

IN THE SENATE

SENATE BILL NO. 1221

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO THE CHILD PROTECTIVE ACT; AMENDING SECTION 16-1602, IDAHO CODE,
2 TO DEFINE TERMS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION
3 16-1617, IDAHO CODE, TO REVISE PROVISIONS RELATING TO INTERAGENCY
4 MULTIDISCIPLINARY TEAMS AND TRAINING REQUIREMENTS FOR TEAM MEMBERS;
5 AMENDING SECTION 16-1618, IDAHO CODE, TO PROVIDE THAT ALL INVESTIGA-
6 TIVE OR RISK ASSESSMENT INTERVIEWS OF ALLEGED VICTIMS OF CHILD ABUSE
7 CONDUCTED BY PERSONNEL OF CHILD ADVOCACY CENTERS WILL BE DOCUMENTED
8 BY AUDIO OR VIDEO TAPING; AND AMENDING SECTION 16-2002, IDAHO CODE, TO
9 PROVIDE A CORRECT CODE REFERENCE.
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, malnu-
17 trition, burns, fracture of any bone, subdural hematoma, 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, prostitu-
24 tion, obscene or pornographic photographing, filming or depiction for
25 commercial purposes, or other similar forms of sexual exploitation
26 harming or threatening the child's health or welfare or mental injury to
27 the child.

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

33 (3) "Adaptive equipment" means any piece of equipment or any item that
34 is used to increase, maintain or improve the parenting capabilities of a par-
35 ent with a disability.

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

37 (a) Whether the child comes under the jurisdiction of the court pur-
38 suant to the provisions of this chapter;

39 (b) Whether continuation of the child in the home would be contrary to
40 the child's welfare and whether the best interest of the child requires
41 protective supervision or vesting legal custody of the child in an au-
42 thorized agency.

1 (5) "Aggravated circumstances" includes, but ~~are~~ is not limited to:

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

4 (i) Abandonment, chronic abuse or chronic neglect of the child.
5 Chronic neglect or chronic abuse of a child shall consist of abuse
6 or neglect that is so extreme or repetitious as to indicate that
7 return of the child to the home would result in unacceptable risk
8 to the health and welfare of the child.

9 (ii) Sexual abuse against a child of the parent. Sexual abuse, for
10 the purposes of this section, includes any conduct described in
11 section 18-1506, 18-1506A, 18-1507, 18-1508, 18-1508A, 18-6101,
12 18-6108 or 18-6608, Idaho Code.

13 (iii) Torture of a child; any conduct described in the code sec-
14 tions listed in section 18-8303(1), Idaho Code; battery or an
15 injury to a child that results in serious or great bodily in-
16 jury to a child; voluntary manslaughter of a child, or aiding or
17 abetting such voluntary manslaughter, soliciting such voluntary
18 manslaughter or attempting or conspiring to commit such voluntary
19 manslaughter;

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

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

24 (6) "Authorized agency" means the department, a local agency, a person,
25 an organization, corporation, benevolent society or association licensed
26 or approved by the department or the court to receive children for control,
27 care, maintenance or placement.

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

30 (8) "Child" means an individual who is under the age of eighteen (18)
31 years.

32 (9) "Child advocacy center" or "CAC" means an organization that adheres
33 to national best practice standards established by the national membership
34 and accrediting body for children's advocacy centers and that promotes a
35 comprehensive and coordinated multidisciplinary team response to alle-
36 gations of child abuse by maintaining a child-friendly facility at which
37 appropriate services are provided. These services may include forensic in-
38 terviews, forensic medical examinations, mental health services and other
39 related victim services.

40 (10) "Circumstances of the child" includes, but is not limited to, the
41 joint legal custody or joint physical custody of the child.

42 (10~~1~~) "Commit" means to transfer legal and physical custody.

43 (11~~2~~) "Concurrent planning" means a planning model that prepares for
44 and implements different outcomes at the same time.

45 (12~~3~~) "Court" means district court or magistrate's division thereof, or
46 if the context requires, a magistrate or judge thereof.

47 (13~~4~~) "Custodian" means a person, other than a parent or legal guardian,
48 to whom legal or joint legal custody of the child has been given by court or-
49 der.

1 (145) "Department" means the department of health and welfare and its
2 authorized representatives.

3 (156) "Disability" means, with respect to an individual, any mental or
4 physical impairment which substantially limits one (1) or more major life
5 activity of the individual including, but not limited to, self-care, man-
6 ual tasks, walking, seeing, hearing, speaking, learning or working, or a
7 record of such an impairment, or being regarded as having such an impairment.
8 Disability shall not include transvestism, transsexualism, pedophilia,
9 exhibitionism, voyeurism, other sexual behavior disorders, or substance use
10 disorders, compulsive gambling, kleptomania or pyromania. Sexual prefer-
11 ence or orientation is not considered an impairment or disability. Whether
12 an impairment substantially limits a major life activity shall be determined
13 without consideration of the effect of corrective or mitigating measures
14 used to reduce the effects of the impairment.

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

17 (178) "Foster care" means twenty-four (24) hour substitute parental
18 care for children placed away from their parents or guardians by persons who
19 may or may not be related to the children and for whom the state agency has
20 placement and care responsibility.

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

26 (1920) "Guardian ad litem" means a person appointed by the court pur-
27 suant to a guardian ad litem volunteer program to act as special advocate for
28 a child under this chapter.

29 (201) "Guardian ad litem coordinator" means a person or entity receiv-
30 ing moneys from the grant administrator for the purpose of carrying out any
31 of the duties set forth in section 16-1632, Idaho Code.

32 (212) "Guardian ad litem program" means the program to recruit, train
33 and coordinate volunteer persons to serve as guardians ad litem for abused,
34 neglected or abandoned children.

35 (223) "Homeless," as used in this chapter, shall mean that the child is
36 without adequate shelter or other living facilities, and the lack of such
37 shelter or other living facilities poses a threat to the health, safety or
38 well-being of the child.

39 (24) "Idaho network of children's advocacy centers" means an organiza-
40 tion that provides education and technical assistance to child advocacy cen-
41 ters and to interagency multidisciplinary teams developed pursuant to sec-
42 tion 16-1617, Idaho Code.

43 (235) "Law enforcement agency" means a city police department, the
44 prosecuting attorney of any county, state law enforcement officers, or the
45 office of a sheriff of any county.

46 (246) "Legal custody" means a relationship created by court order,
47 which vests in a custodian the following rights and responsibilities:

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

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

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

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

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

11 (257) "Mental injury" means a substantial impairment in the intellec-
12 tual or psychological ability of a child to function within a normal range of
13 performance and/or behavior, for short or long terms.

14 (268) "Neglected" means a child:

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

24 (b) Whose parents, guardian or other custodian are unable to discharge
25 their responsibilities to and for the child and, as a result of such
26 inability, the child lacks the parental care necessary for his health,
27 safety or well-being; or

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

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

31 (279) "Permanency hearing" means a hearing to review, approve, reject
32 or modify the permanency plan of the department, and review reasonable ef-
33 forts in accomplishing the permanency plan.

34 (2830) "Permanency plan" means a plan for a continuous residence and
35 maintenance of nurturing relationships during the child's minority.

36 (2931) "Protective order" means an order issued by the court in a child
37 protection case, prior to the adjudicatory hearing, to enable the child to
38 remain in the home pursuant to section 16-1615(5) (f), Idaho Code. Such an
39 order shall be in the same form and have the same effect as a domestic vio-
40 lence protection order issued pursuant to chapter 63, title 39, Idaho Code.
41 A protective order shall be for a period not to exceed three (3) months unless
42 otherwise stated in the order.

43 (302) "Protective supervision" is a legal status created by court order
44 in a child protective case whereby the child is in the legal custody of his or
45 her parent(s), guardian(s) or other legal custodian(s), subject to supervi-
46 sion by the department.

47 (313) "Relative" means a child's grandparent, great grandparent,
48 aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, first
49 cousin, sibling and half-sibling.

1 (324) "Residual parental rights and responsibilities" means those
 2 rights and responsibilities remaining with the parents after the transfer of
 3 legal custody including, but not necessarily limited to, the right of visi-
 4 tation, the right to consent to adoption, the right to determine religious
 5 affiliation, the right to family counseling when beneficial, and the respon-
 6 sibility for support.

7 (335) "Shelter care" means places designated by the department for tem-
 8 porary care of children pending court disposition or placement.

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

17 SECTION 2. That Section 16-1617, Idaho Code, be, and the same is hereby
 18 amended to read as follows:

19 16-1617. INVESTIGATION BY MULTIDISCIPLINARY TEAMS. (1) ~~By January 1,~~
 20 ~~1997,~~ ~~t~~The prosecuting attorney in each county shall be responsible for the
 21 development of an interagency multidisciplinary team or teams for investi-
 22 gation of child abuse and neglect referrals within each county. The teams
 23 shall consist of, but not be limited to, law enforcement personnel, depart-
 24 ment of health and welfare child protection risk assessment staff, child ad-
 25 vocacy center staff where such staff is available in the state, a represen-
 26 tative of the prosecuting attorney's office, and any other person deemed to
 27 be necessary due to his or her special training in child abuse investigation.
 28 Other persons may participate in investigation of particular cases at the
 29 invitation of the team and as determined necessary, such as medical person-
 30 nel, school officials, mental health workers, personnel from domestic vio-
 31 lence programs, persons knowledgeable about adaptive equipment and support-
 32 ive services for parents or guardians with disabilities or the guardian ad
 33 litem program.

34 (2) The teams shall develop a written protocol for investigation of
 35 child abuse cases and for interviewing alleged victims of such abuse or
 36 neglect, including protocols for investigations involving a family member
 37 with a disability. Each team shall develop written agreements signed by mem-
 38 ber agencies, specifying the role of each agency, procedures to be followed
 39 to assess risks to the child and criteria and procedures to be followed to
 40 ensure the child victim's safety including removal of the alleged offender.

41 (3) Each team member shall be trained in his or her respective role, in-
 42 cluding risk assessment, dynamics of child abuse and interviewing and inves-
 43 titigatory techniques. Such training may be provided by the Idaho network of
 44 children's advocacy centers or by the member's respective agency.

45 (4) Each team shall classify, assess and review a representative selec-
 46 tion of cases referred to either the department or to law enforcement enti-
 47 ties for investigation of child abuse or neglect.

48 (5) Each multidisciplinary team shall develop policies that provide
 49 for an independent review of investigation procedures utilized in cases upon

1 completion of any court actions on those cases. The procedures shall include
 2 independent citizen input. Nonoffending parents of child abuse victims
 3 shall be notified of the review procedure.

4 (6) Prosecuting attorneys of the various counties may determine that
 5 multidisciplinary teams may be most effectively established through the use
 6 of joint exercise of powers agreements among more than one (1) county and
 7 such agreements are hereby authorized.

8 (7) Lack of review by a multidisciplinary team of a particular case does
 9 not defeat the jurisdiction of the court.

10 SECTION 3. That Section 16-1618, Idaho Code, be, and the same is hereby
 11 amended to read as follows:

12 16-1618. INVESTIGATIVE INTERVIEWS OF ALLEGED CHILD ABUSE VICTIMS. Un-
 13 less otherwise demonstrated by good cause, all investigative or risk assess-
 14 ment interviews of alleged victims of child abuse will be documented by audio
 15 or video taping whether conducted by personnel of law enforcement entities,
 16 ~~or~~ the department of health and welfare or child advocacy centers. The ab-
 17 sence of such audio or video taping shall not limit the admissibility of such
 18 evidence in any related court proceeding.

19 SECTION 4. That Section 16-2002, Idaho Code, be, and the same is hereby
 20 amended to read as follows:

21 16-2002. DEFINITIONS. When used in this chapter, unless the text oth-
 22 erwise requires:

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

25 (2) "Child" or "minor" means any individual who is under the age of
 26 eighteen (18) years.

27 (3) "Neglected" means:

28 (a) Conduct as defined in section 16-1602 (2~~6~~8), Idaho Code; or

29 (b) The parent(s) has failed to comply with the court's orders or the
 30 case plan in a child protective act case and:

31 (i) The department has had temporary or legal custody of the child
 32 for fifteen (15) of the most recent twenty-two (22) months; and

33 (ii) Reunification has not been accomplished by the last day of
 34 the fifteenth month in which the child has been in the temporary or
 35 legal custody of the department.

36 (4) "Abused" means conduct as defined in section 16-1602(1), Idaho
 37 Code.

38 (5) "Abandoned" means the parent has willfully failed to maintain a
 39 normal parental relationship including, but not limited to, reasonable sup-
 40 port or regular personal contact. Failure of the parent to maintain this
 41 relationship without just cause for a period of one (1) year shall constitute
 42 prima facie evidence of abandonment under this section; provided however,
 43 where termination is sought by a grandparent seeking to adopt the child, the
 44 willful failure of the parent to maintain a normal parental relationship as
 45 provided herein without just cause for six (6) months shall constitute prima
 46 facie evidence of abandonment.

1 (6) "Legal custody" means status created by court order which vests in a
2 custodian the following rights and responsibilities:

3 (a) To have physical custody and control of the child and to determine
4 where and with whom the child shall live;

5 (b) To supply the child with food, clothing, shelter and incidental ne-
6 cessities;

7 (c) To provide the child with care, education and discipline; and

8 (d) To authorize medical, dental, psychiatric, psychological and other
9 remedial care and treatment for the child, including care and treatment
10 in a facility with a program of services for children;

11 provided that such rights and responsibilities shall be exercised subject to
12 the powers, rights, duties and responsibilities of the guardian of the per-
13 son.

14 (7) "Guardianship of the person" means those rights and duties imposed
15 upon a person appointed as guardian of a minor under the laws of Idaho. It
16 includes but is not necessarily limited either in number or kind to:

17 (a) The authority to consent to marriage, to enlistment in the armed
18 forces of the United States, and to major medical, psychiatric and sur-
19 gical treatment; to represent the minor in legal actions; and to make
20 other decisions concerning the child of substantial legal signifi-
21 cance;

22 (b) The authority and duty of reasonable visitation, except to the ex-
23 tent that such right of visitation has been limited by court order;

24 (c) The rights and responsibilities of legal custody except where legal
25 custody has been vested in another individual or in an authorized child
26 placement agency;

27 (d) When the parent and child relationship has been terminated by judi-
28 cial decree with respect to the parents, or only living parent, or when
29 there is no living parent, the authority to consent to the adoption of
30 the child and to make any other decision concerning the child which the
31 child's parents could make.

32 (8) "Guardian ad litem" means a person appointed by the court pursuant
33 to section 16-1614 or 5-306, Idaho Code.

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

38 (10) "Department" means the department of health and welfare and its au-
39 thorized representatives.

40 (11) "Parent" means:

41 (a) The birth mother or the adoptive mother;

42 (b) The adoptive father;

43 (c) The biological father of a child conceived or born during the fa-
44 ther's marriage to the birth mother; and

45 (d) The unmarried biological father whose consent to an adoption of the
46 child is required pursuant to section 16-1504, Idaho Code.

47 (12) "Presumptive father" means a man who is or was married to the birth
48 mother and the child is born during the marriage or within three hundred
49 (300) days after the marriage is terminated.

1 (13) "Parent and child relationship" includes all rights, privileges,
2 duties and obligations existing between parent and child, including inheri-
3 tance rights, and shall be construed to include adoptive parents.

4 (14) "Parties" includes the child and the petitioners.

5 (15) "Unmarried biological father," as used in this chapter and chapter
6 15, title 16, Idaho Code, means the biological father of a child who was not
7 married to the child's mother at the time the child was conceived or born.

8 (16) "Unmarried biological mother," as used in this chapter, means the
9 biological mother of a child who was not married to the child's biological
10 father at the time the child was conceived or born.

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

23 (18) "Adaptive equipment" means any piece of equipment or any item that
24 is used to increase, maintain, or improve the parenting abilities of a parent
25 with a disability.

26 (19) "Supportive services" means services which assist a parent with a
27 disability to compensate for those aspects of their disability which affect
28 their ability to care for their child and which will enable them to discharge
29 their parental responsibilities. The term includes specialized or adapted
30 training, evaluations, or assistance with effective use of adaptive equip-
31 ment, and accommodations which allow a parent with a disability to benefit
32 from other services, such as Braille texts or sign language interpreters.