for appropriate individuals eighteen
3 (18) to ~~twenty-one (21)~~ twenty-three (23) years of age who have been receiv-
4 ing services by, through, or with the authorization of the department of
5 health and welfare or the department of juvenile corrections prior to their
6 eighteenth birthday.

7 SECTION 5. The rules contained in IDAPA 16.06.01, Idaho Department of
8 Health and Welfare, relating to Child and Family Services, Section 010.,
9 Subsection 14., shall be null, void, and of no force and effect on and after
10 July 1, 2025.

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