

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 556

BY JUDICIARY, RULES, AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO JUVENILE PROCEEDINGS; AMENDING SECTION 16-1504, IDAHO CODE, TO
2 PROVIDE THAT CONSENT TO ADOPTION IS REQUIRED FROM CERTAIN COURTS AND TO
3 MAKE A TECHNICAL CORRECTION; AMENDING SECTION 16-1616, IDAHO CODE, TO
4 PROVIDE CERTAIN NOTICE AND REPORTING REQUIREMENTS AND TO MAKE A TECH-
5 NICAL CORRECTION; AMENDING CHAPTER 16, TITLE 16, IDAHO CODE, BY THE
6 ADDITION OF A NEW SECTION 16-1616A, IDAHO CODE, TO PROVIDE REQUIREMENTS
7 REGARDING NOTIFICATION TO RELATIVES; AMENDING SECTION 16-1619, IDAHO
8 CODE, TO PROVIDE FOR JUDICIAL APPROVAL OF ALL MATTERS REGARDING THE
9 CUSTODY OF CERTAIN CHILDREN AND TO MAKE TECHNICAL CORRECTIONS; AMEND-
10 ING SECTION 16-1621, IDAHO CODE, TO PROVIDE ADDITIONAL REQUIREMENTS
11 REGARDING CASE PLANS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SEC-
12 TION 16-1624, IDAHO CODE, TO PROVIDE THAT CERTAIN ADOPTIONS MUST BE
13 SANCTIONED BY THE COURT AND TO MAKE A TECHNICAL CORRECTION; AMENDING
14 SECTION 16-1629, IDAHO CODE, TO PROVIDE FOR JUDICIAL APPROVAL OF CER-
15 TAIN DETERMINATIONS AND TO REVISE AND ESTABLISH PROVISIONS REGARDING
16 THE PLACEMENT PRIORITY AND CONSIDERATIONS FOR CERTAIN CHILDREN; AMEND-
17 ING SECTION 16-2010, IDAHO CODE, TO PROVIDE THAT CERTAIN ADOPTIONS MUST
18 BE SANCTIONED BY THE COURT AND TO MAKE TECHNICAL CORRECTIONS; AND AMEND-
19 ING SECTION 39-1221, IDAHO CODE, TO ESTABLISH PROVISIONS REGARDING A
20 REMOVAL AND CHANGE IN FOSTER HOME PLACEMENT.
21

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

23 SECTION 1. That Section 16-1504, Idaho Code, be, and the same is hereby
24 amended to read as follows:

25 16-1504. NECESSARY CONSENT TO ADOPTION. (1) Consent to adoption is re-
26 quired from:

27 (a) The adoptee, if he is more than twelve (12) years of age, unless he
28 does not have the mental capacity to consent;

29 (b) Both parents or the surviving parent of an adoptee who was conceived
30 or born within a marriage, unless the adoptee is eighteen (18) years of
31 age or older;

32 (c) The mother of an adoptee born outside of marriage;

33 (d) Any biological parent who has been adjudicated to be the child's
34 biological father by a court of competent jurisdiction prior to the
35 mother's execution of consent;

36 (e) An unmarried biological father of an adoptee only if the require-
37 ments and conditions of subsection (2) (a) or (b) of this section have
38 been proven;

39 (f) A court that had jurisdiction over the adoptee pursuant to chapter
40 16, title 16, Idaho Code;

41 (g) Any legally appointed custodian or guardian of the adoptee;

1 (gh) The guardian or conservator of an incapacitated adult, if one has
2 been appointed;

3 (hi) The adoptee's spouse, if any;

4 (ij) An unmarried biological father who has filed a voluntary acknowl-
5 edgment of paternity with the vital statistics unit of the department of
6 health and welfare pursuant to section 7-1106, Idaho Code; and

7 (jk) The father of an illegitimate child who has adopted the child by
8 acknowledgment.

9 (2) In accordance with subsection (1) of this section, the consent of
10 an unmarried biological father is necessary only if the father has strictly
11 complied with all requirements of this section.

12 (a) (i) With regard to a child who is placed with adoptive parents more
13 than six (6) months after birth, an unmarried biological father
14 shall have developed a substantial relationship with the child,
15 taken some measure of responsibility for the child and the child's
16 future, and demonstrated a full commitment to the responsibili-
17 ties of parenthood by financial support of the child, of a fair and
18 reasonable sum and in accordance with the father's ability, when
19 not prevented from doing so by the person or authorized agency hav-
20 ing lawful custody of the child, and either:

21 1. Visiting the child at least monthly when physically and
22 financially able to do so, and when not prevented from doing
23 so by the person or authorized agency having lawful custody
24 of the child; or

25 2. ~~Have~~ Having regular communication with the child or with
26 the person or agency having the care or custody of the child,
27 when physically and financially unable to visit the child,
28 and when not prevented from doing so by the person or autho-
29 rized agency having lawful custody of the child.

30 (ii) The subjective intent of an unmarried biological father,
31 whether expressed or otherwise, unsupported by evidence of acts
32 specified in this subsection shall not preclude a determination
33 that the father failed to meet any one (1) or more of the require-
34 ments of this subsection.

35 (iii) An unmarried biological father who openly lived with the
36 child for a period of six (6) months within the one (1) year period
37 after the birth of the child and immediately preceding placement
38 of the child with adoptive parents, and who openly held himself out
39 to be the father of the child during that period, shall be deemed
40 to have developed a substantial relationship with the child and to
41 have otherwise met all of the requirements of this subsection.

42 (b) With regard to a child who is under six (6) months of age at the
43 time he is placed with adoptive parents, an unmarried biological father
44 shall have manifested a full commitment to his parental responsibil-
45 ities by performing all of the acts described in this subsection and
46 prior to the date of the filing of any proceeding to terminate the
47 parental rights of the birth mother; the filing of any proceeding to
48 adopt the child; or the execution of a consent to terminate the birth
49 mother's parental rights under the provisions of section 16-2005(4),

1 Idaho Code, whichever occurs first. The father shall have strictly com-
2 plied with all of the requirements of this subsection by:

3 (i) Filing proceedings to establish paternity under section
4 7-1111, Idaho Code, and filing with that court a sworn affidavit
5 stating that he is fully able and willing to have full custody of
6 the child, setting forth his plans for the care of the child, and
7 agreeing to a court order of child support and the payment of ex-
8 penses incurred in connection with the mother's pregnancy and the
9 child's birth;

10 (ii) Filing a notice of the proceedings to establish his pater-
11 nity of the child with the vital statistics unit of the department
12 of health and welfare pursuant to section 16-1513, Idaho Code; and

13 (iii) If he had actual knowledge of the pregnancy, paying a fair
14 and reasonable amount of the expenses incurred in connection with
15 the mother's pregnancy and the child's birth, in accordance with
16 his means, and when not prevented from doing so by the person or
17 authorized agency having lawful custody of the child.

18 (3) An unmarried biological father whose consent is required under sub-
19 section (1) or (2) of this section may nevertheless lose his right to consent
20 if the court determines, in accordance with the requirements and procedures
21 of the termination of parent and child relationship act, sections 16-2001
22 through 16-2015, Idaho Code, that his rights should be terminated, based on
23 the petition of any party as set forth in section 16-2004, Idaho Code.

24 (4) In any adoption proceeding pertaining to a child born out of wed-
25 lock, if there is no showing that an unmarried biological father has con-
26 sented to or waived his rights regarding a proposed adoption, the petitioner
27 shall file with the court a certificate from the vital statistics unit of the
28 department of health and welfare, signed by the state registrar of vital sta-
29 tistics, stating that a diligent search has been made of the registry of no-
30 tices from putative fathers, of a child born out of wedlock, and that the pu-
31 tative father involved has not filed notice of the proceedings to establish
32 his paternity, or if a filing is found, stating the name of the putative fa-
33 ther and the time and date of filing. That certificate shall be filed with
34 the court prior to the entrance of the final decree of adoption.

35 (5) An unmarried biological father who does not fully and strictly com-
36 pply with each of the conditions provided in this section is deemed to have
37 waived and surrendered any right in relation to the child, including the
38 right to notice of any judicial proceeding in connection with the adoption of
39 the child, or for termination of parental rights and his consent to the adop-
40 tion of the child is not required unless he proves, by clear and convincing
41 evidence, all of the following:

42 (a) It was not possible for him, prior to the filing of a proceeding to
43 terminate parental rights of the birth mother; the filing of any pro-
44 ceeding to adopt the child; or the execution of a consent to terminate
45 the birth mother's parental rights under the provisions of section
46 16-2005(4), Idaho Code, whichever occurs first, to:

47 (i) Commence proceedings to establish paternity of his child in
48 accordance with section 7-1111, Idaho Code; and

49 (ii) File notice of the filing of proceedings to establish his
50 paternity of the child with the vital statistics unit of the de-

1 partment of health and welfare in accordance with section 16-1513,
2 Idaho Code;

3 (b) His failure to timely file notice of the filing of proceedings to
4 establish his paternity of the child with the vital statistics unit
5 of the department of health and welfare in accordance with section
6 16-1513, Idaho Code, and his failure to commence timely proceedings to
7 establish paternity of his child in accordance with section 7-1111,
8 Idaho Code, was through no fault of his own; and

9 (c) He filed notice of the filing of proceedings to establish pater-
10 nity of his child in accordance with section 7-1111, Idaho Code, with
11 the vital statistics unit of the department of health and welfare in ac-
12 cordance with section 16-1513, Idaho Code, and filed proceedings to es-
13 tablish his paternity of the child within ten (10) days after the birth
14 of the child. Lack of knowledge of the pregnancy is not an acceptable
15 reason for his failure to timely file notice of the commencement of pro-
16 ceedings or for his failure to commence timely proceedings.

17 (6) A minor parent has the power to consent to the adoption of his or her
18 child. That consent is valid and has the same force and effect as a consent
19 executed by an adult parent. A minor parent, having executed a consent, can-
20 not revoke that consent upon reaching the age of majority or otherwise becom-
21 ing emancipated.

22 (7) No consent shall be required of, nor notice given to, any person
23 whose parental relationship to such child shall have been terminated in
24 accordance with the provisions of either chapter 16 or 20, title 16, Idaho
25 Code, or by a court of competent jurisdiction of a sister state under like
26 proceedings; or in any other manner authorized by the laws of a sister state.
27 Where a voluntary child placement agency licensed by the state in which it
28 does business is authorized to place a child for adoption and to consent
29 to such child's adoption under the laws of such state, the consent of such
30 agency to the adoption of such child in a proceeding within the state of Idaho
31 shall be valid and no further consents or notices shall be required.

32 (8) The legislature finds that an unmarried biological father who re-
33 sides in another state may not, in every circumstance, be reasonably pre-
34 sumed to know of, and strictly comply with, the requirements of this chapter.
35 Therefore, when all of the following requirements have been met, that unmar-
36 ried biological father may contest an adoption prior to finalization of the
37 decree of adoption and assert his interest in the child:

38 (a) The unmarried biological father resides and has resided in another
39 state where the unmarried mother was also located or resided;

40 (b) The mother left that state without notifying or informing the un-
41 married biological father that she could be located in the state of
42 Idaho;

43 (c) The unmarried biological father has, through every reasonable
44 means, attempted to locate the mother but does not know or have reason to
45 know that the mother is residing in the state of Idaho; and

46 (d) The unmarried biological father has complied with the most strin-
47 gent and complete requirements of the state where the mother previously
48 resided or was located in order to protect and preserve his parental in-
49 terest and rights in the child in cases of adoption.

1 (9) An unmarried biological father may, under the provisions of section
2 7-1107, Idaho Code, file a proceeding to establish his paternity prior to the
3 birth of the child; however, such paternity proceeding must be filed prior to
4 the date of the filing of any proceeding to terminate parental rights of the
5 birth mother; the filing of any proceeding to adopt the child; or the execu-
6 tion of a consent to terminate the birth mother's parental rights under the
7 provisions of section 16-2005(4), Idaho Code, whichever occurs first.

8 SECTION 2. That Section 16-1616, Idaho Code, be, and the same is hereby
9 amended to read as follows:

10 16-1616. INVESTIGATION. (1) After a petition has been filed, the de-
11 partment shall investigate the circumstances of the child and his family and
12 prepare a written report to the court.

13 (2) Within thirty (30) days of the child's removal, the department
14 shall notify all of the child's adult relatives who are known or who become
15 known after a diligent search by the department. Such notice shall include,
16 but need not be limited to, a clear statement of the relatives' options to
17 become a placement source for the child if need be, a clear statement that the
18 relative has sixty (60) days to respond to the notice and a clear explanation
19 of the provisions of section 16-1616A, Idaho Code. The provisions of this
20 subsection shall not apply when the child is subject to the Indian child
21 welfare act.

22 (3) The report shall be delivered to the court with copies to each of the
23 parties prior to the pretrial conference for the adjudicatory hearing. If
24 delivered by mail, the report must be received by the court and the parties
25 prior to the pretrial conference for the adjudicatory hearing.

26 (4) The report shall contain a social evaluation of the child and the
27 parents or other legal custodian, a list of the child's adult relatives and a
28 description of the contact or attempted contact made with such relatives and
29 such other information as the court shall require.

30 (35) The report shall not be considered by the court for purposes of
31 determining whether the child comes within the jurisdiction of the act. The
32 report may be admitted into evidence at the adjudicatory hearing for other
33 purposes.

34 SECTION 3. That Chapter 16, Title 16, Idaho Code, be, and the same is
35 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
36 ignated as Section 16-1616A, Idaho Code, and to read as follows:

37 16-1616A. NOTIFICATION TO RELATIVES. (1) A relative who was sent no-
38 tice from the department pursuant to section 16-1616, Idaho Code, shall have
39 sixty (60) days to reply to such notice.

40 (2) If a relative timely replies to the notice and submits a completed
41 application indicating that he or she is willing to provide placement for the
42 child, then an assessment of such relative's fitness to provide placement
43 for the child shall be completed within ninety (90) days from the date such
44 application is received. If, based on the assessment, it is determined that
45 a relative is unfit to provide placement for the child, then the department
46 shall provide written notice to such relative that sets forth the reasons
47 for the determination and clearly states that the department shall not be re-

1 quired to reassess such relative in the temporary or permanent placement of
2 the child.

3 (3) If a relative timely replies to the notice indicating that he or
4 she is unwilling to provide placement for the child, then the department
5 shall not be required to reconsider such relative for temporary or permanent
6 placement of the child.

7 (4) At the initial six (6) month review hearing held pursuant to section
8 16-1622, Idaho Code, the department shall report its complete assessment of
9 relatives to the court. The court shall determine whether the department
10 has made reasonable and ongoing efforts to notify all adult relatives as re-
11 quired by section 16-1616, Idaho Code, and to assess relatives as required
12 by this section. If the court determines that the department has made such
13 efforts and assessments, then the court may authorize the department to sus-
14 pend further efforts to contact the child's relatives.

15 (5) The provisions of this section shall not apply when the child is
16 subject to the Indian child welfare act.

17 SECTION 4. That Section 16-1619, Idaho Code, be, and the same is hereby
18 amended to read as follows:

19 16-1619. ADJUDICATORY HEARING -- CONDUCT OF HEARING -- CONSOLIDA-
20 TION. (1) When a petition has been filed, the court shall set an adjudicatory
21 hearing to be held no later than thirty (30) days after the filing of the
22 petition.

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

29 (3) At the adjudicatory hearing, parents or guardians with disabil-
30 ities shall have the right to introduce admissible evidence regarding how
31 use of adaptive equipment or supportive services may enable the parent or
32 guardian to carry out the responsibilities of parenting the child by ad-
33 dressing the reason for the removal of the child.

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

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

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

45 (b) Vest legal custody in the department or other authorized agency
46 subject to residual parental rights and subject to full judicial ~~review~~
47 approval by the court of all matters relating to the custody of the child
48 by the department or other authorized agency.

1 (6) If the court vests legal custody in the department or other autho-
 2 rized agency, the court shall make detailed written findings based on facts
 3 in the record, that, in addition to the findings required in subsection (4)
 4 of this section, continuation of residence in the home would be contrary to
 5 the welfare of the child and that vesting legal custody with the department
 6 or other authorized agency would be in the best interests of the child. In
 7 addition, the court shall make detailed written findings based on facts in
 8 the record as to whether the department made reasonable efforts to prevent
 9 the placement of the child in foster care, including findings, when appro-
 10 priate, that:

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

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

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

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

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

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

29 (9) In order to preserve the unity of the family system and to ensure the
 30 best interests of the child whether issuing an order of protective supervi-
 31 sion or an order of legal custody, the court may consider extending or initi-
 32 ating a protective order as part of the decree. The protective order shall be
 33 determined as in the best interests of the child and upon a showing of contin-
 34 uing danger to the child. The conditions and terms of the protective order
 35 shall be clearly stated in the decree.

36 (10) If the court does not find that the child comes within the juris-
 37 diction of this chapter pursuant to subsection (4) of this section, it shall
 38 dismiss the petition.

39 SECTION 5. That Section 16-1621, Idaho Code, be, and the same is hereby
 40 amended to read as follows:

41 16-1621. CASE PLAN HEARING -- NO FINDING OF AGGRAVATED CIRCUM-
 42 STANCES. (1) In every case in which the child is determined to be within
 43 the jurisdiction of the court, and there is no judicial determination that
 44 aggravated circumstances were present, the department shall prepare a writ-
 45 ten case plan, including cases in which the parent(s) is incarcerated. The
 46 court shall schedule a case plan hearing to be held within thirty (30) days
 47 after the adjudicatory hearing. The case plan shall be filed with the court
 48 no later than five (5) days prior to the case plan hearing. Copies of the
 49 case plan shall be delivered to the parents and other legal guardians, the

1 prosecuting attorney or deputy attorney general, the guardian ad litem and
2 attorney for the child. The court shall hold a case plan hearing to determine
3 whether the best interest of the child is served by adopting, rejecting or
4 modifying the case plan proposed by the department.

5 (2) Notice of the case plan hearing shall be provided to the parents,
6 and other legal guardians, the prosecuting attorney or deputing attorney
7 general, guardian ad litem, attorney for the child, the department and fos-
8 ter parents. Although foster parents are provided notice of this hearing,
9 they are not parties to the child protective act action.

10 (3) If the child is placed in the legal custody of the department, the
11 case plan filed by the department shall set forth reasonable efforts that
12 will be made to make it possible for the child to return home. The case plan
13 shall also:

14 (a) Identify the services to be provided to the child, including ser-
15 vices to identify and meet any special educational, emotional, physical
16 or developmental needs the child may have, to assist the child in ad-
17 justing to the placement or to ensure the stability of the placement.

18 (b) Address options for maintaining the child's connection to the com-
19 munity, including individuals with a significant relationship to the
20 child, and organizations or community activities with which the child
21 has a significant connection.

22 (c) Include a goal of reunification and a plan for achieving that
23 goal. The reunification plan shall identify all issues that need to
24 be addressed before the child can safely be returned home without de-
25 partment supervision. The court may specifically identify issues to
26 be addressed by the plan. The reunification plan shall specifically
27 identify the tasks to be completed by the department, each parent or
28 others to address each issue, including services to be made available
29 by the department to the parents and in which the parents are required
30 to participate, and deadlines for completion of each task. The case
31 plan shall state with specificity the role of the department toward each
32 parent. When appropriate, the reunification plan should identify terms
33 for visitation, supervision of visitation and child support.

34 (d) Include a concurrent permanency goal and a plan for achieving that
35 goal in the event the primary goal of reunification fails or is deter-
36 mined by the court to no longer be appropriate. The concurrent perma-
37 nency goal may be one (1) of the following: termination of parental
38 rights and adoption, guardianship or another planned permanent living
39 arrangement. The concurrent permanency plan shall:

40 (i) Address all options for permanent placement of the child,
41 including consideration of options for in-state and out-of-state
42 placement of the child;

43 (ii) Address the advantages and disadvantages of each option and
44 include a recommendation as to which option is in the child's best
45 interest;

46 (iii) Specifically identify the actions necessary to implement
47 the recommended option;

48 (iv) Specifically set forth a schedule for accomplishing the ac-
49 tions necessary to implement the concurrent permanency goal;

1 (v) Address options for maintaining the child's connection to the
2 community, including individuals with a significant relationship
3 to the child, and organizations or community activities with which
4 the child has a significant connection;

5 (vi) In the case of a child who has attained the age of sixteen (16)
6 years, include the services needed to assist the child to make the
7 transition from foster care to independent living; and

8 (vii) Identify further investigation necessary to identify or as-
9 sess other options for permanent placement, to identify actions
10 necessary to implement the recommended placement or to identify
11 options for maintaining the child's significant connections.

12 (4) If the child has been placed under protective supervision of the de-
13 partment, the case plan, filed by the department, shall:

14 (a) Identify the services to be provided to the child, including ser-
15 vices to identify and meet any special educational, emotional, physi-
16 cal or developmental needs the child may have, to assist the child in
17 adjusting to the placement or to ensure the stability of the placement.
18 The plan shall also address options for maintaining the child's connec-
19 tion to the community, including individuals with a significant rela-
20 tionship to the child, and organizations or community activities with
21 which the child has a significant connection.

22 (b) Identify all issues that need to be addressed to allow the child to
23 remain at home without department supervision. The court may specifi-
24 cally identify issues to be addressed by the plan. The case plan shall
25 specifically identify the tasks to be completed by the department, the
26 parents or others to address each issue, including services to be made
27 available by the department to the parents and in which the parents are
28 required to participate, and deadlines for completion of each task. The
29 plan shall state with specificity the role of the department toward each
30 parent.

31 (5) The case plan, as approved by the court, shall be entered into the
32 record as an order of the court. The court shall not approve any case plan
33 that does not contain a concurrent permanency plan. The order may include
34 interim and final deadlines for implementing the case plan and finalizing
35 the permanency goal. The court's order shall provide that reasonable ef-
36 forts shall be made to reunify the family in a timely manner in accordance
37 with the case plan. Unless the child has been placed under the protective
38 supervision of the department, the court's order shall also require the de-
39 partment to simultaneously take steps to accomplish the goal of reunifica-
40 tion and the concurrent permanency goal.

41 (6) If the primary reunification plan contained in the case plan fails
42 or is determined by the court to no longer be appropriate, then the concu-
43 rent permanency plan contained in the case plan shall become the primary
44 plan. If the department seeks to make any changes to the concurrent perma-
45 nency plan after it has become the primary plan, then the department shall
46 first file with the court an amended permanency plan setting forth all of
47 the information required in subsection (3) (d) of this section. The court
48 shall schedule an amended permanency plan hearing to be held within thirty
49 (30) days after the filing. Copies of the amended permanency plan shall be
50 delivered to the parents and other legal guardians, the prosecuting attor-

1 ney or deputy attorney general, the foster parents, the guardian ad litem
2 and attorney for the child. The court shall hold an amended permanency plan
3 hearing to determine whether the best interests of the child are served by
4 adopting, rejecting or modifying the amended permanency plan proposed by the
5 department.

6 SECTION 6. That Section 16-1624, Idaho Code, be, and the same is hereby
7 amended to read as follows:

8 16-1624. TERMINATION OF PARENT-CHILD RELATIONSHIP. (1) If the child
9 has been placed in the legal custody of the department or under its protec-
10 tive supervision pursuant to section 16-1619, Idaho Code, the department may
11 petition the court for termination of the parent and child relationship in
12 accordance with chapter 20, title 16, Idaho Code. A petition to terminate
13 parental rights shall be filed in the child protective act case.

14 (2) A petition to terminate parental rights shall be filed within
15 thirty (30) days of an order approving a permanency plan with a permanency
16 goal of termination of parental rights and adoption.

17 (3) Unless there are compelling reasons it would not be in the best in-
18 terest of the child, the department shall be required to file a petition to
19 terminate parental rights within thirty (30) days of a judicial determina-
20 tion that an infant has been abandoned or that reasonable efforts are not re-
21 quired because aggravated circumstances were present.

22 (4) The department shall join as a party to the petition if such a pe-
23 tition to terminate is filed by another party~~r~~, as well as to concurrently
24 identify, recruit, process and approve a qualified family for adoption un-
25 less it is determined that such actions would not be in the best interest of
26 the child, or the child is placed with a fit and willing relative.

27 (5) If termination of parental rights is granted and the child is placed
28 in the guardianship or legal custody of the department, the court, upon pe-
29 tition, shall conduct a hearing as to the future status of the child within
30 twelve (12) months of the order of termination of parental rights, and every
31 twelve (12) months subsequently until the child is adopted as sanctioned by
32 the court or is in a placement sanctioned by the court.

33 (6) The court may authorize the department to suspend further efforts
34 to reunify the child with the child's parent, pending further order of the
35 court, when a petition to terminate parental rights has been filed with re-
36 gard to the child.

37 SECTION 7. That Section 16-1629, Idaho Code, be, and the same is hereby
38 amended to read as follows:

39 16-1629. POWERS AND DUTIES OF THE DEPARTMENT. The department, working
40 in conjunction with the court and other public and private agencies and per-
41 sons, shall have the primary responsibility to implement the purpose of this
42 chapter. To this end, the department is empowered and shall have the duty to
43 do all things reasonably necessary to carry out the purpose of this chapter,
44 including, but not limited to, the following:

45 (1) The department shall administer treatment programs for the protec-
46 tion and care of neglected, abused and abandoned children, and in so doing
47 may place in foster care, shelter care, or other diagnostic, treatment, or

1 care centers or facilities, children of whom it has been given custody. The
2 department is to be governed by the standards found in chapter 12, title 39,
3 Idaho Code.

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

13 (3) The department shall be required to maintain a central registry for
14 the reporting of child neglect, abuse and abandonment information. Provided
15 however, that the department shall not retain any information for this pur-
16 pose relating to a child, or parent of a child, abandoned pursuant to chapter
17 82, title 39, Idaho Code.

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

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

34 (6) The department shall keep written records of investigations, eval-
35 uations, prognoses and all orders concerning disposition or treatment of ev-
36 ery person over whom it has legal custody or under its protective supervi-
37 sion. Department records shall be subject to disclosure according to chap-
38 ter 1, title 74, Idaho Code, unless otherwise ordered by the court, the per-
39 son consents to the disclosure, or disclosure is necessary for the delivery
40 of services to the person. Notwithstanding the provisions restricting dis-
41 closure or the exemptions from disclosure provided in chapter 1, title 74,
42 Idaho Code, all records pertaining to investigations, the rehabilitation of
43 youth, the protection of children, evaluation, treatment and/or disposi-
44 tion records pertaining to the statutory responsibilities of the department
45 shall be disclosed to any duly elected state official carrying out his offi-
46 cial functions.

47 (7) The department shall establish appropriate administrative proce-
48 dures for the processing of complaints of child neglect, abuse and abandon-
49 ment received and for the implementation of the protection, treatment and
50 care of children formally or informally placed in the custody of the depart-

1 ment or under its protective supervision under this chapter including, but
2 not limited to:

3 (a) Department employees whose job duties are related to the child pro-
4 tective services system under this chapter shall first be trained as to
5 their obligations under this chapter regarding the protection of chil-
6 dren whose health and safety may be endangered. The curriculum shall
7 include information regarding their legal duties, how to conduct their
8 work in conformity with the requirements of this chapter, information
9 regarding applicable federal and state laws with regard to the rights
10 of the child, parent and others who may be under investigation under the
11 child protective services system, and the applicable legal and consti-
12 tutional parameters within which they are to conduct their work.

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

17 (8) The department having been granted legal custody of a child, ~~sub-~~
18 ~~ject to the judicial review provisions of this subsection,~~ shall have the
19 right to determine where and with whom the child shall live, ~~provided that~~
20 ~~the child shall not be placed outside the state without the court's consent~~
21 subject to judicial approval. ~~Provided however, that t~~The court shall re-
22 tain jurisdiction over the child, which jurisdiction shall be entered on any
23 order or petition granting legal custody to the department, and the court
24 shall have jurisdiction over all matters relating to the child. The depart-
25 ment shall not place the child in the home from which the court ordered the
26 child removed without first obtaining the approval of the court.

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

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

39 (11) At any time the department is considering a placement pursuant
40 to this chapter, the department shall make a reasonable effort to place the
41 child in the least restrictive environment to the child ~~and in so doing.~~
42 Subject to the provisions of subsection (12) of this section, the department
43 shall consider, consistent with the best interest and special needs of the
44 child, placement priority of the child in the following order:

45 (a) A fit and willing relative.

46 (b) A fit and willing nonrelative with a significant relationship with
47 the child.

48 (c) Foster parents and other persons licensed in accordance with chap-
49 ter 12, title 39, Idaho Code.

1 (12) The placement priority set forth in subsection (11) of this sec-
 2 tion shall not apply to the department's consideration of the permanency
 3 plan and permanent placement if the child has been placed in one (1) tempo-
 4 rary placement for a period of six (6) months or longer. In such case, the
 5 department shall make a reasonable effort to place the child in the least
 6 restrictive environment to the child and in so doing shall consider the best
 7 interests, special needs, safety and well-being of the child as paramount.

8 SECTION 8. That Section 16-2010, Idaho Code, be, and the same is hereby
 9 amended to read as follows:

10 16-2010. DECREE. (1) Every order of the court terminating the parent
 11 and child relationship or transferring legal custody or guardianship of the
 12 person of the child shall be in writing and shall recite the findings upon
 13 which such order is based, including findings pertaining to the court's ju-
 14 risdiction.

15 (2) (a) If the court finds sufficient grounds exist for the termination
 16 of the parent and child relationship, it shall so decree and:

17 (i) Appoint an individual as guardian of the child's person~~ry~~ or

18 (ii) Appoint an individual as guardian of the child's person
 19 and vest legal custody in another individual or in an authorized
 20 agency~~ry~~ or

21 (iii) Appoint an authorized agency as guardian of the child's per-
 22 son and vest legal custody in such agency.

23 (b) The court shall also make an order fixing responsibility for the
 24 child's support. The parent and child relationship may be terminated
 25 with respect to one ~~(1)~~ parent without affecting the relationship be-
 26 tween the child and the other parent.

27 (3) Where the court does not order termination of the parent and child
 28 relationship, it shall dismiss the petition; provided however, that where
 29 the court finds that the best interest of the child requires substitution
 30 or supplementation of parental care and supervision, it shall make an order
 31 placing the child under protective supervision, or vesting temporary legal
 32 custody in an authorized agency, fixing responsibility for temporary child
 33 support, and designating the period of time during which the order shall re-
 34 main in effect.

35 (4) If termination of parental rights is granted and the child is placed
 36 in the guardianship or legal custody of the department of health and welfare,
 37 the court, upon petition, shall conduct a hearing as to the future status of
 38 the child within twelve (12) months of the order of termination of parental
 39 rights, and every twelve (12) months subsequently until the child is adopted
 40 as sanctioned by the court or is in a placement sanctioned by the court.

41 SECTION 9. That Section 39-1221, Idaho Code, be, and the same is hereby
 42 amended to read as follows:

43 39-1221. REMOVAL OF CHILDREN -- CHANGE IN PLACEMENT. (1) Any child or
 44 children receiving child care in a children's residential care facility or
 45 children's therapeutic outdoor program found to be operating without a li-
 46 cense may be removed from such home, agency or institution upon order of the
 47 magistrate court of the county in which the child is receiving care and re-

1 turned to the child's own home, or placed in the custody of the department if
2 the child's custodial parent is not available. The prosecuting attorneys of
3 the several counties shall represent the department at all stages of the pro-
4 ceedings before the magistrate court. The magistrate court shall retain ju-
5 risdiction relative to child custody pursuant to the provisions of this sec-
6 tion. In the event that the prosecuting attorney in the county where the al-
7 leged violation occurred fails or refuses to act within sixty (60) days of
8 notification of the violation, the attorney general is authorized to prose-
9 cute violations under this chapter.

10 (2) A child who is placed in a foster home may not be removed from such
11 home by the department to be placed in another foster home or to be placed in
12 any other temporary placement unless:

13 (a) The department has reason to believe the child has been abused or
14 neglected or there is a substantial risk of abuse or neglect to the child
15 in the foster home;

16 (b) The court orders removal and change in placement of the child;

17 (c) The removal and change in placement occurs less than thirty (30)
18 days after the child's placement in the foster home;

19 (d) The removal and change in placement occurs less than ninety (90)
20 days after the child's placement in the foster home and the new place-
21 ment is with a relative, provided that the department shall give the
22 foster parents notice of such change at least five (5) days before the
23 change;

24 (e) The removal and change in placement will result in reuniting sib-
25 lings; or

26 (f) The person providing foster care requests or agrees to the removal.

27 (3) If the department seeks to remove a child from a foster home for
28 placement in another foster home or other temporary placement for any rea-
29 son other than a reason set forth in subsection (2) of this section, then the
30 department shall petition and obtain from the court an order of removal and
31 change in placement. Such petition shall include the following information:

32 (a) Clearly stated reasons for the change in placement;

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

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

37 (d) Whether the change in placement will separate siblings or affect
38 sibling visitation; and

39 (e) Any other information required or requested by the court.

40 (4) No later than five (5) days after filing the petition, the depart-
41 ment shall deliver a copy of the petition to the child's parents, the child's
42 parents' attorney, the child's foster parents, the guardian ad litem and the
43 guardian ad litem attorney along with a clear statement that each such person
44 has a right to be heard at the removal hearing.

45 (5) When a petition has been filed, the court shall schedule a hearing
46 to be held no later than thirty (30) days after the filing of the petition.
47 The court shall provide notice of the hearing to the department and prosecut-
48 ing attorney, if the prosecuting attorney has appeared in the case, and to
49 the child's parents, the child's parents' attorney, the child's foster par-

1 ents, the guardian ad litem and the guardian ad litem attorney, all of whom
2 shall be given an opportunity to be heard at the hearing.

3 (6) Based on the testimony given at the hearing and any evidence bearing
4 on the proposed removal and change in placement, the court shall determine
5 whether a removal and change in placement is in the child's best interests
6 and shall order either the continuation of placement in the child's current
7 foster home or an order granting the petition to remove and change placement.
8 The court shall set forth its reasons for its decision in the order.

9 (7) The provisions of section 39-1212, Idaho Code, shall not apply to
10 subsections (2) through (6) of this section.