

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 610

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO THE CHILD PROTECTIVE ACT; AMENDING SECTION 16-1602, IDAHO
2 CODE, TO REVISE A DEFINITION, TO DEFINE A TERM AND TO MAKE TECHNICAL
3 CORRECTIONS; AMENDING SECTION 16-1624, IDAHO CODE, TO QUALIFY AN
4 EXCEPTION TO JOINING THE DEPARTMENT AS A PARTY TO CERTAIN PETITIONS;
5 AMENDING SECTION 16-1629, IDAHO CODE, TO REVISE THE ENVIRONMENT
6 IN WHICH A CHILD IS TO BE PLACED, TO REMOVE CERTAIN DISCRETION OF
7 THE DEPARTMENT IN CERTAIN CHILD PLACEMENTS, TO REQUIRE CERTAIN
8 CONSIDERATIONS IN PLACEMENTS, TO PROVIDE A PRIORITY FOR PLACEMENTS AND
9 TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-1202, IDAHO CODE,
10 TO DEFINE A TERM; AND AMENDING CHAPTER 12, TITLE 39, IDAHO CODE, BY THE
11 ADDITION OF A NEW SECTION 39-1211A, IDAHO CODE, TO REQUIRE A LICENSE FOR
12 RELATIVE FOSTER CARE AND TO PROVIDE FOR A LIMITED VARIANCE OR WAIVER.
13

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

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

17 16-1602. DEFINITIONS. For purposes of this chapter:

18 (1) "Abused" means any case in which a child has been the victim of:

19 (a) Conduct or omission resulting in skin bruising, bleeding,
20 malnutrition, burns, fracture of any bone, subdural hematoma, soft
21 tissue swelling, failure to thrive or death, and such condition or death
22 is not justifiably explained, or where the history given concerning
23 such condition or death is at variance with the degree or type of such
24 condition or death, or the circumstances indicate that such condition
25 or death may not be the product of an accidental occurrence; or

26 (b) Sexual conduct, including rape, molestation, incest,
27 prostitution, obscene or pornographic photographing, filming or
28 depiction for commercial purposes, or other similar forms of sexual
29 exploitation harming or threatening the child's health or welfare or
30 mental injury to the child.

31 (2) "Abandoned" means the failure of the parent to maintain a normal
32 parental relationship with his child including, but not limited to,
33 reasonable support or regular personal contact. Failure to maintain this
34 relationship without just cause for a period of one (1) year shall constitute
35 prima facie evidence of abandonment.

36 (3) "Adaptive equipment" means any piece of equipment or any item that
37 is used to increase, maintain or improve the parenting capabilities of a
38 parent with a disability.

39 (4) "Adjudicatory hearing" means a hearing to determine:

40 (a) Whether the child comes under the jurisdiction of the court
41 pursuant to the provisions of this chapter;

1 (b) Whether continuation of the child in the home would be contrary to
2 the child's welfare and whether the best interests of the child requires
3 protective supervision or vesting legal custody of the child in an
4 authorized agency;

5 (c) Whether aggravated circumstances as defined in section 16-1619,
6 Idaho Code, exist.

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

11 (6) "Case plan hearing" means a hearing to:

12 (a) Review, approve, modify or reject the case plan; and

13 (b) Review reasonable efforts being made to rehabilitate the family;
14 and

15 (c) Review reasonable efforts being made to reunify the children with a
16 parent or guardian.

17 (7) "Child" means an individual who is under the age of eighteen (18)
18 years.

19 (8) "Circumstances of the child" includes, but is not limited to, the
20 joint legal custody or joint physical custody of the child.

21 (9) "Commit" means to transfer legal and physical custody.

22 (10) "Concurrent planning" means a planning model that prepares for and
23 implements different outcomes at the same time.

24 (11) "Court" means district court or magistrate's division thereof, or
25 if the context requires, a magistrate or judge thereof.

26 (12) "Custodian" means a person, other than a parent or legal guardian,
27 to whom legal or joint legal custody of the child has been given by court
28 order.

29 (13) "Department" means the department of health and welfare and its
30 authorized representatives.

31 (14) "Disability" means, with respect to an individual, any mental
32 or physical impairment which substantially limits one (1) or more major
33 life activity of the individual including, but not limited to, self-care,
34 manual tasks, walking, seeing, hearing, speaking, learning or working, or a
35 record of such an impairment, or being regarded as having such an impairment.
36 Disability shall not include transvestism, transsexualism, pedophilia,
37 exhibitionism, voyeurism, other sexual behavior disorders, or substance
38 use disorders, compulsive gambling, kleptomania or pyromania. Sexual
39 preference or orientation is not considered an impairment or disability.
40 Whether an impairment substantially limits a major life activity shall be
41 determined without consideration of the effect of corrective or mitigating
42 measures used to reduce the effects of the impairment.

43 (15) "Family or household member" shall have the same meaning as in
44 section 39-6303(6), Idaho Code.

45 (16) "Foster care" means twenty-four (24) hour substitute parental
46 care for children placed away from their parents or guardians by persons who
47 may or may not be related to the children and for whom the state agency has
48 placement and care responsibility.

49 (17) "Grant administrator" means the supreme court or any organization
50 or agency as may be designated by the supreme court in accordance with such

1 procedures as may be adopted by the supreme court. The grant administrator
2 shall administer funds from the guardian ad litem account in accordance with
3 the provisions of this chapter.

4 (18) "Guardian ad litem" means a person appointed by the court pursuant
5 to a guardian ad litem volunteer program to act as special advocate for a
6 child under this chapter.

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

10 (20) "Guardian ad litem program" means the program to recruit, train
11 and coordinate volunteer persons to serve as guardians ad litem for abused,
12 neglected or abandoned children.

13 (21) "Homeless," as used in this chapter, shall mean that the child is
14 without adequate shelter or other living facilities, and the lack of such
15 shelter or other living facilities poses a threat to the health, safety or
16 well-being of the child.

17 (22) "Law enforcement agency" means a city police department, the
18 prosecuting attorney of any county, state law enforcement officers, or the
19 office of a sheriff of any county.

20 (23) "Legal custody" means a relationship created by court order, which
21 vests in a custodian the following rights and responsibilities:

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

24 (b) To supply the child with food, clothing, shelter and incidental
25 necessities.

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

27 (d) To authorize ordinary medical, dental, psychiatric,
28 psychological, or other remedial care and treatment for the child,
29 including care and treatment in a facility with a program of services
30 for children; and to authorize surgery if the surgery is deemed by two
31 (2) physicians licensed to practice in this state to be necessary for
32 the child.

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

35 (24) "Mental injury" means a substantial impairment in the intellectual
36 or psychological ability of a child to function within a normal range of
37 performance and/or behavior, for short or long terms.

38 (25) "Neglected" means a child:

39 (a) Who is without proper parental care and control, or subsistence,
40 medical or other care or control necessary for his well-being because
41 of the conduct or omission of his parents, guardian or other custodian
42 or their neglect or refusal to provide them; however, no child whose
43 parent or guardian chooses for such child treatment by prayers through
44 spiritual means alone in lieu of medical treatment shall be deemed for
45 that reason alone to be neglected or lack parental care necessary for
46 his health and well-being, but this subsection shall not prevent the
47 court from acting pursuant to section 16-1627, Idaho Code; or

48 (b) Whose parents, guardian or other custodian are unable to discharge
49 their responsibilities to and for the child and, as a result of such

1 inability, the child lacks the parental care necessary for his health,
2 safety or well-being; or

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

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

6 (26) "Permanency hearing" means a hearing to review, approve, reject or
7 modify the permanency plan of the department, and review reasonable efforts
8 in accomplishing the permanency plan.

9 (27) "Permanency plan" means a plan for a continuous residence and
10 maintenance of nurturing relationships during the child's minority.

11 (28) "Protective order" means an order created by the court granting
12 relief as delineated in section 39-6306, Idaho Code, and shall be for a
13 period not to exceed three (3) months unless otherwise stated herein.
14 Failure to comply with the order shall be a misdemeanor.

15 (29) "Protective supervision" means a legal status created by court
16 order in neglect and abuse cases whereby the child is permitted to remain in
17 his home under supervision by the department.

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

21 (31) "Residual parental rights and responsibilities" means those
22 rights and responsibilities remaining with the parents after the transfer
23 of legal custody including, but not necessarily limited to, the right
24 of visitation, the right to consent to adoption, the right to determine
25 religious affiliation, the right to family counseling when beneficial, and
26 the responsibility for support.

27 (312) "Shelter care" means places designated by the department for
28 temporary care of children pending court disposition or placement.

29 (323) "Supportive services," as used in this chapter, shall mean
30 services which assist parents with a disability to compensate for
31 those aspects of their disability which affect their ability to care
32 for their child and which will enable them to discharge their parental
33 responsibilities. The term includes specialized or adapted training,
34 evaluations or assistance with effectively using adaptive equipment and
35 accommodations which allow parents with a disability to benefit from other
36 services including, but not limited to, Braille texts or sign language
37 interpreters.

38 SECTION 2. That Section 16-1624, Idaho Code, be, and the same is hereby
39 amended to read as follows:

40 16-1624. TERMINATION OF PARENT-CHILD RELATIONSHIP. If the child has
41 been placed in the legal custody of the department or under its protective
42 supervision pursuant to section 16-1619, Idaho Code, the department may
43 petition the court for termination of the parent and child relationship
44 in accordance with chapter 20, title 16, Idaho Code. Unless there are
45 compelling reasons it would not be in the best interest of the child, the
46 department shall be required to file a petition to terminate parental rights
47 within sixty (60) days of a judicial determination that an infant has been
48 abandoned or that reasonable efforts are not required because the parent has
49 subjected the child to aggravated circumstances as determined by the court

1 pursuant to section 16-1619(6)(d), Idaho Code. The department shall join as
2 a party to the petition if such a petition to terminate is filed by another
3 party; as well as to concurrently identify, recruit, process and approve
4 a qualified family for adoption unless it is determined that such actions
5 would not be in the best interest of the child, or the child is placed with a
6 fit and willing relative. If termination of parental rights is granted and
7 the child is placed in the guardianship or legal custody of the department
8 of health and welfare the court, upon petition, shall conduct a hearing as
9 to the future status of the child within twelve (12) months of the order of
10 termination of parental rights, and every twelve (12) months subsequently
11 until the child is adopted or is in a placement sanctioned by the court. A
12 petition to terminate parental rights shall be filed in the child protective
13 act case.

14 SECTION 3. That Section 16-1629, Idaho Code, be, and the same is hereby
15 amended to read as follows:

16 16-1629. POWERS AND DUTIES OF THE DEPARTMENT. The department, working
17 in conjunction with the court and other public and private agencies and
18 persons, shall have the primary responsibility to implement the purpose of
19 this chapter. To this end, the department is empowered and shall have the
20 duty to do all things reasonably necessary to carry out the purpose of this
21 chapter, including, but not limited to, the following:

22 (1) The department shall administer treatment programs for the
23 protection and care of neglected, abused and abandoned children, and in
24 so doing may place in foster care, shelter care, or other diagnostic,
25 treatment, or care centers or facilities, children of whom it has been given
26 custody. The department is to be governed by the standards found in chapter
27 12, title 39, Idaho Code.

28 (2) On December 1, the department shall make an annual statistical
29 report to the governor covering the preceding fiscal year showing the number
30 and status of persons in its custody and including such other data as will
31 provide sufficient facts for sound planning in the conservation of children
32 and youth. All officials and employees of the state and of every county
33 and city shall furnish the department, upon request, such information
34 within their knowledge and control as the department deems necessary. Local
35 agencies shall report in such uniform format as may be required by the
36 department.

37 (3) The department shall be required to maintain a central registry
38 for the reporting of child neglect, abuse and abandonment information.
39 Provided however, that the department shall not retain any information for
40 this purpose relating to a child, or parent of a child, abandoned pursuant to
41 chapter 82, title 39, Idaho Code.

42 (4) The department shall make periodic evaluation of all persons in
43 its custody or under its supervision for the purpose of determining whether
44 existing orders and dispositions in individual cases shall be modified or
45 continued in force. Evaluations may be made as frequently as the department
46 considers desirable and shall be made with respect to every person at
47 intervals not exceeding six (6) months. Reports of evaluation made pursuant
48 to this section shall be filed with the court which vested custody of the
49 person with the department. Reports of evaluation shall be provided to

1 persons having full or partial legal or physical custody of a child. Failure
2 of the department to evaluate a person or to reevaluate him within six (6)
3 months of a previous examination shall not of itself entitle the person
4 to a change in disposition but shall entitle him, his parent, guardian or
5 custodian or his counsel to petition the court pursuant to section 16-1622,
6 Idaho Code.

7 (5) In a consultive capacity, the department shall assist communities
8 in the development of constructive programs for the protection, prevention
9 and care of children and youth.

10 (6) The department shall keep written records of investigations,
11 evaluations, prognoses and all orders concerning disposition or treatment
12 of every person over whom it has legal custody. Department records shall be
13 subject to disclosure according to chapter 3, title 9, Idaho Code, unless
14 otherwise ordered by the court, the person consents to the disclosure,
15 or disclosure is necessary for the delivery of services to the person.
16 Notwithstanding the provisions restricting disclosure or the exemptions
17 from disclosure provided in chapter 3, title 9, Idaho Code, all records
18 pertaining to investigations, the rehabilitation of youth, the protection
19 of children, evaluation, treatment and/or disposition records pertaining to
20 the statutory responsibilities of the department shall be disclosed to any
21 duly elected state official carrying out his official functions.

22 (7) The department shall establish appropriate administrative
23 procedures for the processing of complaints of child neglect, abuse
24 and abandonment received and for the implementation of the protection,
25 treatment and care of children formally or informally placed in the custody
26 of the department under this chapter including, but not limited to:

27 (a) Department employees whose job duties are related to the child
28 protective services system under this chapter shall first be trained
29 as to their obligations under this chapter regarding the protection
30 of children whose health and safety may be endangered. The curriculum
31 shall include information regarding their legal duties, how to
32 conduct their work in conformity with the requirements of this
33 chapter, information regarding applicable federal and state laws with
34 regard to the rights of the child, parent and others who may be under
35 investigation under the child protective services system, and the
36 applicable legal and constitutional parameters within which they are to
37 conduct their work.

38 (b) Department employees whose job duties are related to the child
39 protective services system shall advise the individual of the
40 complaints or allegations made against the individual at the time
41 of the initial contact, consistent with protecting the identity of the
42 ~~referrant~~ referent.

43 (8) The department having been granted legal custody of a child,
44 subject to the judicial review provisions of this subsection, shall have the
45 right to determine where and with whom the child shall live, provided that
46 the child shall not be placed outside the state without the court's consent.
47 Provided however, that the court shall retain jurisdiction over the child,
48 which jurisdiction shall be entered on any order or petition granting legal
49 custody to the department, and the court shall have jurisdiction over all
50 matters relating to the child. The department shall not place the child

1 in the home from which the court ordered the child removed without first
2 obtaining the approval of the court.

3 (9) The department shall give to the court any information concerning
4 the child that the court may at any time require, but in any event shall
5 report the progress of the child under its custody at intervals of not to
6 exceed six (6) months. The department shall file with the court at least
7 five (5) days prior to the permanency hearing either under section 16-1622,
8 Idaho Code, or, in the case of a finding of aggravated circumstances,
9 section 16-1620, Idaho Code, the permanency plan and recommendations of
10 the department. There shall be a rebuttable presumption that if a child is
11 placed in the custody of the department and was also placed in out of the home
12 care for a period not less than fifteen (15) out of the last twenty-two (22)
13 months from the date the child entered shelter care, the department shall
14 initiate a petition for termination of parental rights. This presumption
15 may be rebutted by a finding of the court that the filing of a petition for
16 termination of parental rights would not be in the best interests of the
17 child or reasonable efforts have not been provided to reunite the child with
18 his family, or the child is placed permanently with a relative.

19 (10) The department shall establish appropriate administrative
20 procedures for the conduct of administrative reviews and hearings as
21 required by federal statute for all children committed to the department and
22 placed in out of the home care.

23 (11) At any time the department is considering a placement pursuant to
24 this ~~act~~ chapter, the department shall make a reasonable effort to place
25 the child in the least ~~disruptive restrictive~~ environment to the child and
26 in so doing ~~may~~ shall consider, ~~without limitation~~ consistent with the best
27 interest and special needs of the child, placement priority of the child with
28 related persons in the following order:

29 (a) A fit and willing relative.

30 (b) A fit and willing nonrelative with a significant relationship with
31 the child.

32 (c) Foster parents and other persons licensed in accordance with
33 chapter 12, title 39, Idaho Code.

34 SECTION 4. That Section 39-1202, Idaho Code, be, and the same is hereby
35 amended to read as follows:

36 39-1202. DEFINITIONS. For the purposes of this chapter:

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

38 (2) "Child care" means that care, control, supervision or maintenance
39 of children for twenty-four (24) hours a day which is provided as an
40 alternative to parental care.

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

43 (4) "Children's agency" means a person who operates a business for the
44 placement of children in foster homes or for adoption in a permanent home and
45 who does not provide child care as part of that business. Children's agency
46 does not include a licensed attorney or physician assisting or providing
47 natural and adoptive parents with legal services or medical services
48 necessary to initiate and complete adoptive placements.

1 (5) "Children's camp" means a program of child care at a location
2 away from the child's home which is primarily recreational and includes
3 the overnight accommodation of the child and is not intended to provide
4 treatment, therapy or rehabilitation for the child.

5 (6) "Children's institution" means a person who operates a residential
6 facility for children not related to that person if that person is
7 an individual, for the purpose of providing child care. Children's
8 institutions include, but are not limited to, foster homes, maternity
9 homes, children's therapeutic outdoor programs, or any facilities providing
10 treatment, therapy or rehabilitation for children. Children's institutions
11 do not include: (a) facilities which provide only day care as defined in
12 chapter 11, title 39, Idaho Code; (b) facilities and agencies including
13 hospitals, skilled nursing facilities, intermediate care facilities, and
14 intermediate care facilities for the mentally retarded licensed pursuant to
15 chapter 13, title 39, Idaho Code; (c) day schools; (d) individuals acting
16 in an advisory capacity, counseling a child in a religious context, and
17 providing no child care associated with the advice; (e) the occasional or
18 irregular care of a neighbor's, relative's or friend's child or children by a
19 person not ordinarily engaged in child care.

20 (7) "Children's residential care facility" means a children's
21 institution, excluding:

22 (a) Foster homes;

23 (b) Residential schools;

24 (c) Children's camps.

25 No facility expressly excluded from the definition of a children's
26 institution is included within the definition of a children's residential
27 care facility.

28 (8) "Children's therapeutic outdoor program" is a program which is
29 designed to provide behavioral, substance abuse, or mental health services
30 to minors in an outdoor setting. This does not include children's camps,
31 church camps, or other outdoor programs primarily designed to be educational
32 or recreational, such as Boy Scouts, Girl Scouts, 4-H or sports camps.

33 (9) "Continued care" means the ongoing placement of an individual
34 in a foster home, children's residential care facility, or transitional
35 living placement who reaches the age of eighteen (18) years but is less than
36 twenty-one (21) years of age.

37 (10) "Day school" means a public, private, parochial or secular
38 facility offering an educational program in which the children leave the
39 facility each day at the conclusion of the academic, vocational or school
40 supervised activities.

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

42 (12) "Director" means the director of the department of health and
43 welfare.

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

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

1 (15) "Group care" means foster care of a number of children for
 2 whom child care in a family setting is not available or appropriate, in
 3 a dormitory or cottage type setting, characterized by activities and
 4 discipline of a more regimented and less formal nature than found in a family
 5 setting.

6 (16) "Juvenile detention" is as defined in section 20-502(6), Idaho
 7 Code, of the juvenile corrections act.

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

10 (18) "Person" includes any individual, group of individuals,
 11 association, partnership, limited liability company or corporation.

12 (19) "Placement" means finding a suitable licensed foster home or
 13 suitable adoptive home for a child and completing the arrangements for a
 14 child to be accepted into and adjusted to such home.

15 (20) "Relative" means a child's grandparent, great grandparent,
 16 aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, first
 17 cousin, sibling and half-sibling.

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

20 (2+2) "Residential facility" means any facility where child care is
 21 provided, as defined in this section, and which provides day and night
 22 accommodation.

23 (2+3) "Residential school" means a residential facility for children
 24 which:

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

28 (b) Provides services substantially comparable to those provided
 29 in nonresidential public schools where the primary purpose is the
 30 education and academic pursuits of the students; and

31 (c) Does not seek, receive or enroll students for treatment of
 32 such special needs as substance abuse, mental illness, emotional
 33 disturbance, developmental disability or mental retardation; and

34 (d) Is not:

35 (i) A college or university; or

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

37 (iii) A public or private day school in which the children
 38 leave the facility each day at the conclusion of the academic,
 39 vocational and school supervised activities.

40 (2+4) "Transitional living" means living arrangements and aftercare
 41 services for children, or as continued care, to gain experience living on
 42 their own in a supportive and supervised environment prior to emancipation.

43 SECTION 5. That Chapter 12, Title 39, Idaho Code, be, and the same is
 44 hereby amended by the addition thereto of a NEW SECTION, to be known and
 45 designated as Section 39-1211A, Idaho Code, and to read as follows:

46 39-1211A. RELATIVE FOSTER CARE -- LIMITED VARIANCE OR WAIVER. (1) A
 47 relative providing foster care for a related child pursuant to chapter 16,
 48 title 16, Idaho Code, must be licensed in accordance with this chapter.

1 (2) Notwithstanding the provisions of subsection (1) of this section,
2 the department may expedite placement with a relative, issue a foster care
3 license or grant a limited variance or waiver of a licensing standard or
4 requirement if, in the department's judgment, the health and safety of the
5 related child is not thereby endangered.

6 (3) If the department grants a limited variance or waiver of a licensing
7 standard or requirement to the child's relative pursuant to this section,
8 the department shall document the grounds for granting the limited variance
9 or waiver and the reasons the limited variance or waiver will not compromise
10 the related child's safety and health.

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

15 (5) The board shall promulgate appropriate rules necessary to
16 implement and enforce the provisions of this section.